

Re: Public comments in *United States v. Mountain Health Care*

Dear Mr. Botti: I am writing to express opposition to the proposed Final Judgment in the case of *United States v. Mountain Health Care*, now pending before the U.S. District Court for the Western District of North Carolina. The proposed judgment will not benefit the public interest, and will actually cause harm to consumers by depriving thousands of North Carolina residents of the benefits of a comprehensive, stable physician network.

In my opinion, the Justice Department lacks insights into the practices of Mountain's business to understand their good faith efforts to comply with the DOJ-FTC Statements of Antitrust Enforcement Policy in Health Care and has ignored the ramifications of the consent decree being imposed on Mountain. Through personal experience with the anti-trust settlement process, the government claims that no one operates the messenger model correctly. This presumption means physicians, and their advisors, are presumed guilty from the beginning of an investigation.

Also, the anti-trust laws, as they are being applied against physician networks, are only helping the parties that the Sherman Act was originally intended to protect the public against * * * the health plans. The modern day "robber barons" are the insurance companies, with billions of dollars in profits and unchecked power against employers and healthcare providers. Physicians have not caused rising healthcare premiums, as the standard FTC-DOJ consent language would

suggest. In fact, the physician fee schedules from insurance carriers, including the largest payor, Medicare, have not even kept up with normal inflation, much less medical inflation rates since the 1970s.

The "excuse" of per se price fixing in pursuing these prosecutions is an attempt by the government to not have to prove a case. The fact that physicians, and their advisors, have no resources to sustain an FTC-DOJ investigation much less contest a settlement offer, should not be a reason for the government to continue bullying professionals into settlement after settlement without providing a reasonable means for physicians to continue to operate a practice in a world dominated by billion-dollar insurers. However, the federal government continues chalking up 'victories' in the arena of physician network dissolution under the guise of ridding the world of anti-trust offenders. I've asked repeatedly, and have not received an answer, "Who's been hurt?" in these recent cases pursued by the DOJ and FTC. I ask again, and beg for an answer, "Who's been hurt?" in this case against Mountain.

While I'm not happy to have settled anti-trust cases recently, I find the inconsistency in the application of the consent decree with Mountain disturbing. Why should one physician network be offered an opportunity to continue to operate while another is forced to disband? In either event, the physicians are forced to operate their practices with blinders on, practicing as individuals at the mercy of the health plan forced to operate their practices with blinders on, practicing as

individuals at the mercy of the health plan contract offers. In both outcomes the physicians are left with no ability to do anything, having "failed" at the application of the only safe harbor offered by the government—the exclusive messenger model. How would one treatment of the organization (continue versus disband) affect the members of the patient community differently? Dissolution seems to only serve the purposes of exacting a harsher punishment.

The Justice Department has not taken into account the interests of actual consumers. Nor have they ever considered the rights of Mountain's shareholders and physicians. As citizens of the United States, they have an absolute right to freely associate with other professionals for their mutual benefit. It is not a crime to act in one's economic self-interest, so long as one does not implement actual force against other individuals. Since there's no evidence Mountain ever initiated force against its customers, there is no justification for the extreme remedy provided for in this final judgment.

For these reasons, the Justice Department should withdraw the proposed Final Judgment and dismiss its complaint against Mountain.

Please include these comments in the official record of this case, pursuant to the Tunney Act.

Sincerely,
Marcia L. Brauchler,
*Physicians' Ally, Inc., P.O. Box 260661,
Littleton, CO 80163-0171, (303) 346-2935.*

BILLING CODE 4410-11-M