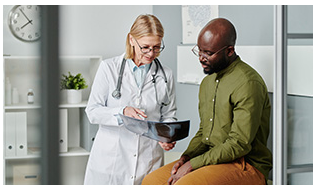

Practice sues hospitals, claiming they freeze out providers

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Compliance

A lawsuit in New Jersey suggests that hospital management that fails to allow local doctors a fair chance to treat their patients may be in restraint of trade, among other violations.

Salerno Medical Associates LLP (SMA) in East Orange, N.J., brought action against several northern New Jersey hospitals in the RWJBarnabas (RWJB) health system on September 30, claiming that they regularly "divert medical services traditionally provided by Plaintiffs and other Independent Providers — many of whom maintain longstanding relationships with their patients and possess deep familiarity with their medical histories — to hospital-employed and contracted hospitalists."

While some might consider that entirely the hospitals' business, the suit says this "steering" of patients to providers is contrary to the public interest, and also interferes with the rights of patients as well as those of their non-RWJB-affiliated providers, including those who hold privileges at those hospitals.

The plaintiffs charge that RWJB's policies effectively freeze all but "RWJB's Contracted Intensivists" from treating patients in their intensive care units (ICU), and similarly restrict outside physicians from treating emergency patients admitted to a 48-hour period of observation in their hospitals and from "participating in call coverage despite their privileges." (The hospitals, the plaintiffs say, mainly employ physicians from their own RWJBarnabas Health Medical Group, formerly known as Barnabas Health Medical Group.)

In some cases, it's alleged that the hospitals do not notify the outside providers at all, or otherwise place onerous restriction on their involvement — e.g. in the case of observation the provider "has only 60 minutes to respond."

SMA contends that these hospitals thus "tortiously interfere with doctor-patient relationships and the patients' right to treat with a physician of their choosing," and "unlawfully discriminate against Plaintiffs and other Independent Providers, violate their due process rights and constitute unfair competition."

The plaintiffs further claim patient harms as a result; they cite, for example, a patient admitted for spine surgery whose allegedly inappropriate medication orders resulted in the need for a second operation, and whose lack of post-care services and instruction might have resulted in "serious and even fatal medical consequences," had the patient not happened to contact his non-RWJB doctor, who corrected the problem.

The plaintiffs claim antitrust violations including illegal self-referral, unfair competition, and other charges and ask for injunctive relief as well as statutory and punitive damages.

A spokesperson for RWJBarnabas Health tells Part B News that "patient safety is our number one priority. Our long-standing process of utilizing on-site hospitalists and interventionalists to provide 24/7 care to hospitalized patients not only increases patient safety, but it also enhances continuity of care and provides the most timely and responsible medical care. This practice in no way prevents patients from continuing to be cared for by their primary care physicians or other medical specialists." The spokesperson adds that they're "confident this matter will be resolved in accordance with the law, and we are fully prepared to defend our actions in court."

It's been done — and won

Salerno's lawyer, Steven I. Adler, a partner with Mandelbaum Barrett P.C., says that "the New Jersey Antitrust Act and common law caselaw, [which] recognize hospitals as being quasi-public entities, and RWJB being a 501(c)(6) [non-profit] institution, gives our clients ample support to be successful on their claims."

Phil Kim, a partner with the Jackson Walker law firm in Dallas, sees some precedents for this kind of case. One 2010 case against Baptist Health, a large hospital system in Arkansas, has interesting similarities: "A group of independent physicians raised antitrust concerns — especially when lacking clinical justification — and the state supreme court upheld a permanent injunction against Baptist Health, preventing enforcement of the exclusionary policy while emphasizing that such policies need to be based on legitimate clinical justifications, not economic motives aimed at suppressing competition," Kim recounts.

Adler himself says he himself was involved, 40 years ago, in “an important restraint of trade litigation on behalf of two inner-city physicians who challenged a New Jersey hospital’s moratorium barring doctors from joining its medical staff unless they joined a medical practice that already had privileges at the hospital. The hospital claimed the moratorium was the result of a bed shortage, while our clients alleged that the doctors with privileges were monopolizing the beds for their own practices. The New Jersey Supreme Court ruled in our clients’ favor and struck down the moratorium.”

Adler expects the convincer to be the well-being of the affected patients, which “played a significant part in the decision to file suit. Patients’ private physicians, who often have long-term relationships with their patients and know their medical history, should be involved in helping patients decide who will be their doctor if a referral is needed.”

Resource

Complaint, Salerno Medical Associates, et al, v RWJBarnabas Health, Inc. et al:
https://assets.alm.com/34/67/e646d0ba44a3a077985ee4daf1ce/salerno-medical-associates-et-al-v-rwjbarnabas-et-al.pdf

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