

Private Enforcement Cases Highlight Consolidation and Anticompetitive Practices in Healthcare Industry

As federal and state agencies ramp up enforcement in healthcare antitrust following the [Biden executive order](#) calling for revamped competition in the industry, private entities are also increasingly joining in the action. In this month's Litigation and Enforcement Highlights, we take a look at a pair of recent private antitrust cases that allege anticompetitive conduct of large hospital systems.

Saint Francis Hospital v. Hartford HealthCare (Connecticut)

Last month, Hartford HealthCare in Connecticut was hit with an antitrust lawsuit filed in federal court by competitor Saint Francis Hospital, alleging that Hartford's physician practice acquisitions and resulting practices harmed competition and consumers in the Hartford region, in violation of the federal Sherman and Clayton Acts as well as the Connecticut Antitrust Act.

Hartford HealthCare, which owns at least seven hospitals and ten surgery centers, is one of two major health systems in Connecticut, having grown significantly in recent years with acquisitions of multiple hospitals and medical practices across the state.^[1] The sprawling [75-page complaint](#) accuses Hartford HealthCare, which includes Hartford Hospital, of several anticompetitive practices, including:

- acquiring numerous physician practices to achieve dominant market share in several physician specialties;
- using threats to demand these doctors refer all or most cases to Hartford's hospitals, surgical centers, and affiliates;
- using financial penalties to require physicians to exclusively practice

through Hartford's physician network; and

- interfering with managed care plans' use of tiered networks that would allow patients to utilize lower cost providers.

As a result of these practices, the complaint alleges that Hartford has directly enhanced its bargaining power with health plans and was able to charge rates more than 15% higher for lesser quality service than other hospitals in the region. The complaint further claimed evidence of Hartford's blatant goal of stifling competition, alleging "Hartford HealthCare executives have stated repeatedly that their plan was to 'crush' or 'bury' Saint Francis." To that end, Hartford had acquired two dozen surgeons and specialists in hematology, oncology, cardiology and neurology over the last four years, with more planned. In sum, the lawsuit claims "Hartford HealthCare's anti-competitive actions were taken ... specifically to increase its market dominance and ability to charge higher than market rates."

This case highlights the increasingly scrutinized practice of health system acquisition of physician practices and its impact. The Connecticut legislature has [enacted legislation](#) in the 2021 session that directs the Office of Health Strategies to study and report on improving regulatory oversight of mergers and acquisitions of physician practices. This case has also garnered the attention of the Connecticut attorney general. The complaint requests permanent injunction against any anticompetitive behavior, including future acquisitions of physician practices, as well as divestiture of acquisitions from 2020.

Location 24 LLC v. HCA Healthcare

In Florida, another similar private enforcement case is pending in federal court against HCA Healthcare, alleging anticompetitive conduct in violation of the Sherman Act and Florida antitrust law. The lawsuit claims that HCA engaged in a pattern of conduct that formed partnerships with large surgical practices in the Sarasota area, only such "partnerships" were fraudulent and formed for the purpose of improving HCA's market power in the orthopedic surgery market.

Plaintiff Location 24 LLC is comprised of a group of doctors at the Kennedy White

Orthopedic Center, the largest orthopedic surgical practice in Sarasota, Florida. HCA Holdings, the parent company of HCA Healthcare, is a for-profit corporation that operates locally managed healthcare facilities in 21 U.S. states and the UK, including four hospitals and four ambulatory surgical centers in the Sarasota area. According to the [complaint](#), in forming the partnerships, HCA would take majority control of the partnership at 51% ownership. After assuming control over all decisions of the surgery center, HCA would “deliberately diminish[] the quality, reputation, and capabilities of the surgical practice,” while diverting patients to HCA’s wholly-owned hospitals, such as co-defendant in this case, Doctors Same Day Surgery Center. In addition, HCA prevents these surgical centers from terminating the partnerships through financial threats and restrictive covenants and imposes a two-year noncompete clause on physicians to prevent establishment of new surgery centers.

Notably, the complaint claimed that “HCA’s scheme is a premeditated plan that is implemented all over the country and over an extended period ... [that] inevitably breaks down HCA’s partners’ medical practices to ensure that the number of market participants has been reduced, enabling HCA to control the specific specialty surgical market in the region.” Plaintiffs also point to HCA’s involvement in another private enforcement action in North Carolina, where a [class action alleges HCA](#) used market power garnered from the cross-market merger with Mission Health in North Carolina to demand anticompetitive terms in contracts with insurers, including tying, all-or-nothing, anti-steering, and gag clauses, driving up prices and insurance premiums. Additionally in that lawsuit, class plaintiffs alleged similar facts to the Florida case, specifically that they “acquired medical facilities from another company, cut costs and staff at the newly-acquired facility, and then diverted patients to HCA’s flagship facility in an effort to consolidate hospitals and raise prices.”

As more private parties are emboldened to bring lawsuits to call attention to anticompetitive behaviors in the healthcare industry, these efforts could also support and work concurrently with state and federal actions to reign in consolidation and anticompetitive practices.

[1] Stephen Singer, *Hartford HealthCare has expanded across Connecticut, but anti-competitive lawsuit 'seems pretty novel,' analyst says*, Hartford Courant (Jan. 16, 2022).