

INTERLOCUTORY, MODIFYING, VACATING, AND MISCELLANEOUS ORDERS

EVANSTON NORTHWESTERN HEALTHCARE

Docket No. 9315. Order, January 5, 2006

Order denying respondent's request to remove its subsidiary from the caption of the administrative proceeding.

ORDER DENYING MOTION BY ENH MEDICAL GROUP, INC. FOR REMOVAL OF NAME FROM CAPTION

On November 14, 2005, respondent ENH Medical Group, Inc. ("ENH Medical"), a subsidiary of respondent Evanston Northwestern Healthcare Corp. ("ENH"), filed a motion asking the Commission to remove its name from the caption of this proceeding. ENH Medical states that complaint counsel has consented to the requested relief. For the reasons stated below, the application is denied as premature.

On February 10, 2004, the Commission issued a three-count complaint against respondents ENH and ENH Medical. Counts I and II of the complaint asserted that ENH's January 2000 acquisition of the Highland Park Hospital substantially lessened competition in violation of Section 7 of the Clayton Act. As alleged in the complaint, following the merger of the hospitals, the parties folded the Highland Park Independent Physician Group into ENH Medical, which then negotiated prices for ENH salaried physicians as well as for independent physicians who are not clinically or financially integrated with ENH or ENH Medical, including physicians who formerly contracted through the Highland Park Independent Physician Association. Count III of the complaint charged that such joint price negotiations constitute unlawful price fixing in violation of Section 5 of the Federal Trade Commission Act. The allegations of Count III of the complaint were resolved by a consent order which, *inter alia*, prohibits ENH and ENH Medical Group from facilitating, or entering into agreements between or among physicians unless the physicians are participants in a clinically or financially integrated practice.

Interlocutory Orders, Etc.

The present motion in essence requests that ENH Medical be dismissed from the case, but does not provide an adequate factual or legal basis for doing so. Although the consent order resolved the allegations of one count of a three-count complaint, as it affected ENH Medical, that respondent was not dismissed from the case at that time and it is premature to conclude that ENH Medical Group has no further relevance to this litigation. The Commission is now considering, in the context of ENH's appeal, whether ENH's acquisition of Highland Park Hospital violated Section 7 of the Clayton Act. If the Commission finds liability, it may become necessary to consider whether any additional or further relief with regard to ENH Medical is necessary in order to accomplish full relief and to restore competition in the relevant market.

Accordingly, for the foregoing reasons,

It is ordered that the instant motion to remove ENH Medical from the caption is *denied*; and

It is further ordered that the appeal of ENH Medical from the Initial Decision of the Administrative Law Judge, and from certain procedural and evidentiary rulings -- as detailed in the Notice of Appeal it filed on November 2, 2005 -- is hereby deemed to have been perfected by the filing of Respondent's Appeal Brief on December 16, 2005.

By the Commission.