

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

FILED

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LINDA L. ROARK
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General,

Plaintiff,

v.

POPLAR BLUFF PHYSICIANS GROUP, INC.
D/B/A DOCTORS REGIONAL MEDICAL CENTER,

and

BEN N. TILL, M.D.
THOMAS A. DODD, M.D.
GARY W. DAUSMANN, M.D.
RICK L. MCGATH, M.D.
RICHARD GAYLE, D.O.
DAVID GAYLE, D.O.
MARK A. BAUMAN, M.D.
KENNETH C. LI, M.D.
JOHN P. CHRISTY, M.D.
E. T. HANSBROUGH, M.D.
E. C. HANSBROUGH, M.D.
WENDELL ELLIOTT, M.D.
JOSEPH HECKER, M.D.
GILBERT D. SMITH, M.D.
KIRBY L. TURNER, M.D.
MICHAEL D. LASETER, M.D.
R.E. RAMIREZ, M.D.
A. D. MADDURI, M.D.
ROBERT C. YOUNG, M.D.
N. C. CHAUHAN, M.D.
R. KINGSLEY BOST, M.D.
ANN L. PEICK, M.D.
WILLIAM L. TRAXEL, M.D.
S. D. MADDURI, M.D.
A. N. REDDY, M.D.
JONATHAN JOHNSON, M.D.
FREDERICK D. JONES, M.D.
d/b/a KNEIBERT CLINIC, a Missouri
general partnership,

Defendants.

Case No. CV195-393CC

PETITION FOR PERMANENT INJUNCTIONS,
CIVIL PENALTIES AND OTHER RELIEF

Comes now Plaintiff herein, the State of Missouri, pursuant to § 416.011 et seq., RSMo 1986 and § 407.010 et seq., RSMo 1986 by and through its Attorney General, Jeremiah W. (Jay) Nixon and his Assistant Attorney General, Penny G. Newman and for its cause of action states as follows:

JURISDICTION AND VENUE

1. This petition is filed, and jurisdiction and venue of the court invoked, under the provisions of §§ 416.061(1), 416.131(1) and § 407.100, RSMo and Mo. R. Civ. Pro. 92.01 to recover money damages for injuries sustained, civil penalties and injunctive relief against defendants' anticompetitive activities in violation of the Missouri Antitrust Law, §§ 416.031.1 and 416.031.2, and defendants' activities in violation of the Missouri Merchandising Practices Law, § 407.020.

2. Venue is proper in Cole County by virtue of defendants' consent.

PARTIES

3. Jeremiah W. (Jay) Nixon is the duly elected and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to §§ 416.061 and 407.100 RSMo.

4. Defendant Poplar Bluff Physicians Group, Inc. (hereafter "PBPG") is a Missouri corporation doing business as Doctors Regional Medical Center (hereafter "DRMC"), a for-profit hospital

with its principal place of business at 621 Pine Boulevard in Poplar Bluff, Missouri 63901.

5. Defendant Ben N. Till, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic, a Missouri general partnership, a medical clinic doing business in Poplar Bluff, Missouri (here after "Kneibert Clinic") and is a shareholder, Chairman of the Board of Directors and President of PBPG.

6. Defendant Thomas A. Dodd, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder, Secretary of the Board of Directors and Secretary of PBPG.

7. Defendant Gary W. Dausmann, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder in PBPG.

8. Defendant Rick L. McGath, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder in PBPG.

9. Defendant Richard Gayle, D.O., an individual, is a doctor of osteopathy and a "junior non-voting" partner in the Kneibert Clinic and is a shareholder in PBPG.

10. Defendant David Gayle, D.O., an individual, is a doctor of osteopathy and a "junior non-voting" partner in the Kneibert Clinic and is a shareholder in PBPG.

11. Defendant Mark A. Bauman, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder in PBPG.

12. Defendant Kenneth C. Li, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder in PBPG.

13. Defendant John P. Christy, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder in PBPG.

14. Defendant E. T. Hansbrough, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder, Vice Chairman of the Board of Directors and Vice President of PBPG.

15. Defendant E. C. Hansbrough, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder in PBPG.

16. Defendant Wendell Elliott, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder in PBPG.

17. Defendant Joseph Hecker, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder in PBPG.

18. Defendant Gilbert D. Smith, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic.

19. Defendant Kirby L. Turner, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder in PBPG.

20. Defendant Michael D. Laseter, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder in PBPG.

21. Defendant R. E. Ramirez, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic.

22. Defendant A. D. Madduri, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder in PBPG.

23. Defendant Robert C. Young, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic.

24. Defendant N. C. Chauhan, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder in PBPG.

25. Defendant R. Kingsley Bost, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic.

26. Defendant Ann L. Peick, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder in PBPG.

27. Defendant William L. Traxel, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder in PBPG.

28. Defendant S. D. Madduri, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder in PBPG.

29. Defendant A. N. Reddy, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder in PBPG.

30. Defendant Jonathan Johnson, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic.

31. Defendant Frederick D. Jones, M.D., an individual, is a physician and an owner and partner in the Kneibert Clinic and is a shareholder in PBPG.

STATUTORY PROVISIONS (RSMO 1986)

32. Section 416.031 provides:

1. Every contract, combination or conspiracy in restraint of trade or commerce in this state is unlawful.

2. It is unlawful to monopolize, attempt to monopolize, or conspire to monopolize trade or commerce in this state.

. . . .

33. Section 416.021 defines "person" as:

2. any individual, corporation, firm, partnership, incorporated or unincorporated association or any other legal or commercial entity.

34. Section 416.021 defines "trade or commerce" as:

4. any economic activity involving or relating to any commodity or service.

35. Section 416.061 provides:

1. The several circuit courts of this state are invested with jurisdiction to prevent and restrain violations of § 416.031.

2. It shall be the duty of the attorney general to enforce the provisions of sections 416.011 to 416.161. It shall be the duty of the attorney general to institute civil proceedings to prevent and restrain violations of sections 416.011 to 416.161.

. . . .

4. The attorney general is authorized to enter into consent judgments or decrees with any party defendant in an action brought under sections 416.011 to 416.061. However, no such consent judgment or decree shall become final until approved by the circuit court when filed or until a period of sixty days has elapsed since the filing of the consent judgment or decree, whichever occurs first; provided, however, that no such approval may be entered by the circuit court until the thirty-first day after the filing of the consent judgment or decree.

. . . .

36. Section 416.071 provides:

1. In addition to all other remedies provided by sections 416.011 to 416.161, the circuit courts of this state are invested with jurisdiction to grant such preliminary or permanent injunctive relief and to issue such temporary restraining orders as necessary to prevent and restrain violations of section 416.031.

2. In any civil action brought under sections 416.011 to 416.161, in addition to granting such prohibitory injunctions and other restraints as it deems expedient to deter the defendant from, and secure against, his committing a future violation of sections 416.011 to 416.161, the court may grant such mandatory relief as is reasonably necessary to restore or preserve fair competition in the trade or commerce affected by the violation.

37. Section 407.020 provides, in pertinent part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in § 407.453, in or from the State of Missouri, is declared to be an unlawful practice. . . . Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

38. Section 407.010 provides the following definitions:

. . . .

(4) "Merchandise", any objects, wares, goods, commodities, tangibles, real estate or services;

(5) "Person", any natural person or his legal representative, partnership, firm, for profit or not for profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof;

(6) "Sale", any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or credit;

(7) "Trade" or "commerce", the advertising, offering for sale, sale, or distribution or any combination thereof, of any services and any property, tangible or intangible, real, personal, or mixed, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated. The terms "trade" and "commerce" include any trade or commerce directly or indirectly affecting the people of this state.

39. Section 407.100 provides in pertinent part:

(1) Whenever it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

. . . .

(3) If the court finds that the person has engaged in or is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.

. . . .

(6) The court may award to the state a civil penalty of not more than one thousand dollars per violation;

(7) Any action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business.

. . . .

(8) The Attorney General is authorized to enter into consent judgments or consent injunctions with or without admissions of violations of this chapter. Violation of any such consent judgment or consent injunction shall be treated as a violation under section 407.110.

GENERAL AVERMENTS

Kneibert Clinic

40. The Kneibert Clinic is a medical group multi-specialty practice made up of 33 physicians (27 partners and 6 associates) which maintains its primary medical clinic in Poplar Bluff, Butler County, Missouri.

41. All doctors of the Kneibert Clinic facility are on the staff of DRMC and Kneibert Clinic is physically attached to DRMC.

42. DRMC was formerly a physician owned hospital with over 85% of shares in the hospital owned by physicians who are partners at the Kneibert Clinic and who have privileges at the hospital. An employee stock ownership plan was approved in 1994, and the employees of DRMC now own over 30% of the hospital.

43. The Kneibert Clinic and DRMC serve the greater Poplar Bluff, Butler County, Missouri area, an area of Southeastern Missouri.

44. Poplar Bluff, Missouri has a population of approximately 16,900 persons and Butler County, the county in which Poplar Bluff is located, has a population of approximately 38,600.

45. There are approximately 80 medical doctors in the Poplar Bluff, Butler County, Missouri area.

46. Upon information and belief, Kneibert Clinic is the source of primary outpatient health care services for a substantial percentage of those residents of Butler County, Missouri.

47. The Kneibert Clinic provides a pharmacy which offers for sale prescription medications and for lease or sale, oxygen

equipment for home use and durable medical equipment (DME). DME includes but is not limited to: wheelchairs, walkers, hospital beds, bedside commodes and convalescent shower equipment.

48. Prescription drugs require an order, script or other appropriate authorization from a physician before they can be dispensed to patients.

49. DME and home oxygen equipment require an order, script certificate of medical need or other appropriate authorization from a physician before insurance companies, Medicare and/or Medicaid will reimburse for such equipment.

50. Home Medical Supply, Inc., The Other Side Health Care Equipment, Home Care Equipment, Key Drugs and Letassy Pharmacy are companies in Poplar Bluff, Missouri which offer DME and home oxygen equipment for lease or sale in addition to the Kneibert Clinic. There are also other suppliers from outside Poplar Bluff which provide these services.

51. Kneibert Clinic Pharmacy is owned by the partners of the Kneibert Clinic and sells prescription medications and leases and sells home oxygen equipment and DME in direct competition to the companies listed in ¶ 50 above.

52. Upon information and belief, Kneibert Clinic currently provides home oxygen leasing and sales services to approximately 83% of Butler County residents and provides DME leasing and sales services to approximately 50% of Butler County residents in need of such services.

53. Kneibert Clinic also provides clinic laboratory, radiology, EKG/EEG and Optical Shoppe within its facility and these businesses are also owned by the Kneibert Clinic partners.

54. Until January 1, 1995, as set forth in the Kneibert Clinic Partnership Agreement, each individual physician/partner at the Kneibert Clinic received profits from Kneibert Clinic Pharmacy sales based directly on the number of their scripts or orders filled at the Kneibert Clinic. This also was true of the profit distribution for the clinic radiology, clinic laboratory, clinic EKG and Optical Shoppe revenues. The Partnership Agreement was amended on January 1, 1995 and now provides that 30% of profits from the pharmacy are distributed equally and 70% are distributed based on a physician's number of professional clinic visits as a percentage of the total number of charged clinic professional visits.

55. Beginning as early as the mid-1980's and after, the exact dates being unknown to the State of Missouri, certain partners at the Kneibert Clinic and their employees have engaged in a pattern of predatory activities and actions designed to, and, in fact succeeding in, coercing, pressuring and/or unduly influencing patients to order all home oxygen equipment, DME and prescription medications from the Kneibert Clinic pharmacy rather than through normal competitive channels, by, among other activities, threatening to withhold physician services unless the patient purchases his/her prescriptions from the Kneibert Clinic Pharmacy, refusing to provide patients with a written script for health care

services and products, calling in prescriptions directly to the Kneibert Clinic pharmacy, and placing scripts into a vacuum tube connected to the pharmacy in order to keep patients from taking scripts to other vendors, and pressuring and arguing with patients to coerce them to use the Kneibert Clinic Pharmacy.

DRMC

56. DRMC is a for-profit, 230 bed hospital in Poplar Bluff, Butler County, Missouri which serves an area of southeastern Missouri with Poplar Bluff, Missouri and surrounding Butler County as its primary market.

57. DRMC was purchased by PBPG from National Health Care, Inc. (now Hallmark Health Care, Inc.) in 1990.

58. Hallmark Health Care, Inc. currently has a management contract with PBPG to operate DRMC.

59. There are two other hospitals in Butler County, Missouri: Lucy Lee Hospital, a for-profit 201 bed hospital owned by American Medical International ("AMI") and a 225 bed Veterans Hospital which is a federal hospital.

60. DRMC is the source of primary hospital services for approximately 48% of those residents within the greater Poplar Bluff, Butler County, Missouri area.

61. PBPG, d/b/a DRMC operates the hospital, which provides a pharmacy, home infusion services, home health services, a laboratory, EKG/EEG services, DRMC Radiology, and an ambulance service.

62. DRMC has a 20 bed rehabilitation facility in the hospital which is managed by Advanced Rehabilitation Resources, Inc. (ARRI) which is now owned by "Rehab Care."

63. Upon discharge from DRMC or its rehabilitation facility, some patients are in continuing need of nursing care and other medical services during their periods of convalescence or require admission to nursing homes or skilled care facilities.

64. There are primarily two organizations that offer home health services through home health nurses in the Butler County, Missouri area: Doctors Regional Home Health, owned and operated by DRMC and Lucy Lee Home Health, an affiliate of Lucy Lee Hospital.

65. Generally, physicians, discharge planners, home health care nurses, nurses and/or social workers at DRMC provide home health care services to patients in need of such services upon being discharged from DRMC. These services or consultations are provided to the patients prior to discharge from DRMC or by the home health nurses in the home. (The discharge planners, home health care nurses, nurses and social workers are directly employed by DRMC.)

66. Physicians, or upon physicians' orders, discharge planners, home health care nurses, nurses and/or social workers arrange for the provision and leasing of various items of DME, home oxygen equipment and home infusion services as well as admission to nursing home or residential care facilities.

67. Home infusion services consist of, among other products and services: enteral care; I.V. antibiotics; I.V. pain management and total parenteral nutrition.

68. On or about late 1992, the exact date being unknown to the State of Missouri, DRMC began providing home infusion services out of the hospital pharmacy.

69. The home infusion services and products are administered to patients in their homes by DRMC home health nurses.

70. At the time DRMC entered the home infusion business, there were two other companies located in Poplar Bluff, Butler County, Missouri which provided home infusion equipment and services in the Butler County area: IV Care, Inc. and IV Specialty, Inc.

71. The physician/owners of DRMC, discharge planners, home health care nurses, nurses and social workers have direct contact with patients whose discharge from DRMC is eminent. No other vendors of home health care products, including home infusion services, have access to DRMC patients prior to discharge.

72. Physicians with privileges at DRMC, DRMC discharge planners, home health care nurses, nurses and social workers, refer most, if not all discharging patients in need of home health care and home health care products to Doctors Regional Home Health for nursing, to DRMC Pharmacy for home infusion services and Kneibert Clinic pharmacy for DME, home oxygen and pharmacy.

73. From at least early 1992, DRMC's discharge planners, home health care nurses, nurses, social workers and the

physicians/owners at DRMC have engaged in a pattern of predatory communications and actions designed to, and in fact succeeding to channel, steer, coerce, pressure and/or unduly influence DRMC patients to order home infusion equipment and services from DRMC and home oxygen equipment and DME from Kneibert Clinic rather than through normal competitive channels.

74. From at least early 1992 and after, DRMC, its employees and the physician/owners of DRMC and their employees have instituted a policy of refusing to deal with any home infusion company other than DRMC's home infusion company.

75. From at least early 1992 and after, DRMC, its employees and the physician/owners of DRMC and their employees, acting as one unit or in combination or conspiracy with each other, foreclosed all vendors of home infusion companies from competing in the home infusion sale and leasing markets for patients discharging from DRMC in and around Butler County, Missouri.

76. Beginning some time in 1992, the exact date being unknown to the State of Missouri, PBPG, d/b/a DRMC aggressively entered the market for provision of ancillary medical services to nursing homes and residential care facilities in the Butler County, Missouri area. These ancillary medical services include but are not limited to: reference laboratory services, radiology, pharmacy, IV therapy, respiratory services, laundry, catering, consulting, quality risk management, infection control, educational programs and psychological assessments.

77. DRMC is a primary referral source of patients for nursing homes and residential care facilities in the Poplar Bluff, Butler County, Missouri area.

78. From and after the date that DRMC entered the ancillary medical services market for nursing homes and residential care facilities, DRMC, its physician/owners, directors, representatives and employees have engaged in a pattern of communications and actions designed to, and in fact succeeding to, coerce, pressure and/or unduly influence certain nursing home and residential care facility administrators, employees and patients to order ancillary medical services, particularly outpatient reference laboratory services, from DRMC or risk losing referrals from DRMC and from the physicians with privileges at DRMC.

79. Physicians, administrators and employees representing DRMC have combined, contracted or conspired with the administrators of nursing homes and residential care facilities in the Butler County area to agree that, in exchange for continued referrals of patients to the nursing homes and residential care facilities, the nursing homes will use DRMC's ancillary services, particularly reference laboratory services.

COUNT I

Attempted Monopolization

Kneibert Clinic Partners

80. All averments contained in paragraphs 1-79 above are repeated and incorporated herein.

81. This is an action under Chapter 416, RSMo 1986, (the Missouri Antitrust Act) arising out of the transactions described hereinabove.

82. The relevant product market to this cause is the DME and home oxygen equipment sale and leasing market.

83. The relevant geographic market to this cause is the Butler County, Missouri region.

84. The Kneibert Clinic partners have engaged in a series of unlawful and wrongful activities, coercive acts and communications designed and specifically intended to willfully acquire or maintain for Kneibert Clinic Pharmacy monopoly power in the DME and home oxygen sale and leasing markets.

85. The Kneibert Clinic partners possess sufficient power in the DME and home oxygen markets and the related hospital market such that the aforesaid exclusionary acts create a dangerous probability of actual monopolization.

86. The coercive acts, communications and wrongful activities by Kneibert Clinic partners alleged above violate § 416.031.2, RSMo (1986).

87. As a direct and proximate result of said violations, the economy of the State of Missouri has been injured in that actual and potential competition in the DME and home oxygen market has been foreclosed, restrained, suppressed and eliminated, a substantial number of citizens of the State of Missouri have been denied the benefits of a free, open and competitive market, persons in the relevant market have had to pay artificially inflated and

non-competitive prices, they have been injured by having their freedom of choice foreclosed in selecting the DME and home oxygen companies with which they do business, actual and potential competitors have been injured in their business and the public and general welfare of the State of Missouri have been injured.

88. These acts of attempted monopolization by Kneibert Clinic partners seriously threaten irreparable harm to the DME and home oxygen market in and around Butler County, Missouri in that former competitors have been forced out of business, present competitors are being forced out of business and new competitors face barriers to entry in the market thereby creating an absolute and permanent monopoly for Kneibert Clinic partners in the DME and home oxygen equipment leasing and sales market.

WHEREFORE, the State of Missouri prays this court to enter judgment in its favor:

1. Ordering the Kneibert Clinic partners, their affiliates and employees to cease and desist from all activities designed to force, coerce, threaten or unduly influence patients, nursing home and residential care facility administrators and employees, home health nurses, nurses, discharge planners and/or social workers to deal exclusively with Kneibert Clinic for DME and home oxygen services;

2. Enter judgments against defendants, jointly and severally, awarding Kneibert Clinic patients treble their actual damages sustained as a direct and proximate result of the aforesaid antitrust violations;

3. Awarding plaintiff its reasonable attorney's fees;
4. Awarding plaintiff its costs of suit; and
5. Granting all other relief the court deems just and proper.

COUNT II

Attempted Monopolization

DRMC

89. All averments contained in paragraphs 1 through 88 above are repeated and incorporated herein.

90. This is an action under Section 2 of the Missouri Antitrust Law, § 416.031.2 RSMo, 1986.

91. The relevant product market to this cause is the home infusion equipment and services sale and leasing market.

92. The relevant geographic market to this cause is the Butler County, Missouri region.

93. DRMC has engaged in a series of unlawful and wrongful activities, coercive acts and communications designed and specifically intended to willfully acquire and maintain for DRMC, monopoly power in the home infusion equipment and services sale and leasing market.

94. DRMC possesses sufficient market power in the relevant market of home infusion services and the related market of hospital services such that the aforesaid exclusionary acts create a dangerous probability of actual monopoly.

95. As a direct and proximate result of said acts of attempted monopolization, the economy of the State of Missouri has

been injured in that actual and potential competition in the home infusion market has been foreclosed, restrained, suppressed and eliminated, a substantial number of citizens of the State of Missouri have been denied the benefits of a free, open and competitive market, persons in the relevant market have been injured by having their freedom of choice foreclosed in selecting the home infusion company with which they do business, actual and potential competitors have been injured in their business and the public and general welfare of Missouri have been injured.

96. As a result of the violations of law alleged in this claim, natural persons residing in the State of Missouri have sustained injury to their property in an amount presently undetermined. These acts of attempted monopoly threaten to cause and have caused serious and irreparable harm to the home infusion market in and around Butler County, Missouri in that present competitors are being forced out of business and new competitors face barriers to entry in the market thereby creating an absolute and permanent monopoly for DRMC in the home infusion market.

WHEREFORE, the State of Missouri prays this court to enter judgment in its favor:

1. Ordering DRMC, its affiliates and employees, to cease and desist from all activities designed to force, coerce, threaten or unduly influence patients, nursing home and residential care administrators and employees, home health nurses, discharge planners and/or social workers to deal exclusively with DRMC for home infusion equipment and services;

2. Enter judgment against defendant DRMC awarding DRMC patients treble their actual damages sustained as a direct and proximate result of the aforesaid antitrust violations;

3. Awarding plaintiff its reasonable attorneys fees;

4. Awarding plaintiff its costs of court; and

5. Granting all other relief the court deems just and proper.

COUNT III

Restraint of Trade

DRMC

97. All averments contained in paragraphs 1 through 96 hereinafter are repeated and incorporated herein.

98. This is an action under Section 1 of the Missouri Antitrust Law, § 416.031.1 RSMO 1986.

99. The combinations, contracts and/or conspiracies by and among DRMC and nursing home and residential care facility administrators whereby DRMC continues to refer patients in need of skilled nursing home care to the respective nursing homes and residential care facilities on the condition that said nursing homes and residential care facilities deal exclusively with the hospital owned reference laboratory for their patients reference laboratory needs constitute coercive reciprocity agreements in violation of Section 1 of the Missouri Antitrust Law, § 416.031.1 RSMo 1986.

100. DRMC has exclusive control of a substantial share of patient referrals to nursing homes and residential care facilities

in the Butler County area and, accordingly, has the market power over patient referrals to coerce, pressure or otherwise unduly influence the nursing homes and residential care facility administrators and their employees' selection or recommendation of reference laboratory services.

101. DRMC has and continues to unlawfully exercise said power to coerce, pressure or otherwise unduly influence the nursing home and residential care facility administrators and their employees to select or recommend only the hospital owned reference laboratory to the exclusion of other laboratories.

102. As a direct and proximate result of the coercive reciprocity agreements, the economy of the State of Missouri has been injured in that competitors in the reference laboratory market have been substantially foreclosed from doing business with certain nursing homes and residential care facilities in the Butler County, Missouri area, residents of Missouri have been injured by having their freedom of choice in the reference laboratory market foreclosed and competing reference laboratories have been injured in their business and property in that they have been foreclosed from doing business with certain nursing homes and residential care facilities in Butler, County, Missouri.

103. The contracts, combinations and/or conspiracies among DRMC and the nursing home and residential care administrators, and employees seriously threaten irreparable harm in that all present competitors of DRMC reference laboratory business will be driven out of business and new companies will face barriers to entry in

the market thereby creating an absolute and permanent monopoly for DRMC in the nursing home residential care facility reference laboratory service market.

WHEREFORE, the State of Missouri prays this court to enter a judgment in its favor:

1. Enjoining DRMC from further combining, contracting and/or conspiring or otherwise coercing or forcing the utilization of DRMC reference laboratory services to the exclusion of all other competitors in the reference laboratory market;

2. Ordering DRMC to cease and desist from all activities or communications designed to force or coerce nursing home and residential care facility administrators, and employees to deal exclusively with DRMC's laboratory;

3. Ordering DRMC to assign or refer discharged patients to nursing homes and residential care facilities in a nondiscriminatory and nonpreferential basis irrespective of the reference laboratory with which that nursing home or residential care facility deals;

4. Awarding patients treble their actual damages sustained as a direct and proximate cause or result of the aforesaid antitrust violations;

5. Awarding plaintiff its reasonable attorneys fees;

6. Awarding plaintiff its costs of court; and

7. Granting all other relief this court deems just and proper.

COUNT IV

Merchandising Practices Act Violations

Kneibert Clinic Partners

Prescription Drugs, Home Oxygen Equipment, DME

104. All averments contained in paragraphs 1 - 103 hereinabove are repeated and incorporated herein.

105. Defendants, through their own acts and the acts of their agents, employees, salespeople, officers, and/or others acting on their behalf, violated § 407.020, RSMo 1986 in connection with the offer for sale or lease and sale or lease of health care services and products, including but not limited to, prescription drugs, home oxygen equipment and DME by:

- A. Engaging in the unfair practice in the sale or lease of prescription drugs, home oxygen and DME of using their power, authority, and fiduciary and/or advisory relationship to coerce, pressure, and/or unduly influence their patients to purchase or lease health care services, e.g. prescription drugs, home oxygen equipment and/or DME, from the pharmacy wholly owned and operated by Kneibert Clinic partners; and
- B. Omitting the material fact in the sale or lease of health care services and products, e.g. prescription drugs, home oxygen and DME, that

patients have the right to patronize the vendor of their own choosing; and

- C. Omitting the material fact in the sale or lease of health care services and products, e.g. prescription drugs, home oxygen equipment and DME, that the Kneibert Clinic partners financial profits are based on the number of scripts they have written which are filled at the Kneibert Clinic Pharmacy.

WHEREFORE, the State of Missouri prays this Court to enter a Judgment in its favor:

1. Finding that defendants, the Kneibert Clinic partners, have violated the provisions of § 407.020 RSMo;
2. Ordering Kneibert Clinic partners, their affiliates and employees, to cease and desist from all activities designed to force, coerce, pressure, threaten and/or unduly influence patients, nursing home administrators and employees, home health nurses, nurses, discharge planners and/or social workers to order health care services, including but not limited to, prescription drugs, home oxygen, DME and any other health care service, exclusively from Kneibert Clinic Pharmacy;
3. Enter Judgment against defendants Kneibert Clinic partners, jointly and severally, awarding patients their actual damages sustained as a direct and proximate result of the aforesaid violations;
4. Awarding plaintiff its reasonable attorneys fees;

5. Awarding plaintiff its costs of court;
6. Ordering defendant to pay, as civil penalties pursuant to § 407.100(5), \$1,000 for each violation of § 407.020 RSMo 1986; and
7. Granting all other relief the court deems just and proper.

COUNT V

Merchandising Practices Act Violation

DRMC

Home Infusion

106. All averments contained in paragraphs 1 -105 hereinabove are repeated and incorporated herein.

107. Defendant, through the acts of its agents, employees, salespeople, officers, directors or others acting on its behalf, did violate § 407.020, RSMo 1986 in connection with the offer for sale or lease and sale or lease of home infusion equipment and services by:

- A. Omitting the material fact in selling or leasing home infusion equipment and services to patients of DRMC that patients have the right to patronize the vendor of their own choosing for home infusion equipment and services; and
- B. Engaging in the unfair practice in the sale or lease of home infusion equipment and services of using its power, authority, and fiduciary and/or advisory relationship to coerce, pressure, and/or unduly influence patients of DRMC hospital to

purchase home infusion equipment and services from the home infusion company wholly owned and operated by DRMC.

WHEREFORE, the State of Missouri prays this court to enter a judgment in its favor:

1. Finding that defendant DRMC has violated the provisions of § 407.020, RSMo;

2. Ordering DRMC, its affiliates and employees, to cease and desist from all activities designed to coerce, pressure, and/or unduly influence patients, nursing home administrators and employees, home health nurses, discharge planners and/or social workers to deal exclusively with DRMC for home infusion equipment and services;

3. Enter judgment against defendant DRMC awarding DRMC patients their actual damages sustained as a direct and proximate result of the aforesaid violations;

4. Awarding plaintiff its reasonable attorneys fees;

5. Awarding plaintiff its cost of court;

6. Ordering defendant to pay, as civil penalties pursuant to § 407.100(5), \$1,000 for each violation of § 407.020 RSMo 1986; and

7. Granting all other relief the court deems just and proper.

COUNT VI

Merchandising Practices Act Violation

DRMC

Reference Laboratory Services

108. All averments contained in paragraphs 1 through 107 hereinabove are repeated and incorporated herein.

109. Defendant, through the acts of its agents, employees, salespeople, officers, directors or others acting on its behalf, did violate § 407.020, RSMo 1986 in connection with the offer for sale and sale of reference laboratory services by:

- A. Engaging in the unfair practice of coercing, pressuring, or otherwise unduly influencing the administrators and employees of nursing homes and residential care facilities and their patients with regard to the selection or recommendation of a reference laboratory services vendor in order to cause individuals to purchase laboratory services from the reference laboratory wholly owned and operated by DRMC.

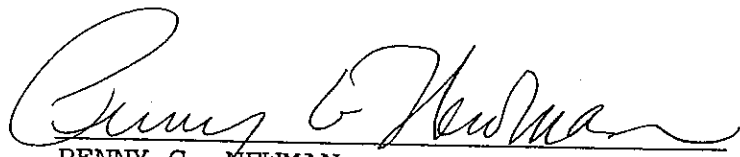
WHEREFORE, the State of Missouri prays this court to enter a judgment in its favor:

1. Finding that defendant DRMC has violated the provisions of § 407.020, RSMo 1986;
2. Ordering DRMC to cease and desist from all activities or communications designed to coerce or unduly influence nursing home and administrative care and residential care facility administrators and employees and patients to purchase reference laboratory services exclusively from DRMC's wholly owned laboratory;

3. Ordering DRMC to assign or refer discharged patients to nursing homes and residential care facilities in a nondiscriminatory and nonpreferential basis irrespective of the reference laboratory with which that nursing home or residential care facility deals;
4. Enter judgment against defendant DRMC awarding DRMC patients their actual damages sustained as a direct and proximate result of the aforesaid violation;
5. Awarding plaintiff its reasonable attorneys fees;
6. Awarding plaintiff its costs of court;
7. Ordering defendant to pay as a civil penalty pursuant to § 407.100(5), \$1,000 for each violation of § 407.020 RSMo 1986; and
8. Granting all other relief the court deems just and proper.

Respectfully submitted,

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