

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.

14-2033 BLS

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

PARTNERS HEALTHCARE SYSTEM, INC.,
SOUTH SHORE HEALTH AND EDUCATIONAL
CORP., and HALLMARK HEALTH CORP.,

Defendants.

COMPLAINT FOR
INJUNCTIVE RELIEF



I. NATURE OF THE CASE

1. This action brought by the Commonwealth of Massachusetts (the “Commonwealth”) challenges certain conduct by Partners HealthCare System, Inc. (“Partners”) as unfair methods of competition or unfair acts or practices in violation of the Massachusetts Consumer Protection Act, M.G.L. c. 93A.

2. The Commonwealth alleges that Partners’ proposed acquisition of South Shore Health and Educational Corp., including South Shore Hospital (collectively, “South Shore”), would substantially lessen competition in portions of Eastern Massachusetts for the provision of general acute care inpatient health services in violation of M.G.L. c. 93A, § 2.

3. The Commonwealth alleges that Partners’ proposed acquisition of Hallmark Health Corporation, including Lawrence Memorial Hospital and Melrose-Wakefield Hospital

(collectively, “Hallmark”), would substantially lessen competition in portions of Eastern Massachusetts for the provision of general acute care inpatient health services in violation of M.G.L. c. 93A, § 2.

4. The Commonwealth alleges that Partners’ practice of joint contracting with health plans on behalf of unowned affiliate physician groups that are not also affiliated with a Partners hospital (“certain unowned physician groups”) unreasonably restrains trade in violation of M.G.L. c. 93A, § 2.

5. The Commonwealth seeks injunctive relief to prevent, restrain and/or remedy these adverse effects on competition and consequent harm to consumers.

II. PARTIES

6. This action is filed on behalf of the Commonwealth by its Attorney General, Martha Coakley, pursuant to the authority granted by M.G.L. c. 93A, § 4.

7. Partners Healthcare System, Inc. is a Massachusetts not-for-profit corporation headquartered in Boston, Massachusetts. It owns nine general acute-care hospitals, all in Massachusetts: Massachusetts General Hospital, Brigham and Women’s Hospital, Faulkner Hospital, Newton-Wellesley Hospital, Union Hospital and Salem Hospital (collectively, North Shore Medical Center), Martha’s Vineyard Hospital, Nantucket Cottage Hospital, and Cooley Dickinson Hospital. In fiscal year 2012, Partners’ annual revenues were approximately \$9 billion.

8. South Shore Health and Educational Corporation is a Massachusetts not-for-profit corporation having its principal place of business in South Weymouth, Massachusetts. It is the parent company of South Shore Hospital, a large acute-care hospital located in South Weymouth, Massachusetts, approximately 17 miles south of downtown Boston. In fiscal year 2012, South Shore’s annual revenues were approximately \$449 million.

9. Hallmark Health Corporation is a Massachusetts not-for-profit corporation having its principal place of business in Medford, Massachusetts. It is the parent company of two community hospitals: Lawrence Memorial Hospital in Lawrence, Massachusetts and Melrose-Wakefield Hospital in Melrose, Massachusetts. In fiscal year 2012, Hallmark's annual revenues were approximately \$328 million.

10. Partners currently contracts on behalf of Melrose-Wakefield and Lawrence Memorial Hospitals.

III. JURISDICTION AND VENUE

11. The Commonwealth brings this action by and through its Attorney General, as authorized by M.G.L. c. 93A, § 4, seeking injunctive and other equitable relief from the defendants' violations of M.G.L. c. 93A, § 2. The defendants are engaged in the conduct of trade or commerce in Massachusetts and, consistent with M.G.L. c. 93A, § 4, the Commonwealth either notified each defendant of this action at least five days before its commencement and provided the defendant with an opportunity to confer with the Attorney General in person or by counsel or other representative as to this action, or the defendant expressly waived these rights.

12. This Court has jurisdiction over the subject matter of this action under M.G.L. c. 212, § 4 and c. 93A, § 4.

13. This Court has personal jurisdiction over the Commonwealth, Partners, South Shore and Hallmark.

14. Venue in this Court is proper under M.G.L. c. 93A, § 4.

IV. COMPETITION BETWEEN HEALTH CARE PROVIDERS IN MASSACHUSETTS

15. In Massachusetts, health plans, employers, and patients depend on competition between health care providers to reduce costs, increase quality, improve service, and spur innovation.

16. When a health plan negotiates competitive prices for health care provider services, employers and individuals benefit from lower prices, insurance premiums, and out-of-pocket costs.

17. During a health plan's negotiations with a health care provider, the plan's ability to get lower prices depends in part on the existence of competing health care providers. For example, a health plan is able to negotiate lower hospital prices when it can more credibly threaten to exclude a hospital from its network. The strength of that threat depends, in large part, on the extent to which patients would keep their current health plan and switch to other hospitals in the plan's network. The larger the number of patients that would keep their current health plan and switch to other hospitals (rather than switching plans) is, the more likely it is that a plan can resist a hospital's price increases.

18. The degree to which patients view health care providers as substitutes varies from patient to patient, but is influenced by factors such as the health care provider's geographic proximity to patients, reputation, amenities, and scope of services.

19. As explained below, Partners' current and proposed actions in the Massachusetts health care market will substantially reduce competition:

- Partners' proposed acquisitions of South Shore and Hallmark would substantially reduce the existing competition between Partners and those hospitals leading to increased prices; and

- Partners' practice of jointly contracting for certain unowned physician groups with health plans has the effect of substantially reducing competition in the market for physician services.

V. THE SOUTH SHORE TRANSACTION

20. On December 21, 2012, Partners and South Shore Health and Educational Corporation entered into an agreement that would give Partners control of South Shore Hospital.

21. South Shore and Partners currently compete against each other in the market for general acute-care inpatient hospital services sold to commercial health plans ("inpatient hospital services").

22. The relevant geographic market for analyzing the acquisition consists of certain cities and towns including Boston and the greater South Shore area (the "Boston-South Shore area").

23. The Boston-South Shore area is a relevant geographic market in which competition likely will be lessened in violation of M.G.L. c. 93A, § 2.

24. By eliminating significant competition between South Shore and Partners, the acquisition would likely enable Partners to raise the prices of inpatient hospital services.

25. On February 19, 2014, the Massachusetts Health Policy Commission issued a report reaching similar conclusions. The Commission, led by an 11-member board of health-care experts and government and business leaders, concluded that the proposed acquisition would likely increase health-care spending, reduce competition, and result in increased premiums for employers and consumers. The Commission voted unanimously to refer its report to the Attorney General for further review pursuant to section 13 of chapter 6D of the General Laws.

VI. THE HALLMARK TRANSACTION

26. On March 13, 2013, Partners and Hallmark entered into an agreement that would give Partners control of the Hallmark hospitals.

27. The acquisition would expand the existing relationship between Partners and Hallmark, causing Partners to have full control over Hallmark.

28. Absent this agreement, Hallmark and Partners would more vigorously compete against each other in the market for inpatient hospital services.

29. The relevant geographic market for analyzing the acquisition consists of certain cities and towns including Boston and the greater Metro North area (the "Boston-Metro North area").

30. The Boston-Metro North area is a relevant geographic market in which competition likely will be lessened in violation of M.G.L. c. 93A, § 2.

31. By eliminating significant potential competition between Hallmark and Partners, the acquisition would likely enable Partners to raise the prices of inpatient hospital services.

VII. JOINT CONTRACTING

32. Partners has agreements to contract on behalf of certain unowned affiliate physician groups with health plans where these physician groups are not also affiliated with a Partners hospital.

33. Partners' practice of joint contracting for these unowned physician groups substantially reduces competition in the market for physician services.

34. Due to this loss of competition, certain unowned physician groups receive higher reimbursement rates than they would be able to obtain from health plans absent their joint-contracting arrangement with Partners.

35. Partners' practice of jointly contracting on behalf of certain unowned physician groups with health plans does not result in sufficient procompetitive benefits to outweigh the anticompetitive effects.

VIII. VIOLATIONS ALLEGED

**Violation of Massachusetts General Laws c. 93A:
Acquisition of South Shore**

36. The Commonwealth incorporates the allegations of paragraphs 1 through 35 above.

37. Partners' proposed acquisition of South Shore constitutes an unfair method of competition and/or an unfair act or practice in the conduct of trade or commerce in violation of Massachusetts General Laws c. 93A, § 2.

38. Unless enjoined, the proposed acquisition would likely have the anticompetitive effects alleged in paragraphs 20 through 25 above, among others.

**Violation of Massachusetts General Laws c. 93A:
Acquisition of Hallmark**

39. The Commonwealth incorporates the allegations of paragraphs 1 through 38 above.

40. Partners' proposed acquisition of Hallmark constitutes an unfair method of competition and/or an unfair act or practice in the conduct of trade or commerce in violation of Massachusetts General Laws c. 93A, § 2.

41. Unless enjoined, the proposed acquisition would likely have the anticompetitive effects alleged in paragraphs 26 through 31 above, among others.

**Violation of Massachusetts General Laws c. 93A:
Joint Contracting**

42. The Commonwealth incorporates the allegations of paragraphs 1 through 41 above.

43. Partners' practice of joint contracting with certain unowned physician groups constitutes an unfair method of competition and/or an unfair act or practice in the conduct of trade or commerce in violation of Massachusetts General Laws c. 93A, § 2.

44. Unless enjoined, these joint contracting practices would continue to have the anticompetitive effects alleged in paragraphs 32 through 35 above, among others.

IX. REQUEST FOR RELIEF

45. The Commonwealth requests that this Court:

- (A) Enter an order finding that the proposed acquisition of South Shore violates M.G.L. c. 93A, § 2;
- (B) Enter an order finding that the proposed acquisition of Hallmark violates M.G.L. c. 93A, § 2;
- (C) Enter an order finding that Partners' joint contracting for certain unowned physician groups violates M.G.L. c. 93A, § 2;
- (D) Enjoin Partners from acquiring South Shore;
- (E) Enjoin Partners from acquiring Hallmark;
- (F) Enjoin Partners from continuing to jointly contract for certain unowned physician groups; and
- (G) Award such other and further relief as the Court may deem just and proper.

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