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Health system must relinquish control of surgery center

OLYMPIA — Attorney General Bob Ferguson announced today that CHI Franciscan will pay up to \$2.5 million to resolve a federal antitrust lawsuit Ferguson filed against the Tacoma-based non-profit health system in 2017. CHI Franciscan is also required to divest its controlling interest in an outpatient surgery center it acquired in Silverdale, restoring competition for services on the Kitsap Peninsula.

The money will be distributed to health clinics and organizations to increase access to health care services for Kitsap Peninsula.

In addition, CHI Franciscan is required to notify Attorney General's Office of future deals that could decrease competition. The agreement also includes other contract changes and notice requirements.

Ferguson filed the lawsuit after CHI Franciscan acquired the assets of WestSound Orthopaedics in Silverdale, and then announced an affiliation with The Doctors Clinic (TDC), a multi-specialty practice with more than 50 physicians and seven locations throughout Kitsap County.

The deals combined the three largest providers of orthopedic physician services in the Kitsap region, greatly reducing choices for Kitsap consumers seeking orthopedic services close to home.

"CHI Franciscan's actions unlawfully decreased competition and increased prices at the expense of patients," Ferguson said. "Today's agreement holds CHI Franciscan accountable for putting its bottom line ahead of the people on the Kitsap Peninsula."

"I appreciate all of the work from the Attorney General's office to protect consumers from health care monopolies such as the one CHI Franciscan created in Kitsap County. This settlement will increase provider options and, hopefully, reduce costs to patients," said Rep. Michelle Caldier, R-Port Orchard. "At the same time, we are working to prevent these kinds of monopolies in the future through legislation I was able to get passed this year that requires health organizations to provide a 60-day notice to the AG's office before similar mergers and acquisitions can take place."

"Concerns about potential anti-trust violations were first brought to area legislators by a small group of local physicians," said Sen. Christine Rolfes, D-Bainbridge Island. "I want to thank these medical

professionals for stepping forward, and also thank the Attorney General's office for listening and acting."

As part of the TDC agreement, Franciscan acquired the group's ambulatory surgery center, and then began referring many surgeries to Franciscan-owned Harrison Medical Center, at a much higher cost.

Ferguson's lawsuit asserted that the deals violated state and federal antitrust laws. Antitrust laws protect consumers by ensuring that companies compete to offer high-quality goods and services at low prices.

After the two deals, thousands of Kitsap Peninsula patients faced higher prices, increased wait times, difficulty in scheduling procedures and a reduction in their choice of services and locations.

Anticompetitive deals

In announcing the Kitsap deals, CHI Franciscan and TDC touted them as "an exciting direction for Kitsap County residents and families," claiming they would "enhance patient access and efficiency."

Privately, in documents obtained during the Attorney General's Office's investigation, officials at CHI Franciscan and TDC discussed the deals as a boon to their bottom line and harmful to patient care.

CHI Franciscan's Chief Financial Officer, Mike Fitzgerald, wrote in an email: "I am all for taking advantage of hospital based pricing. ... It would be great to drop a couple of million more to our bottom line, if we think we can do it."

TDC's former physician president succinctly summarized these effects to its current medical director: "I can't wait to hear how CHI messages the addition of TDC to [Franciscan Medical Group]. 'You can now get your outpatient care in a complex, relatively unsafe, and vastly more expensive location. You are welcome, Kitsap County...'"

Ferguson asserted that the affiliation between Franciscan and TDC was a price-fixing agreement in violation of antitrust laws. CHI Franciscan also acquired TDC's ambulatory surgery center, imaging and laboratory services. CHI Franciscan shuttered TDC's imaging services, as well as a large portion of the services provided at the ambulatory surgery center, and shifted that care to Harrison Medical Center. CHI Franciscan did not acquire TDC's medical practices.

In 2016, the AGO received complaints on behalf of consumers and began investigating CHI Franciscan's agreements in Kitsap County. The office found the true motive for both deals was to gain negotiating clout over healthcare insurers and win the ability to charge higher rates for physician services.

Both transactions also enabled CHI Franciscan to capture more patient referrals and shift services to its wholly owned hospital, Harrison Medical Center, the only civilian acute-care hospital in Kitsap County. The deals hobbled CHI Franciscan's competitors while allowing it to reap the benefit of more expensive, hospital-based rates.

Overnight, the deals resulted in double-digit percentage price increases. Rate increases hit the vast majority of procedures covered by commercial insurance contracts with the organizations, resulting in higher out-of-pocket costs for patients.

Agreement details

Today's agreement bars CHI Franciscan from entering into similar agreements in the future. It also requires the health system to give the Attorney General's Office advanced notice of future arrangements that could decrease competition.

CHI Franciscan will pay up to \$2.5 million. The Attorney General's Office will distribute that money among at least four health providers to increase access to health care on the Kitsap Peninsula. The grant money will go toward direct patient services. Those providers include West Sound Free Clinic, Peninsula Community Health Services, Bremerton Health Center and Kitsap Mental Health.

If the transfer of the ambulatory surgery center in Silverdale prompts the Department of Health to require the facility's recertification, CHI Franciscan's payment will be reduced by \$500,000 to offset the costs associated with recertification.

The divestiture of the surgery center is designed to bring it back online as a viable competitor for outpatient surgeries at a lower cost than hospital-based procedures.

In addition, primary care physicians and orthopedists at The Doctors Clinic are required to contract with insurers separately from CHI Franciscan if the insurers desire. This requirement helps restore competition and gives insurance companies an alternative when building their insurance plans, offering potential savings to consumers.

The agreement also forces CHI Franciscan to allow for incentive-based payments to The Doctors Clinic physicians for providing higher quality of care. The agreement with CHI Franciscan prohibited Doctors Clinic physicians from receiving these types of incentive payments, only allowing payments based on patient volume.

Finally, the agreement requires Franciscan and The Doctors Clinic to notify Kitsap Peninsula imaging patients of imaging facility options available to them other than Harrison Medical Center. This requirement will provide imaging patients with the information they need to choose the Kitsap Peninsula imaging facility that best serves their particular circumstances.

Assistant Attorneys General Amy Hanson and Erica Koscher, and Senior Counsel Rene Tomisser handled the case.

New legislation on hospital acquisitions & affiliations

This session, the Attorney General's Office supported [House Bill 1607](#), sponsored by Rep. Caldier, which requires health systems, hospitals, and physician groups to notify the Attorney General's Office 60 days in advance of any mergers, acquisitions or contracting affiliations of a certain size that have the potential to impact competition. Had it been law at the time, HB 1607 would have required CHI Franciscan to provide advance notice of these deals to the Attorney General's Office.

HB 1607 passed the Legislature on April 15.

The Antitrust Division of the Attorney General's Office is responsible for enforcing the antitrust provisions of Washington's Unfair Business Practices-Consumer Protection Act, and investigates complaints about potential anti-competitive activity. For more information about filing a complaint, click [here](#).

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