

MEMO ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS DIVISION

STATE OF NEW YORK, by
ELIOT SPITZER, ATTORNEY GENERAL,

Plaintiff,

- against -

SAINT FRANCIS HOSPITAL,
VASSAR BROTHERS HOSPITAL, AND
MID-HUDSON HEALTH,

Defendants.

COPY
98 Civ 939 (WCC)

Notice of Motion

**THE STIPULATED MOTION OF THE STATE,
SAINT FRANCIS HOSPITAL, VASSAR BROTHERS HOSPITAL, AND MID-HUDSON
HEALTH IN SUPPORT OF THE FINAL CONSENT JUDGMENT**

Please take notice that the State, Saint Francis Hospital, Vassar Brothers Hospital, and Mid-Hudson Health (the "parties"), by and through their attorneys, hereby move this Court for entry of the Final Consent Judgment attached to this motion. The parties intend the Final Consent Judgment, when entered by the Court, to constitute a full and complete resolution of this litigation, with each party bearing its own costs except as specifically provided in the Final Consent Judgment.

Dated: June 28, 2000
New York, New York

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ANTITRUST BUREAU

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98 Civ. 939 (MCC)

(Conner, Sr. D.J.)

FINAL CONSENT JUDGMENT

Plaintiff, State of New York, by its Attorney General, Eliot Spitzer (the "State"), and defendants Saint Francis Hospital ("St. Francis"), Vassar Brothers Hospital ("Vassar Brothers"), and Mid-Hudson Health ("Mid-Hudson"), by their respective attorneys, filed cross-motions for summary judgment. The Court rendered its Opinion and Order dated April 10, 2000, denying defendants' motion for summary judgment and granting the State's motion for summary judgment on the issue of defendants' liability ("Opinion and Order"). Defendants filed a motion dated April 24, 2000, and a reply to reconsider the terms of the Opinion and Order, which the

State opposed. The State and the defendants have consented to entry of this Final Consent Judgment without a determination of the motion to reconsider, remedy proceedings, a trial or final adjudication of any issue of fact or law, or an appeal. This Final Consent Judgment shall not be evidence against or an admission by any party of any issue of fact or law, nor a determination that any violation of law has occurred. Therefore, before the taking of any trial testimony and without trial of any issue of fact or law, and upon the consent of the parties, it is

ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the parties to this action. The Complaint states a claim upon which relief may be granted to the State against St. Francis, Vassar Brothers, and Mid-Hudson under section 1 of the Sherman Act, 15 U.S.C. § 1, and sections 4 and 15 of the Clayton Act, 15 U.S.C. §§ 15, 26, and the Donnelly Act, New York Gen. Bus. Law, Article 22, §§ 340, 342, 342-a.

II. DEFINITIONS

As used in this Final Consent Judgment:

1. "1991 Mid Hudson Plan" means the agreement that

defendants entered into in 1991, which is Exhibit 20 to Defendants' Rule 56.1 Statement.

2. "1995 Agreement" means the agreement that defendants entered into in January 1995, which is Exhibit 5 to Plaintiff's Rule 56.1 Statement.

3. "1996 Agreement" means the agreement that defendants entered into in March 1996, which is Exhibit 41 to Defendants' Rule 56.1 Statement.

4. "Defendant Hospitals" means St. Francis and Vassar Brothers collectively. "Defendant Hospital" means one of the Defendant Hospitals.

5. "Established Hospital" means "Hospital" as defined in section 2801 of the New York Public Health Law, or an affiliate, subsidiary, or predecessor to such a "Hospital." Both Defendant ~~hospitals are~~ "Established Hospitals."

6. "Fairness Formula" is a revenue/market share-oriented accounting model under which Defendant Hospitals sought to "balance" revenues flowing into Defendant Hospitals, adjusting for the costs associated with providing hospital services.

7. "Hart-Scott" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, any amendments thereto, and any regulations promulgated thereunder.

8. "Mid-Hudson" means Mid-Hudson Health and all subsidiaries, affiliates, and predecessors. Mid-Hudson was established as a not-for-profit corporation created by Defendant Hospitals.

9. "St. Francis" means St. Francis Hospital, located in Poughkeepsie, New York, and all of its subsidiaries and affiliates, and shall not include any parent corporation.

10. "Third Party" means any person or entity that purchases or pays for hospital services. "Third Party" includes third party payers acting on behalf of their members, such as indemnity insurers, managed care plans, health maintenance organizations, preferred provider organizations, and point of service plans.

11. The "Trades" means an agreement between Defendant Hospitals to site specific hospital services at the campus of one or the other Defendant Hospital.

12. "Vassar Brothers" means Vassar Brothers Hospital, located in Poughkeepsie, New York, and all of its subsidiaries and affiliates, and shall not include any parent corporation.

III. APPLICABILITY

This Final Consent Judgment applies to St. Francis, Vassar Brothers, and Mid-Hudson, to St. Francis's, Vassar Brothers's, and Mid-Hudson's officers, directors, trustees, agents, attorneys, and

employees in their representative capacities, successors and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Consent Judgment by personal service or otherwise.

IV. PROHIBITED ACTIVITIES

Subject to Paragraph V of this Final Consent Judgment, each Defendant Hospital is enjoined and restrained from directly or indirectly, or through any joint venture, partnership, or other device, entering into, organizing or attempting to organize, implementing or attempting to implement, or soliciting any agreement, understanding, arrangement, contract, or combination, either express or implied, with any other hospital, including the other Defendant Hospital:

1. to raise, fix, peg, stabilize, or otherwise maintain any price, prices, or other terms or conditions for the sale or supply of hospital services;

2. to allocate services, volumes, territories, capital, or customers for hospital services;

3. to propose, negotiate, select, approve, accept, or refuse terms for hospital services with any third party;

4. to refuse to provide any hospital service, including any service not previously provided by the Defendant Hospital or in

geographic areas where those services were not previously provided;

5. to provide exclusively any hospital service; and

6. to propose or communicate, directly or indirectly, any negotiated fee or term, or any refusal to negotiate a fee or term, with any Third Party.

In addition, Defendant Hospitals shall not discuss, communicate, or exchange with each other or any other hospital information concerning the marketing, pricing, negotiating, or contracting of any hospital service.

V. PERMITTED ACTIVITIES

1. Nothing in this Final Consent Judgment shall prevent either Defendant Hospital from individually offering or operating any hospital service, nor require or obligate either Defendant Hospital to offer or operate any hospital service.

2. Each Defendant Hospital may seek, indeed is encouraged to seek, certificates of need from the New York Public Health Council or the Department of Health or any other regulatory prerequisites to providing hospital services. The Attorney General's office shall support each Defendant Hospital's efforts to secure these regulatory prerequisites to providing hospital services.

3. Nothing in this Final Consent Judgment shall prevent Defendant Hospitals from entering into joint purchasing within the

meaning of N.Y. Pub. Health Law § 2803-a.

4. Nothing in this Final Consent Judgment shall prevent either Defendant Hospital from entering into a merger, joint venture, or collaborative activity with another Established Hospital, provided that such merger, joint venture, or collaborative activity is done in accordance with the procedures of Paragraph XII of this Final Consent Judgment.

5. Nothing in this Final Consent Judgment shall prevent Defendant Hospitals from participating in surveys, such as those conducted by the Healthcare Association of New York State or the Northern Metropolitan Hospital Association, in which participants receive only aggregated data from survey participants and which cannot be used to identify the prices or services of specific hospitals and which do not contain forecasts of future prices or services of specific hospitals.

~~6. Nothing in this Final Consent Judgment shall prevent~~
Defendant Hospitals from operating and purchasing services from HealthServe LLC, so long as an appropriate data firewall is approved by the State and implemented by HealthServe. Defendant Hospitals have represented to the State that the computer system that HealthServe LLC provides will not facilitate access by one Defendant Hospital to the data of the other Defendant Hospital.

7. Nothing in this Final Consent Judgment shall prevent Vassar Brothers' participation in Health Quest, which is a network of hospitals that currently includes Vassar Brothers and Northern Dutchess Hospital, provided that Vassar Brothers complies with the requirements of Paragraph XII of this Final Consent Judgment.

8. Nothing in this Final Consent Judgment shall prevent Defendant Hospitals from jointly conducting (1) continuing medical education programs; and (2) community awareness and education programs, including efforts at disease prevention and control of infectious diseases. In addition, nothing in this Final Consent Judgment shall prevent the continued operation of the Joint Pharmacy and Therapeutics Committee, as long as the actions of the Committee operate as recommendations that can be accepted, rejected, or ignored by Defendant Hospitals.

9. Nothing in this Final Consent Judgment shall infringe the First Amendment rights of either Defendant Hospital or prevent Defendant Hospitals from jointly lobbying or petitioning any governmental institution or jointly pursuing litigation.

10. Nothing in this Final Consent Judgment shall prevent a payment between Defendant Hospitals as part of implementing the transition within Paragraph VII, the provisions of Exhibit A, attached hereto, or the provisions of this paragraph. Nothing in

this Final Consent Judgment shall prevent actions contemplated by Exhibit A or to enforce agreements to make such payments, including the Proposed Process to Resolve Breakup Financial Issues attached as Exhibit A or agreements reached as part of that process, and agreements between Defendant Hospitals concerning such payments may be reached both before and after execution of this Final Consent Judgment.

11. Nothing in this Final Consent Judgment shall prevent or restrain applicable review and decision by the New York State Department of Health, including review and decision concerning conditions or contingencies within certificates of need.

12. Nothing in this Final Consent Judgment shall prevent payments to vendors for services or products identified on Exhibit B provided to Mid-Hudson, or payments between Defendant Hospitals resulting from an accounting or reconciliation of such vendor payments since January 1999.

VI. NULLIFICATIONS

1. Defendant Hospitals' 1991 Mid Hudson Plan, 1995 Agreement, and 1996 Agreement are null and void and neither Defendant Hospital shall impose or seek to impose any obligation on the other Defendant Hospital or any Third Party arising from the 1991 Mid Hudson Plan, 1995 Agreement, or the 1996 Agreement.

2. The Fairness Formula is null and void and neither Defendant Hospital shall impose or seek to impose any obligation on the other Defendant Hospital or any Third Party arising from the Fairness Formula or any other agreement to distribute funds between Defendant Hospitals.

3. The Trades is null and void and neither Defendant Hospital shall impose or seek to impose any obligation on the other Defendant Hospital or any Third Party arising from the Trades or any agreement to site services as between Defendant Hospitals.

4. Defendant Hospitals shall seek to dissolve Mid-Hudson within sixty (60) days of this Final Consent Judgment and, upon entry of this Final Consent Judgment, neither Defendant Hospital shall impose or seek to impose any obligation on the other Defendant Hospital or any Third Party arising from the creation or operation of Mid-Hudson. The dissolution of Mid-Hudson shall be subject to review by the New York State Public Health Council and the New York State Department of Health and Defendant Hospitals shall use best efforts to cooperate with that review.

5. Defendant Hospitals shall terminate any agreement, understanding, arrangement, contract, or combination entered into with the other Defendant Hospital that conditions any actual or possible price or term between the Defendant Hospital and a Third

party, including a third party payer, on the formal or informal approval, review, or acquiescence of the other Defendant Hospital.

VII. TRANSITION

1. Except as otherwise provided in this Paragraph, Defendant Hospitals shall be in compliance with Paragraphs IV through VI, inclusive, of this Final Consent Judgment within thirty (30) days of the date of this Final Consent Judgment.

2. The State-approved data firewall referred to in Paragraph V 5. shall be in place within one hundred eighty (180) days of the date of this Final Consent Judgment. Defendant Hospitals shall provide to the State within thirty (30) days of the date of this Final Consent Judgment, a timetable for implementing the obligation to install the data firewall.

3. Defendant Hospitals shall terminate their joint, but not necessarily separate, ownership of Physicians' Network P.C. within ~~one hundred eighty (180) days of the date of this Final Consent~~ Judgment.

4. Defendant Hospitals shall terminate their joint contract with Dr. Dennis Devereaux within sixty (60) days of the date of this Final Consent Judgment.

VIII. PAYMENT TO NEW YORK STATE

Within sixty (60) days of the date of this Final Consent Judgment, Defendant Hospitals shall pay to New York State the total sum of five hundred eighty-three thousand dollars (\$583,000). This payment represents the payment of costs and fees, including attorneys' fees.

IX. COMPLIANCE PROGRAM

Vassar Brothers and St. Francis shall maintain an antitrust compliance program that shall include:

1. distributing within ten (10) days from the entry of this Final Consent Judgment, a copy of this Final Consent Judgment to all officers, directors, trustees, and all personnel with any contracting authority;

2. distributing within fifteen (15) days from the entry of this Final Consent Judgment, a copy of this Final Consent Judgment to the fifty (50) largest Third Parties that buy hospital services from the Defendant Hospital. The measure of which Third Parties shall be the revenues from that Third Party received by the Defendant Hospital since January 1, 1999;

3. distributing in a timely manner a copy of this Final Consent Judgment to any person who succeeds to a position described

in Paragraph IX 1. or a third party considering buying hospital services from the Defendant Hospital;

4. briefing annually, in person, those persons designated in Paragraph IX 1. on the meaning and requirements of this Final Consent Judgment and the antitrust laws, and the penalties, including imprisonment, for violation of the antitrust laws and this Final Consent Judgment;

5. obtaining from the persons designated in Paragraph IX 1. an annual written certification that he or she has read, understands, and agrees to abide by this Final Consent Judgment and is not aware of any violation of this Final Consent Judgment;

6. terminating any person designated in Paragraph IX 1. who willfully violates this Final Consent Judgment or who refuses to provide the certification in Paragraph IX 5; and

7. maintaining for inspection by the State a record of the persons to whom this Final Consent Judgment has been distributed, who have received the annual briefing, and who have provided certifications under subdivisions of this Paragraph.

X. CERTIFICATIONS

1. Within thirty (30) days after the entry of this Final Consent Judgment, Vassar Brothers, St. Francis, and Mid-Hudson shall each certify to the State that it has made the distribution

of this Final Consent Judgment in accordance with Paragraph IX 1. above.

2. Annually for ten (10) years after the entry of this Final Consent Judgment, on or before its anniversary date, St. Francis and Vassar Brothers shall each certify to the State that it has complied with the provisions of Paragraph IX.

XI. PLAINTIFF'S ACCESS TO INFORMATION

For the sole purpose of determining or securing compliance with this Final Consent Judgment and subject to any recognized privilege, authorized representatives of the Attorney General, upon written request, shall on reasonable notice be permitted:

1. access during regular business hours of Vassar Brothers and St. Francis to inspect and copy all records and documents concerning any matter pertaining to this Final Consent Judgment;

2. to interview and question, under oath if requested by the Attorney General, Vassar Brothers and St. Francis officers, directors, trustees, administrators, and employees, who may have counsel present, concerning any matter pertaining to this Final Consent Judgment; and

3. to obtain written reports from Vassar Brothers and St. Francis concerning any matter pertaining to this Final Consent Judgment.

XIII. REVIEW OF MERGERS, JOINT VENTURES, AND COLLABORATIVE ACTIVITY

1. Forty-five (45) days after entry of this Final Consent Judgment, each Defendant Hospital shall inform the Attorney General in writing of the name and address of any merger, joint venture, or collaboration that the Defendant Hospital has with another Established Hospital as of the date of the Final Consent Judgment. As to each such merger, joint venture, or collaboration, the Defendant Hospital shall provide a full description of the activities undertaken by the merged entity, venture, or collaboration and the manner in which the merged entity, venture, or collaboration provides services, sets fees for its services, and negotiates contracts with Third Parties.

2. After the date of entry of this Final Consent Judgment, each Defendant Hospital must obtain the Attorney General's written approval or intent to not object prior to participating in any merger, joint venture, or collaboration with an Established Hospital. In such event, the Defendant Hospital shall report to the Attorney General the name, address, and details of the proposed merger, joint venture, or collaboration, together with the relevant underlying documentation and a statement identifying the proposed implementation date. Such information shall include the manner in which the proposed merger, joint venture, or collaboration will set

the fees for its services and the manner in which the merged entity, joint venture, or collaboration will negotiate contracts with Third Parties. The Attorney General may request additional information concerning the proposed merger, joint venture, or collaboration. Except as to transactions subject to Hart-Scott, the State shall respond to each report required under this Paragraph within thirty (30) days after receiving such report.

3. As to transactions subject to Hart-Scott, Defendant Hospitals shall provide to the Attorney General, simultaneously with providing to the federal agencies, copies of all filings made to the federal agencies, including responses to requests for additional information. The State's review of any transaction subject to Hart-Scott shall be subject to the timing and procedures of Hart-Scott and not this Final Consent Judgment.

XIII. JURISDICTION RETAINED

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Consent Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Consent Judgment, to modify or terminate any of its provisions, to enforce compliance, or to punish violations of its provisions.

XIV. TERM OF FINAL CONSENT JUDGMENT

This Final Consent Judgment shall expire ten (10) years from the date of entry.

Dated: White Plains, New York
June 30, 2000

William C. Conner

Senior United States District Judge

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Exhibit A to Final Consent Judgment

PROPOSED PROCESS TO RESOLVE BREAKUP FINANCIAL ISSUES CONNECTED WITH MID-HUDSON LICENSED SERVICES

The parties agree that the process for resolving issues connected with the breakup of Mid-Hudson is as follows:

1. Members of the Board and Administration of Vassar Brothers and St. Francis will work to resolve issues and determine a final settlement - 45 days.
2. If item one is not successful a facilitator will be jointly hired to facilitate resolution - additional 60 days.
3. If item two does not result in resolution of the issues either or both parties have the right to pursue legal remedies as appropriate.

Exhibit B to Final Consent Judgment

Services or Products Sold By Vendors to Mid-Hudson

Equipment rental
Office Supplies
Education Sessions
Membership Dues
Consulting
Legal .
Audit/Accounting
Advertising
Travel
Health Talk (RNN TV)
Physician Recruitment
Subscriptions
Physician Referral Service
Sponsorship
Corporation Tax
Surveys