



Clinical Integration: “A Patient History”

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The views expressed herein do not necessarily reflect
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The Purpose of Antitrust Law

- Prevent private business practices that unreasonably restrain competition.
- For the benefit of consumers:
 - Lower prices
 - Better quality
 - Increased choice, selection, convenience, and innovation

Maricopa

“The agreement under attack is an agreement among hundreds of doctors concerning the price at which each will offer his own services to a substantial number of consumers [T]he fee agreements . . . are among independent competing entrepreneurs. They fit squarely into the horizontal price-fixing mold.” (pp. 356-57)

Maricopa & Financial Integration

- To avoid condemnation as an illegal price-fixing conspiracy, the Supreme Court said, the agreement needs to be:

“ . . . analogous to partnerships or other joint arrangements in which persons who would otherwise be competitors pool their capital and share risks of loss as well as the opportunities for profit.” (p. 356)

Clinical Integration

- An active and ongoing program to evaluate and modify the practice patterns of physicians and create a high degree of interdependence and cooperation to control costs and ensure quality.
- The goal is to create a meaningful prospect of:
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MedSouth & SHO: Some Lessons

- Achieving clinical integration is not a matter of the *quantity* of clinical activities, it is a matter of their *quality*.
- Ancillarity – that is, the nexus between the clinical activities and joint price setting – remains a critical inquiry.
 - See, e.g., the recent 5th Circuit decision in *North Texas Specialty Physicians v. FTC*

Questions from DOJ/FTC 2004 Report

- What do the physicians plan to do together from a clinical standpoint?
- How do the physicians expect to accomplish these goals?
- What basis is there to think that individual physicians will actually seek to accomplish these goals?
- What results can reasonably be expected from undertaking these goals?
- How does joint contracting with payers contribute to accomplishing the clinical goals?
accomplishing the clinical goals?

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