

Client Alert

Antitrust & Litigation Practice Group

August 7, 2012

Federal Trade Commission Settles with Healthcare Group over Recent Acquisitions of Cardiologists

On August 6, 2012, the Federal Trade Commission (FTC) agreed by a vote of 5-0 to enter into proposed settlements with Renown Health regarding that group's recent acquisitions of two cardiology groups in Reno, Nevada. The proposed consent decrees are *available at*: <http://www.ftc.gov/os/caselist/1110101/index.shtm>.

Renown Health is a healthcare company that operates general acute care hospitals and commercial health plans that serve the Reno area. In late 2010, Renown Health acquired Sierra Nevada Cardiology Associates (SNCA), one of two large cardiology groups in the Reno area. Less than a year later, Renown Health acquired Reno Heart Physicians (RHP), which according to the FTC, was the only other significant cardiology group in the area. Prior to these transactions, Renown Health did not employ any cardiologists.

Renown Health also entered into employment agreements with SNCA and RHP cardiologists that contained non-compete provisions. These provisions prohibited the employed cardiologists from joining medical practices that competed with Renown Health.

According to the FTC's complaint, Renown Health's high market share in cardiology services in Reno, Nevada (approximately 88%), coupled with the non-compete provisions in the employment agreements, had anticompetitive effects on price, quality, and other terms of competition. Renown Health's acquisitions have also increased its bargaining power, which may lead to higher prices. Finally, the FTC's complaint alleges that entry into the market at a scale large enough constitute a competitive alternative for health plans is unlikely to be timely or sufficient to deter the likely anticompetitive effects.

To settle the FTC's charges, Renown Health entered into consent decrees with the FTC. Interestingly, the consent decrees do not require Renown Health to unwind either transaction, but attempt to resolve the FTC's concerns regarding the combination of high concentration and restrictive non-competition provisions. Accordingly, each consent decree contains an Order to Suspend, which is effective immediately, and a proposed Decision and Order, which the FTC may issue after a 30 day public comment period that ends on September 5, 2012.

For more information, contact:

Jeffrey S. Spigel
+1 202 626 2626
jspigel@kslaw.com

John D. Carroll
+1 202 626 2993
jdc Carroll@kslaw.com

King & Spalding
Washington, D.C.
1700 Pennsylvania Avenue, NW
Washington, D.C. 20006-4706
Tel: +1 202 737 0500
Fax: +1 202 626 3737

www.kslaw.com

Client Alert

Antitrust & Litigation Practice Group

- Under the Order to Suspend, the non-compete provisions in the SNCA and RHP agreements are suspended for at least 30 days while the FTC considers any public comments it receives. During this time, former SNCA and RHP cardiologists may leave Renown Health, and must notify a special monitor appointed by the FTC to ensure they are included in a group of up to 10 cardiologists that will be allowed to join competing groups.
- After the public comment period expires, and in the event that the FTC finalizes the proposed Decision and Order, another 30-day release period commences. During this period, other cardiologists may also leave Renown Health, provided that certain conditions are met. For example, departing cardiologists must agree to continue to practice in the Reno area for at least one year. In addition, during the 30 day release period, Renown Health can request that the FTC end the release order if 10 Renown Health cardiologists have left for competing practices. If fewer than six cardiologists have decided to leave Renown Health after the end of this release period, Renown Health will continue to suspend the non-compete provisions until at least six cardiologists have accepted offers with competing practices in the Reno area.

According to the FTC's press release, the State of Nevada, through its Attorney General, worked with FTC staff to investigate and resolve this matter. The Attorney General has filed a complaint similar to the FTC's and has entered into an agreement with Renown Health similar to the FTC's proposed settlement.

The FTC's settlement with Renown Health is noteworthy, because the FTC typically prefers structural remedies, (*i.e.*, the sale of certain assets or unwinding of a transaction). In addition, the fact that the FTC so closely examined two relatively small transactions reaffirms that provider combinations in concentrated markets will continue to receive significant FTC scrutiny.

Celebrating more than 125 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 800 lawyers in 17 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality and dedication to understanding the business and culture of its clients. More information is available at www.kslaw.com.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice.