

✓ IS THE WAITING GAME OVER?

FTC May Be Wrapping Up Investigation Into Dominican's Purchase of AMI's Community Hospital

by Mary Bryant

In March, 1989 a story unfolded that would make headlines for years to come.

The leaders of Dominican Santa Cruz Hospital announced they had acquired AMI's Community Hospital.

In less than six months, the once-rival facility, located less than a mile away from Dominican's main campus, was closed, renovated and reopened as a restorative care unit and acute drug rehabilitation center.

But before the ink was dry on the deal, some guys and gals would cry foul.

Bidding against Dominican Hospital in the battle to buy Community Hospital were doc-

tors from the Santa Cruz Medical Clinic, along with a handful of independent physicians and soon-to-be-former Community Hospital administrators.

Quickly these folks were joined by several members of the county's Board of Supervisors who wanted to be sure before Dominican's staff rested on their laurels, well deserved or not, that the long-established institution would sign a long-term agreement to provide care for the poor, an odd request since Dominican had entered into such a contract with the county in 1973 extending to the year 2010. But life for Dominican leaders was going to get just a bit odder.

It was into this fray that attorneys from the Federal Trade Commission (FTC) would arrive, responding to a letter of complaint reportedly filed by an interested party to what was turning



into a very public brawl.

Had Dominican leaders broken the law when purchasing the only competing hospital in North County?

"Ordinarily the way that the commission has gotten involved in looking at hospital

markets is in the context of a merger," said David Newman, an attorney with the FTC who is familiar with the Dominican case. "In the situation where there has been two or more hospitals in town and one is acquiring the other, or they are

agreeing to merge their operations... we can request additional information before they merge."

Was this an ordinary kind of merger? "A situation where the acquisition happens before our investigation is kind of un-

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A Brief Look At The Hospital Industry

In the 1750s the first public hospitals were open. They were boarding houses of a sort for those who had no family to turn to in times of crisis.

By 1850, religious organizations were beginning to take a hand in caring for the poor. Soon, specialized institutions would also be constructed, along with teaching facilities.

It wasn't going to be until the turn of the century, however, that Americans would see the for-profit hospitals on the scene. But even then these medical centers were not exactly your upscale kinds of places, since most anyone checking into a hospital in those days was more likely to find comfort instead of a cure.

By 1943 this all was beginning to change. With the widespread use of antibiotics surgeons refined their trade and doctors became very adept at saving lives.

In the late 1940s, with young men returning home from the war and more employees receiving insurance benefits, the big race began in earnest.

More hospitals would be built in the United States between 1945 to 1980 than anywhere else in the world.

Caring for the sick had become a high stakes game.

But that was then.

Since 1980 there has been an extraordinary decline both in the number of and the admissions to hospitals. It is a trend that reflects changes in the way care is delivered and the way health care dollars are spent.

Now players bid for the biggest share of a steadily shrinking market. The winners stay in business. The losers don't.

Between 1976 and 1986 just under 200 hospitals closed, many others restricted operations or merged with institutions which were once competitors. Since this time, hundreds others have also ceased operation. Why?

Simple. Fewer people are checking into hospitals. Instead, with the advent of advanced drug therapies and breakthroughs in surgical procedures and the use of anesthetics, more folks can get well at home.

According to the American Hospital Association, in California the number of admissions has declined from 700 per day per 1,000 of population in 1987 to 631 per day per 1,000 of population, a 10 percent drop.

The number of surgeries has also been on the wane. In the same period, the figure for surgeries has dropped from 109 to 103 per 1,000 of population. □



Watsonville Community Hospital.

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usual," Newman said.

Nonetheless, did the terms of the purchase break the law?

According to Dominican's attorney Toby Singer in a 1991 interview with *The Post*, Dominican had been careful not to fail to meet the letter of the law when it came to current regulations when acquiring Community Hospital at a price of less

than \$12 million. "There are three tests. I guess the basic one is if the purchase price or value of the assets acquired are over \$15 million," Singer explained.

But this fact apparently did not to detour representatives of the FTC. The case must have also been interesting enough for the federal team to take two and a half years to consider.

What did the investigators look for during this period of time?

"What are the likely effects of the acquisitions... In the Santa Cruz area you might look and see if people would go to San Jose for urgent hospital care if a monopoly [provider] was to exist in Santa Cruz and raise its prices excessively," Newman reported. "But we don't tend to look at the post acquisition behavior of a firm because it's likely they're going to be behaving... Nobody who is under investigation by a



Federal agency, to see whether or not their merger monopoly is competitive, is going to sit there and [raise] their prices by 30 percent... We tend to try to get a sense of how the market is likely to behave after we've gone away."

But in this case the market does include another hospital, Watsonville Community, which makes defining Dominican as a monopoly provider just that much more tricky. And even if you define North and South County Santa Cruz as independent and unique service areas, then are the communities unique to be served by a single hospital?

"There are certainly a lot of smaller communities throughout

California that have only one hospital," Newman said again noting that in North Santa Cruz County there had once been two.

Actually, there had once been four hospitals in competition in North County, but this is a different story.

Let's get back to what objective factors will play a part in whether the FTC directors decide to open a formal investigation.

"[There is] a second part of the equation. It may be that the benefits of an acquisition are so great that even if the firm has acquired market power, that people in the community will still be better off. This would be true, if for example, you had two hospitals that were operat-

ing at a relatively low census, and you could tolerate all of the operations in one hospital," Newman said.

At the time of the acquisition Community Hospital was operating at a 23 percent average census or occupancy rate, and the parent, for-profit corporation, AMI, was experiencing multimillion dollars losses due in part to the lack of business. And, as noted above, all of the acute care operations were consolidated into Dominican's Soquel Drive campus.

It is through this consolidation that Dominican leaders report having saved \$4 million each year in efficiencies, which is now growing close to the price paid in the acquisition.

How did Dominican wind up saving money?

Efficiencies, and as a result savings, are gained by not keeping open duplicate units, like 24-hour a day emergency or intensive care centers. These are savings that have been passed on to the community by way of keeping prices below the regional levels and in the hospital's continuing commitment to care for the poor.

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—David Newman

"We balance the efficiencies with the economies of scale and potential increases in service against what we know about the likely competitive effects of having any one firm in a market," Newman said.

Newman also added that while the trend in the market currently reflected a decline in the utilization of acute care hospital services, there would be a point when the tide would ebb since certain kinds of procedures, like major abdominal surgery and neurosurgery, would continue to require hospitalization. Or, more simply,

he reported experts were noticing a stabilization in the number of out-patient surgeries when adjusted for population growth, a fact which might suggest some plateau had been reached and that very sick patients would continue to rely on hospitals for care.

But with all this said, what's to happen of the investigation at Dominican Hospital. Will FTC directors file charges?

Newman was reticent to respond to any direct questions, since official FTC investigations are not disclosed, even if it's known an investigation is underway from the documents that are on file with the courts.

"There are questions that we look at in terms of what to do. What we try not to do is to look at the numbers... and plug it into one answer. We try to proceed thoroughly, analytically, and broadly in terms of what's likely to produce the maximum benefits for consumers," Newman said. "Given the time frames involved, we have to be mindful of the possibilities that... a remedy [where the firm would divest its acquisition] may not work. The market's already over-subscribed. There are also other remedies to look at."

What other remedies would the FTC consider?

"One of the lesser remedies that we'll get restricts a hospital from... further acquisitions within the market without approval from the commission," Newman responded.

Is such a deal in the offing? "We have had discussion with the FTC about this issue and we are waiting to hear from them," said Sister Julie Hyer, Dominican's president and chief executive officer. □