

Judge finds 'exclusionary conduct' from ProMedica in lawsuit ruling

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BY BROOKS SUTHERLAND / THE BLADE

Ruling there was little doubt ProMedica's "conduct was exclusionary" when it cancelled eight longstanding service agreements with McLaren St. Luke's Hospital, a federal judge delivered a strongly-worded ruling Tuesday that granted the Maumee hospital a preliminary injunction for an antitrust lawsuit against the Toledo-based health care system.

In the 12-page order, U.S. District Court Judge Jack Zouhary denied ProMedica's motion to dismiss the lawsuit, ruling that St. Luke's provided significant evidence to support its case that it suffered "irreparable injury" because of alleged anticompetitive business practices.

He further noted that St. Luke's presented a strong case that ProMedica engaged in exclusionary conduct and through a series of witness declarations, concluded ProMedica's own executives detailed an intention to cancel agreements based on McLaren's acquisition of St. Luke's, which would make the hospital more competitive.

"If the motives behind defendants' actions were not clear based on their actions alone, ProMedica executives themselves admitted the motivation behind their decision to cancel the agreements was the presence of a more formidable St. Luke's in the market," the judge wrote.

The lawsuit was filed in November after Paramount, a subsidiary of ProMedica, informed St. Luke's it would become an out-of-network provider for commercial and Medicare Advantage health plans beginning Jan. 1.

Ginger Petrat, a McLaren St. Luke's spokesman, called Judge Zouhary's ruling a "victory for not only the Paramount health plan members who will be able to continue receiving care from the McLaren St. Luke's physicians and caregivers they know and trust, but also our entire community," in a statement released Tuesday night.

ProMedica responded to Tuesday's ruling by simply noting that it "strongly disagrees with the court's decision" while vowing the company will appeal to the U.S. Court of Appeals for the Sixth Circuit.

"In the interim, ProMedica intends to comply with the court's order," the statement read. "We are currently in the process of informing all affected health insurance members and remain committed to helping our members access the highest quality of care to improve their health and well-being."

Spokesman Tausha Moore previously bashed the filing, arguing "this frivolous lawsuit from an out-of-state health care system lacks any merit and was filed solely to tarnish ProMedica's reputation."

The suit filed Nov. 11 by St. Luke's on Nov. 11 contends "ProMedica engaged in a pattern of monopolistic and anticompetitive behavior designed to maintain and increase its dominant market position by limiting patient choice and causing harm to St. Luke's and its affiliated physicians."

It further contended that with 91,000 members in its Paramount health plans, ProMedica has an estimated 50 percent of overall hospital market share in the Toledo area and as much as 70 percent in certain service lines. The suit also alleges that ProMedica has amassed significant control over the local hospital market and has the power to raise prices and stifle competition.

ProMedica countered with a Dec. 4 motion to dismiss the lawsuit. In a memorandum supporting the motion to dismiss, lawyers for ProMedica bashed the lawsuit as an "abuse of the antitrust laws."

"McLaren St. Luke's wants less rather than more competition, and through this action asks the Court to allow McLaren St. Luke's to take a free ride on ProMedica's investments," the lawyers wrote.

But in his ruling, Judge Zouhary said "defendants' claims that a temporary injunction would 'eliminate competition and give McLaren St. Luke's a free ride on ProMedica investments,' are not well taken."

The judge further ruled that "not only have plaintiffs (St. Luke's) shown a "potential" for genuine effects on competition, but they likely may establish actual detrimental effects as well."