

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

UNITED HEALTHCARE OF COLORADO, INC.,
PACIFICARE HEALTH PLAN ADMINISTRATORS, INC.,
PACIFICARE OF COLORADO, INC., and
UNITEDHEALTHCARE INSURANCE COMPANY,

Plaintiffs,

v.

HCA, INC.,
HEALTHONE OF DENVER, INC.,
HCA-HEALTHONE, LLC,
MEDICAL IMAGING OF COLORADO, LLC, and
THE IMAGING GROUP, LLC.

Defendants.

[PROPOSED] TEMPORARY RESTRAINING ORDER

THIS MATTER having come before the Court on Plaintiffs' Motion for Temporary Restraining Order under Fed.R.Civ.P. 65(b), the Court having reviewed said motion, the supporting affidavits and exhibits, the evidence and arguments presented at the hearing, and the Court being otherwise fully advised in the premises,

HEREBY FINDS that:

(1) Plaintiffs, United HealthCare of Colorado, Inc. ("UHC-Colorado"), PacifiCare Health Plan Administrators, Inc. ("PacifiCare-HPA"), PacifiCare of Colorado, Inc. ("PacifiCare"), and UnitedHealthcare Insurance Company (UnitedHealthcare) (collectively,

“United”) sell HMO and health insurance products and administers claims for self-funded and fully-insured health plans to employer groups in Colorado.

(2) Defendants, HCA, Inc, HealthONE of Denver, Inc., HCA-HealthONE, LLC, (collectively “HCA”), provide general acute care hospital services, ambulatory surgery services, and imaging services in Colorado. HCA owns or has a substantial stake in 7 hospitals, 11 ambulatory surgery centers, and more than 30 outpatient clinics, in addition to 20 imaging facilities in the Denver Metro Area. HCA has 70 percent of the market share for women’s imaging services, including, but not limited to mammography services. HCA controls a majority of the women’s radiological imaging services market, including mammography services, and a substantial share of certain other outpatient-based imaging services in the Denver metro area, through its ownership and control of Defendants Medical Imaging Group of Colorado LLC, and The Imaging Group, LLC (collectively the “Imaging Defendants”) (HCA and the Imaging Defendants are collectively referred to as the “Defendants”).

(3) UHC-Colorado, PacifiCare and UnitedHealthcare contract with providers like HCA to provide medical services at affordable rates for United’s members throughout Colorado. In addition, PacifiCare-HPA provides health care administration services to employers who self-fund health care benefit plans in order for their employees to access health care services. PacifiCare-HPA also contracts with providers on behalf of such self-funded health plans. Within the Denver Metro Area, United has over 400,000 members of which over 200,000 are women.

(4) Since 1998, UHC-Colorado has contracted with HCA for the provision of general acute care hospital services and ambulatory surgery services through a certain United HealthCare

of Colorado Hospital Participation Agreement (the “UHC Agreement”). Since 1996, PacifiCare-HPA has contracted with HCA for the provision of general acute care hospital services and ambulatory surgery services through a certain Hospital Services Agreement (the “PacifiCare-HPA Agreement”). In 2002, PacifiCare also entered into a Hospital Services Agreement with HCA (the “PacifiCare Agreement”). (Collectively, the UHC Agreement, the PacifiCare-HPA Agreement, and the PacifiCare Agreements are referred to herein as the “Hospital Agreements.”)

(5) On or about December 5, 2005, HCA terminated the UHC Agreement, effective August 31, 2006. On or about June 1, 2006, HCA terminated the PacifiCare Agreement and the PacifiCare-HPA Agreement, also effective August 31, 2006.

(6) In addition to the Hospital Agreements, UHC-Colorado and PacifiCare are parties to certain provider agreements with the Imaging Defendants for the provision of imaging services, including but not limited to women’s imaging services, to United members (the “Imaging Agreements”). Following the final termination of the Hospital Agreements, HCA separately caused the termination of the Imaging Agreements, but making it clear that the termination of the Imaging Agreements was linked to the resolution of the negotiations of the Hospital Agreements. Specifically, on August 9 and 11, 2006, the Imaging Defendants notified United that their imaging centers will become “out of network” as of November 9, 2006, unless the negotiations concerning the Hospital Agreements are successful. Prior to this time, Imaging Defendants had not conditioned access to the imaging facilities or had tied their contract negotiations with the Hospital Agreements.

(7) Through the notifications dated August 9 and 11, 2006, HCA tied the Imaging Agreements to the Hospital Agreements, demanding that United agree to the terms proposed by HCA under the Hospital Agreements if United wanted the HCA imaging centers to remain within the United network. Through use of its monopoly position with respect to mammography services, HCA is seeking to extort an “access fee” for United’s members to have continued access to Defendants’ imaging services. HCA is aware of its monopoly position in women’s imaging services and the negative impact its decision to terminate the Imaging Agreements would have on United and its members.

(8) Colorado Insurance law requires United to notify its members on September 22, 2006, that the Imaging Defendants’ facilities will become “out-of-network” providers within 45 days. Such a notification is likely to irreparably harm United through the loss of customers, damage to its business and goodwill in the marketplace, and substantial diminution of its competitive position in the marketplace. Since September 1, 2006, United has lost customers and has received numerous communications from employers and individuals that they will cease using United because of the loss of Defendants facilities in United’s network. Further, the health care consumers in the Denver Metro Area will face higher costs and limited choice for mammography services.

(9) Prior to the termination of the Hospital Agreements, United was assisting and advising its members in obtaining in-network medical services when at HCA facilities. United would inform its members when they may begin to incur out-of-network charges and explain in-

network alternatives for continued treatment so the member could understand how to maximize his or her benefits through the choice of where to receive services.

(10) On or about August 31, 2006, HCA abruptly stopped providing notice of United member admissions and halted United's Nurse Advocates access to United's member-patients. HCA has also declined to provide member room numbers when requested by United representatives, thereby preventing United from directly contacting its members by telephone. Because HCA has denied such access, United's member-patients are likely to make uninformed decisions about their health care options and pay significantly higher than necessary out-of-network costs for services provided at HCA facilities.

HEREBY CONCLUDES AS A MATTER OF LAW that:

(11) United will likely succeed on its antitrust claims because Defendants have a monopoly in the Denver Metro Area for women's imaging services and have abused that monopoly power by conditioning access to mammography services to agreeing to certain higher hospital rates. These higher hospital rates is a form of predatory pricing by a monopolist designed to extract higher prices from consumers. Defendants' termination of the Imaging Agreements and the predatory access fee is directly related to Defendants' monopoly power in mammography services and the cause of higher prices for United and its members.

(12) Instead of seeking even more costly mammography services from Defendants, United members may seek care at the remaining in-network mammography providers. However, if all of United's women members shifted from Defendants to the other mammography providers, possessing 30 percent or less of the mammography services market, wait time will

increase for a procedure in which delay can be deadly. Alternatively, United's members may simply chose to forgo or put off having a mammogram done, either because Defendants' prices are too high or because there are too few reasonable prices alternatives in the market.

(13) Therefore, if Defendants are permitted to continue their antitrust violations and terminate the Imaging Agreements with United, United's women members will either have to seek care from the limited number of in-network mammography providers who would be hard-pressed to cope with the influx of such a large number of additional patients or pay higher prices to the Imaging Defendants.

(14) United will also likely succeed on its tortious interference with contract claim. HCA has intentionally interfered with United's contracts with its members by precluding United access to its member-patients. HCA ceased providing United notification of United member-patient admissions at precisely the same time the termination of the Hospital Agreements became effective and ordered all of the Nurse Advocates out of its facilities shortly thereafter. HCA has further obstructed United's access to its patients by refusing to provide United with the room numbers of its member-patients and refusing to connect United representatives with its member-patients on the telephone. This interference with United's services to its members is wrongful.

(15) United has received notice by many employer customers of their intent not to renew their insurance contracts with United based on the loss of Defendants hospitals from United's network of providers, as Defendants posses 35 percent of the hospital services market based on in patient discharge data. There is a high-probability that the loss of Defendants, as the provider of *70 percent* of the mammography services, will have as great if not a greater impact on

employers' decision to renew with another insurance carrier. Therefore, the threatened injury to United – immediate and irreparable harm from the loss of customers, damage to its business and goodwill in the marketplace, and substantial diminution of its competitive position in the marketplace – outweighs the harm an Injunction might cause Defendants, which is slight.

(16) The public interest heavily favors granting an Injunction. Disregarding antitrust law by abusing and misusing market power to generate higher profits is contrary to public policy. Also, denying United members access and information about health care harms the public. In addition, no public policy supports Defendants' actions, which will put the public at an increased health risk.

(17) Finally, entry of this Injunction will not alter the status quo. United wishes to preserve the status quo by preventing HCA from terminating the Imaging Agreements and barring the Nurse Advocates from contacting United member-patients at HCA facilities, which was the status between the parties before the termination of the Hospital Agreements became effective.

(18) Accordingly United has demonstrated: (1) that it has a substantial likelihood of success on the merits; (2) that it will suffer immediate and irreparable harm from the loss of customers, damage to its business and goodwill in the marketplace, and substantial diminution of its competitive position in the marketplace unless an Injunction is issued; (3) that the threatened injury to United outweighs the harm an Injunction might cause Defendants; and (4) that the Injunction will not adversely affect the public interest.

IT IS HEREBY ORDERED that:

(1) Pending a hearing on Plaintiffs' Motion for Preliminary Injunction and until further Order from this Court, the Defendants, their employees, owners, agents, subsidiary entities, parent entities and all individuals and entities acting by, through, under or in concert with them are enjoined from terminating the Imaging Contracts with United.

(2) Defendants are enjoined from demanding payment of any higher fee for hospital services in order to secure access by United to women's imaging services, such as mammography services.

(3) The Defendants, their employees, owners, agents, subsidiary entities, parent entities and all individuals and entities acting by, through, under or in concert with them are enjoined from denying access to United and its Nurse Advocates to HCA facilities in the Denver Metro Area for purposes of contacting United members, from refusing to disclose to United information concerning United member room numbers, from denying United the right to communicate with United members who are patients in HCA facilities, in person or by telephone, and shall cooperate with United in identifying when United members are admitted to HCA facilities.

IT IS FURTHER ORDERED that:

(1) Plaintiffs' Motion for Preliminary Injunction shall be heard by this Court on _____, 2006.

(2) Plaintiffs are not required to post a bond because it is not likely that Defendants will suffer any harm from this Temporary Restraining Order.

This Temporary Restraining Order is issued on September ____, 2006, at ____ .m.

BY THE COURT

United States District Court Judge