

1995

A Consumer Perspective on the Pros and Cons of Antitrust Enforcement in Health Care: An Introduction

John D. Blum

Assoc. Dean for Health Law Programs Inst for Health Law, Loyola University Chicago

Follow this and additional works at: <http://lawcommons.luc.edu/lclr>



Part of the [Health Law and Policy Commons](#)

Recommended Citation

John D. Blum *A Consumer Perspective on the Pros and Cons of Antitrust Enforcement in Health Care: An Introduction*, 8 *Loy. Consumer L. Rev.* 76 (1995).

Available at: <http://lawcommons.luc.edu/lclr/vol8/iss2/12>

This Feature Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola Consumer Law Review by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

A Consumer Perspective on the Pros and Cons of Antitrust Enforcement in Health Care: *An Introduction*

by John D. Blum

Twenty years have passed since the landmark decision of *Goldfarb v. Virginia State Bar* which opened the doors for the application of the antitrust laws in the health care field. In the two decades since *Goldfarb*, health care antitrust has emerged as a core area of health law practice. The field has evolved through a series of public and private actions dealing with professionalism and competition, physician-hospital relationships, and more recently provider-payor relations. Antitrust law generally has been energized by all of the activity in health care, and this evolving sub-speciality area has been the subject of widespread debate and analyses.

In reflecting on health care antitrust law, it is clear that the law itself has not fundamentally changed as the legal principles set out in federal and state statutory laws have remained constant. But this is not to say that the antitrust laws related to health care have been static, on the contrary they are being driven by an ever widening range of issues. The law is challenged by the health care markets which are simultaneously causing and reacting to various movements. In particular, the ascendancy of managed care has forced new interpretations of how antitrust law should be viewed in an arena where purchasers are forcing significant realignment of institutions and providers, and where established definitions of markets may no longer

be adequate. Recent pronouncements by the federal Department of Justice and the Federal Trade Commission have attempted to set guidelines in this new market environment, but the efficacy and value of these directives have sparked considerable debate. The very role of law itself in maintaining a competitive environment is questioned. Many call for state and federal enforcement relaxation, and at the opposing end of the spectrum, others argue for aggressive enforcement.

Paradoxically, absent from the health care antitrust debates are the fundamental concerns about the impact of antitrust law on the health care consumer. While the discussions of antitrust enforcement are often couched in the technical lexicons of lawyers and economists, the core issues surrounding health care competition reach the very essence of the nature of the health delivery system which will be available to providers and patients alike. In recognition of the significance of health care antitrust law as a consumer issue, the Institute for Health Law sponsored a one day conference in the fall of 1995, "Consumerism and Competition: Striking a Balance." The conference brought together a panel

John D. Blum is the Associate Dean for Health Law Programs Institute for Health Law, Loyola University Chicago. For more information on the Institute, call (312) 915-7174.

of nationally known academics and practitioners to focus on current health care antitrust issues from the vantage point of the consumer. Six papers were presented at the conference and are contained in this issue of the *Loyola Consumer Law Reporter*. Two of the papers, written by Professors Clark Havighurst from Duke University School of Law and James Blumstein from Vanderbilt University Law School, discuss consumerism in reference to federal and state enforcement policies. Dr. Warren Greenburg, an economist from George Washington University, presents an overview of the Marshfield Clinic case, and an assessment of private antitrust enforcement. Professor Frances Miller from Boston University School of Law argues for the need for state governments to release provider specific information to assist consumers in making health care decisions. In his paper, Professor Joseph Bauer from Notre Dame Law School sup-

ports the need for local health care institutional collaborations, but not at the expense of abrogating antitrust law enforcement. This issue concludes with a piece by Professor Peter Carstensen from the University of Wisconsin School of Law who points out the inadequacies of the antitrust laws and argues for broader based legal reform initiative in health care to foster consumer interests.

I am hopeful that this special issue will be instrumental in moving the health care antitrust dialogue into a more consumer oriented direction. This effort directed by Loyola's Institute for Health Law was underwritten by our Law School's new Institute for Consumer Antitrust Studies. The Institute for Health Law plans to continue its work in consumer related health care issues, and is planning to design future events which will focus on health care antitrust and medical consumerism generally.
