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Seventh Circuit Resurrects Physician’s Antitrust Challenge to Loss of Medical Staff Privileges

Although many attempts by physicians to challenge hospital medical staff privileges terminations on antitrust grounds have fallen flat over the years, often because of perceived failures by the plaintiff to allege an appropriate geographic or service “market” for antitrust purposes, the Seventh Circuit Court of Appeals recently revived a physician’s antitrust suit against Indiana University Health (“IU Health”), finding that the plaintiff alleged plausible claims under the Sherman Act and Clayton Act.¹ The case against IU Health in particular focused upon the impact that the hospital system’s acquisition of physician practices had upon one of the few remaining independent specialists in the area, a challenging issue for many hospital medical staffs split between employed and independent community physicians.

Plaintiff Dr. Ricardo Vasquez, who owns and operates a vascular surgery practice in the city of Bloomington, Indiana, sued IU Health for allegedly scheming to destroy his medical practice. According to Dr. Vasquez, through an aggressive campaign of physician practice acquisitions, IU Health employed 97 percent of the primary care physicians (“PCP”) in Bloomington, and over 80 percent in the wider region. When Dr. Vasquez resisted becoming an employee of IU Health too, he alleges that IU Health began a campaign to impugn his clinical reputation and cripple his practice, up to and including termination of his hospital medical staff privileges at IU Health.

The District Court dismissed plaintiff’s complaint for failure to plead a plausible geographic market in which IU Health allegedly harmed competition, and for filing suit too late. On appeal, the Seventh Circuit rejected both points and reversed and remanded.

The Seventh Circuit began its analysis of the market definition allegations by reciting the standard of the hypothetical monopolist test for market definition, which asks “what would happen if a single firm became the only seller in a candidate geographic region... If that hypothetical monopolist could profitably raise prices above competitive levels, the region is a relevant geographic market.” However, if “customers would defeat the attempted price increase by buying from outside the region, it is not a relevant market; the test should be rerun using a larger candidate region.”

Dr. Vasquez alleged that the city of Bloomington was the relevant geographic market, offering two explanations of how a hypothetical monopolist could raise prices to supra-competitive levels in Bloomington’s vascular-surgery market.

First, plaintiff alleged that the vascular-surgery market in Bloomington is inherently local because patients who receive these treatments require ongoing care, sometimes for the rest of their lives. These patients, Dr. Vasquez argued, would not want to be sent to another city for the rest of

1. *Vasquez v. Indiana Univ. Health, Inc.*, No. 21-3109, 2022 WL 2582368, at *3 (7th Cir. July 8, 2022).

their lives to receive care: “[B]ecause most patients would consider [this] a bad deal, insurers... face pressure to provide vascular care in or near Bloomington.”

Second, Dr. Vasquez alleged that vascular surgeons’ reliance on referrals makes Bloomington an appropriate geographic market. He asserted that IU Health employs 97 percent of the primary care physicians in Bloomington. This means that nearly every vascular surgery patient in Bloomington gets referred to a specialist by an IU Health primary care physician. Dr. Vasquez asserted that a hypothetical monopolist with this level of market power over primary-care services in Bloomington would have unfettered control over the flow of patients to vascular surgeons.

The Seventh Circuit found both of Vasquez’s accounts of how a hypothetical monopolist could dominate Bloomington’s vascular-surgery market sufficient to clear the plausibility bar at the pleadings stage. In fact, the Court went further and found Vasquez not only to have sufficiently alleged how a hypothetical monopolist could dominate the Bloomington market, but also that Vasquez pled sufficient allegations that IU Health did in fact already dominate the Bloomington market. The Court pointed to Vasquez’s allegations that IU Health controlled all of the hospitals that provide vascular-care-related services, including its equipment and surgeons. Regarding “upstream” referrals, the Court further explained that because IU Health employed 97 percent of the primary care physicians in Bloomington, IU Health has monopolistic referral control, meaning that virtually every patient needing vascular care sees an IU Health PCP.

IU Health finally asserted that Vasquez’s Clayton Act claim should be dismissed because the four-year statute of limitations period had expired. According to IU Health, the statute of limitations began to run in 2017 at the moment it began acquiring other hospitals, and expired in 2021 well before Vasquez filed his lawsuit. The Seventh Circuit disagreed. The Complaint alleged that IU Health engaged in a “systematic and targeted scheme to ruin Dr. Vasquez’s reputation and practice” in “approximately 2017, around the time that IU Health acquired Premier.” Although the Court recognized that this allegation could be construed to mean that he learned about his injury exactly in 2017, the Court noted that Dr. Vasquez’s allegations, which included the language “around the time”, was pled in such a way that it was difficult to ascertain, without further discovery, exactly when Vasquez learned about the purported scheme. The Court found this ambiguity sufficient to save Vasquez’s Clayton Act claim at the pleadings stage.

Moving forward, it will be interesting to see how Dr. Vasquez’s claims develop in discovery and what guidance the courts may offer to hospitals and physicians.

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