

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA and
STATE OF MICHIGAN,

Plaintiffs,

v.

HILLSDALE COMMUNITY HEALTH
CENTER,
W.A. FOOTE MEMORIAL HOSPITAL,
D/B/A ALLEGIANCE HEALTH,
COMMUNITY HEALTH CENTER OF
BRANCH COUNTY, and
PROMEDICA HEALTH SYSTEM, INC.,

Defendants.

CASE NO.: 2:15-cv-12311

COMPLAINT

The United States of America and the State of Michigan bring this civil antitrust action to enjoin agreements by Defendants Hillsdale Community Health Center (“Hillsdale”), W.A. Foote Memorial Hospital, d/b/a Allegiance Health (“Allegiance”), Community Health Center of Branch County (“Branch”), and ProMedica Health System, Inc. (“ProMedica”) (collectively, “Defendants”) that unlawfully allocate territories for the marketing of competing healthcare services and limit competition among Defendants.

NATURE OF THE ACTION

1. Defendants are healthcare providers in Michigan that operate the only general acute-care hospital or hospitals in their respective counties. Defendants directly compete with each other to provide healthcare services to the residents of south-central Michigan. Marketing is a key component of this competition and includes advertisements, mailings to patients, health fairs, health screenings, and outreach to physicians and employers.

2. Allegiance, Branch, and ProMedica's Bixby and Herrick Hospitals ("Bixby and Herrick") are Hillsdale's closest Michigan competitors. Hillsdale orchestrated agreements to limit marketing of competing healthcare services. Allegiance explained in a 2013 oncology marketing plan: "[A]n agreement exists with the CEO of Hillsdale Community Health Center, Duke Anderson, to not conduct marketing activity in Hillsdale County." Branch's CEO described the Branch agreement with Hillsdale as a "gentlemen's agreement not to market services." A ProMedica communications specialist described the ProMedica agreement with Hillsdale in an email: "The agreement is that they stay our [sic] of our market and we stay out of theirs unless we decide to collaborate with them on a particular project."

3. The Defendants' agreements have disrupted the competitive process and harmed patients, physicians, and employers. For instance, all of these

agreements have deprived patients, physicians, and employers of information they otherwise would have had when making important healthcare decisions. In addition, the agreement between Allegiance and Hillsdale has deprived Hillsdale County patients of free medical services such as health screenings and physician seminars that they would have received but for the unlawful agreement. Moreover, it denied Hillsdale County employers the opportunity to develop relationships with Allegiance that could have allowed them to improve the quality of their employees' medical care.

4. Defendants' senior executives created and enforced these agreements, which lasted for many years. On certain occasions when a Defendant violated one of the agreements, executives of the aggrieved Defendant complained about the violation and received assurances that the previously agreed upon marketing restrictions would continue to be observed going forward.

5. Defendants' agreements are naked restraints of trade that are *per se* unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

JURISDICTION, VENUE, AND INTERSTATE COMMERCE

6. The United States brings this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The State of Michigan brings this

action in its sovereign capacity under its statutory, equitable and/or common law powers, and pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain Defendants' violations of Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

7. This Court has subject matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. § 4 (as to claims by the United States); Section 16 of the Clayton Act, 15 U.S.C. § 26 (as to claims by the State of Michigan); and 28 U.S.C. §§ 1331, 1337(a), 1345, and 1367.

8. Venue is proper in the Eastern District of Michigan under 28 U.S.C. § 1391 and Section 12 of the Clayton Act, 15 U.S.C. § 22. Each Defendant transacts business within the Eastern District of Michigan, all Defendants reside in the State of Michigan, and at least two Defendants reside in the Eastern District of Michigan.

9. Defendants all engage in interstate commerce and in activities substantially affecting interstate commerce. Defendants provide healthcare services to patients for which employers, health plans, and individual patients remit payments across state lines. Defendants purchase supplies and equipment from out-of-state vendors that are shipped across state lines.

DEFENDANTS

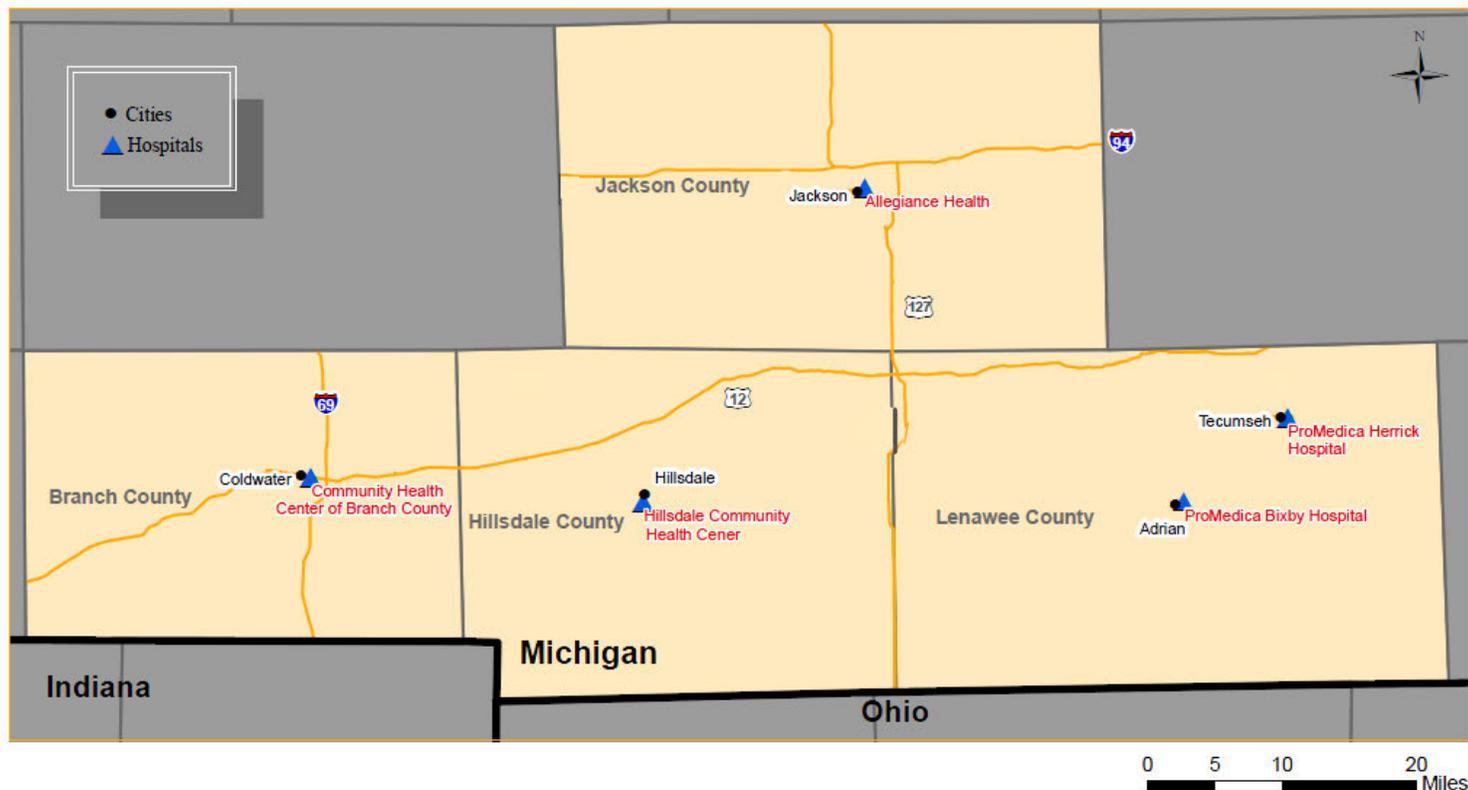
10. Hillsdale is a Michigan corporation headquartered in Hillsdale, Michigan. Its general acute-care hospital, which is in Hillsdale County, Michigan, has 47 beds and a medical staff of over 90 physicians.

11. Allegiance is a Michigan corporation headquartered in Jackson, Michigan. Its general acute-care hospital, which is in Jackson County, Michigan, has 480 beds and a medical staff of over 400 physicians.

12. Branch is a Michigan corporation headquartered in Coldwater, Michigan. Its general acute-care hospital, which is in Branch County, Michigan, has 87 beds and a medical staff of over 100 physicians.

13. ProMedica is an Ohio corporation headquartered in Toledo, Ohio, with facilities in northwest Ohio and southern Michigan. ProMedica's Bixby and Herrick Hospitals are both in Lenawee County, Michigan. Bixby is a general acute-care hospital with 88 beds and a medical staff of over 120 physicians. Herrick is a general acute-care hospital with 25 beds and a medical staff of over 75 physicians.

Map of Defendants' Hospitals



BACKGROUND ON HOSPITAL COMPETITION

14. Hillsdale competes with each of the other Defendants to provide many of the same hospital and physician services to patients. Hospitals compete on price, quality, and other factors to sell their services to patients, employers, and insurance companies. An important tool that hospitals use to compete for patients is marketing aimed at informing patients, physicians, and employers about a hospital's quality and scope of services. An executive from each Defendant has testified at deposition that marketing is an important strategy through which hospitals seek to increase their patient volume and market share.

15. Defendants' marketing includes advertisements through mailings and media such as local newspapers, radio, television, and billboards. Allegiance's marketing to patients also includes the provision of free medical services, such as health screenings, physician seminars, and health fairs. Some Defendants also market to physicians through educational and relationship-building meetings that provide physicians with information about those Defendants' quality and range of services. Allegiance also engages in these marketing activities with employers.

HILLSDALE'S UNLAWFUL AGREEMENTS

16. Hillsdale has agreements limiting competition with Allegiance, ProMedica, and Branch.

Unlawful Agreement Between Hillsdale and Allegiance

17. Since at least 2009, Hillsdale and Allegiance have had an agreement that limits Allegiance's marketing for competing services in Hillsdale County. As Allegiance explained in a 2013 oncology marketing plan: "[A]n agreement exists with the CEO of Hillsdale Community Health Center, Duke Anderson, to not conduct marketing activity in Hillsdale County."

18. In compliance with this agreement, Allegiance has excluded Hillsdale County from marketing campaigns since at least 2009. For example, Allegiance excluded Hillsdale County from the marketing plans outlined in the above-referenced 2013 oncology marketing plan. And according to a February 2014

board report, Allegiance excluded Hillsdale from marketing campaigns for cardiovascular and orthopedic services.

19. On at least two occasions, Hillsdale's CEO complained to Allegiance after Allegiance sent marketing materials to Hillsdale County residents. Both times—at the direction of Allegiance CEO Georgia Fojtasek—Allegiance's Vice President of Marketing, Anthony Gardner, apologized in writing to Hillsdale's CEO. In one apology he said, "It isn't our style to purposely not honor our agreement." Mr. Gardner assured Hillsdale's CEO that Allegiance would not repeat this mistake.

20. Allegiance also conveyed its hands-off approach to Hillsdale in 2009 when Ms. Fojtasek told Hillsdale's CEO that Allegiance would take a "Switzerland" approach towards Hillsdale, and then confirmed this approach by mailing Hillsdale's CEO a Swiss flag.

21. Allegiance executives and staff have discussed the agreement in numerous correspondences and business documents. For example, Allegiance staff explained in a 2012 cardiovascular services analysis: "Hillsdale does not permit [Allegiance] to conduct free vascular screens as they periodically charge for screenings." As a result, around that time, Hillsdale County patients were deprived of free vascular-health screenings.

22. In another instance, in 2014 Allegiance discouraged one of its newly

employed physicians from giving a seminar in Hillsdale County relating to competing services. In response to the physician's request to provide the seminar, the Allegiance Marketing Director asked the Vice President of Physician Integration and Business Development: "Who do you think is the best person to explain to [the doctor] our restrictions in Hillsdale? We're happy to do so but often our docs find it hard to believe and want a higher authority to confirm."

23. The agreement between Hillsdale and Allegiance has deprived Hillsdale County patients, physicians, and employers of information regarding their healthcare-provider choices and of free health-screenings and education.

Unlawful Agreement Between Hillsdale and ProMedica

24. Since at least 2012, Hillsdale and ProMedica have agreed to limit their marketing for competing services in one another's county.

25. This agreement has restrained marketing in several ways. For example, in June 2012, Bixby and Herrick's President asked Hillsdale's CEO if he would have any issue with Bixby marketing its oncology services to Hillsdale physicians. Hillsdale's CEO replied that he objected because his hospital provided those services. Bixby and Herrick's President responded that he understood. Bixby and Herrick then refrained from marketing their competing oncology services in Hillsdale County.

26. Another incident occurred around January 2012, when Hillsdale's CEO complained to Bixby and Herrick's President about the placement of a ProMedica billboard across from a physician's office in Hillsdale County. At the conclusion of the conversation, Bixby and Herrick's President assured Hillsdale's CEO that he would check into taking down the billboard.

27. ProMedica employees have discussed and acknowledged the agreement in multiple documents. For example, after Hillsdale's CEO called Bixby and Herrick's President to complain about ProMedica's billboard, a ProMedica communications specialist described the agreement to marketing colleagues via email: "According to [Bixby and Herrick's President] any potential marketing (including network development) efforts targeted for the Hillsdale, MI market should be run by him so that he can talk to Hillsdale Health Center in advance. The agreement is that they stay our [sic] of our market and we stay out of theirs unless we decide to collaborate with them on a particular project."

28. The agreement between Hillsdale and ProMedica deprived patients, physicians, and employers of Hillsdale and Lenawee Counties of information regarding their healthcare-provider choices.

Unlawful Agreement Between Hillsdale and Branch

29. Since at least 1999, Hillsdale and Branch have agreed to limit marketing in one another's county. In the fall of 1999, Hillsdale's then-CEO and

Branch's CEO reached an agreement whereby each hospital agreed not to market anything but new services in the other hospital's county. Branch's CEO testified recently in deposition that "There's a gentlemen's agreement not to market services other than new services."

30. Branch has monitored Hillsdale's compliance with the agreement. For example, in November 2004, Hillsdale promoted one of its physicians through an advertisement in the Branch County newspaper. Branch's CEO faxed Hillsdale's then-CEO a copy of the advertisement, alerting him to the violation of their agreement.

31. In addition to monitoring Hillsdale's compliance, Branch has directed its marketing employees to abide by the agreement with Hillsdale. For example, Branch's 2013 guidelines for sending out media releases instructed that it had a "gentleman's agreement" with Hillsdale and thus Branch should not send media releases to the *Hillsdale Daily News*.

32. The agreement between Hillsdale and Branch deprived Hillsdale and Branch County patients, physicians, and employers of information regarding their healthcare-provider choices.

NO PROCOMPETITIVE JUSTIFICATIONS

33. The Defendants' anticompetitive agreements are not reasonably necessary to further any procompetitive purpose.

VIOLATIONS ALLEGED

First Cause of Action: Violation of Section 1 of the Sherman Act

34. Plaintiffs incorporate paragraphs 1 through 33.

35. Allegiance, Branch, and ProMedica are each a horizontal competitor of Hillsdale in the provision of healthcare services in south-central Michigan. Defendants' agreements are facially anticompetitive because they allocate territories for the marketing of competing healthcare services and limit competition among Defendants. The agreements eliminate a significant form of competition to attract patients.

36. The agreements constitute unreasonable restraints of trade that are *per se* illegal under Section 1 of the Sherman Act, 15 U.S.C. § 1. No elaborate analysis is required to demonstrate the anticompetitive character of these agreements.

37. The agreements are also unreasonable restraints of trade that are unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1, under an abbreviated or "quick look" rule of reason analysis. The principal tendency of the agreements is to restrain competition. The nature of the restraints is obvious, and the

agreements lack legitimate procompetitive justifications. Even an observer with a rudimentary understanding of economics could therefore conclude that the agreements would have anticompetitive effects on patients, physicians, and employers, and harm the competitive process.

Second Cause of Action: Violation of MCL 445.772

38. Plaintiff State of Michigan incorporates paragraphs 1 through 37 above.

39. Defendants entered into unlawful agreements with each other that unreasonably restrain trade and commerce in violation of Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

REQUESTED RELIEF

The United States and the State of Michigan request that the Court:

- (A) judge that Defendants' agreements limiting competition constitute illegal restraints of interstate trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772;
- (B) enjoin Defendants and their members, officers, agents, and employees from continuing or renewing in any manner the conduct alleged herein or from engaging in any other conduct,

agreement, or other arrangement having the same effect as the alleged violations;

- (C) enjoin each Defendant and its members, officers, agents, and employees from communicating with any other Defendant about any Defendant's marketing in its or the other Defendant's county, unless such communication is related to the joint provision of services, or unless the communication is part of normal due diligence relating to a merger, acquisition, joint venture, investment, or divestiture;
- (D) require Defendants to institute a comprehensive antitrust compliance program to ensure that Defendants do not establish any similar agreements and that Defendants' members, officers, agents and employees are fully informed of the application of the antitrust laws to hospital restrictions on competition; and
- (E) award Plaintiffs their costs in this action, including attorneys' fees and investigation costs to the State of Michigan, and such other relief as may be just and proper.

Dated: June 25, 2015

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

WILLIAM J. BAER
Assistant Attorney General for Antitrust

DAVID I. GELFAND
Deputy Assistant Attorney General

/s/
KATRINA ROUSE (D.C. Bar #1013035)
JENNIFER HANE
BARRY JOYCE
Attorneys
Litigation I
Antitrust Division
U.S. Department of Justice
450 Fifth Street, N.W., Suite 4100
Washington, D.C. 20530
(202) 305-7498
E-mail: katrina.rouse@usdoj.gov

LOCAL COUNSEL:

BARBARA L. McQUADE
United States Attorney

/s/ with the consent of Peter Caplan
PETER CAPLAN
Assistant United States Attorney
211 W. Fort Street, Suite 2001
Detroit, Michigan 48226
(313) 226-9784
P30643
E-mail: peter.caplan@usdoj.gov

FOR PLAINTIFF STATE OF
MICHIGAN:

BILL SCHUETTE
Attorney General
State of Michigan

/s/ with the consent of Joseph Potchen
JOSEPH POTCHEN
Division Chief

/s/ with the consent of Mark Gabrielse
MARK GABRIELSE (P75163)
D.J. PASCOE
Assistant Attorney Generals
Michigan Department of Attorney General
Corporate Oversight Division
G. Mennen Williams Building, 6th Floor
525 W. Ottawa Street
Lansing, Michigan 48933
(517) 373-1160
Email: gabrielsem@michigan.gov