

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

WOMAN’S CLINIC, INC.,)
ELIZABETH CAMPBELL, M.D.,)
DONALD P. KRATZ, M.D.,)
DARREN LEHNERT, M.D.,)
LISA G. POWELL, M.D.,)
DAVID L. REDFERN, M.D.,)
J. CHRISTOPHER STEIN, M.D.,)
THOMAS D. McCLAIN, M.D.)
ORTHOPEDIC SURGERY, L.L.C. and)
THOMAS D. McCLAIN, M.D.,)
)
Plaintiffs,)
)
vs.)
)
ST. JOHN’S HEALTH SYSTEM, INC., and)
ST. JOHN’S PHYSICIANS AND CLINICS, INC.,)
f/k/a ST. JOHN’S HEALTH SYSTEMS, INC.,)
)
Defendants.)

Cause No. 01-3245-CV-S AE-ECF

FIRST AMENDED COMPLAINT

Plaintiffs Woman’s Clinic, Inc. (“Woman’s Clinic”), Thomas D. McClain, M.D. Orthopedic Surgery, L.L.C. (collectively the “Medical Group Plaintiffs”), Elizabeth Campbell, M.D., Donald P. Kratz, M.D., Darren Lehnert, M.D., Lisa G. Powell, M.D., David L. Redfern, M.D., J. Christopher Stein, M.D., and Thomas D. McClain, M.D. (collectively the “Physician Plaintiffs”), by their attorneys, bring this action under the antitrust laws of the United States and the State of Missouri to enjoin the Defendants St. John’s Health System, Inc. (“SJHS”) and St. John’s Physicians and Clinics, Inc. (“SJP&C”) from their unlawful restraint and threatened restraint of trade in the Springfield Market (as hereinafter defined) for physicians’ services in Springfield, Missouri and surrounding communities, and to seek a declaratory judgment that the Defendants have violated the covenant of good faith and fair dealing in certain contracts with the Physician Plaintiffs. For their causes of action, Plaintiffs allege as follows:

INTRODUCTION

1. The Physician Plaintiffs are specialists in private practice in Springfield, Missouri (“Springfield”). They are asking the Court to stop Defendants from enforcing and exploiting contracts that unreasonably restrain trade, from taking other anti-competitive actions that threaten Plaintiffs’ ability to compete as providers of medical services in Springfield, and from breaching other contractual obligations and covenants to the Physician Plaintiffs.

2. Access to patients is critical for sustaining a medical practice.

3. Most patients with health care insurance are covered through a health care plan at work. Employers and/or employees pay premiums to managed care organizations, which negotiate payor agreements (sometimes referred to as “Health Services Agreements” or “Payor Agreements,” and referred to hereinafter as “Payor Agreements”) with physicians and other health care providers to provide medical care to their plan members at agreed rates. A physician who agrees to provide covered services to a plan member in connection with a Payor Agreement is referred to as a “Provider.” A physician will often evidence his or her commitment to provide services pursuant to a “Provider Agreement” or “Affiliation Agreement” (referred to hereinafter as an “Affiliation Agreement”). An organization of Providers is sometimes referred to as a “Provider Network.”

4. A managed care plan directs or “steers” its plan members to physicians who are part of its Provider Network. In order to gain access to patients using managed care, a physician must be a member in one or more Provider Networks.

5. In Springfield, although approximately 200,000 to 250,000 patients are members of managed care plans, only two physician Provider Networks exist — the SJHS Provider Network (as hereinafter defined) and the Cox Health System (“CHS”) Provider Network (as

hereinafter defined). The “SJHS Provider Network” is comprised of physician, hospital and other medical service Providers under contract with SJHS to provide medical services to beneficiaries of managed care plans that also contract (through Payor Agreements) with SJHS. The “CHS Provider Network” is set up in a similar way.

6. Physicians employed by SJP&C (or the similar CHS affiliate that employs CHS’ physicians) are sometimes referred to as “Integrated Physicians” because they are employed as part of an overall integrated delivery system. Physicians not so employed are referred to as “Nonintegrated Physicians.” Nonintegrated Physicians, although not employed, can contract with SJHS or CHS to be Providers in their Provider Networks. When this happens, such Nonintegrated Physicians are termed “Network Affiliate Physicians.”

7. No other Provider Networks exist in Springfield because the supply of Nonintegrated Physicians needed to staff another physician provider network is insufficient. This is due to the vertical integration of Defendants and CHS, and the exclusionary conduct of the Defendants.

8. Each Medical Group Plaintiff employs one or more of the Physician Plaintiffs. Each Physician Plaintiff is a member in good standing of the St. John’s Regional Health Center (“SJRHC”) medical staff, and each Physician Plaintiff admits and plans to continue admitting patients to SJRHC. Each is a formerly employed physician of SJP&C and is currently a Network Affiliate Physician of the SJHS Provider Network.

9. The Physician Plaintiffs, as Network Affiliate Physicians of the SJHS Provider Network, currently have access to patients whose managed care plans have entered into Payor Agreements with SJHS. Patients from this source represent a substantial portion of each Physician Plaintiffs’ medical practice. Plaintiffs have little or no access to managed care patients

whose health plans have a Payor Agreement with the CHS Provider Network because it is closed and will not admit Plaintiffs as additional Providers.

10. Defendants, by word and deed, have made it known that they plan to allow only their Integrated Physicians to be members of and enjoy the benefits of the SJHS Provider Network. To carry out this plan Defendants intend to terminate the Physician Plaintiffs from the SJHS Provider Network. When this happens, Plaintiffs, if not foreclosed by Defendants, intend to compete with SJHS, SJP&C and CHS for patients by offering patients and their managed care organizations a better combination of quality, service and price.

11. The Defendants, however, have threatened to enforce certain contracts and have taken other actions to stifle Plaintiffs' anticipated competition and to keep the Physician Plaintiffs from gaining access to managed care patients after Defendants terminate the Physician Plaintiffs from the SJHS Provider Network. These same contracts and actions also prevent Nonintegrated Physicians from gaining a competitive foothold in Springfield.

12. Although Defendants now publicly deny any present intent to terminate the Physician Plaintiffs' affiliation in the SJHS Provider Network, Defendants are instructing their Integrated Physicians to refrain from referring patients to the Physician Plaintiffs.

13. Unless the Plaintiffs are free to compete for access to managed care patients, either by forming a Provider Network comprising Nonintegrated Physicians to contract with managed care organizations, or by contracting individually and directly with managed care organizations, it will be unreasonably difficult or impossible for any of them to sustain their medical practices in Springfield.

14. Defendants' policy of directing referrals away from the Physician Plaintiffs reduces patient flow to the Physician Plaintiffs, deprives the Physician Plaintiffs of substantial

benefits due to them under certain Affiliation Agreements (as hereinafter defined) with Defendants, and places the Medical Group Plaintiffs and the Physician Plaintiffs in jeopardy of losing their respective medical practices.

15. Defendants are violating the antitrust laws of the United States and the State of Missouri by their contracts, their actions and their threatened actions, as set out below:

a. After the Physician Plaintiffs are terminated from the SJHS Provider Network, they will be unable to enter into Provider Agreements of their own, because SJHS requires virtually all managed care organizations with whom it contracts to agree in writing to use the SJHS Provider Network exclusively. Putting it another way, a managed care organization is prohibited under its Payor Agreement with SJHS from dealing with Plaintiffs or any other Provider other than through the SJHS Provider Network. With these restrictions in place, SJHS controls Plaintiffs' access to managed care patients and is able to exclude Plaintiffs. CHS has similar exclusionary provisions in its Payor Agreements.

b. As a condition of leaving employment with SJP&C, SJHS requires formerly employed physicians to sign a Transition Agreement (as hereinafter defined) containing a "Business Covenant," which the Physician Plaintiffs signed under protest. This Business Covenant prevents Plaintiffs from competing with SJHS (or CHS for that matter) by owning, operating or providing medical treatment in an ancillary facility like a birthing center, a mammography clinic, an outpatient surgery center, or a diagnostic imaging facility, including an MRI or bone densitometry. This restriction, which lasts for five years after a physician leaves employment with SJP&C, has stunted the development of such facilities and has resulted in higher health care costs in Springfield. As explained

hereinafter, the Business Covenant results in an illegal market allocation that supports and reinforces the anti-competitive, exclusionary effects of the Payor Agreements.

c. Defendants have taken other actions to stifle Plaintiffs' competition after SJHS terminates their affiliation in the SJHS Provider Network. For example:

i. Woman's Clinic needs to replace two of its physicians who retired prematurely because of Defendants' practices and tactics. Woman's Clinic cannot recruit a replacement because SJHS refuses, despite repeated requests, to confirm whether a replacement physician will be allowed in its Provider Network or, if so, for how long. As a practical matter, no physician will accept employment with Woman's Clinic without assurance of long-term access to managed care patients. Woman's Clinic cannot give that assurance.

ii. In 1994 and before, Woman's Clinic owned and operated a mammography suite. When SJHS purchased the group medical practice of Woman's Clinic in late 1994, it also purchased the mammography suite. When the Physician Plaintiffs associated with Woman's Clinic repurchased their practice from SJHS in December 1999, SJHS would not sell the mammography facility even though Woman's Clinic was willing to repurchase it and would have continued operating it. Woman's Clinic is willing and able to establish another mammography facility, but the Business Covenant prevents it from doing so.

iii. Dr. McClain and members of his former medical group voted to terminate employment with SJP&C and open an outpatient surgery center in Springfield. When Defendants learned of this, they threatened Dr. McClain and his colleagues with enforcement of the Business Covenant and with eviction from

their suite of medical offices on 90 days' notice – a period too short to make other office arrangements for the physicians and their patients. As a result of these threats, and after learning of the exclusive Payor Agreements between SJHS and managed care organizations, the medical group relented by abandoning its plans.

16. In sum, the Defendants' anti-competitive contracts, practices and policies are affecting and threaten to continue affecting not only the Plaintiffs, but all health care providers and consumers of the Springfield community. Health care costs are greater. Physicians are reluctant to move to Springfield to start independent practices. Physicians in substantial numbers leave Springfield or retire prematurely at the end of their employment with SJHS. The Woman's Clinic, with a sixty-year-plus history of serving patients in the Springfield community, faces extinction. The Physician Plaintiffs, who have roots in the community and have patients who depend on them, seek only to stay in Springfield and continue practicing medicine without unlawful and anti-competitive interference from Defendants.

JURISDICTION AND VENUE

17. This First Amended Complaint is filed under Section 16 of the Sherman Act, 15 U.S.C. § 26, to prevent and restrain existing and threatened violations by the Defendants of Section 1 of the Sherman Act, 15 U.S.C. § 1. It is also filed under § 416.121, R.S.Mo. (2001) to prevent and restrain a threatened violation by Defendants of § 416.031.1, R.S.Mo. It is also filed as a declaratory judgment action under the Missouri common law for breach of contract. This Court has federal question jurisdiction under 28 U.S.C. § 1331, and supplemental jurisdiction under 28 U.S.C. § 1367.

18. Each of the Defendants maintains offices, transacts business and is found within the Southern Division, Western District of Missouri.

PLAINTIFFS

19. Woman's Clinic, a Missouri corporation, employs certain of the Physician Plaintiffs, who are highly skilled specialist physicians who, with their predecessors, have provided obstetric and gynecologic services to the women of Springfield and surrounding communities for more than sixty years. It has one of the largest such practices in the Springfield area due to the skill and professionalism of its physicians, all of whom are board-certified or board-eligible in their specialty. For example, in 2000 the physicians of Woman's Clinic rendered care to their patients on over 27,400 occasions.

20. David L. Redfern, M.D., a formerly employed physician of SJP&C, is a Fellow of the American College of Obstetricians and Gynecologists, a Diplomat of the American Board of Obstetrics and Gynecology, a physician licensed to practice medicine by the State of Missouri, an employed physician of the Woman's Clinic, a member in good standing of the medical staffs of SJRHC and Cox Medical Center ("CMC") and a Network Affiliate Physician.

21. Elizabeth Campbell, M.D., a formerly employed physician of SJP&C, is a Fellow of the American College of Obstetricians and Gynecologists, a Diplomat of the American Board of Obstetrics and Gynecology, a physician licensed to practice medicine by the State of Missouri, an employed physician of the Woman's Clinic, a member in good standing of the medical staffs of SJRHC and CMC and a Network Affiliate Physician.

22. Donald P. Kratz, M.D., a formerly employed physician of SJP&C, is a Fellow of the American College of Obstetrics and Gynecology, a Diplomat of the American Board of Obstetricians and Gynecologists, a physician licensed to practice medicine by the State of Missouri, an employed physician of the Woman's Clinic, a member in good standing of the medical staffs of SJRHC and CMC and a Network Affiliate Physician.

23. Lisa G. Powell, M.D., a formerly employed physician of SJP&C, is a Fellow of the American College of Obstetricians and Gynecologists, a Diplomat of the American Board of Obstetrics and Gynecology, a physician licensed to practice medicine by the State of Missouri, an employed physician of the Woman's Clinic, a member in good standing of the medical staff of SJRHC and CMC and a Network Affiliate Physician.

24. Darren Lehnert, M.D., a formerly employed physician of SJP&C, is a Junior Fellow of the American College of Obstetricians and Gynecologists, a Diplomat of the American Board of Obstetrics and Gynecology, a physician licensed to practice medicine by the State of Missouri, an employed physician of the Woman's Clinic, a member in good standing of the medical staff of SJRHC and a Network Affiliate Physician.

25. J. Christopher Stein, M.D., a formerly employed physician of SJP&C, is a Junior Fellow of the American College of Obstetricians and Gynecologists, eligible to sit for examination by The American Board of Obstetrics and Gynecology, a physician licensed to practice medicine by the State of Missouri, an employed physician of the Woman's Clinic, a member in good standing of the medical staff of SJRHC and a Network Affiliate Physician.

26. Thomas D. McClain, M.D. Orthopedic Surgery, L.L.C., is a Missouri limited liability company that provides orthopedic surgery services to patients in Springfield and surrounding communities through its member, Thomas D. McClain, M.D.

27. Thomas D. McClain, M.D., a formerly employed physician of SJP&C, engages in the practice of orthopedic medicine and surgery in Springfield. He is a Fellow of the American Academy of Orthopedic Surgeons, a Diplomat of The American Board of Orthopedic Surgery, licensed to practice medicine by the State of Missouri, a member in good standing of the medical staff of SJRHC and a Network Affiliate Physician.

DEFENDANTS AND OTHER PARTIES

28. Defendant SJHS is a Missouri not-for-profit corporation with its principal place of business in Greene County, Missouri. It is a vertically integrated delivery system providing health care services, hospital services and managed care services. It delivers acute hospital care services through SJRHC, one of only two tertiary care hospitals in Springfield, the other being CMC. SJHS delivers medical services through physicians employed by its affiliate, SJP&C, or through Providers under contract to itself or SJP&C. Mercy Health Plans, Inc., d/b/a Premier Health Plans (“Premier”), an affiliate of SJHS, provides managed care services.

29. Defendant SJP&C is owned and controlled by SJHS. It is a Missouri not-for-profit corporation, formerly known as St. John’s Health Systems, Inc., with its principal place of business in Greene County, Missouri. SJP&C employs physicians and allied health professionals who deliver medical and related health care services. It manages the medical practices of Integrated Physicians, and provides them with offices and equipment used for providing medical services.

30. CHS is a Missouri not-for-profit corporation with its principal place of business in Greene County, Missouri. Although not a defendant, it is the other vertically integrated delivery system providing health care services, hospital services and managed care services in Springfield. It delivers acute hospital care services through CMC, medical services through its subsidiary Primrose Health Services, Inc., and managed care services through its subsidiary, Cox Health Systems Insurance Co., or through Cox-Freeman Health Plans.

INTERSTATE COMMERCE

31. Many employers and managed care organizations who sponsor or manage health care plans, or have Payor Agreements with SJHS, remit substantial payments across state lines to

SJHS, the members of the SJHS Provider Network, SJP&C and Premier for the health care provided to their employees, enrollees, beneficiaries, and their dependents in the Springfield area.

32. Many employers that remit payments to SJHS, the members of the SJHS Provider Network, SJP&C and Premier are businesses that sell products and services in interstate commerce and the size of those payments affect the prices of the products and services sold by those businesses.

33. At material times, the Plaintiffs and the Defendants have used interstate banking facilities, and Defendants have purchased substantial quantities of goods and services across state lines for use in providing health care services to individuals in the Springfield area.

34. The activities of Plaintiffs and Defendants that are the subject of this First Amended Complaint have been, are within the flow of, and have substantially affected interstate trade and commerce.

RELEVANT MARKET

35. The Physician Plaintiffs are specialists who supply their services to patients who require specialized treatment. Other than group buyers, such as self-insured employers, commercial or governmental health insurers, and the relatively small number of direct pay patients, there are no other consumers of Plaintiffs' services. The relevant service markets include: a) obstetrics and gynecology; b) orthopedic surgery; and c) such other physician specialties and subspecialties affected by Defendants' anti-competitive contracts and practices as are proven at trial.

36. The Defendants have imposed contractual restrictions on the ability of the Physician Plaintiffs and other physicians formerly employed by SJP&C to compete with SJHS

within 25 air miles of SJHS' main facility in Springfield. This area includes all of Greene County, Missouri, substantial portions of Webster, Christian and Lawrence Counties, and small portions of Polk, Dallas, Dade, Douglas and Stone Counties. Defendants have entered into Payor Agreements with managed care organizations that, as written or as applied, require the managed care organizations to deal exclusively with the SJHS Provider Network in at least the same area.

37. While the exact boundaries of the relevant geographic market will be proven at trial, for purposes of this First Amended Complaint, the relevant geographic market is the 25-air-mile radius from SJHS' main facility at 1235 E. Cherokee, Springfield, Missouri (the "Springfield Market").

BACKGROUND OF MANAGED CARE

38. Before the development of managed care, the predominant form of health insurance was indemnity coverage that paid a fee to the physician and/or the hospital for each service rendered to a patient. Indemnity insurers had difficulty controlling health care costs since they had no role in setting the fees, determining the need for treatment, or reviewing the appropriateness or cost of the treatment provided.

39. During the 1980s, rising health care costs led to a reassessment of the traditional fee-for-service and indemnity insurance business model. The search for alternative ways to provide health care financing and delivery more efficiently led to the development of managed care.

40. Managed care organizations contract with employers and other group purchasers of health care benefits to provide or to administer health care plans. Managed care products, such as health maintenance organizations ("HMOs"), preferred provider organizations ("PPOs")

and point-of-service (“POS”) plans have become the predominant form of private health care financing, largely because of the ability of managed care organizations to control health care costs.

41. Managed care organizations control health care costs in several ways, one of which is germane here. As a group buyer of medical services on behalf of its plan members, a managed care organization is in a position to negotiate for discounted fees from Providers with whom it has Payor Agreements. Alternatively, the Provider may agree to provide medical services for a capitated rate, *i.e.*, a flat, per capita fee covering pre-determined services a Provider renders to a plan member or beneficiary regardless of actual cost.

42. In order to realize the benefits of lower, negotiated rates, a managed care organization “steers” its plan members to the physicians in the Provider Network with whom it contracts. By giving plan members financial incentives for being treated within the Provider Network, it assures that most plan members will be treated by network Providers. Being treated by an out-of-network provider is usually more costly for the patient or is not covered at all. For a physician, this means that the physician must be a Provider in the patient’s Provider Network or the patient will generally go to another Provider who is.

THE DEVELOPMENT OF MANAGED CARE IN SPRINGFIELD

43. Until 1994, health care in Springfield was delivered in the traditional fee-for-service method by physicians who, for the most, practiced independently in solo or small group practices. The Smith-Glynn-Callaway Clinic and the Ferrell-Duncan Clinic were the only large multi-specialty clinics.

44. At all relevant times, SJRHC and CMC were the only tertiary care hospitals within a 75-mile radius of Springfield. According to the most recent statistics from the State of

Missouri, these medical centers have an approximately equal number of patient days of acute care hospital services, with CMC exceeding SJRHC by about 2.5%.

45. Prior to 1994, neither medical center employed a significant number of physicians, except for traditionally hospital-based physicians, such as anesthesiologists, radiologists, pathologists and emergency room physicians.

46. In 1994, SJHS began purchasing the medical practices of physicians in the Springfield area who admitted patients to SJRHC. The first major acquisition was the multi-specialty Smith-Glynn-Callaway Clinic. The acquisition of a number of primary care practices and other specialty practices, including Plaintiffs' practices, followed quickly.

47. Physicians, including the Physician Plaintiffs, were under substantial pressure in 1994 to enter into Employment Agreements (as hereinafter defined) with SJHS (now known as SJP&C). SJHS at the time was irrevocably committed to developing an integrated delivery system and it warned physicians that those who remained Nonintegrated Physicians risked being frozen out as a result of losing access to patients. In short, physicians who admitted their patients to SJRHC believed their choices were either to sign on with SJHS as Integrated Physicians or risk losing their medical practices. Moreover, SJHS touted its claimed ability to pay physicians competitive salaries based on their talent and hard work, as well as its ability to manage efficiently and cost-effectively the physicians' offices and staff.

48. SJHS acquired physician practices in such alarming numbers that the Attorney General of Missouri, Jeremiah W. ("Jay") Nixon, intervened out of concern that completing all of the planned physician practice acquisitions would unreasonably restrain the physician services market in violation of the antitrust laws of the United States and the State of Missouri. In return for Attorney General Nixon's agreement to forego judicial relief under the antitrust laws, SJHS,

through its parent corporation, entered into an agreement with the Attorney General by which SJHS agreed to limit for a period of time the number of physician practices that it would acquire in various specialties. The resulting Compromise and Settlement Agreement, which began in 1994, expired on December 31, 1997. Attachment 1 is a true copy of the Compromise and Settlement Agreement.

49. When SJHS acquired a physician's practice, it bought the assets of the practice and typically entered into an employment agreement ("Employment Agreement") with the physician. Attachment 2 is a true copy of an Employment Agreement that SJHS entered into with Plaintiff Donald P. Kratz, M.D., on December 2, 1994, and is typical of the Employment Agreements required by SJHS. Of particular importance are the restrictions SJHS placed on the physician's ability to compete with SJHS after his or her employment ended. Article VIII, A (the "Employment Covenant"), prohibited a physician whose employment with SJHS had ended from practicing medicine for two years within a 25-air-mile radius of SJRHC's main campus, 1235 East Cherokee, Springfield, Missouri. Each physician signing an Employment Agreement received a separate one-time payment for agreeing to this Employment Covenant. In the case of a physician coming to work for SJHS or SJP&C and who had no private practice, the physician's Employment Agreement nevertheless contained a provision like the Employment Covenant in Attachment 2.

50. Physicians employed by the Defendants became members of the SJHS Provider Network and SJHS entered into Payor Agreements on their behalf with numerous managed care companies and other payors.

51. Premier, an SJHS affiliate, began marketing HMO, PPO and POS products and services to employers in the Springfield Market that offered health care benefit plans to their

employees. SJHS also began marketing the services of its SJHS Provider Network to managed care companies, including Premier and others, that also offered health care plans in Springfield.

52. CHS implemented an integrated delivery system on essentially the same schedule as SJHS. It entered into contractual arrangements with the physicians of the Ferrell-Duncan Clinic and other physicians who admitted their patients to CMC. CHS also formed an HMO, a PPO and an insurance company to compete for managed care business. A CHS affiliate, Primrose Healthcare Services, Inc., markets the services of the CHS Provider Network just as SJHS markets its SJHS Provider Network.

53. Due to the extent of the vertical integration of SJHS and CHS, the supply of Nonintegrated, independent physicians in Springfield and surrounding communities has been and is insufficient to permit the formation of another Provider Network that would compete with the SJHS or CHS Provider Networks.

54. By the end of 1998, the Physician Plaintiffs and other specialist physicians concluded that SJHS and SJP&C were not performing as promised or as expected. Indeed, SJHS' administrative and professional bureaucracy made it more, not less, difficult for the Physician Plaintiffs to deliver high quality medical services.

55. During 1999, Plaintiffs Campbell, Kratz, Lehnert, Powell and Redfern began negotiating with SJHS and SJP&C to terminate their Employment Agreements. These negotiations led to a Memorandum of Understanding, dated November 19, 1999 (the "MOU"), between these Plaintiffs, SJHS and SJP&C. Attachment 3 is a true copy of the MOU.

56. Later in 1999, the same parties, pursuant to their earlier negotiations, entered into a Practice Transition Agreement (the "Transition Agreement") and a Network Affiliation Agreement (the "Affiliation Agreement"). Attachment 4 is a true copy of the Transition

Agreement of David L. Redfern, M.D., and is typical of the Transition Agreement signed by Drs. Campbell, Kratz, Lehnert, Powell and Redfern. Attachment 5 is a true copy of the Affiliation Agreement of Darren Lehnert, M.D., and is typical of the Affiliation Agreements signed by Drs. Campbell, Kratz, Powell and Redfern. Attachment 5a is a true copy of an Amendment of the Affiliation Agreement signed by Donald P. Kratz, M.D., and is typical of the Amendments signed by Drs. Campbell, Lehnert, Powell and Redfern. Attachment 5b is a modification of the Affiliation Agreement of David L. Redfern, M.D., and is typical of the modification made to the Affiliation Agreements of Drs. Campbell, Kratz, Lehnert and Powell.

57. The MOU provides in pertinent part that:

a. the services and procedures that were then being performed were exempt from the Business Covenant (as defined in ¶5 of the Transition Agreement), as were new services and procedures so long as no Facility Fee (as hereinafter defined) is charged (MOU ¶1);

b. the physicians had the right to negotiate provider contracts with third-party payors after giving notice of termination of the Affiliation Agreement but not before doing so (MOU ¶2);

c. the physicians would keep patients' medical charts, but SJHS and SJP&C would have full access as needed (MOU ¶4);

d. SJHS and SJP&C agreed to permit the Woman's Clinic to retain its business name and telephone number (MOU ¶3);

e. SJHS and SJP&C agreed to lease to the Woman's Clinic for five years the business premises it occupied at 1900 S. National, Suite 1960, Springfield, Missouri (MOU ¶6);

f. SJHS and SJP&C agreed not to discriminate against the departing physicians in matters of credentialing and reappointment to the medical staff of SJRHC or regarding their surgical schedules (MOU ¶¶7, 9); and

g. SJHS and SJP&C agreed to consider changing the SJRHC medical staff bylaws that prohibited Nonintegrated Physicians from voting on medical staff matters (MOU ¶10).

58. Following agreement on the terms of the MOU, Drs. Campbell, Kratz, Lehnert, Powell and Redfern, under protest, entered into a Transition Agreement with SJP&C, effective January 3, 2000. Among other matters, the Transition Agreement recited the terms under which SJP&C would agree to waive the Employment Covenant of the Employment Agreement so that the physicians could continue seeing and treating their patients in Springfield. Despite the Physician Plaintiffs' protests that the Transition Agreement contained illegal terms, namely the Business Covenant, the Defendants nevertheless insisted that each physician enter into the Transition Agreement or else move their practices 25 miles away. Plaintiffs' Attachment 6 is representative of the protest letters sent by the Physician Plaintiffs to Defendants regarding the Business Covenant and the Transition Agreement.

59. The terms of the Transition Agreement required each physician to:

a. pay SJP&C a \$25,000 "buy-out" of his or her Employment Covenant, with payment due on January 3, 2000 (Att. 4, ¶3.A);

b. execute an Affiliation Agreement that discriminated against the Physician Plaintiffs by paying them less than Integrated Physicians for the same services (*Id.* at ¶3.B); and

c. execute the “Business Covenant” of the Transition Agreement (Id. at ¶5). The Business Covenant prohibits each Physician Plaintiff for five years, commencing January 3, 2000, from competing with SJP&C “in the health care industry” within a 25 air-mile radius of SJRHC. Competition includes providing “Designated Services” for which a “facility-type fee” would be billed to patients or payors. Prohibited Designated Services include owning, being employed by or providing medical services at a facility that has:

- i. ambulatory outpatient surgical services;
- ii. operating rooms or other special procedure rooms;
- iii. freestanding laboratory and diagnostic services, including magnetic resonance imaging (MRI), computerized axial tomography (CAT scan), angioplasty, ultrasound and mammography;
- iv. rehabilitation;
- v. home health, durable medical equipment and home infusion therapy and supplies;
- vi. birthing centers; and
- vii. oncology services, including radiation therapy and chemotherapy services (Id. at ¶5.A).

60. As an exception to the above, SJP&C agreed to allow the departing physicians to continue seeing their existing patients, provided the physician did not render any Designated Service to a patient for which a treatment facility would charge a fee (hereinafter referred to as a “Facility Fee”).

61. In sum, this Business Covenant prohibits the Physician Plaintiffs for five years from being employed by or providing medical services at an ancillary facility such as a birthing

center, an outpatient surgery center, or a mammography, ultrasound or radiology facility that would charge a Facility Fee for its use. Such facilities, if allowed to exist in Springfield, would compete with the high-priced, hospital-based treatment facilities owned by SJHS and for which SJHS charges a Facility Fee.

62. The Business Covenant is not ancillary to the Physician Plaintiffs' Employment Agreement with SJP&C, since it prevents competition with SJHS's hospital-based treatment facilities. The Business Covenant also is not ancillary to any other agreement that promotes or enables competition. Lastly, it does not protect any legally recognized protectable interest of SJP&C or SJHS.

63. The Business Covenant is a contract that unlawfully restrains trade, commerce and competition in two respects:

a. By causing the Physician Plaintiffs to agree under protest to refrain from competing with its hospital-based facilities, SJHS has allocated the Springfield Market for medical treatment facilities.

b. By restricting the supply of physicians able to staff such facilities, Defendants have erected a barrier to the entry of ancillary facilities into the Springfield Market.

64. Effective January 3, 2000, Plaintiffs Drs. Campbell, Kratz, Lehnert, Powell and Redfern entered into Affiliation Agreements with SJHS. The term of the Affiliation Agreement was for one year, renewable automatically for one year unless terminated. (Att. 5, at Article V. 5.1.) After the first year, either party could terminate for any reason upon 150 days written notice. Under the terms of the Affiliation Agreement, each physician agreed, among other matters, to:

a. provide medical services as a participant in the SJHS “[P]rovider [N]etwork in accordance with the terms of contracts set out in Attachment A to the Agreement” (Att. 5 at Art. 1.1); and

b. refrain from soliciting, negotiating or entering into alternative contracts with the third-party payors under contract with SJHS, as identified in Attachment A to the Agreement, without the prior permission of SJHS (Id. at Art.1.12), and under the MOU, such solicitations could only be made after notice of termination of the Affiliation Agreement was given.

65. Pursuant to the Affiliation Agreement, SJHS agreed to:

a. negotiate and enter into managed care contracts that automatically include the physician as a Provider (Id. at Art. 2.2);

b. use its best efforts to enter into managed care contracts with third-party payors for the benefit of the physician (Id. at Art. 2.1);

c. list the physician as a participating Provider whenever it markets the SJHS Provider Network to third-party payors (Id. at Art. 2.3);

d. include the physician in the SJHS Provider Network in *all* managed care contracts with third-party payors, unless the third-party payor desires on its own accord to exclude the physician (Id. at Art. 2.3) (emphasis added); and

e. permit the physician to participate in any alternative delivery system or provide medical services outside the network, so long as any such activities do not interfere with the duties under the Affiliation Agreement (Id. at Art. VI).

66. On June 28, 2000, SJHS sent an Amendment to the Affiliation Agreement. (See Att. 5a.) The Amendment was presented on a non-negotiable basis. SJHS stated it was giving

notice of termination of the Affiliation Agreement if the Amendment was not accepted, even though SJHS knew the Affiliation Agreement could not be terminated without cause during its first year ending January 3, 2001. Without withdrawing its illegitimate threat to terminate the Affiliation Agreement, SJHS still refused to negotiate over the Amendment and insisted the Physician Plaintiffs sign it.

67. The Amendment, which was intended to discourage Integrated Physicians from leaving Defendants' employ, modified the Affiliation Agreement in two ways detrimental to Plaintiffs. For services provided to Premier health plan patients:

a. it discriminated against Nonintegrated Physicians (who were still Network Affiliate Physicians) by reducing the compensation payable to them for their services to a level 10% below the compensation of the Defendants' Integrated Physicians; and

b. it permitted SJHS to reduce compensation payable to Nonintegrated Physicians (who were also Network Affiliate Physicians), on thirty days written notice, down to but not less than Medicare rates.

68. In the case of Dr. McClain, SJHS required him to agree to the foregoing 10% reduction as a condition of ending his employment.

69. On January 16, 2001, SJHS, without consulting the Physician Plaintiffs, gave thirty days notice under the Amendment that it was yet again reducing the Physician Plaintiffs' compensation for services to Premier patients. Their compensation rate was reduced to equal the 2000 Medicare rate. (See Att. 5b.)

70. On August 23, 2000, in response to a rising tide of dissatisfaction being expressed by certain Integrated Physicians, particularly specialists including then-employed Dr. McClain,

the Boards of SJHS and SJP&C jointly adopted a “Resolution Regarding Specialty Physician Option” (the “Resolution”). Attachment 7 is a true copy of the Resolution.

71. In addition to being required to sign the Transition Agreement containing the Business Covenant, and the Affiliation Agreement reducing their income, departing Nonintegrated Physicians were and are subject to the onerous conditions of the Resolution. These conditions were intended to discourage and, in fact, did prevent physicians from leaving their employment with Defendants and establishing their own private practices in Springfield. The onerous conditions imposed under the Resolution were:

a. Physicians had a short period, lasting only ninety days commencing October 1, 2000, to give notice and make other employment arrangements (Att. 7, ¶5).

b. Employment terminated quickly after giving notice under the Resolution — the physician’s last day of employment being the earlier of December 31, 2000 or ninety days from receipt of notice under the Resolution (Id. at ¶1).

c. The physician had to vacate his or her office quickly – December 31, 2000 being the last day of occupancy unless SJHS and SJP&C chose to give the physician an additional ninety days at a new “market value” rental rate (Id. at ¶2).

d. The physician’s access to information services at SJRHC ended on his or her last day at work, but no later than December 31, 2000 (Id. at ¶3).

e. A departing Nonintegrated Physician had no right to stay in the SJHS Provider Network — if allowed to stay, each physician had to sign an Affiliation Agreement that SJHS could cancel on 90-days notice after the first year and that reduced the physician’s compensation to 10% less than for Integrated Physicians for services to Premier members (Id. at ¶9).

f. SJHS would decide on a case-by-case basis whether the physician would get his or her patients' records, and the physician had to pay for copying any patient records he or she received (Id. at ¶12).

g. Physicians in a departing medical group could not keep their group's business name or telephone number unless SJP&C agreed (Id. at ¶13).

h. SJP&C, not the departing physician, would determine when and how to notify patients of the change – departing Nonintegrated Physicians would receive a list of only those patients they treated in the last twelve months (Id. at ¶14). And,

i. On their last day of work, the physicians had to pay in full for medical equipment and furniture purchased under the Transition Agreement (Id. at ¶16).

72. These foregoing conditions, by themselves and in combination with the restrictions and unfavorable terms of the mandatory Transition Agreement and Affiliation Agreement, made exercise of a physician's right to resign employment under the Resolution so difficult and fraught with risk and uncertainty that many physicians who wanted to leave their employment were inhibited from doing so, instead remaining as SJHS employees.

73. Despite the formidable obstacles just described, a small number of physicians, including two of the Physician Plaintiffs, resigned their employment at SJP&C even after the Resolution was adopted.

a. In December 2000, Plaintiff J. Christopher Stein, M.D., a physician employed by SJP&C since 1998, exercised his right under the Resolution to resign his employment and buy out his Employment Covenant. He paid SJP&C \$50,000 in order to continue to treat his patients and practice medicine in Springfield. As part of exercising his right to resign under the Resolution, Dr. Stein was required to enter into a Transition Agreement

substantially identical to Attachment 4, containing a Business Covenant, and an Affiliation Agreement substantially similar, but not identical to Attachment 5, as amended and modified by Attachments 5a and 5b.

b. In December 2000, Plaintiff Thomas D. McClain, M.D., an orthopedist employed by SJP&C since 1994, resigned his employment and bought out his Employment Covenant. He paid SJP&C \$25,000 in order to continue to treat his patients and practice medicine in Springfield. As part of exercising his right to resign under the Resolution, Dr. McClain was required to enter into a Transition Agreement, substantially identical to Attachment 4, containing a Business Covenant, and an Affiliation Agreement substantially similar, but not identical to Attachment 5, as amended and modified by Attachments 5a and 5b.

SJHS' EXCLUSIVE DEALING ARRANGEMENTS
WITH MANAGED CARE ORGANIZATIONS

74. During 2000 and before, Dr. Redfern requested copies of SJHS' Payor Agreements with employers, insurers and managed care organizations. SJHS was obligated to provide these on request.

75. Through discovery in this case, the Plaintiff Physicians have received various other SJHS Payor Agreements (sometimes referred to as "Health Services Agreements") with employers, insurers and managed care organizations.

76. Review of these Payor Agreements and other information discloses that more than 90% of SJHS' Payor Agreements have a provision requiring the plan sponsor, employer, insurer or managed care organization to deal exclusively with the SJHS Provider Network during the term of the contract. The following is a typical example of such an exclusive dealing provision:

Exclusivity.

During the term of this Agreement, Group agrees not to enter into, either directly or indirectly, any other agreement for the provision of Covered Services for Group's employees or dependents with any other provider, insurance carrier, health maintenance organization, preferred provider organization, and/or hospital-physician organization located in or doing business [sic] Greene, Christian and Laclede Counties. Non-compliance with this section, as determined by St. John's, shall be deemed a material breach of this Agreement.

Attachment 8 is a true copy of the Health Services Agreement between SJHS and The Board of Education for the School District of Springfield R-12, dated February 16, 2000, and is typical of other similar Payor Agreements between SJHS and plan sponsors, employers, insurers and managed care organizations.

77. Because of such exclusivity provisions, a managed care organization under contract with SJHS cannot sign a Payor Agreement with a physician who is not a member of the SJHS Provider Network. The effect of this is that Nonintegrated Physicians are denied access to managed care patients whose health plans use the SJHS Provider Network.

78. Another effect of these exclusivity provisions is that patients in Springfield have and will continue to experience increasing health care costs in Springfield.

79. On information and belief, CHS has similar exclusivity provisions in all or most of its Payor Agreements. The CHS Provider Network, administered by its affiliate, Primrose Health Plan, Inc., is closed to Plaintiffs.

80. Because of these exclusivity provisions the Physician Plaintiffs are substantially foreclosed, except as members of the SJHS (or CHS) Provider Networks, from providing care to the estimated 200,000 - 250,000 patients who participate in managed care plans in Springfield. As stated, SJHS has adopted a policy that discourages referrals to the Plaintiffs from within the SJHS Provider Network. The CHS Provider Network is closed to the Plaintiffs. If Defendants

are allowed to follow through with their plan, these exclusivity provisions will foreclose the Plaintiffs' access to managed care patients in Springfield.

THE EXTENT OF VERTICAL INTEGRATION IN SPRINGFIELD

81. SJHS and CHS are the only integrated delivery systems in Springfield. They each operate one of the two tertiary care hospitals in Springfield. On information and belief, they employ or have contracts that are effectively exclusive with many of the active specialist physicians in Springfield.

82. Ninety-three percent of the active obstetricians/gynecologists in Springfield are employed by SJHS or CHS. SJHS employs and contracts with 36%; CHS employs and contracts with 57%.

83. Ninety-three percent of the orthopedic surgeons in Springfield are employed by SJHS or CHS. SJHS employs and contracts with 45%; CHS employs and contracts with 48%.

84. SJHS offers the Provider Network for the majority of the covered lives in the Springfield area. The CHS Provider Network is utilized by the balance of the covered lives.

85. Because of the number of Integrated Physicians in Springfield (either through SJHS or CHS), substantially all managed care companies doing business in Springfield have no alternative but to use the Provider Network of one or the other and, further, to do so exclusively.

86. Managed care companies and employers who sponsor health care plans in Springfield believe that having only the SJHS and CHS Provider Networks limits choice and competition. Having another Provider Network or, at least, Payor Agreements between managed care companies and independent medical groups or individual physicians, like the Physician Plaintiffs, would permit additional choice and improve competitive conditions.

DEFENDANTS' UNREASONABLE AND ILLEGAL RESTRAINT OF TRADE AND COMMERCE

87. The Defendants have unreasonably and illegally contracted, combined, and conspired to restrain trade and commerce in Springfield as follows:

a. The Business Covenant between the Physician Plaintiffs and SJP&C allocates the market for ancillary facilities to SJHS. But for the restriction of the Business Covenant, Plaintiffs would provide certain types of medical services to their patients in more efficient, less costly ancillary facilities.

b. The exclusive dealing provision of SJHS's Payor Agreements with managed care organizations prevents such organizations from entering into Payor Agreements with Plaintiffs or any other Nonintegrated Physician, medical group or treatment facility.

c. The Defendants' vertical integration into the market for physicians' services, in combination with the restrictive contractual arrangements and practices heretofore alleged, has and will continue to affect adversely the supply of specialist Nonintegrated Physicians in Springfield.

d. The Defendants' conduct has adversely affected managed care organizations doing business in Springfield in that the supply of physicians is insufficient to form another Provider Network. As a result the Defendants have a duopoly with CHS that results in higher health care costs, inefficient delivery of health care, and an inadequate supply of Nonintegrated Physicians, and that restricts the competitive opportunity of managed care plans.

e. The Defendants have adopted a policy which discourages SJP&C's Integrated Physicians from referring patients to Plaintiffs, even patients treated from within the SJHS Provider Network of which the Physician Plaintiffs are Network Affiliate Physicians.

88. The Business Covenant and the exclusive dealing provisions of the SJHS Payor Agreements have a synergy that magnifies and reinforces their separate anticompetitive effects, namely:

a. Ancillary facilities are substantially less costly compared to their hospital-based counterparts and, thus, would be very attractive competitive alternatives for managed care organizations if not for the restrictions of the Business Covenant and exclusive dealing provisions.

b. If Plaintiffs could own, be employed by or provide medical services at ancillary facilities in Springfield, managed care organizations would have a strong financial incentive to ignore their illegal exclusive dealing arrangements with Defendants in order to realize the cost-savings that would be achieved by contracting with these alternative facilities and the physicians who staff them.

c. By prohibiting Plaintiffs and others from owning, being employed by or providing medical services at ancillary facilities, the Business Covenant reinforces the exclusivity provisions by eliminating this incentive at its source.

d. At the same time, the exclusivity provisions insulate the Defendants and their Integrated Physicians from competition for managed care patients by Nonintegrated Physicians, and thereby ensure that Defendants' high-cost, hospital-based treatment facilities are utilized to the maximum extent. And,

e. Without the alternative of contracting with independent, ancillary facilities or with Nonintegrated Physicians, a managed care organization or other payor must deal exclusively with SJHS or CHS and accept the higher cost of doing so.

SJHS' BREACH OF THE AFFILIATION AGREEMENTS

89. The Affiliation Agreements between SJHS and the Physician Plaintiffs contractually impose several obligations and terms on SJHS, and more specifically:

a. The Affiliation Agreements obligate SJHS to negotiate managed care contracts with third-party payors for the benefit of the Physician Plaintiffs.

b. The Affiliation Agreements obligate SJHS to use its best efforts to enter into managed care contracts for the benefit of the Physician Plaintiffs.

c. The Affiliation Agreements prevent SJHS from discriminating against the Physician Plaintiffs when it negotiates managed care contracts with third-party payors.

d. The Affiliation Agreements require SJHS to always list the Physician Plaintiffs as participating Providers in SJHS Provider Network when SJHS markets its Provider Network to third-party payors.

e. The Affiliation Agreements require SJHS to include the Physician Plaintiffs in its Provider Network in *all* managed care contracts it has with third-party payors, and only the payors have the option to request the exclusion of a particular Provider from the Provider Network.

90. It is normally in a third-party payor's best interest to include more rather than fewer Providers in a Provider Network.

91. The Affiliation Agreements include an implied covenant of good faith and fair dealing. The implied covenant of good faith and fair dealing precludes SJHS from deliberately acting in such a manner as to deprive the Physician Plaintiffs of substantial present and anticipated benefits reasonably due them pursuant to the Affiliation Agreements.

92. The Physician Plaintiffs continue to live up to their obligations under the Affiliation Agreements, and SJHS has never indicated to the Plaintiff Physicians the occurrence or nonoccurrence of any condition or event that might relieve SJHS of its obligations under the Affiliation Agreements.

93. On information and belief, SJHS has and continues to negotiate and re-negotiate managed care contracts with third-party payors that discriminate against one or more of the Physician Plaintiffs. On information and belief, such discrimination is not due to any action or request by such third-party payors.

94. On information and belief, SJHS, SJP&C and Premier have adopted an in-house referral policy under which Integrated Physicians are directed to refrain from referring patients to the Physician Plaintiffs. Such an in-house referral policy discriminates against the Physician Plaintiffs so as to reduce greatly the number of patients they treat and to diminish their reimbursement rates, and it deliberately deprives the Physician Plaintiffs of substantial benefits they could reasonably expect to receive as a result of entering into the Affiliation Agreements with SJHS. Such an in-house referral policy breaches the obligation of good faith and fair dealing inherent in the Affiliation Agreements.

95. SJHS also has refused to assure affiliation in its Provider Network for any qualified physician recruited by the Woman's Clinic. In other words, SJHS has refused to assure that it will offer an Affiliation Agreement to such a recruit. Accordingly, the Woman's Clinic is not able to recruit any new physicians to join its practice because, as a practical matter, no physician will come to Springfield without guaranteed access to managed care patients. SJHS' refusal to assure an Affiliation Agreement breaches the obligation of good faith and fair dealing inherent in the existing Affiliation Agreements.

THE THREAT OF CONTINUING HARM TO PLAINTIFFS

96. Executives and directors of SJP&C have indicated through words and actions that SJP&C plans to integrate fully in the specialties of obstetrics and gynecology, and orthopedics, among others, by eliminating from the SJHS Provider Network the Physician Plaintiffs along with other Nonintegrated Physicians in these and other specialties. Upon information and belief, this objective is part of the business plan of SJHS and SJP&C.

97. SJHS' actions and intentions, including but not limited to terminating the Affiliation Agreements of the Physician Plaintiffs, causing the reduction or elimination of the stream of patient referrals from within the SJHS Provider Network, and seeking the elimination of competition from Nonintegrated Physicians such as the Plaintiffs, will make it unreasonably difficult or impossible for Plaintiffs to sustain a viable medical practice in their specialty in Springfield because:

- a. the Business Covenant will prevent them from competing by owning, investing or providing services at an ancillary facility;
- b. the exclusive dealing provisions between SJHS and managed care organizations will substantially foreclose Plaintiffs' access to the patients of those managed care plans; and
- c. the policies and practices of SJHS and the vertical integration of both SJHS and CHS in the market for physicians' services foreclose the supply of physicians, preventing the formation of another Provider Network comprising Nonintegrated Physicians to compete with the SJHS and CHS Provider Networks for access to managed care patients.

COUNT I

(Illegal and Unreasonable Restraint of Trade and Commerce)

98. The allegations of paragraphs 1 through 97 are incorporated by reference and realleged.

99. Defendants, by virtue of their position and power in the market as a vertically integrated delivery system and their prior employment relationships and agreements with the Physician Plaintiffs, have entered into contracts with the Physician Plaintiffs and with managed care organizations that unreasonably restrain trade and commerce in the Springfield Market.

100. Unless enjoined from enforcing these contracts and carrying on these actions, SJHS and SJP&C will continue to affect adversely competition for obstetric and gynecologic, and orthopedic services in Springfield by:

a. substantially decreasing competition by limiting patients' choices of multiple Providers, including the Plaintiffs;

b. substantially lessening competition for the development and provision of medical services in ancillary facilities;

c. substantially restricting the supply of physicians by (i) making it difficult or impossible for quality physicians to enter the Springfield medical community as Nonintegrated Physicians; (ii) making it unreasonably difficult or impossible for Integrated Physicians to leave SJHS and enter independent practice in Springfield; and (iii) making it unreasonably difficult or impossible for formerly employed Nonintegrated Physicians to remain in Springfield; and

d. substantially lessening competition for medical services provided to employers that sponsor health care benefit plans and to managed care organizations,

thereby increasing the prices for such services and/or decreasing the quality or quantity of services provided.

WHEREFORE, the Plaintiffs, Woman's Clinic, Inc., Thomas D. McClain, M.D. Orthopedic Surgery, L.L.C., Elizabeth Campbell, M.D., Donald P. Kratz, M.D., Darren Lehnert, M.D., Lisa G. Powell, M.D., David L. Redfern, M.D., J. Christopher Stein, M.D., and Thomas D. McClain, M.D., request that:

1. Defendants be permanently enjoined and restrained from carrying on their in-house policy of directing patient referrals away from the Plaintiffs.

2. The exclusivity provisions of the SJHS Payor Agreements be adjudged to violate §1 of the Sherman Act, 15 U.S.C. § 1.

3. Defendants be permanently enjoined and restrained from enforcing against any Plaintiff, directly or indirectly, the exclusivity provision of any SJHS Payor Agreement.

4. Defendants be permanently enjoined and restrained from enforcing against the Plaintiffs, directly or indirectly, the Business Covenant of any Transition Agreement.

5. Defendants be permanently enjoined and restrained from discriminating against the Physician Plaintiffs in matters of referrals, credentialing, renewal of medical staff privileges, block surgery scheduling, and emergency room callbox or coverage.

6. Plaintiffs recover their costs and reasonable attorneys' fees as provided by 15 U.S.C. § 26.

7. Plaintiffs have such other and further relief as the Court may deem just and proper.

COUNT II

(Horizontal Market Allocation)

101. The allegations of paragraphs 1 through 97 are incorporated by reference and realleged.

102. Defendants, by virtue of their control over the Physician Plaintiffs resulting from the Employment Covenants in their Employment Agreements, caused the Physician Plaintiffs, under protest, to enter into Transition Agreements containing the Business Covenant.

103. The Business Covenant does not safeguard any protectable interest of Defendants recognized by Missouri courts, such as patient relationships or trade secrets. Moreover, it is not an ancillary restraint the effect of which is to enable or promote competition.

104. The Business Covenant, as a contract that unlawfully allocates patient services and markets, is a naked restraint of trade.

105. This unlawful market allocation contract prevents Plaintiffs and other Nonintegrated Physicians formerly employed at SJP&C from competing as facility owners, operators or providers with the hospital facilities of SJHS or CHS.

106. The aforesaid contract and acts of Defendants are unreasonable per se and constitute a violation of § 1 of the Sherman Act, 15 U.S.C. § 1.

107. Defendants have stated their intent to enforce the Business Covenant against Nonintegrated Physicians formerly employed at SJP&C, such as the Physician Plaintiffs. The Physician Plaintiffs, such as Dr. McClain, seek to own and operate ancillary facilities for which they would charge a Facility Fee but for the Business Covenant. The Physician Plaintiffs and their employers, the Medical Group Plaintiffs, are threatened with irreparable injury to their

business or property and will suffer further injury if Defendants are not enjoined from enforcing the Business Covenant.

WHEREFORE, the Plaintiffs, Woman's Clinic, Inc., Thomas D. McClain, M.D. Orthopedic Surgery, L.L.C., Elizabeth Campbell, M.D., Donald P. Kratz, M.D., Darren Lehnert, M.D., Lisa G. Powell, M.D., David L. Redfern, M.D., J. Christopher Stein, M.D., and Thomas D. McClain, M.D., request that:

1. The Business Covenants of the Transition Agreements be adjudged a per se violation of §1 of the Sherman Act, 15 U.S.C. § 1.
2. Defendants be permanently enjoined and restrained from enforcing against the Plaintiffs, directly or indirectly, the Business Covenant of any Transition Agreement.
3. Defendants be permanently enjoined and restrained from discriminating against the Physician Plaintiffs in matters of referrals, credentialing, renewal of medical staff privileges, block surgery scheduling, and emergency room callbox or coverage.
4. Plaintiffs recover their costs and reasonable attorneys' fees as provided by 15 U.S.C. § 26.
5. Plaintiffs have such other and further relief as the Court may deem just and proper.

COUNT III

(Restraint of Trade-Missouri Law)

108. The allegations of paragraphs 1 through 97 are incorporated by reference and realleged.

109. The Business Covenant is a contract that is unreasonable per se because it allocates patient services and markets in Missouri in violation of § 416.031.1, R.S.Mo.

110. The Business Covenant is unenforceable as to the Physician Plaintiffs because Defendants lack a protectable interest in being free of competition from Plaintiffs for ancillary facilities.

WHEREFORE, the Plaintiffs, Woman's Clinic, Inc., Thomas D. McClain, M.D. Orthopedic Surgery, L.L.C., Elizabeth Campbell, M.D., Donald P. Kratz, M.D., Darren Lehnert, M.D., Lisa G. Powell, M.D., David L. Redfern, M.D., J. Christopher Stein, M.D., and Thomas D. McClain, M.D., request that:

1. Defendants be permanently enjoined and restrained from discriminating against the Physician Plaintiffs in matters of referrals, credentialing, renewal of medical staff privileges, block surgery scheduling, and emergency room callbox or coverage.

2. The Business Covenants of the Transition Agreements be adjudged a per se violation of § 416.031.1, R.S.Mo.

3. Defendants be permanently enjoined and restrained, pursuant to § 416.071, R.S.Mo., from enforcing against any Plaintiff, directly or indirectly, the Business Covenant of any Transition Agreement.

4. Plaintiffs recover their costs and reasonable attorneys' fees as provided by § 416.121.1(2), R.S.Mo.

5. Plaintiffs have such other and further relief as the Court may deem just and proper.

COUNT IV

(Declaratory Judgment – Breach of Contract (Breach of the Affiliation Agreement))

111. The allegations of paragraphs 1 through 97 are incorporated by reference and realleged.

112. The Physician Plaintiffs entered into the Affiliation Agreements pursuant to the Transition Agreements, and SJHS entered into the Affiliation Agreements as consideration for the Physician Plaintiffs' promise to serve in the SJHS Provider Network.

113. The Affiliation Agreements include an implied covenant of good faith and fair dealing.

114. The Affiliation Agreements impose mutual obligations on SJHS and the Physician Plaintiffs.

115. The Physician Plaintiffs have performed and continue to perform their obligations pursuant to the Affiliation Agreements.

116. SJHS has materially breached the Affiliation Agreements.

WHEREFORE, the Plaintiffs, Woman's Clinic, Inc., Thomas D. McClain, M.D. Orthopedic Surgery, L.L.C., Elizabeth Campbell, M.D., Donald P. Kratz, M.D., Darren Lehnert, M.D., Lisa G. Powell, M.D., David L. Redfern, M.D., J. Christopher Stein, M.D., and Thomas D. McClain, M.D., request that:

1. The Court adjudge and declare that the Defendants' practices of directing referrals away from the Physician Plaintiffs is a violation and breach of the covenant of good faith and fair dealing contained in the Affiliation Agreements.

2. The Court adjudge and declare that the Defendants' refusal to assure an Affiliation Agreement for any qualified newly recruited physician of the Woman's Clinic is a violation and breach of the covenant of good faith and fair dealing contained in the Affiliation Agreements.

3. The Court grant Plaintiffs recovery of their costs.

4. Plaintiffs have such other and further relief as the Court may deem just and proper.

Date: December 21, 2001.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading was served by (X) U.S. Mail, postage prepaid; () fax; () Federal Express; and/or () hand delivery this 21st day of December, 2001, to:

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