

California Senate Committee on Health
Informational Hearing
Healthcare Market Consolidations: Impacts on
Cost, Quality and Access
March 16, 2016 1:30 p.m. Room 4203

PUBLIC COMMENT STATEMENT OF RICHARD GROSSMAN

Good afternoon. My name is Richard Grossman. I am an antitrust attorney at the San Francisco law firm of Pillsbury & Coleman and I am lead counsel in a case seeking to represent a class of self-funded health plans asserting antitrust and unfair competition claims against Sutter Health, the dominant health care provider in Northern California. (*UFCW & Employers Benefit Trust v. Sutter Health et al.*, Case No. CGC-14-538451, San Francisco Superior Court)

There has been a good discussion today of the urgent need for more robust antitrust enforcement in the healthcare industry. I would like to spend a few minutes discussing our antitrust case, which is one of the few examples of public or private healthcare antitrust enforcement in California.

I also want to thank the Senate Committee for its serious attention to the anticompetitive practices that have caused healthcare prices for the identical medical services to be nearly 40% higher in Northern California than in Southern California, resulting in billions of dollars of illegal overcharges to patients and the Northern California employers whose self-funded health plans pay for their healthcare.

As you know, employer self-funded health plans pay for their workers' healthcare directly out of their own funds without purchasing separate insurance. They account for more than 50% of the healthcare in California. However, they are victims of anticompetitive agreements between Northern California's dominant healthcare provider and the insurance companies that negotiate the prices for all provider networks:

1. Agreements that impose punitive and unsustainable pricing on any health plan that does not include all Sutter hospitals and all Sutter medical groups in its provider network— even where higher quality, lower cost alternatives are available. These are the agreement terms that Dr. Ginsberg described in his testimony as “All or Nothing”.
2. Agreements that forbid health plans from providing their patient-enrollees with incentives to choose the higher quality and lower cost providers within the health plan's provider network. One example of a pro-competitive incentive structure banned by these agreements is a “Tiered Network” that Dr. Ginsberg also described in his testimony.

3. Agreements that forbid the disclosure of Sutter's higher prices to patients or the self-funded health plans that pay for their care – making it impossible for patients to know that there are more cost-effective alternatives when they select a provider.

These anticompetitive agreements are the leading cause of the outrageously high cost of healthcare in Northern California and the primary challenge for fixing our broken healthcare system because they completely insulate the dominant healthcare provider from the discipline of price competition – the primary engine of our free market economy. Such agreements have been condemned in policy statements of the Federal Trade Commission and the U.S. Department of Justice but, at this moment, the case that we are prosecuting is the only effort to stop these practices.

I have heard from self-funded health plans from across the region – health plans sponsored by our state's largest corporations and employers, by government entities and union healthcare trusts – and they all have the same question: They ask, "Where is the state of California on this issue? They point out that the Attorney General has been studying these illegal practices for nearly 4 years but has failed to act. They ask, "Why hasn't the Attorney General utilized the antitrust laws to stop these anticompetitive practices?"

I do not have a good answer to any of those questions. Anyone taking a serious look at these issues sees the same evidence that I have uncovered. Historically, the Attorney General's antitrust section, led by Kathleen Foote, is widely recognized as California's most courageous defender of competition in our free market system. There is no question about that. And yet, our state regulators have been too timid to utilize their law enforcement powers to address the anticompetitive conduct that is now outrageously inflating healthcare costs.

Because nothing has been done to rein in these anticompetitive practices, health insurance companies now seek further consolidation through mergers they hope will give them the power to counter the market dominance that certain providers have obtained through illegal conduct. But further market consolidation is not the answer to fighting monopoly power. The answer is enforcement of our antitrust laws.

And so I call on you today to use your committee to proactively investigate these practices and I ask you to do everything in your power to urge the Attorney General to take decisive action. My colleagues and I would be proud to stand shoulder to shoulder with the State of California in an effort to reintroduce healthy price competition into the healthcare market and dramatically lower healthcare costs for all Californians.

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