



Microsoft & Medicine

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Introduction

Microsoft will now have to take the medicine prescribed by a federal court in its recent antitrust order. While it may be a bitter pill to swallow for the wealthiest corporation in the world, I doubt it will be any worse for wear in the long run. Having more money than anyone has a way of softening one's problems.

Previously the government had broken up other monopolies such as Standard Oil, AT&T, as well as de-regulating the airline and banking industries, and the feds now have found Microsoft guilty of anticompetitive practices.

While some may argue that Microsoft simply out-manuevered its competition with innovative products, the facts show that Microsoft used anti-competitive means to corner the PC Intel market by bundling Windows with their Internet Explorer in order to hinder Netscape Navigator.

In the Court's final order, however, many of the judge's claims against Microsoft could be found to be very similar to

that of organized medicine's position in the healthcare marketplace. But I give serious doubt whether the federal government will accuse the medical profession of the same charges.

Organized Medicine's Monopoly

Anyone familiar with organized medicine's control of the healthcare industry is aware of the monopolistic control it has over its competition. Although Microsoft acted alone, the medical profession included others in their cartel: the insurance industry, hospitals, and the government itself.

The creation of the medical monopoly began when the feds basically turned the healthcare delivery system over to the medical society to operate. The government has also given them billions of public dollars to operate their private enterprise in a public setting, ie, hospitals and public health positions. The 2 are so intertwined now with money and regulators that, in effect, the medical monopoly

includes the federal government as a co-conspirator.

The CATO Institute in Washington DC released a policy analysis of “The Medical Monopoly.” (1) In the Executive Summary, it is noted:

“Although broad-based health care reform has temporarily moved to the back of the public agenda, there remain serious problems of cost and access in the American health care system. The underlying reason for those problems is the lack of a functioning free market in health care in this country. There is a privately owned health care, but there is no a living, vibrant free marketplace in health care like there is in other products and services.” (1, p.2)

While a true Health Care Reform is much needed not only in terms of free enterprise to increase competition, thus rendering better services/products at lower costs, but also in terms of freedom of choice of treatments and safer procedures for the patients. For health care providers, an open marketplace with a level playing field would eliminate the double standard non-MD health-care providers now experience. Indeed, it’s difficult to compete in the same

game while playing by different rules, as chiropractors have long endured.

Let’s look at the Microsoft case to see what similarities exist that could be applicable to making a case against organized monopolistic medicine. The federal government has taken this legal action to breakup Microsoft due to its monopolistic position in the market for operating systems designed to run on Intel-compatible personal computers by “engaging in a series of exclusionary, anti-competitive, and predatory acts to maintain its monopoly power.” (1, p.2)

I find it odd that the same antitrust concerns have excluded another of the largest monopolies in this country, the medical cartel, because it seems the exact behavior still occurs despite the Wilk et al. v. the AMA et al. antitrust case. (3) Although the Wilk decision stopped the overt discrimination against DCs from working in public hospitals, in effect, their covert boycott still exists over 13 years later when you consider that only 200 of over 5,000 hospitals utilize DCs on staff.

Exclusionary Tactics

U.S. District Judge Thomas Penfield Jackson ruled on Microsoft’s maintenance of monopoly power by anti-competitive means: *“The threshold question in this analysis is whether the defendant’s conduct is ‘exclusionary’—that is, whether it has restricted significantly, or threatens to restrict significantly, the ability of other firms to compete in the relevant market on the merits of what they offer customers.”* (2)

Obviously keeping DCs off the staffs of 96% of hospital markets constitutes ‘exclusionary.’ It irks me to no end that I, as a state-licensed health care provider, cannot enter a public hospital paid in part by my own taxes to help a patient or that the patient is denied informed consent as to the possibility that chiropractic care may be better option than the medical approaches.

The fact that in many cases of health insurance coverage, only chiropractic is capped or limited, and many exclude chiropractic care altogether, thus denying patients access to our care which has been proven to be safer, quicker, less costly and more clinically effective. As Pran Manga, PhD, indicated in his writings, this constitutes a case of “distributive injustice”

for both the patients and providers. (4) As well, patients are routinely denied options and alternatives to medical methods and, thus, they are denied their right of legal informed consent.

The court order continues to define 'anti-competitive' behavior: *"If the evidence reveals a significant exclusion - ary impact in the relevant market, the defendant's conduct will be labeled 'anticompetitive' and liability will attach - unless the defendant comes forward with specific, procompetitive business motivations that explain the full extent of its exclusionary conduct."*

If anyone thinks the AMA has any desire for "procompetitive business motivations" toward chiropractors, I think they need a blood check. Despite the legal requirement of informed consent, few patients are routinely told by their surgeons that the AHCPR federal guideline (5) on low back pain recommends spinal manipulation first and surgery last.

The court continues by stating that "the second element of a monopoly maintenance claim is satisfied by proof of 'behavior that not only (1) tends to impair the opportunities of rivals, but also (2) either does

not further competition on the merits or does so in an unnecessarily restrictive way."

With regard to (1), not only are DCs kept locked out of 96% of all hospitals, but recent HCFA stats show that the utilization of chiropractic services in Medicare programs have fallen to 0.5%. In regard to (2): Medical HMO and Workers' Compensation gatekeepers have also limited access to chiropractic care for patients.

Predatory Practices

The court also defined "predatory" practices: "Predation involves aggression against business rivals through the use of business practices that would not be considered profit maximizing except for the expectation that (1) actual rivals will be driven from the market, or the entry of potential rivals blocked or delayed, so that the predator will gain or retain a market share sufficient to command monopoly profits, or (2) rivals will be chastened sufficiently to abandon competitive behavior the predator finds threatening to its realization of monopoly profits."

With regard to (1), it's obvious that chiropractors are still sub-

ject to this predatory action by the medical society in that: "actual rivals will be driven from the market, or the entry of potential rivals blocked or delayed." When I applied for staff privileges, I was rudely informed by the board that "we ain't gonna have no Yankee judge tell us what to do," and "we like to think our doctors know what's best for our patients." Their attorney went so far as to commit malpractice when he informed the board that if they were to let a chiropractor on staff, the hospital would lose its license, which is totally untrue, but enough to scare the members to vote no.

With regard to (2), realistically, if you were a hospital administrator, would you want a DC on staff knowing the average cost per LBP case via chiropractic is only \$800, whereas the medical solutions of physical therapy/one week stay is \$7,000 and a surgical case starts at \$14,000? (6) In defense of this exclusionary tactic, the board told me they preferred giving their patients the best of medical care, not chiropractic care, despite the comparative research showing the clinical-effectiveness of SMT. No doubt chiropractic is a very grave threat to the "real-

ization of monopoly profits.”

Best of Breed Fallacy

The federal judge also addressed this attitude with Microsoft with its “best of breed” defense when they refused to license Windows 95 without a version of Internet Explorer. The court order said: “With respect to the latter assertion [best of breed], Internet Explorer is not demonstrably the current ‘best of breed’ Web browser, nor is it likely to be so at any time in the immediate future...”

Microsoft’s decision to tie Internet Explorer to Windows cannot truly be explained as an attempt to benefit consumers and improve the efficiency of the software market generally, but rather as a part of a larger campaign to quash innovation that threatened its monopoly position.”

In light of the AHCPR’s guideline (5) which recommends spinal manipulation as a “Proven Treatment” and which fails to recommend physical therapy modalities and even states that “Surgery has been found to be helpful in only one in 100 cases of low back problems,” it’s difficult how any hospital can assert that these medical treatments are the “best of breed.”

“Microsoft placed an oppressive thumb on the scale of competitive fortune, thereby effectively guaranteeing its continued dominance in the relevant market. More broadly, Microsoft’s anticompetitive actions trammelled the competitive process through which the computer software industry generally stimulates innovation and conduces to the optimum benefit of consumers.”

While the Wilk decision stated that a public hospital cannot exclude a chiropractor simply for being a chiropractor, it allowed them to exclude DCs for any other reason, and in my case, this included “incompatibility with the medical staff.” I found this very odd—the medics discriminate against chiropractors; then, when we ask for inclusion, they alibi that incompatibility would occur, as if that started with us chiropractors. That’s equivalent to a public golf course being taken over by a group of white good ol’ boys, and when the feds demand integration into the public facility, the good ol’ boys complain saying it would cause incompatibility among them to have to play with minorities. What’s wrong with this picture?

Oppressive Thumb

In effect, the medical profession has kept its own “oppressive thumb” on chiropractic care, thus continuing its dominance in the healthcare marketplace. By excluding chiropractic care from hospital care, consumers are denied their freedom of choice and their right to informed consent. Indeed, the medical monopoly has “trammelled the competitive process” and thereby prohibited innovation in healthcare to the optimum benefit of patients.

The CATO Institute summarized this anticompetitive atmosphere in healthcare:

“Nonphysician providers of medical care are in high demand in the United States. But licensure laws and federal regulations limit their scope of practice and restrict access to their services. The result has almost inevitably been less choice and higher prices for consumers.

“Safety and consumer protection issues are often cited as reasons for restricting non-physician services. But the restrictions appear not to be based on empirical findings. Studies have repeatedly shown that qualified nonphysicians

providers—such as midwives, nurses, and chiropractors—can perform many health and medical services traditionally performed by physicians—with comparable health outcomes, lower costs, and high patient satisfaction... the primary result is an increase in physician fees and income that drives up health care costs.

“At a time government is trying to cut health spending and improve access to health care, it is imperative to examine critically the extent to which government policies are responsible for rising health costs and the unavailability of health services. Eliminating the roadblocks to competition among health care providers could improve access to health services, lower health costs, and reduce government spending.” (1)

Obviously the federal government does nothing to stop the same anticompetitive actions of medical monopoly, hospitals and insurance programs that discriminate against chiropractors and other non-MD practitioners.

Why this obvious oversight? I believe its due to many reasons:

Government and medicine are tied at the hip. Government gives billions to medical schools, researchers and hospitals every year.

Governmental bureaucratic positions inside the HHS and FTC are always MD appointees who bring with them a bias toward any CAM providers.

Politicians and the AMA: AMPAC contributions have influenced many politicians favorably to the medical mindset.

Government considers the medical profession as a “quasi-utility” and not as a separate trade association susceptible to antitrust laws. This quasi-utility enjoys the best of both worlds—publicly supported facilities on one hand and the private profit-motivated world of health insurance on the other.

The insurance industry, the profitable middle-man in the healthcare industry, makes too much money to tolerate any changes that might cut into profits. The perverse motivation where premiums are linked to expenses favors the use of more expensive medical procedures over non-invasive

and less expensive methods like chiropractic care or chelation therapy for heart problems.

Workers’ Compensation, Medicare, Military Health Services are all influenced by medical doctors on their boards, thus an inherent bias to exclude non-MD competitors, and the perverse motivation where the more they pay out, the more they can charge in premiums.

Hospital boards are also controlled by appointees approved by the local medical society, thus excluding non-traditional possibilities.

Chiropractic invalidated: After decades of organized propaganda and political dirty tricks against the chiropractic profession by the AMA, the image of chiropractic is tainted in the minds of many policy makers. Adding to this problem is chiropractic’s own ability to shoot itself in the foot with outlandish claims, charismatic leadership, suspect education in some diploma mills, and disunity creating in-fighting.

The Medical Web

Whereas Microsoft had no partners in their monopolistic

crime, organized medicine certainly does—government agencies and bureaucrats, insurance executives, Workers' Compensation insurers, Medicare and MHS appointees—all have something to gain by allowing the exclusionary treatment of non-MD competitors. All of these agencies and industries have a lot to gain in this medical monopoly, and allowing an open marketplace would cut into their enormous funds, unlike Microsoft who alone profited by their anticompetitive scheme.

While some may hope for government regulators to end the reign of the medical cartel, others disagree. Michael Tanner, Director of Health and Welfare Studies at the CATO Institute commented on this dilemma.

“I am amazed that chiropractors would turn to government for protection, since it is precisely this same government that has conspired with the AMA to restrict the availability of chiropractic services to consumers. Even today the government continues its efforts to stifle non-traditional approaches to health care. The FCA’s attempt to ban vitamin supplements is only the latest outrage. “[T]he inefficiencies stem directly from government inter-

vention in the marketplace. Simply put: we do not have a functioning free market in health care in this country today. We have a privately owned health care. But we do not have a living, vibrant free marketplace in health care the way we do in other products.

“If you look at healthy markets in other goods and services, you recognize certain common characteristics. First, there is a great choice of providers, all in competition with one another, trying to gain customers on the basis of price and quality. And on the other side, there is a consumer trying to get the best deal for his dollar.

“But in health care today, largely because of government interference, neither of these conditions is true. We have a small group of monopoly providers with very little competition and consumers who, buy and large, are spending someone else’s money. Therefore, they have little incentive to be good consumers and seek the best deal for their dollar.” (7)

Thus, without a dynamic free market, both suppliers and consumers are infected with perverse motivations. Without competition, medical professionals charge outrageous costs

for their services, many of which are deemed unnecessary or ineffective. Consumers using health insurance are not cost-conscious as they would be in buying any retail product.

A Medical Utility

Adding to this private marketplace in healthcare is the odd fact that much of it is supported by public tax monies which build their hospitals, support their medical schools/students, and they are paid by public money in Medicare and Medicaid. Only in healthcare do we see this mix of a private marketplace supported by public monies.

Some would argue that the medical health care delivery system is considered a public utility rather than a standard business, hence they should not be viewed as participating in free enterprise. After all, public tax monies support the various elements that comprise the healthcare delivery system—build and support medical schools, public hospitals, fund Medicare and Medicaid, and so on. Just as public monies build and support our police and fire departments, some look at their local hospital in the same regard.

However, there is one huge difference between a true public utility and the medical system, that is, the police and fire departments don't charge citizens ungodly amounts of money when they perform their services. Imagine your house on fire and the fire truck pulls up, but before they turn on their water hoses, the fire chief hands you a bill for \$50,000 and asks for your credit card. Imagine a policeman before he enters your home to arrest a burglar asking for \$20,000 to catch the thief. If these 2 cases occurred, we would be incensed knowing they were public servants.

So why does a public hospital operating on public funds charge inordinate prices for doing their public service? Is it ethical for these public servants to charge outrageous sums after being supported by public monies? It seems they have the best of both worlds—public and private. Public monies put them through medical school and build and support their overhead in hospitals, then they are allowed to charge for their services.

Adding to this mix is the fact that the government regulators are knee-deep in medical influence. While the cry by the pub-

lic for CAM services increases, and chiropractors and other non-MD practitioners also cry foul for being virtually excluded, the distributive injustice that excludes them from an open marketplace with a level playing field goes unheard by a government stacked with medical appointees, lobbyists, and legislators who enjoy a lucrative relationship with AMPAC. Again, the CATO Institute report mentioned this inequitable government regulation of health care providers:

“However, true reform requires that the supply side of the health care market be addressed as well. Currently, a wide variety of licensing laws and other regulatory restrictions limits the scope of practice of nonphysician professionals and restricts access to their services. Moreover, at the same time that it is restricting the practices of nontraditional health care professionals, government is providing subsidies for the education and training of physicians who fit the medical orthodoxy. The result has been the creation of a de facto medical monopoly, leading to less choice and higher prices for consumers.” (1)

While it is obvious that an easy case can be made against the

medical cartel using the same logic that Judge Jackson used to bust the Microsoft grip on the Intel industry, I doubt the same type of solution exists to end the reign of medical monopolistic control of the healthcare industry. The medical web includes too many partners who are content to see the system unchanged, as we saw with their sabotage of the 1994 Health Care Reform Act. By maintaining the expensive and ineffective medical cartel, everyone has something to gain, except for the patients who are denied informed consent about options of alternative methods and the CAM providers who are denied equal access to hospitals and patients alike.

What amazes me most about this distributive injustice for CAM providers and denial of freedom of choice for patients is how little is said in protest. Rarely have I read a newspaper article about this medical monopolization of healthcare despite the outlandish costs, the unnecessary and ineffective surgeries, the deadly side-effects of medications and the general greed and fraud that permeates medical care. It seems having a medical monopoly dominating the health care world is just par for

the course. Indeed, we do see a double standard when it comes to enterprise in the healthcare industry.

For example, back surgeries are the third-leading reason for hospital procedures despite the fact that the federal guideline on acute low back pain stated that only 1 in 100 back surgeries are helpful, and recommended spinal manipulation as the preferred initial professional care. Meanwhile, 96% of hospital exclude chiropractors from their staff, thereby denying patients access to the “best of breed” care.

When insurance fraud experts say up to 30% of this trillion-dollar healthcare industry is fraudulent, something is amiss. Not only does fraud add to the cost of healthcare, but unnecessary surgeries do too. Dr. Lucian Leape, MD of Harvard’s Department of Health Policy and Management pointed out that in 1992 there were 2.4 million unnecessary operations performed resulting in a cost of \$3.9 billion and 11,900 deaths. (8) Added to this list are the 44,000 to 98,000 estimated deaths from medical mistakes annually according to the Institute of Medicine (9) and the 120,000 deaths noted by Dr. Leape (10)

and the risks from unnecessary or ineffective medical care is one of the leading causes of death in the US.

But when efforts like the Health Care Reform Act are proposed, the medical cartel simply swings into action to call in its cards from legislators to squash any reform attempts. And when the lack of free enterprise is cited as one solution to end these mistakes, it falls on deaf ears—apparently free enterprise is okay for all industries except the healthcare industry.

And as long as the private enterprise of medical care which is controlled by MD bureaucrats and funded/regulated by government and insurance companies, we will continue to see the abuses inherent to a non-competitive industry. Until the same rules of business apply to healthcare, I predict we will continue to see more of the same—rising costs, inferior services, unnecessary services, indifferent care by hospital staffs, and an ailing society that’s only getting worse. Until free enterprise is injected into healthcare, there is no good solution to ineffective socialized/govt/insurance industry-controlled medicine, which is exactly the hybrid we have now.

Chiropractic’s Dilemma

Should we fight to gain entrance into the government-medical-insurance cartel only to be hampered by their regulations and cost-controls—the “private” market? Or should we withdraw from the private marketplace and sell our wares in the open marketplace instead as some cash-practice management gurus suggest?

Obviously the HCFA battle will determine our fate in Medicare’s private marketplace. Presently Medicare HMOs have so restricted chiropractic’s participation that enrollees have utilized our services at a rate of 0.5%. And if Secretary Shalala’s stance that Medicare HMOs are “not required to utilize only chiropractors to provide manual manipulation of the spine to correct a subluxation” by allowing PTs, MDs or DOs to dispense this service, we will definitely be forced out of that marketplace altogether. The dilemma all chiropractors will face in the future is either to fight to gain entrance into the private marketplace of the regulated industry of managed care organizations and be subjected to their whims, pricing and control, or else be relegated to the fringe of an open marketplace where our roots began.

Obviously the financial restraints of no insurance coverage in a cash practice may undermine the growth of any DC's practice in today's "managed care" environment. But, on the other hand, without regulations to contend with, a certain amount of autonomy may offset the price one pays to play in the private marketplace of MCOs.

If healthcare costs continue to rise along with patient dissatisfaction from MCOs, a true Health Care Reformation may happen as it has in all other countries. Only in America do we find health-care-for-profit, which may explain why this country leads the world in expense and number of procedures. A single-payer system like Canada and England may evolve as the medical cartel continues to bleed this country. Perhaps when the monopolistic profit motive is removed from medicine will we see a more sane approach as to what procedures are utilized first. Although never substantiated, some reports believe that surgeries of all types fell to a 10% level once socialized healthcare occurred in most European countries.

On the other hand, if health-care were deregulated com-

pletely with no governmental subsidies, no insurance profiteering, no AMPAC influencing legislators, and a true open marketplace were implemented instead, many gross changes would occur. With true competition in the healthcare marketplace, prices would immediately drop because patients wouldn't have "other people's money" to spend. Hospital services would improve or patients would go elsewhere looking for more bang for their bucks. Any licensed practitioner would have public hospital staff privileges and patients would finally have informed consent of their options. Medical doctors would have to come down from their pedestals and interact with patients and non-MD practitioners. Insurance companies' perverse motivation ("If we pay out more, we can charge more in premiums") would end, and rates and administrative costs would drop if a single-payer system evolved. Indeed, the present medical cartel is rife with unnecessary, ineffective, costly and dangerous care. Despite these known drawbacks, the medical monopoly has a very firm grip on government regulators to protect its domain despite the call from experts like the CATO Institute for a "function-

ing free market in health care." The future of healthcare in the United States stands at a crossroads as to whether it will remain the same or change to either a single-payer system or to a true free market system.

Time will only tell how chiropractic will also change with the prevailing healthcare economics. If the ACA lawsuit against HHS over HCFA prevails, a small section of the government marketplace in Medicare will open up. If it fails, chiropractic will again be relegated to the free market outside of the insurance industry, just as it was for much of its existence. If a Health Care Revolution occurred to end the present government subsidized private marketplace of the medical monopoly and replaced with a truly free marketplace, then we DCs would stand to gain access unlike ever before—a level playing field with one set of rules!

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