Anesthesia Advantage, Inc. vs. Metz

In the October 1988 issue of the AANA Journal (56(5): 383), this column discussed antitrust protection against a hospital's denial of access. The article discussed an annotation of cases stemming from violations of the Sherman Antitrust Act by a hospital when it denies staff privileges or referrals to physicians or other health care practitioners. Several cases cited in the annotation for key points were cases involving nurse anesthetists. There has recently been a decision, Anesthesia Advantage, Inc. vs. Metz (1990 U.S. App. Lexis 14079, 10th Cir.), involving nurse anesthetists, clarifying a necessary prerequisite to relief under the Sherman Antitrust Act.

The Sherman Antitrust Act prohibits conspiracies "in restraint of trade or commerce among the several states" (Section 1) and prohibits monopolizing "any part of the trade or commerce among the several states" (Section 2). Numerous health care practitioners have claimed that a hospital's refusal to permit them to practice at the hospital was illegal under one or both of the provisions of the Sherman Antitrust Act. Health care practitioners denied privileges because of exclusive contracts or because they were members of certain professions that have also brought suit against hospitals under the Sherman Antitrust Act.

However, there is a preliminary matter which must be satisfied before a case can be brought under the Sherman Antitrust Act. The conspiracy or the monopolization must affect interstate commerce. Congress' ability to prohibit antitrust activities was based on its authority under the Constitution to regulate interstate commerce. Matters which are purely "local" and which do not affect interstate commerce are not protected by the Sherman Antitrust Act, no matter how outrageous the conduct.

With respect to health care, some courts have been satisfied with evidence that hospitals treat out-of-state residents, purchase supplies, drugs and equipment from out-of-state suppliers and receive payments from out-of-state payors to justify jurisdiction. In other cases, courts have referred to the same evidence as de minimus, having an insubstantial effect on interstate commerce. In Anesthesia Advantage, Inc. vs. Metz, four nurse anesthetists in the Denver, Colorado area and their professional corporation brought suit against a number of hospitals and anesthesiologists in the Denver area, claiming that the anesthesiologists illegally prevented them from competing at three Colorado hospitals. They claimed they were "illegally squeezed out of business by anesthesiologists because their [CRNAs] presence forces down the market price for anesthesia services" (708 F. Supp. 1171, 1175). The defendant anesthesiologists tried to get the case dismissed because claiming was insufficient in connection with interstate commerce. The District Court granted the defendants' motion and dismissed the case.

**Connections with interstate commerce**

The nurse anesthetists pointed out that there were four connections with interstate commerce:

1. One of the hospitals had out-of-state shareholders.
2. The hospitals and anesthesiologists purchased and used out-of-state equipment and supplies.
3. The anesthesiologists, nurse anesthetists and hospitals received substantial revenues from out-of-state insurance companies.
4. Some of the patients were from out-of-state.

Although there had been antitrust cases involving nurse anesthetists (Bhan vs. NNME Hospitals Inc., 669 F. Supp. 998; Oltz vs. St. Peters Hospital, 656 F. Supp. 760), the courts in these cases had not seriously considered whether anesthesia affects interstate commerce.
The question is: What has to be in interstate commerce, the antitrust activity or the defendant's business activities? The courts are split. Some courts have held that the plaintiff only has to show that there is a connection between the defendant's general business activities and interstate commerce, while others hold that there must be a connection between the challenged activity and interstate commerce. Anesthesia Advantage, Inc. vs. Metz arose in the 10th Circuit Court of Appeals, which has adopted a restrictive reading of the interstate commerce clause. In the 10th Circuit, the connection must be between the challenged activities and interstate commerce. In the 10th Circuit, you not only have to show that anesthesia has an effect on interstate commerce, you have to show that excluding nurse anesthetists from the anesthesia market also affects interstate commerce.

The plaintiffs presented evidence that their corporation received 68% of its revenues from out-of-state insurance companies and treated 37 out-of-state patients. The anesthesiologist group submitted evidence that from 3.62% to 14.30% of their state patients were from out-of-state. On the other hand, the anesthesiologists billed from 78.8% to 95% of their billings to out-of-state insurance companies or payors. In addition, anesthesia machines were manufactured by out-of-state companies.

**Effect on interstate commerce**

The 10th Circuit Court of Appeals held that the plaintiffs had to (1) identify a relevant aspect of interstate commerce, and (2) specify its relationship to the defendants' activities alleged to be "infected" with the illegality. The plaintiffs did not have to show that the flow of interstate commerce was actually diminished. They just had to show that interstate commerce was affected in more than a de minimus way.

Looking at the specifics of the case, the Court found that the CRNAs' claims that if they were allowed to compete, it would affect the volume of interstate payments of insurance and affect interstate commerce in supplies and equipment was sufficient to establish jurisdiction even if the number of out-of-state patients may be small.

While the lawsuit has a long way to go, it is important because it reverses a decision which would have made it very difficult for CRNAs to take advantage of federal antitrust laws.

---

**CRNAs**


words that describe the OR setting at Foote Hospital—a hospital that is committed to OR professionalism and quality care.

We have a dynamic new chief of Anesthesia who is committed to providing excellent anesthesia services and patient care.

Foote Hospital, a 504-bed acute care facility located in Jackson, Michigan has openings for full-time CRNAs. In addition to opportunities for professional growth in a dynamic atmosphere, we offer:

- New salary rate structure that pays up to $75,000 based upon experience
- Overtime paid on 1.5 times salary after 40 hours
- $5.00 per hour call pay
- AANA certification
- Malpractice insurance
- Outside education opportunities
- 4 weeks vacation, 5 personal days, and 8 holidays
- $1.50/hour second shift differential
- $2.00/hour third shift differential
- A new innovative pension plan
- Flexible benefit plan
- Free parking

In addition, Jackson offers you affordable living (average home cost—$56,000) with easy access to Detroit, Ann Arbor, and Lansing for various cultural and sporting events.

If you are looking for an exciting opportunity in a modern growth-oriented environment, please submit resume to or call:

Employment Coordinator
Foote Hospital
205 N. East Avenue
Jackson, MI 49201
(517) 788-4966
E.O.E.

---

**NURSE ANESTHETIST**

Career opportunities are available for motivated, qualified CRNAs to join our busy practice located in southwestern Michigan.

Our attractive package includes:

- $5,000.00 sign-on bonus
- Up to $3,000.00 relocation assistance
- All overtime—Doubletime
- Maximum pension/profit sharing plan allowed by law—25%
- 4 weeks vacation first year
- Education allowance
- Insurance paid include: health, dental, malpractice, disability, life, workers compensation, prescription
- Back-up call only—no in-house call

Our total package ranges from $80,000.00/year for new graduates to over $95,000.00/year for senior CRNAs.

No call flexible hours positions available

call collect

Kalamazoo Anesthesiology, P.C.
Kalamazoo, Michigan
(616) 345-8618