Jefferson Parish Hospital v. Hyde—The last chapter

Not since *Chalmers-Francis v. Nelson* has a case received as much attention from nurse anesthetists as the *Hyde* case in which the AANA filed an amicus curiae brief. On March 26, 1984, the Supreme Court of the United States issued its decision upholding the legality of an exclusive contract between a hospital and a group of anesthesiologists.

Background

Dr. Hyde was denied staff privileges at Jefferson Parish Hospital. Although his professional qualifications were found satisfactory, the governing board of the hospital denied staff privileges because of an exclusive arrangement with a professional medical corporation to provide anesthesia services. Dr. Hyde brought suit against the hospital claiming that the exclusive contract was a “tie-in” which violated the antitrust laws.

Courts often look at antitrust claims under two approaches: (1) the Rule of Reason and (2) the *Per Se* Rule. Under the Rule of Reason, a restraint violates the antitrust laws if it imposes an unreasonable restraint on competition. Under the *Per Se* Rule, certain types of transactions are so dangerous in their effect on competition as to be violations *Per Se* (by itself) without consideration of the actual anti-competitive effect.

The Trial Court, using the Rule of Reason, found that the hospital did not have strong economic power in the market and that the exclusive contract gave rise to benefits which resulted and improved patient care thereby outweighing whatever anti-competitive effects there were of the exclusive arrangement. The Fifth Circuit Court of Appeals discussed a number of anti-competitive effects of the exclusive contract. The Court of Appeals found the contract similar to price-fixing, justifying the application of the *Per Se* Rule and eliminating the option of consideration of any benefit to the arrangement.

Both the Trial Court and the Court of Appeals considered the role of nurse anesthetists in examining the underlying economic effects of the exclusive contract. Both courts were obviously unfamiliar with the roles of CRNAs and made numerous derogatory statements.

When the case was appealed to the United States Supreme Court, the AANA determined not to support or oppose exclusive contracts but to file an amicus curiae brief to make sure that the Supreme Court was aware of the role that CRNAs played in the delivery of anesthesia care and of the education and continuing education policies to which CRNAs must adhere. The Supreme Court decision is of interest to nurse anesthetists because the Supreme Court did, in fact, refrain from making deprecating remarks regarding nurse anesthetists and because of the reasoning in upholding the legality of exclusive contracts.

The Supreme Court’s decision was written by
Justice Stevens who was joined by Justices Brennan, Marshall, White and Blackman. A separate opinion, agreeing with the result but not with the reasoning giving rise to the result, was written by Justice O'Connor and joined in by Justices Burger, Powell and Rehnquist. The significance of the two opinions is that although they both agreed that, in this case, the contract did not violate the antitrust laws, the opinions approach the matter in different ways. In the Hyde case, the majority opinion was separated by a single vote from the concurring opinion. Therefore, although Justice O'Connor's reasoning is not the "official" reasoning of the court, because the majority opinion was the opinion of the more senior members of the court, the concurring opinion may be the way the Supreme Court will approach these cases in the future, if there is a change in personnel on the court.

Majority opinion

The majority opinion made a number of points in upholding the legality of the exclusive contract. First, the court said that, "It is clear, however, that every refusal to sell two products separately cannot be said to restrain competition." An illegal tying arrangement depends on the seller's being able to exploit its control over a product, to force the buyer to purchase another product if the buyer either did not want or might have preferred to purchase elsewhere on different terms. In fact, where the existence of "forcing" is probable, the court will not even examine market conditions, and the tying will be illegal under the Per Se Rule.

The classic example of an illegal tie-in is the use of a patent to require someone to purchase another product he would not have otherwise purchased. The court noted that although the anesthesiological component of the package offered by the hospital could be provided separately, the contract would not be illegal or inherently anti-competitive unless patients were forced to purchase the anesthesiologist's services as a result of the hospital's market power. Wryly (and somewhat inaccurately), the court concludes that, "It is safe to assume that every patient undergoing a surgical operation needs the services of an anesthesiologist; at least this record contains no evidence that the hospital 'forced' any such services on unwilling patients." Therefore, in the absence of "forcing" the Per Se Rule would not be applied to this arrangement.

Since the Per Se Rule did not apply, the only other way that the arrangement would be anti-competitive would be if under the Rule of Reason the arrangement unreasonably restrained competition.

The court noted that there had been no evidence of actual adverse effect on competition. Therefore, there was no showing of the kind of restraint on competition that is prohibited by the Sherman Act.

Concurring opinion

In the concurring opinion, Justice O'Connor suggested a different approach to the question of the application of the Per Se Rule or Rule of Reason. Justice O'Connor's opinion requires a weighing of the benefits and detriments of each anti-competitive arrangement, an analysis she claims was engaged in under all the Per Se cases, anyway. Justice O'Connor would eliminate the whole concept of the Per Se Rule. "The time has therefore come to abandon the 'per se' label and refocus the inquiry on the adverse economic effects, and the potential economic benefits, that the tie may have. She suggested a three-fold test and in analyzing the exclusive contract here decides that "There is no sound economic reason for treating surgery and anesthesia as separate services." She also finds that the tie-in improves patient care and permits more efficient hospital operation in a number of ways.

Conclusion

One of the significant differences in the two approaches relates to the difficulty in showing anti-competitive impact under the rule of reason. Typically, bringing suit against a tie-in arrangement on the grounds that it violates the Rules of Reason is extremely expensive because of the need for expert testimony concerning the nature of the market and proof that competition was unreasonably restrained in the market. Thus, the Hyde case will be important not only in the medical field but in the antitrust field as well because of its restriction on per se illegality and because of its announcement on the part of Justices O'Connor, Burger, Powell and Rhenquist of their intent to dispense with the Per Se Rule of reason altogether. In the health care field, it can also be expected to impact on exclusive arrangements between hospitals and radiologists, pathologists and other medical specialists.