

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
CHAMPAIGN COUNTY, ILLINOIS, AT LAW

**FILED**  
CLERK OF THE CIRCUIT COURT  
CHAMPAIGN COUNTY ILLINOIS

JUN 14 2007

THE PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN, Attorney General  
of Illinois,

Plaintiff,

v.

CARLE CLINIC ASSOCIATION, P.C.,  
CHRISTIE CLINIC, P.C.,

Defendants.

Linda S. Frank  
CLERK OF THE CIRCUIT COURT  
CHAMPAIGN COUNTY ILLINOIS

No. 07h 115

*Parens Patriae*

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff, the People of the State of Illinois, by Lisa Madigan, Attorney General of Illinois, on behalf of itself and its citizens, complains against Defendants Carle Clinic Association, P.C., an Illinois professional corporation, and Christie Clinic, P.C., an Illinois professional corporation, for violating the Illinois Antitrust Act, 740 ILCS 10/1 *et seq.*, as follows:

**I. Introduction**

1. The Illinois Antitrust Act prohibits competitors from agreeing to limit their supply of products or services in order to raise prices. 740 ILCS 10/3(1)(b). In mid-March 2003, Carle Clinic Association, P.C. ("Carle") and Christie Clinic, P.C. ("Christie"), the two largest physician groups in Champaign County, began denying services to new patients eligible for Medicaid or Illinois Public Aid ("Medicaid"). The clinics agreed to boycott new Medicaid patients to increase the effective Medicaid reimbursement rates and to accelerate reimbursement payments. Their boycott violated

section 3 of the Illinois Antitrust Act and left many of the 20,000 Medicaid-eligible children and adults in Champaign County with fewer choices and poorer quality in medical care—if they could access medical care at all.

## II. Parties

2. The Attorney General of Illinois, Lisa Madigan, brings this Complaint under her common law authority to represent the people of the State of Illinois and under her authority provided by section 7 of the Illinois Antitrust Act, 740 ILCS 10/7.

Specifically, the Attorney General has the authority to seek:

- a. Injunctive relief under section 7(1): “The Attorney General . . . shall bring suit in the Circuit Court to prevent and restrain violations of Section 3 of this Act”;
- b. Civil penalties under section 7(4): “In lieu of any criminal penalty . . . , the Attorney General may bring an action in the name and on behalf of the people of the State against any . . . corporation, domestic or foreign, to recover a penalty not to exceed \$1,000,000 . . . for any act herein declared illegal”;
- c. Treble damages for State agencies under section 7(2): “The Attorney General may bring an action on behalf of this State, counties, municipalities, townships and other political subdivisions organized under the authority of this State to recover the damages under this subsection”; and
- d. Treble damages as *parens patriae* of injured persons under section 7(2): “Any person who has been injured in his business or property, or is threatened with such injury, by a violation of Section 3 of this Act may maintain an action in the Circuit Court for damages, or for an injunction, or both, against any person who has committed such violation.”

3. Carle is an Illinois corporation headquartered at 602 W. University Avenue in Urbana, Illinois. Carle is one of the largest physician groups in the United States with over 300 physicians. In Champaign County, Carle employs approximately 200 physicians and has about a 60% market share for physician services.

4. Christie is an Illinois corporation headquartered at 101 W. University Avenue in Champaign, Illinois. Christie employs approximately 100 physicians in Champaign County and has about a 30% market share for physician services.

### **III. Jurisdiction & Venue**

5. Jurisdiction is proper under 735 ILCS 5/2-209 because Carle and Christie (collectively, “the clinics”) do business in Illinois.

6. Venue is proper under 735 ILCS 5/2-102 because the clinics have offices in Champaign County, and their registered agents are located in Champaign County.

### **IV. Illegal Conduct**

7. In March 2003, Carle and Christie agreed that they would boycott new Medicaid patients seeking primary medical care. Carle and Christie agreed to boycott new Medicaid patients knowing that their boycott would leave many Medicaid-eligible patients—children and adults with little or no income—without access to medical care. Carle and Christie employed over 90% of the physicians in Champaign County, so by collectively boycotting Medicaid patients, they were in effect denying many people any access to primary medical care. By denying these people medical care, Carle and Christie intended to increase the effective Medicaid reimbursement rates and accelerate reimbursement payments from the State of Illinois.

#### **A. Carle decides to reject new Medicaid patients.**

8. In June 2001, Dr. R. Bruce Wellman (“Wellman”) became Carle’s CEO and president. Wellman began to look for ways to improve Carle’s profitability. Medicaid reimbursement rates were lower than reimbursement rates from other payor groups, such

as private insurers and Medicare, and Medicaid reimbursement payments were often slower. Wellman began lobbying the Illinois legislature to raise Medicaid reimbursement rates.

9. Wellman's lobbying initiative failed, however. At a Carle board of governors meeting in April 2002, Wellman explained that his efforts to increase Medicaid funding by lobbying local legislators were unlikely to be successful. Instead, Wellman recommended that Carle stop seeing new Medicaid patients, which would pressure the State of Illinois to increase Medicaid funding.

10. At the next board meeting in May 2002, Wellman informed the board that he was developing a plan to stop accepting new Medicaid patients. The proposed start-date was July 1, 2002. Wellman intended to "work collaboratively with other health care interests in the community in developing a unified program."

11. In July 2002, Carle's board of governors adopted a written Medicaid policy under which Carle would serve only its "fair share" of Medicaid patients. Carle would treat Medicaid patients so long as its percentage of Medicaid patient visits was less than the percentage of people eligible for Medicaid in the community. If Medicaid patients made up 10% of the community, then Carle would accept Medicaid patients so long as they made up only 10% of patient visits. Put another way, Carle's written policy was that Carle would treat a percentage of Medicaid patients in the community equal roughly to its market share.

12. In practice, however, Wellman planned to deny treatment to new Medicaid patients for primary care services and to reduce their appointments with specialists by restricting the appointment slots available to Medicaid patients. Wellman claimed that

this approach was the optimal way to ensure that Carle saw only its “fair share” of Medicaid patients.

**B. Carle puts its Medicaid policy on hold to get cooperation from Christie.**

13. Carle was poised to stop accepting new Medicaid patients in mid-2002. Yet, other than informing physicians about the Medicaid policy, Carle took no steps to implement it until January 2003.

14. Other than Carle, the only major provider of physician services in Champaign County is Carle’s primary competitor, Christie.

15. Carle needed Christie to refuse to treat new Medicaid patients for Carle’s policy to successfully pressure the State of Illinois to raise Medicaid reimbursement rates and expedite reimbursement payments. If Christie continued to accept new Medicaid patients after Carle implemented its Medicaid policy, Medicaid patients would still have access to primary medical care. Carle’s Medicaid policy would be effective at raising Medicaid reimbursement rates and accelerating reimbursement payments only if Christie also refused to see new Medicaid patients.

**C. Carle convinces Christie to agree to Carle’s plan to stop seeing new Medicaid patients.**

16. Christie also was unhappy with Medicaid reimbursement, specifically with the payment terms. Christie wanted faster Medicaid reimbursement payments and began to consider ways to achieve that end.

17. Christie’s CEO, Richard Alan Gleghorn (“Gleghorn”), met with Wellman on several occasions in the months after Carle adopted its Medicaid policy. During this

time, Wellman and Gleghorn also had regular contact through telephone calls and email exchanges.

18. In August 2002—one month after Carle’s board approved its Medicaid policy—Christie began to review its own policy on Medicaid patients. At Christie’s October 2002 board meeting, its management presented options for a new clinic-wide Medicaid policy.

19. Carle and Christie also communicated through their joint participation in community-group meetings about the community’s free clinic, Frances Nelson Health Center (“Frances Nelson”). The purported purpose of the meetings was to upgrade the capabilities and capacity of Frances Nelson. Edra Scofield (“Scofield”), a former Carle vice president, attended many of the meetings.

20. Aware of Carle’s plan to stop accepting new Medicaid patients, Scofield forecasted Carle’s policy to the community group by explaining that Carle was “taking a look at what [it] needed to do because of reimbursements.” In a fall 2002 meeting, Scofield warned that Carle “plan[s] to proceed with limiting access for new IPA [Medicaid] patients and that [Carle] cannot wait any longer to implement [its] plans.”

21. On information and belief, through these or other communications, Christie agreed to Carle’s plan that the clinics stop accepting new Medicaid patients.

22. In January 2003, Christie’s board of directors adopted a plan to stop accepting new Medicaid patients by: (1) recognizing the Primary Care Department’s willingness to stop accepting new Medicaid patients; (2) noting that training would be needed for front desk staff; and (3) directing that a written policy and procedure on denying services to new Medicaid patients be developed.

23. The Medicaid policy Christie adopted was the same as Carle's.

**D. The Boycott Begins: Carle and Christie implement their Medicaid policies at the same time.**

24. Once Christie had agreed with Carle not to accept new Medicaid patients, both clinics began to implement their Medicaid policies.

25. In January 2003, both clinics began to develop scripts directing their schedulers to turn away new Medicaid patients. Both clinics also began training employees about operational changes for implementing their Medicaid policies. The goal was to implement the Medicaid policies by the end of March 2003.

26. On March 17, 2003, Carle stopped accepting new Medicaid patients. At or about the same time, Christie's Primary Care Department stopped accepting new Medicaid patients. On May 1, 2003, Gleghorn formally announced that Christie had implemented clinic-wide the same Medicaid policy as Carle.

**E. Carle and Christie have identical Medicaid policies.**

27. Carle and Christie adopted Medicaid policies at the same time that are so similar as to preclude coincidence.

28. Both clinics decided not to accept new Medicaid patients. Both clinics considered new Medicaid patients to mean:

- patients who are not registered with the clinic, or
- patients who have not been seen by a clinic physician for at least three years.

Both clinics continued to see existing Medicaid patients, which included patients referred by other physicians within the clinic.

29. Carle and Christie also made the same clinic-wide exceptions to their Medicaid policies.

30. Both clinics continued to accept Medicaid patients referred from hospital emergency rooms, although both clinics encouraged their specialty physicians to serve these patients only for an episode of care, that is, medical treatment only for the condition for which a patient is referred.

31. Both clinics also continued to accept patients referred from Frances Nelson under their respective agreements with Frances Nelson. Both clinics encouraged their physicians to provide these patients with a consultation and to refer them back to Frances Nelson instead of accepting them for ongoing treatment.

32. The only nominal difference in the clinics' policies was that only Carle initially expected its specialists to limit the appointment "slots" for Medicaid referrals, but that part of the policy never was implemented.

33. The chart below summarizes the clinics' policies:

Patient Type	Carle Clinic		Christie Clinic	
	Accept	Refuse	Accept	Refuse
Medicaid patients never registered by clinic		X		X
Medicaid patients not seen by clinic in 3 years		X		X
Medicaid patients referred by other clinic physicians	X		X	
Medicaid patients referred by Frances Nelson	Encourage consult only		Encourage consult only	
Medicaid patients referred by hospital emergency room	Encourage only episode of care		Encourage only episode of care	

**F. Carle and Christie continue coordinating their efforts to implement their Medicaid policies.**

34. After implementing their Medicaid policies, Carle and Christie continued to coordinate their refusals to provide medical care to new Medicaid patients.

35. After formally announcing its Medicaid policy in May 2003, Christie's IPA Policy Task Force raised many issues about implementing the Medicaid policy, so Gleghorn sought help from Carle. Gleghorn contacted someone at Carle—either Wellman or Mike Bukosky, Carle's chief administrative officer—to obtain Carle's Medicaid policy. Scofield then emailed Gleghorn the telephone scripts that Carle used for Medicaid patients.

36. Since 2003, Carle and Christie representatives have met at Frances Nelson community-group meetings, where attendees often discussed the clinics' continuing policies not to accept new Medicaid patients. During the past few years, Wellman and Gleghorn personally attended these meetings.

37. In an April 2005 email, Gleghorn asked Wellman if he planned to meet with a community-health representative about collection policies, Medicaid policies, and their joint agreement with Frances Nelson. Gleghorn suggested that the clinics should have a "unified front."

**V. Anticompetitive Effects**

38. Before Carle and Christie implemented their Medicaid policies in March 2003, Carle and Christie physicians were permitted, and generally were willing, to accept Medicaid patients for primary care services.

39. Once Carle and Christie stopped accepting new Medicaid patients, Medicaid patients had to seek medical care at Frances Nelson, their only realistic alternative in Champaign County. Frances Nelson, however, did not and does not have the capacity or staff to timely treat the approximately 20,000 Medicaid patients in Champaign County. To deal with the influx of Medicaid patients after Carle and Christie implemented their Medicaid policies, Frances Nelson created a patient waiting list and, for certain periods of time, even stopped adding patients to the waiting list.

40. Because of the Medicaid policies implemented by Carle and Christie in March 2003, Medicaid-eligible patients—many children and low-income adults—lost the benefits of competition between Carle and Christie.

41. Medicaid patients who had to turn to Frances Nelson suffered lower quality healthcare because of overcrowding and fewer choices in primary medical care.

42. Other Medicaid patients, whom Frances Nelson could not accommodate, lost access to primary medical care entirely because of the Medicaid policies jointly adopted by Carle and Christie.

43. For example, 285 children were refused admission to school in the fall of 2003 because they could not get their required examinations and vaccinations before the October 15 deadline. Although many of these children were eligible for Medicaid, they could not get examined by a physician because Carle and Christie refused to see them. Only after several weeks went by and after community volunteers stepped in did all the children receive their required examinations and vaccinations so they could return to school. As one area official put it: “There were about 160 kids at Central [Champaign Central High School] who were just sitting on the sidelines because they needed a tetanus

shot. That just doesn't make sense. The Medicaid kids couldn't get appointments at Christie or Carle."

44. Carle's and Christie's policy of not accepting new Medicaid patients has also endangered many of Champaign County's premature babies (commonly called "preemies"). Carle and Christie have turned away preemies covered by Medicaid—despite the high risks of preemies developing serious conditions, such as cerebral palsy, anemia, blindness, deafness, and growth and developmental problems. Once the preemies are released from the hospital, Carle and Christie refuse to provide the continued medical care the preemies need because of the clinics' Medicaid policies. Carle and Christie have left preemies—perhaps the most vulnerable patients—without adequate access to medical care simply because they have Medicaid coverage.

45. Many other Medicaid patients have been denied treatment under the clinics' policies. For example:

- a. Carle and Christie both refused to treat an infant covered by Medicaid. The infant's grandmother, who had temporary custody, worried that her grandchild was having small seizures, possibly as a consequence of his mother abusing cocaine during pregnancy. The infant's grandmother sought treatment for the seizures, as well as a baby-wellness check-up, but both Carle and Christie turned her and her grandchild away.
- b. A two-year-old has fallen behind in learning to speak because of the clinics' Medicaid policies. Although a Christie physician delivered the child, Christie refused to provide ongoing care because the child was covered by Medicaid. Carle, too, refused to treat him. As a result, the child suffered from chronic ear infections, which prevented him from hearing very well. By the time his mother found a physician willing to treat her son, the child was far behind in speech development.
- c. A mother drove her son for an hour to Christie so her son could be seen by a urologist. When the mother and son arrived, Christie turned them away because the son was insured by Medicaid.

- d. Another mother scheduled an appointment with a Christie podiatrist for her son, who was insured by KidCare, then Illinois's Medicaid program for children. The mother drove her son 100 miles for the appointment only to be turned away upon arrival. Christie refused to treat him because of Christie's policy not to accept new Medicaid patients.
- e. An infant was delivered by a Carle physician and initially received treatment by a Carle pediatrician and other specialists in a neonatal intensive care unit because of the infant's poor heart condition. Once the infant was discharged, however, Carle refused to provide additional care because the child was insured by Medicaid.

46. In addition, because of the Medicaid policies implemented by Carle and Christie in March 2003, the State of Illinois incurred higher Medicaid reimbursement costs. For example, because of the clinics' Medicaid policies, some Medicaid-eligible patients suffered ailments that went untreated and undiagnosed until symptoms warranted emergency-room visits. Other Medicaid-eligible patients used emergency rooms to receive primary care. The State of Illinois typically reimburses treatment in an emergency room at a higher rate than the same treatment in a physician's office.

47. Carle and Christie intended their Medicaid policies to deprive Medicaid-eligible patients from receiving medical care because Carle and Christie wanted to pressure the State of Illinois to raise Medicaid reimbursement rates and to accelerate Medicaid reimbursement payments.

### **Count I: Violation of Section 3(1) of the Illinois Antitrust Act**

48. The preceding paragraphs are incorporated as if set forth herein.

49. Sections 3(1)(a) and (b) of the Illinois Antitrust Act, 740 ILCS 10/1 *et seq.*, make it illegal to:

Make any contract with, or engage in any combination or conspiracy with, any other person who is, or but for a prior agreement would be, a competitor of such person:

- a. for the purpose or with the effect of fixing, controlling, or maintaining the price or rate charged for any commodity sold or bought by the parties thereto, or the fee charged or paid for any service performed or received by the parties thereto;
- b. fixing, controlling, maintaining, limiting, or discontinuing the production, manufacture, mining, sale or supply of any commodity, or the sale or supply of any service, for the purpose or with the effect stated in paragraph a. of subsection (1).

50. During all relevant times, Carle and Christie have been competitors in physician services and primary care services in Champaign County.

51. From March 2003 through the present, Carle and Christie knowingly and willfully conspired and agreed to limit the supply of their physician services by refusing to accept new patients who are eligible for Medicaid.

52. The purpose of the conspiracy and agreement between Carle and Christie was to fix, control, and raise the fees paid for services provided to Medicaid-eligible patients, specifically to raise the Medicaid reimbursement rates and to accelerate Medicaid reimbursement payments.

53. The conspiracy and agreement between Carle and Christie had the effect of fixing, controlling, and raising the average Medicaid reimbursement payments paid by the State of Illinois for treatment of Medicaid patients.

54. Medicaid-eligible patients in Champaign County have suffered a deprivation of medical services and have been forced to incur higher costs for the medical services they did obtain because of the conspiracy and agreement between Carle and Christie and were thereby injured by reason of Carle's and Christie's violations of the Illinois Antitrust Act in an amount presently undetermined.

55. From about March 2003 through the present, Carle and Christie violated Section 3(1) of the Illinois Antitrust Act, 740 ILCS 10/3(1).

56. WHEREFORE, Plaintiff State of Illinois prays for judgment as follows:

- A. Declaring that the conspiracy, combination, contract, arrangement and agreement alleged herein be adjudged and decreed to be in violation of section 3(1) of the Illinois Antitrust Act, 740 ILCS 10/3(1);
- B. Against Defendants, jointly and severally, and awarding damages in favor of the State of Illinois for all overcharges paid by the State for medical services;
- C. Against Defendants, jointly and severally, and awarding damages in favor of the State of Illinois as *parens patriae* for damages suffered by Medicaid patients as a result of Defendants' illegal conduct;
- D. Awarding treble damages pursuant to 740 ILCS 10/7(2);
- E. Awarding civil penalties pursuant to 740 ILCS 10/7(4);
- F. Awarding injunctive relief to undo the effects of the Defendants' illegal conduct and to prevent further recurrences of such conduct;
- G. Awarding costs, disbursements, and reasonable attorneys fees pursuant to 740 ILCS 10/7; and
- H. Such other, further and different relief as the Court may deem just, necessary, or appropriate.

## **Count II: Violation of Section 3(2) of the Illinois Antitrust Act**

57. The preceding paragraphs are incorporated as if set forth herein.

58. Section 3(2) of the Illinois Antitrust Act, 740 ILCS 10/1 *et seq.*, makes it illegal to “by contract, combination, or conspiracy with one or more other persons unreasonably restrain trade or commerce.”

59. Carle and Christie entered into a contract, combination, or conspiracy by jointly agreeing not to accept new patients eligible for Medicaid.

60. The agreement between Carle and Christie not to accept new patients eligible for Medicaid unreasonably restrained trade and commerce by depriving those patients of otherwise available medical care.

61. From about March 2003 through the present, by jointly agreeing not to accept new patients who are eligible for Medicaid, Carle and Christie violated section 3(2) of the Illinois Antitrust Act, 740 ILCS 10/3(2).

62. WHEREFORE, Plaintiff State of Illinois prays for judgment as follows:

- A. Declaring that the conspiracy, combination, contract, arrangement and agreement alleged herein be adjudged and decreed to be an unreasonable restraint of trade in violation of section 3(2) of the Illinois Antitrust Act, 740 ILCS 10/3(2);
- B. Against Defendants, jointly and severally, and awarding damages in favor of the State of Illinois for all overcharges paid by the State for medical services;
- C. Against Defendants, jointly and severally, and awarding damages in favor of the State of Illinois as *parens patriae* for damages suffered by Medicaid patients as a result of Defendants’ illegal conduct;
- D. Awarding treble damages pursuant to 740 ILCS 10/7(2);
- E. Awarding civil penalties pursuant to 740 ILCS 10/7(4);

- F. Awarding injunctive relief to undo the effects of the Defendants' illegal conduct and to prevent further recurrences of such conduct;
- G. Awarding costs, disbursements, and reasonable attorneys fees pursuant to 740 ILCS 10/7; and
- H. Such other, further and different relief as the Court may deem just, necessary, or appropriate.

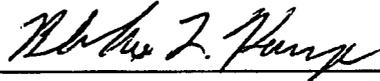
**Jury Trial Demanded**

The State of Illinois demands a trial by jury of all issues so triable in this cause.

Dated: June 14, 2007

Respectfully submitted,

THE STATE OF ILLINOIS,  
by LISA MADIGAN, ATTORNEY  
GENERAL OF ILLINOIS

By:  \_\_\_\_\_

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