

## Eye on Washington by Nicholas F. Benton

### **Anti-trust witchhunt against doctors**

*Why is the AMA keeping silent, while the Justice Department is going on a rampage against its members?*

**T**he American Medical Association is refusing to lift a finger to fight the onslaught of Department of Justice anti-trust actions against the nation's medical professionals, experts here report. As a result, there is no organized defense for doctors, hospitals, and other medical professionals and institutions against a witchhunt that has emanated since the beginning of the year from the Justice Department's Anti-Trust Division.

According to a report in the *Healthspan* newsletter earlier this year, DOJ Anti-Trust Division head Charles Rule told a meeting of the American Medical Association's House of Delegates last December, "The DOJ has decided to emphasize criminal anti-trust investigation of doctors." He justified the new policy, according to the report, on "the thesis that skyrocketing health care costs . . . endanger the prospects for universal health care and threaten to hemorrhage the federal deficit."

"Unchecked, spiraling health care costs will, in Rule's view, lead to 'socialized medicine.' To avert this outcome, Rule advocates 'marketplace competition,' " but since this is apparently not working sufficiently at the present time, "it will be assisted by DOJ criminal anti-trust investigations of physicians," the report points out.

Earlier this year, the Justice Department had reportedly launched grand jury investigations into allegations of criminal anti-trust offenses by dentists in Tucson, Arizona, obstetricians in Savannah, Georgia, and allergists in Boston, Massachusetts.

Rule defined three categories of what he considered criminal anti-trust violations by physicians: 1) doctors who block new delivery systems by agreeing to withhold their services or to boycott doctors who agree to provide their services; 2) groups of independent doctors who secretly agree to terms that they will insist upon when negotiating to participate in a preferred provider organization or a health maintenance organization; and 3) doctors who agree to allocate patients among themselves on the basis of the patients' residences or other criteria.

A scathing editorial in a recent issue of *Modern Healthcare*, by editor Clark W. Bell, lashed out at the Department of Justice for failing to recognize "the impact government cost-containment programs have had on the healthcare business." The editorial was directed at anti-trust actions against attempts of hospitals to merge.

"While we're certain the Justice Department believes it's just trying to do its job by protecting 'vulnerable' patients from greedy, price-gouging hospitals, we wonder where the department's officials have been in recent years," Bell wrote.

"Don't they realize their employer, the mighty U.S. government, has instituted changes that radically affect the way hospitals operate? Prospective pricing for Medicare patients, encouraging managed-care programs and cutbacks in social spending have forced many hospitals to look for merger partners simply to survive. But instead of acknowledging the plight of hospitals, the government steps in with

anti-trust suits."

Bell pointed favorably to a jury's recent ruling in favor of the defendants in a Roanoke, Virginia case, where the government attempted to step in to prevent the merger of two not-for-profit hospitals. But he pointed out that the DOJ is not relenting in its efforts, with a Rockford, Illinois, merger case awaiting a judge's ruling, and one in Kalamazoo, Michigan, currently under federal investigation.

Of course, the same government cost-containment policies which are forcing hospitals into mergers and other efforts merely to survive, are also responsible for most of what the DOJ's Charles Rule also identifies as anti-trust crimes by medical professionals.

As reported earlier in this column, a further escalation of anti-trust actions against doctors will occur as soon as the coming fiscal year's spending bill becomes law in September, because it includes an amendment, sponsored by Rep. Fortney Stark (D-Calif.), called the Physician Ownership-Referral Bill, which makes it a crime for doctors to refer patients to joint venture projects they entered into in order to share facilities, as a way of offsetting government cuts in Medicare and Medicaid payments.

What surprises many observers here, is the silence of the American Medical Association on all of this. Perhaps the AMA is worried that it will hurt its own credibility to be perceived by the public as siding with "crooks" against the government.

The effect of such silence is that the public will vent its rage for declining health care on the doctors and hospitals that are being squeezed, and will be led to believe the Justice Department's line that it is the "personal greed" of doctors that is to blame for the difficulty of obtaining adequate care.