List Of Health Care and Pharmaceutical Articles By Subject

Please contact nelson.p@east.ei.com or Patrick.english@lw.com with any suggestions for articles to include in future updates to this list. Articles are listed in reverse chronological order under each section heading.

Subject headings include: (1) Biotechnology/Biologics; (2) Case Analysis; (3) Consumer Protection; (4) Enforcement; (5) Fraud and Abuse; (6) Health Policy; (7) Hospitals; (8) Insurance; (9) Joint Ventures; (10) Managed Care; (11) Medical Devices; (12) Mergers and Acquisitions; (13) Monopolization; (14) Patents/Intellectual Property; (15) Pharmaceuticals: General; (16) Pharmaceuticals: Generic/Hatch-Waxman; (17) Physicians and Physician Groups; (18) Price Fixing; (19) Regulation/Legislation; and (20) Unfair Competition.

(1) Biotechnology/Biologics


Kevin Rollins, Nanobiotechnology Regulation: a Proposal For Self-regulation With Limited Oversight, 6 Nanotechnology Law & Business 221 (Summer 2009).


Andrew McCoy, Biotechnology and Embryonic Stem Cells: A Comparative Analysis of the Laws and Policies of the United States and Other Nations, 8 Loyola Law and Technology Annual 63 (Spring 2009).


David C. Hoffman, *A Modest Proposal: Toward Improved Access To Biotechnology Research Tools By Implementing A Broad Experimental Use Exception*, 89 Cornell L. Rev. 993 (May, 2004). Mainly a discussion of potential changes to intellectual property rights in the biotech industry, but includes some analysis of the economic forces influencing competition in this complex research field with potential impact on anticompetitive behavior.

Roger A. McEowen, *Legal Issues Related To The Use And Ownership Of GeneticallyModified Organisms*, 43 Washburn L.J. 611 (2004). Includes analysis of antitrust concerns raised when biotech firms act to protect their intellectual property rights. While mainly related to agriculture, this appears relevant to biotech generally.

M. Howard Morse, *Settlement Of Intellectual Property Disputes in the Pharmaceutical and Medical Device Industries: Antitrust Rules*, 10 Geo. Mason L. Rev. 359 (Spring, 2002). Examining "judicial precedents relating to antitrust challenges to settlement agreements, explores the earlier Boston Scientific and Summit-VISX enforcement actions, and applies the teaching from those cases to the recent pioneer generic pharmaceutical agreement challenges."

(2) Case Analysis


Amy Albro, "Rubbing Salt in the Wound": As Nurses Battle with a Nationwide Staffing Shortage, an NLRB Decision Threatens to Limit the Ability of Nurses to Unionize, 3 Nw. J. L. & Soc. Pol'y 103 (Winter, 2008).


Thomas A. Lambert, Evaluating Bundled Discounts, 89 Minn. L. Rev. 1688 (June, 2005). Analyzing the issue primarily through hospital and device manufacturer examples, including the decision in LePage's Inc. v. 3M.

Karen Brooks, Pharmaceutical Companies Facing Competition from Generic Drug Manufacturers May Face Increased Scrutiny for Anticompetitive Marketing Practices -- In re


Frank Fine, *European Community Compulsory Licensing Policy: Heresy Versus Common Sense*, 24 NW. J. Int'l L. & Bus. 619 (Spring, 2004). Discussing whether compulsory licensing, on antitrust grounds, is an appropriate means of breaking monopolies that owe their existence, to a large extent, to the ownership of valuable intellectual property.


James Thuo Gathii, *Balancing Patent Rights And Affordability Of Prescription Drugs In Addressing Bio-Terrorism: An Analysis Of In Re Ciprofloxacin Hydrochloride Antitrust Litigation*, 13 Alb. L.J. Sci. & Tech. 651 (Summer / Fall, 2003). This significant decision regarding patent rights and the availability of generic drugs wherein the court held “in essence, [that] the patent exception does not swallow or preclude an antitrust injury,” serves as a foundation for this articles exploration of health policy regarding prescription drugs and the intersection of patent protections and antitrust injury.


Robert W. Hahn and Anne Layne-Farrar, *Federalism in Antitrust*, 26 Harv. J.L. & Pub. Pol'y 877 (Summer, 2003). Using the example of the Microsoft litigation to support the position that States involvement in antitrust enforcement should be limited.

Guhan Subramanian, *The Drivers of Market Efficiency in Revlon Transactions*, 28 Iowa J. Corp. L. 691 (Summer, 2003). In depth analysis of certain drivers of market efficiencies with a couple healthcare examples and other situations analogous to industry issues.


Michael J. Meurer, *Controlling Opportunistic and Anti-Competitive Intellectual Property Litigation*, 44 B.C. L. Rev 509 (March 2003). This Article analyzes two methods of controlling rent-seeking costs associated with opportunistic and anti-competitive intellectual property lawsuits. One method discourages rent-seeking costs by reducing the credibility of weak lawsuits. A more extreme method eliminates rent-seeking costs by restricting or eliminating certain intellectual property rights.


Henry M. Rubinstein, D.C., *Wilk v. AMA: The Lingering Effects Of An Inadequate Injunction To Remedy Malignant Anti-Trust Violations Against The Chiropractic Profession - A Search For The Cure To Federal And State Executive, Legislative, And Judiciary Inaction To Continued Discrimination Of Chiropractic As Related Especially To Insurance*, 11 U. Miami Bus. L.Rev. 131 (Winter / Spring, 2003). Argues that the court's injunction in this case was wholly inadequate, and that it does nothing to rectify what the author describes as “the pernicious, and
pervasive poisoning of the chiropractic profession by the AMA, or the multitude of medical providers and health-care delivery decision makers in government and private sectors, where the AMA's stinging barbed tentacles ultimately reach.”


**Failure to Define Geographic Market Dooms Hospital's Antitrust Claims**, 10 Antitrust Litig. Reporter 7 (Nov. 2002).

*Analysis of the 5th Circuit decision in Surgical Care Center of Hammond L.C. v. Hospital Service District No. 1 of Tangipahoa Parish et al.*, No. 01- 30171 (5th Cir. Oct. 9, 2002).


Erica Lehrer Goldman, *$173.6 Million Antitrust Verdict In Texas Case*, 227 Legal Intel. 70 (Oct. 8, 2002); see also, Antitrust: Kinetic Concepts v. Hillenbrand Indus., *Hospital Bed Company Gets $520 Million Antitrust Award*, 10 Health Law Lit. Rep. 5 (Oct. 2002). Reports on the verdict in a private antitrust action against a manufacturer of specialty hospital beds accused of bundling activities that were “motivated by exclusionary and anticompetitive purposes and without legitimate business justification.”


*Antitrust Issues In The Pharmaceutical Industry*, 10 Antitrust Lit. Repr. 4 (Aug. 30, 2002). “This special issue of the Antitrust LR is devoted entirely to antitrust litigation in the pharmaceutical industry, with summaries of important developments over the last few months in lawsuits and at the FTC.”


Maryland v. Bristol-Myers Squibb Inc., States Sue Maker Of Cancer Drug For Keeping Generic Version Off the Market, 7 Health Care Fraud Lit. Rptr. 11, p.7 (July 2002). Twenty-nine states filed antitrust lawsuit charging that Bristol-Myers Squibb Inc. monopolized the market for the cancer-fighting drug Taxol and acted illegally to keep a cheaper, generic version off the market.

Y. Christopher Sipes, James R. Atwood, Recent Patent Ruling Intrudes on Key Antitrust Immunity Doctrine, 8 Intellectual Prop. Lit. Rptr. 24 (May 14, 2002).

Questioning the court’s decision in In re Buspirone Patent Litigation, 185 F. Supp. 2d 363 (S.D.N.Y. 2002), that pioneer drug manufacturers are not entitled to the legal protections from antitrust liability ordinarily associated with regulatory submissions and court filings when they submit their patents to FDA in order to invoke the patent provisions of the Hatch-Waxman Act.

Chester County Hosp. v. Independence Blue Cross, Hospital Seeks Breakup Of Pennsylvania Health Insurer, 9 Antitrust Lit. Rep. 12, p.3 (May 2002). Reporting on the complaint by a hospital against the regional Blue Cross entity claiming monopolization, attempted monopolization and restraint of trade where the insurer allegedly forced hospitals to accept reimbursement rates below their actual costs.

Peter J. Hammer, William M. Sage, Antitrust, Health Care Quality, And The Courts, 102 Colum. L. Rev. 545 (Apr. 2002). Empirical review of court opinions from the last 15 years examining American health care as a vehicle for advancing understanding of the nexus among competition, quality, and antitrust law. Expresses concern that quality and other nonprice considerations are afforded less weight in antitrust analysis. Concludes that courts have been successful in incorporating some nonprice factors into antitrust analysis.


Anti-Competition Charges Against AHP, 17 Pharm. Lit. Rep. 11, p.7 (Mar. 2002). American Home Products Corp. has agreed to settle charges filed by the Federal Trade Commission that it entered into an anti-competitive agreement with Schering-Plough Corp. to delay entry of a lower-cost generic drug into the U.S. market.


Leo T. Crowley, Tying Arrangements: Hospital and Physician Services, N.Y.L.J., Health Law, p.3 (June 18, 2001).

Discussing HealthAmerica Pennsylvania Inc. v. Susquehanna Health System, 2001 WL 395420 (M.D.Pa.).

Tal Sapeika, Dismissal of Hospitals' Suit Against Tobacco Firms Affirmed, 29 J.L. Med. & Ethics 238 (Summer 2001).

Discussing the decision in Association of Washington Public Hospital Districts v. Philip Morris, Inc., 241 F.3d 696 (9th Cir. 2001).

Nick Oldham, Exclusion of Radiologist By Hospital's Referral Network Upheld, 29 J.L. Med. & Ethics 239 (Summer 2001).


Uses In re Brand Name Prescription Drugs, Antitrust Litig., 186 F.3d 781 (7th Cir. 1999), as one example of problems surrounding the expert testimony of economists.


(3) Consumer Protection


Katrice Bridges Copeland, Enforcing Integrity, Indiana Law Journal, 87 Ind. L.J. 1033 (Summer 2012).


Kelly G. Dunberg, Just What The Doctor Ordered? How the Patient Safety and Quality Improvement Act May Cure Florida’s Patients’ Right to Know about Adverse Medical Incidents (Amendment 7), Florida Law Review, 64 Fla. L. Rev. 513 (April 2012).


David Gialanella, J&J Paying $181M to Settle Claims Over Medication Ads, New Jersey Law


Ralph S. Tyler et al., *The First Amendment and “Off-Label” Promotion*, Drug and Medical


*Google Agrees to Forfeit $500 Million in Connection with AdWords for Prescription Drugs,*


Michael Booth, Court Approves Class Suit Alleging Relacore Ad Fraud, New Jersey Law Journal (October 2010).

Julie Brill, Competition and Consumer Protection: Strange Bedfellows or Best Friends?, Antitrust Source, 10-DEC Antitrust Source 1 (December 2010).


Tobias J. Butler, Esq., The Realities of Relying on Doctor-Patient Non-Disclosure Agreements for Reputational Protection, Health Lawyer, 22 No. 5 Health Law. 23 (June, 2010). SocialU Consulting, LLC Atlanta, GA


Stacy Clark, Pharmaceutical Price-Fixing and Consumer Protection: Blue Cross & Blue Shield v. Astrazeneca Pharmaceuticals LP, Journal of Law, Medicine & Ethics, 38 J.L. Med. & Ethics


Philip M. Kober, *Regulating Medicine on the Internet,* Wisconsin Lawyer, 83-FEB Wis. Law. 10 (February 2010).


Carol Rooney, *The Learned Intermediary Doctrine: An Update,* Trial Advocate Quarterly, 29 No. 1 Trial Advoc. Q. 6 (Winter 2010).


Randal Shaheen & Amy Ralph Mudge,
Substantiation?, Antitrust 25-FALL Antitrust 65 (Fall 2010).


Interview with David Vladeck, Director, FTC Bureau of Consumer Protection, Antitrust Source, 9-APR Antitrust Source 1(April 2010).

Jackson Williams, Sunshine Proposals for Imaging Ownership and Drug/Medical Device Manufacturer Relationships: Physician Disclosures and the Limits of Consumerism in Health Care, DePaul Journal of Health Care Law, 13 DePaul J. Health Care L. 131 (Summer 2010).


(4) Enforcement


John Calender, Alexander McIntyre, Jr., Disgorgement From Generic Drug Manufacturers For Agreement Not To Compete, 52 LA Bar Jnl. 286 (December 2004/January 2005).


Mark Taylor, Case In Point; Challenge Of Hospital Merger Key To Antitrust Climate, Modern Healthcare, August 9, 2004, Pg. 20. News regarding the FTC’s challenge to an Illinois hospital merger.


Thomas A. Piraino, Jr., *A New Approach To The Antitrust Analysis Of Mergers*, 83 B.U.L. Rev. 785 (October, 2003). Arguing for changes to prevailing merger analysis by adopting a review policy with a sliding scale approach courts have begun to use when analyzing collaborations among competitors under Section 1 of the Sherman Act. Not healthcare specific, though a hospital merger case is used as an example.


Robert W. Hahn and Anne Layne-Farrar, *Federalism in Antitrust*, 26 Harv. J.L. & Pub. Pol'y 877 (Summer, 2003). Using the example of the Microsoft litigation to support the position that States involvement in antitrust enforcement should be limited.


Managed Care Week, *DOJ, FTC eye possible antitrust violations among insurers, other health entities*, 8 Managed Care Week 13, 1 (Mar. 3, 2003). Heightened scrutiny discussed at DOJ FTC hearings on healthcare competition policy.


Managed Care Week, *Health insurers will share in an $ 80 million settlement to be paid by two drug companies to resolve an antitrust lawsuit involving the blood pressure medication Cardizem CD*, 5 Managed Care Week 13, 6 (Feb. 3, 2003); see also, AG Bulletin, *Attorneys General Announce Antitrust Settlement With Pharmaceutical Manufacturers*, AG Bulletin (Jan. 2003), Health L. Litig. Reporter, Pharmaceuticals: *In re Cardizem CD Antitrust Litig.*, $80 Million Settlement Ends


Patricia A. Conners, *Current Trends and Issues in State Antitrust Enforcement*, 16 Loy. Consumer L. Rev. 37 (2003). Noting that the health care industry has received more attention from state antitrust enforcers than any other industry, and giving particular focus on hospital mergers and pharmaceutical issues.


import of this summer’s FTC decision exonerating Schering-Plough Corp. and generic
drugmaker. Upsher-Smith Laboratories Inc. of charges of anticompetitive behavior. The decision
was appealed in August and a Commission ruling is expected this winter.

1 (Sept. 2002). Discussing physician collective bargaining power, and focusing on the FTC
Advisory Opinion letter, dated February 19, 2002, concerning the ability of MedSouth, “a large
independent practice association ("IPA") of approximately 430 clinically integrated, but not
financially integrated physicians, to jointly negotiate contracts with health plans.”

“This special issue of the Antitrust LR is devoted entirely to antitrust litigation in the
pharmaceutical industry, with summaries of important developments over the last few months in
lawsuits and at the FTC.” Tatiana Boncompagni, *Prescription for Hatch-Waxman Is Change: With
decision their rallying cry, advocates for generic and name-brand drugmakers agree that
law is flawed. At Senate hearing, FTC reveals action against "illegal" patent moves by Biovail,
Marketletter (Apr. 29, 2002). FTC announces its first enforcement action against unilateral
moves by a branded drugmaker to delay generic competition.

FTC gets responsibility for all pharmaceutical and biotech transactions.

Michael R. Bissegger, *Messenger Models Still Are Antitrust Problems For Providers*, 3 Health
Care Strategic Management 20, 9 (Mar. 1, 2002) Discussing the settlement between the
Federation of Physicians and Dentists and the United States Department of Justice.

Modern Healthcare, *New Sheriff In Town : Health Insurers Take Antitrust Enforcement Matters
article about a trend in private actions.

Geraldine M. Alexis and Zorah Braithwaite, *FTC Improperly Injects Itself Into Drug Patent

Marketletter, *GlaxoSmithKline Censured For Abuse of Market Dominance in Greece*,
Marketletter (Oct. 29, 2001).

Jill Wechsler, *Industry Under Investigation: Prosecutors are focusing on marketing, pricing, and
agreements to delay generic competition*, 6 Pharmaceutical Executive 21, 24 (June 1, 2001).
Recent news about the enforcement agencies' prosecution of cases surrounding drug samples.
Antitrust Report, *Akzo Nobel Agrees to Plead Guilty/And Pay $ 12 Million Fine for its
Role in Criminal Antitrust Conspiracy*, 28 Antitrust Report 3, 12 (May/June 2001). The
conspiracy was to "fix prices and allocate market shares of monochloroacetic acid (referred to as
MCAA)."


**(5) Fraud and Abuse**


(6) **Health Policy**

Robert J. Donaher, *AntiTrust Compliance Under the Affordable Care Act*, N.J. Law., June 2014, at 6


Marc A. Rodwin, *The Metamorphosis of Managed Care: Implications for Health Reform Internationally*, Journal of Law, Medicine & Ethics, 38 J.L. Med. & Ethics 352 (Summer 2010).


Tobi M. Murphy, Enforcement Of The HIPAA Privacy Rule: Moving From Illusory Voluntary Compliance To Continuous Compliance Through Private Accreditation, 54 Loy. L. Rev. 155 (Spring, 2008). Not antitrust per se, but FTC enforcement in the healthcare field.


James C. Cooper, E-Commerce Symposium -- May 24, 2006: *Public Versus Private Restraints On The Online Distribution Of Contact Lenses: A Distinction With A Difference*, 3 J.L. Econ. & Pol'y 331 (Spring, 2007).

Mike J. Wyatt, *Note: Leveling the Healing Field: Specialty Hospital Legal Reform as a Cure for an Ailing Health Care System*, 46 Washburn L.J. 547 (Spring, 2007).


antitrust grounds, is an appropriate means of breaking monopolies that owe their existence, to a large extent, to the ownership of valuable intellectual property.


Managed Care Week, *DOJ, FTC eye possible antitrust violations among insurers, other health entities*, 8 Managed Care Week 13, 1 (Mar. 3, 2003). Heightened scrutiny discussed at DOJ FTC hearings on healthcare competition policy.

Discussing increased activity in antitrust enforcement in the healthcare industry and the upcoming series of public hearings about healthcare competition policy.


Bryan A. Liang, M.D., Ph.D., J.D. & Steven D. Small, M.D., *Communicating about Care: Addressing Federal-State Issues in Peer Review and Mediation to Promote Patient Safety*, 3 Hous. J. Health L. & Pol'y 219 (2003). Interesting discussion of medical errors, quality assurance, and legal implications. There are indirect relations to antitrust law in the interpretations of peer review and the competitive issues frequently raised in that context.


Peter J. Hammer, William M. Sage, *Antitrust, Health Care Quality, And The Courts*, 102 Colum. L. Rev. 545 (Apr. 2002). Empirical review of court opinions from the last 15 years examining American health care as a vehicle for advancing understanding of the nexus among competition, quality, and antitrust law. Expresses concern that quality and other nonprice considerations are afforded less weight in antitrust analysis. Concludes that courts have been successful in incorporating some nonprice factors into antitrust analysis.
Thomas L. Greaney, Whither Antitrust? The Uncertain Future of Competition Law in Health Care, 3/1/02 Health Aff. 185 (Mar/Apr, 2002).


M. Howard Morse, Settlement Of Intellectual Property Disputes in the Pharmaceutical and Medical Device Industries: Antitrust Rules, 10 Geo. Mason L. Rev. 359 (Spring 2002). Examining “judicial precedents relating to antitrust challenges to settlement agreements, explores the earlier Boston Scientific and Summit-VISX enforcement actions, and applies the teaching from those cases to the recent pioneer generic pharmaceutical agreement challenges.”

Elizabeth Stanley, An Ounce Of Prevention: Analysis Of Drug Patent Settlements Under The Hatch-Waxman Act, 10 Geo. Mason L. Rev. 345 (Spring 2002). Using the pharmaceutical industry and generic drug cases under Hatch-Waxman in particular, as the best example of the tension between patent and antitrust laws, to examine these competing rights and changes in the law.

Richard M. Steuer, Peter A. Barile III, Antitrust In Wartime, 16 Antitrust ABA 71 (Spring 2002). Exploration on the effect of war on antitrust policy and government intervention to relax antitrust enforcement. Particularly interesting reading on issues that span antitrust though it does not deal with healthcare specific issues.


Daniel B. Ravicher & Shani C. Dilloff, *Antitrust Scrutiny Of Intellectual Property Exploitation: It Just Don't Make No Kind Of Sense*, 8 Sw. J. of L. & Trade Am. 83 (2001/2002). Discussing the role of antitrust. “There is only one politically proper method for changing the intellectual property law; and, the application of antitrust law to intellectual property exploitation by the judicial and executive branches is not that method.”


Kevin Gopal, *Cutting Through the Jungle*, 9 Pharmaceutical Executive 21, 38 (Sept. 1, 2001). A brief, though interesting article, discussing some current and ongoing problems in the German healthcare system.


Herbert Hovenkamp, *Post-Chicago Antitrust: A Review And Critique*, 2001 Colum. Bus. L. Rev. 257 (2001). One of the most respected writers in the field analyzing recent developments. No direct discussion of healthcare specific issues. The article examines the successes and failures of the post-Chicago school of antitrust analysis. Noting the “failures” of the Kodak decision and the
“successes” of the theory of raising rivals' costs (RRC) in explaining of certain exclusionary practices, and the theory of unilateral effects as related to horizontal mergers.

(7) Hospitals


Mike J. Wyatt, *Note: Leveling the Healing Field: Specialty Hospital Legal Reform as a Cure for an Ailing Health Care System*, 46 Washburn L.J. 547 (Spring, 2007).


Sara Rosenbaum, et al., *EMTALA and Hospital "Community Engagement": The Search for a Rational Policy*, 53 Buffalo L. Rev. 499 (Spring, 2005). In part addressing collaboration among competing hospitals.


Beverly Cohen, *An Examination Of The Right Of Hospitals To Engage In Economic Credentialing*, 77 Temp. L. Rev. 705 (Fall, 2004).

Mark Taylor, *Unusual Case; Oral Hearings Set In N.Y. For Rare Antitrust Case*, Modern Healthcare, August 9, 2004, Pg. 18. News regarding ambulatory surgery center’s case alleging anticompetitive acts by a not for-profit hospital.

Mark Taylor, *Case In Point; Challenge Of Hospital Merger Key To Antitrust Climate*, Modern Healthcare, August 9, 2004, Pg. 20. News regarding the FTC’s challenge to an Illinois hospital merger.


Stuart R. Cohn, *The Non-Merger Virtual Merger: Is Corporate Law Ready For Virtual Reality?* 29 Del. J. Corp. L. 1 (2004). Discussing the recent phenomena of “virtual mergers” (contractual arrangements that function as mergers without the formality) and using a case of New York hospitals as a primary example.


Thomas A. Piraino, Jr., *A New Approach To The Antitrust Analysis Of Mergers*, 83 B.U.L. Rev. 785 (October, 2003). Arguing for changes to prevailing merger analysis by adopting a review policy with a sliding scale approach courts have begun to use when analyzing collaborations among competitors under Section 1 of the Sherman Act. Not healthcare specific, though a hospital merger case is used as an example.


Eunice A. Moon, *Redefining Relevant Markets Under The Sherman Antitrust Act: The New York District Court Finds Mastercard And Visa In A Class Of Their Own*, 34 Rutgers L. J. 797 (Spring, 2003). General discussion of market analysis with particular focus on the Visa case and examples from healthcare industry cases.


Patricia A. Conners, *Current Trends and Issues in State Antitrust Enforcement*, 16 Loy. Consumer L. Rev. 37 (2003). Noting that the health care industry has received more attention from state antitrust enforcers than any other industry, and giving particular focus on hospital mergers and pharmaceutical issues.

*Failure to Define Geographic Market Dooms Hospital's Antitrust Claims*, 10 Antitrust Litig. Reporter 7 (Nov. 2002).

*Analysis of the 5th Circuit decision in Surgical Care Center of Hammond L.C. v. Hospital Service District No. 1 of Tangipahoa Parish et al., No. 01- 30171 (5th Cir. Oct. 9, 2002).*

*Chester County Hosp. v. Independence Blue Cross, Hospital Seeks Breakup Of Pennsylvania Health Insurer*, 9 Antitrust Litig. Reporter 12, p.3 (May 2002). Reporting on the complaint by a hospital against the regional Blue Cross entity claiming monopolization, attempted
monopolization and restraint of trade where the insurer allegedly forced hospitals to accept reimbursement rates below their actual costs.

Peter P Budetti; Stephen M Shortell; Teresa M Waters; Jeffrey A Alexander; et. al, Physician and Health System Integration, 1/1/02 Health Aff. 203 (Jan/Feb 2002). Analyzing the pressure on hospitals and practitioners to create vertically integrated health systems.

Stephen D. Williger, Maynard A. Buck, Health Care Entities, A World of Privilege and Immunity?, 49 Fed. Law. 32 (Jan. 2002). Discussing the Health Care Quality Improvement Act (HCQIA), and noting antitrust issues relating to Peer Review disputes.


Gregory Vistnes, Hospital Competition in HMO Networks, 20 J Health Econ 5 (Sept. 1, 2001).


Nick Oldham, Exclusion of Radiologist By Hospital's Referral Network Upheld, 29 J.L. Med. & Ethics 239 (Summer 2001).


Tal Sapeika, Dismissal of Hospitals' Suit Against Tobacco Firms Affirmed, 29 J.L. Med. & Ethics 238 (Summer 2001).

Discussing the decision in Association of Washington Public Hospital Districts v. Philip Morris, Inc., 241 F.3d 696 (9th Cir. 2001).


Discussing HealthAmerica Pennsylvania Inc. v. Susquehanna Health System, 2001 WL 395420 (M.D.Pa.).

Dr. Cyril Toker, Hospital Mergers That Strangle Reproductive Services: Can the Patient Find Any Remedy within the Legal System?, 2 Fl. Coastal L.J. 291 (Spring, 2001). Examining the legal recourse for people who have been denied reproductive services by Catholic hospitals, and the effect of mergers among sectarian and nonsectarian hospitals.

Lauretta Higgins Wolfson, State Regulation of Health Facility Planning: The Economic Theory and Political Realities of Certificates Of Need, 4 DePaul J. Health Care L. 261 (Winter/Spring, 2001). Discussing the history and current workings of the Illinois health facility planning system's Certificate of Need "CON" program.

Sandra DiFranco, Denying Medical Staff Privileges Based on Economic Credentials, 15 J.L. & Health 247 (2001). Discussing medical staff credentialing, economic credentialing, and a solution to the “vague relationship” that exists between physicians and hospitals.


Kevin J. Smith, Health Care Provider Bankruptcy and Medicare Overpayments at the New Millennium, 33 U. West. L.A. L. Rev. 227 (2001). "The purpose of this Article is to inform current and potential health care providers – and their attorneys - of some of the situations that may arise when the health care provider files for bankruptcy protection."


Gregory Vistnes, Hospitals, Mergers, and Two stage Competition, 67 Antitrust L.J. 671 (2000). An analysis of several hospital mergers challenged by the FTC, and several mergers that went unchallenged.

(8) Insurance


Matthew L. Cantor & Axel Bernabe, Antitrust Ramifications of Exclusivity in Health Care, BNA Insights, June 12, 2013


Henry M. Rubinstein, D.C., *Wilk v. AMA: The Lingering Effects Of An Inadequate Injunction To Remedy Malignant Anti-Trust Violations Against The Chiropractic Profession - A Search For The Cure To Federal And State Executive, Legislative, And Judiciary Inaction To Continued Discrimination Of Chiropractic As Related Especially To Insurance*, 11 U. Miami Bus. L.Rev. 131 (Winter / Spring, 2003). Argues that the court's injunction in this case was wholly inadequate, and that it does nothing to rectify what the author describes as “the pernicious, and pervasive poisoning of the chiropractic profession by the AMA, or the multitude of medical providers and health-care delivery decision makers in government and private sectors, where the AMA's stinging barbed tentacles ultimately reach.”
Managed Care Week, Health insurers will share in an $80 million settlement to be paid by two drug companies to resolve an antitrust lawsuit involving the blood pressure medication Cardizem CD, 5 Managed Care Week 13, 6 (Feb. 3, 2003); see also, AG Bulletin, Attorneys General Announce Antitrust Settlement With Pharmaceutical Manufacturers, AG Bulletin (Jan. 2003), Health L. Litigation Reporter, Pharmaceuticals: In re Cardizem CD Antitrust Litig., $80 Million Settlement Ends Collusion Suit Over Heart Drug, 10 Health L. Litig. Reporter 9, 11 (Feb. 2003). The lawsuit alleged that Aventis Pharmaceuticals, Inc. and Andrx Corp. conspired to delay availability of a generic version of Cardizem CD from July 1998 to June 1999.


Chester County Hosp. v. Independence Blue Cross, Hospital Seeks Breakup Of Pennsylvania Health Insurer, 9 Antitrust Lit. Rep. 12, p.3 (May 2002). Reporting on the complaint by a hospital against the regional Blue Cross entity claiming monopolization, attempted monopolization and restraint of trade where the insurer allegedly forced hospitals to accept reimbursement rates below their actual costs.

Managed Care Week, Attorney General Grants MDs Permission To Jointly Negotiate With Texas Blues, 33 Managed Care Week 11, 1 (Sept. 10, 2001).

(9) Joint Ventures


Bruce A. Johnson & Gerald A. Niederman, New FTC Advisory Opinion Approves Clinical Integration Program, BNA Insights, Feb. 28, 2013


Thomas A. Piraino, Jr., The Antitrust Analysis Of Joint Ventures After The Supreme Court's Dagher Decision, 57 Emory L.J. 735 (2008).


Stuart R. Cohn, *The Non-Merger Virtual Merger: Is Corporate Law Ready For Virtual Reality?* 29 Del. J. Corp. L. 1 (2004). Discussing the recent phenomena of “virtual mergers” (contractual arrangements that function as mergers without the formality) and using a case of New York hospitals as a primary example.


M. Gregg Bloche, *The Invention of Health Law*, 91 Calif. L. Rev. 247 (March, 2003). Broad health policy analysis noting that courts are creating current health law, and that it is developing without benefit of focused rational analysis. Antitrust is used as a prime example in analyzing portions of the welfare-maximization model.


Eunice A. Moon, *Redefining Relevant Markets Under The Sherman Antitrust Act: The New York District Court Finds Mastercard And Visa In A Class Of Their Own*, 34 Rutgers L. J. 797 (Spring, 2003). General discussion of market analysis with particular focus on the Visa case and examples from healthcare industry cases.

(10) Managed Care


James F. Rill, *Collusion On Structure Of Prescription Drug Formularies Would Violate Antitrust Laws*, 17 Legal Backgrounder 50 (Nov. 15, 2002). Advocating the potential for anticompetitive behavior that exists where pharmacy benefit management plans, operated by managed care companies, conspire to fix the structure of their plan formularies.


Jack E. Karns, *The Reliance On Federal Preemption Law By Managed Care Organizations and Group Plan Insurers To Create An Impenetrable Shield Against Patients' State Law Claims*, 15 St. Thomas L. Rev. 201 (Fall 2002). A critique of managed care focusing on various techniques used by the industry to avoid liability, including ERISA, and discussing relevant recent decisions including Pegram v. Herdrich, 530 U.S. 211, 220 (2000).

Miriam L. Clemons, *Don't Shoot the Messenger: Independent Physicians and Joint Payment Contracting Using the Messenger Model*, 32 U. Mem. L. Rev. 927 (Summer, 2002). Examining managed care contracting, and the difficulties that individual and small group providers face in determining the fees they will receive from the MCO's for the services they provide.


*Case Briefs: Antitrust*, 4 DePaul J. Health Care L. 223 (Fall 2000).


(11) Medical Devices


M. Howard Morse, *Settlement Of Intellectual Property Disputes in the Pharmaceutical and Medical Device Industries: Antitrust Rules*, 10 Geo. Mason L. Rev. 359 (Spring, 2002). Examining “judicial precedents relating to antitrust challenges to settlement agreements, explores the earlier Boston Scientific and Summit-VISX enforcement actions, and applies the teaching from those cases to the recent pioneer generic pharmaceutical agreement challenges.”

(12) Mergers & Acquisitions


Alexis Slagle Gilroy & Jana Kolarik Anderson, *Unique Considerations for Health Care Mergers and Acquisitions*, in Navigating Health Care M&A Transactions: Leading Lawyers on...
Conducting Due Diligence and Developing an Effective Deal Strategy for Health Care Clients 77 (2013), available at 2013 WL 2729770


Tom Campbell, Defending Hospital Mergers After the FTC's Unorthodox Challenge to the Evanston Northwestern - Highland Park Transaction, 16 Ann. Health L. 213 (Summer, 2007).

Robert Pitofsky, Efficiency Consideration And Merger Enforcement: Comparison Of U.S. And EU Approaches, 30 Fordham Int'l L.J. 1413 (May, 2007). Interesting article, though it includes only limited healthcare issues as examples.


Mark Taylor, Case In Point; Challenge Of Hospital Merger Key To Antitrust Climate, Modern Healthcare, August 9, 2004, Pg. 20. News regarding the FTC’s challenge to an Illinois hospital merger.
Stuart R. Cohn, *The Non-Merger Virtual Merger: Is Corporate Law Ready For Virtual Reality?* 29 Del. J. Corp. L. 1 (2004). Discussing the recent phenomena of “virtual mergers” (contractual arrangements that function as mergers without the formality) and using a case of New York hospitals as a primary example.

Thomas A. Piraino, Jr., *A New Approach To The Antitrust Analysis Of Mergers*, 83 B.U.L. Rev. 785 (October, 2003). Arguing for changes to prevailing merger analysis by adopting a review policy with a sliding scale approach courts have begun to use when analyzing collaborations among competitors under Section 1 of the Sherman Act. Not healthcare specific, though a hospital merger case is used as an example.

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and generic pharmaceutical policy arguing that procompetition, pro-patent, and pro-settlement interests should be balanced to achieve the lowest net social cost.


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