

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

NORTHWEST SPECIALTY HOSPITAL,)	Case No.: CV 07-560
Plaintiff,)	
vs.)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
NORTH IDAHO HEALTH NETWORK,)	
Defendant.)	

INTRODUCTION.

This matter came before the Court on a two-day court trial beginning October 20, 2008. Plaintiff Northwest Specialty Hospital (NSH) was represented by Kevin C. Braley of Holland & Hart, L.L.P., and defendant North Idaho Health Network (NIHN) was represented by Kimbell C. Gourley of Trout, Jones, Gledhill, Fuhrman, P.A. Following an I.R.C.P. 41(b) motion made by NIHN at the conclusion of NSH's case, this Court granted such motion, and the reasons for this Court granting such motion and the reasons for this Court's findings and conclusions were made on the record in open court on October 21, 2001, as required under *Sorenson v. Adams*, 98 Idaho 708, 571 P.2d 769 (1977).

The dispute in this case arises from NSH's efforts to become a hospital member of NIHN's network of hospitals and physicians. NSH is a hospital in

Post Falls that conducts both inpatient and outpatient surgery, is duly licensed by the Idaho Department of Health and Welfare, is Medicare certified and accredited by the Joint Commission on Accreditation of Health Care Organizations. NIHN is a physician-hospital organization that consists of a network of physicians and hospitals in Benewah, Boundary, Bonner, Kootenai and Shoshone counties. As a health care provider network, NIHN contracts with insurance companies and managed care plans to provide a network of providers who will perform medical services for a contracted fee. For managed care plans, the insurance companies offer benefits to their insureds at lower deductibles or lower co-pays when those insureds use NIHN's "in-network", and the insurance companies use disincentives of higher deductibles and higher co-pays when an insured uses "out-of-network" providers who are not part of NIHN's network.

NSH contracts with Blue Cross directly when a patient is insured under a Blue Cross traditional indemnity insurance or preferred provider organization (PPO) insurance. NSH contracts with Regence Blue Shield directly when a patient is insured under a traditional or statewide PPO network. However, Blue Cross uses NIHN exclusively to contract with providers for its managed care plans in North Idaho, and Regence Blue Shield uses NIHN exclusively to contract with providers for its RegionalCare PPO network plans in North Idaho. NIHN's by-laws prevent NSH from becoming a member of NIHN, as only one hospital per county can be a member under NIHN's by-laws, and Kootenai Medical Center (KMC) is that hospital for Kootenai County. Because NSH is not a member of NIHN, NIHN will not contract with NSH as an in-network provider for

Blue Cross' managed care plans and Regence Blue Shield's RegionalCare PPO plan. Since NSH is not a member of NIHN, patients of NSH who have Blue Cross managed care insurance or Regence Blue Shield RegionalCare PPO must decide to either 1) have their surgery at NSH but pay higher deductibles or co-pays due to the fact that NSH is "out-of-network", or 2) have their surgery performed at Kootenai Medical Center which is the exclusive hospital in Kootenai County under its arrangement with NIHN, and thus, is an "in-network" provider under those health care plans.

NSH filed this declaratory judgment action on January 23, 2007, claiming it is entitled to a determination by this Court that NIHN has wrongfully refused to contract with NSH and has violated Idaho's "Any Willing Provider" statute, Idaho Code § 41-3927. The only appellate case interpreting that statute is *Idaho Cardiology Associates v. Idaho Physicians Network*, 141 Idaho 223, 108 P.3d 370 (2005). The key difference in that case was one corporation owned sixty-percent of the network (the equivalent of NIHN), owned all of the physicians' group and all of an insurance company. Similar to this case, the network would not let a group of physicians, Idaho Cardiology Associates (the equivalent of NSH) into its network. Due to the common ownership, the Idaho Supreme Court found the network was subject to the "any willing provider" statute. While there is in effect an "exclusive" relationship between NIHN and Kootenai Medical Center, there is no common ownership between NIHN and Kootenai Medical Center, or between NIHN and any other provider for that matter. Nor is there any common

ownership between NIHN and Blue Cross, Regence Blue Shield or any other insurance company.

I. FINDINGS OF FACT

1. NIHN was formed on August 26, 1994, with the Idaho Secretary of State as an Idaho non-profit corporation. NSH is organized as North Idaho Day Surgery, LLC, a limited liability company under the laws of Idaho, and does business in Post Falls, Idaho, as Northwest Specialty Hospital (NSH). Venue is proper in this Court pursuant to Idaho Code § 5-404 and the Court has original jurisdiction over this matter pursuant to Idaho Code §1-705 and § 5-514.

2. A true and correct copy of NIHN's Articles of Incorporation has been admitted into evidence as Defendant's Exhibit B.

3. NIHN adopted bylaws and amendments thereto which were admitted into evidence as Defendant's Exhibits C, D, E, and F (the "Bylaws").

4. NIHN was formed for the purpose of establishing a network by which providers and payors would be contractually united.

5. NIHN receives compensation from payors based upon a per member per month fee. NIHN does not receive any compensation from providers.

6. NIHN has contracts with five payors, two of which are insurance companies, and three of which are self-insured employers.

7. NIHN has contracts with five hospital providers and approximately 265 physician providers.

8. NIHN has no ownership interest in, affiliation with, or relationship with payors other than contractual. NIHN's only relationship with its payors is a contractual relationship, whereby the payors agree to pay NIHN a per member per month fee for access to NIHN's network.

9. NIHN on or about the 12th day of June, 1995, entered into a contract with Kootenai Medical Center, whereby NIHN agreed that Kootenai Medical Center would be its exclusive hospital provider in Kootenai County, Idaho.

10. NIHN's Bylaws requires its hospital providers to be "Class B" members of NIHN.

11. Northwest Specialty Hospital (NSH) is not a "Class B" member of NIHN.

12. NSH has made no efforts to date to become a "Class B" member of NIHN, however, beginning in 2006, NSH made written requests to NIHN to become a part of NIHN's provider network.

13. NIHN does not provide any "basic health care services" as defined by Idaho Code § 41-3903.

14. NIHN is not a "managed care organization" as defined by Idaho Code § 41-3903(14). NIHN does not "offer" a "managed care plan" as defined in Idaho Code § 41-3903(15), and as referenced in Idaho Code § 41-3903(14), because NIHN does not "offer" a "contract of coverage given to an individual, family or group of covered individuals". The insurance companies perform that function. While NIHN's by-laws control or determine "what" gets offered by Blue

Cross and Regence Blue Shield (KMC as the only “in-network” hospital and NSH as an “out-of-network” hospital) on certain plans from those companies, NIHN does not make the offer of those “managed care plans”, Blue Cross and Regence Blue Shield make the offer. NIHN brings providers (physicians and hospitals) and payors (insurance companies, managed care companies and self-insured employers) together, but NIHN does not render “basic health care services” as defined in Idaho Code § 41-3903(1), and as referenced in Idaho Code § 41-3904(4).

II. CONCLUSIONS OF LAW

1. NIHN does not provide "basic health care services" as defined by Idaho Code § 41-3903, and as referenced in Idaho Code § 41-3904(4).

2. NIHN is not individually a "managed care organization" as defined by Idaho Code § 41-3903(14). NIHN does not “offer” a “managed care plan” as defined in Idaho Code § 41-3903(15), and as referenced in Idaho Code § 41-3903(14), because NIHN does not “offer” a “contract of coverage given to an individual, family or group of covered individuals”. The insurance companies perform that function. While NIHN’s by-laws control or determine “what” gets offered by Blue Cross and Regence Blue Shield (KMC as the only “in-network” hospital and NSH as an “out-of-network” hospital) on certain plans from those companies, NIHN does not make the offer of those “managed care plans”, Blue Cross and Regence Blue Shield make the offer. NIHN brings providers (physicians and hospitals) and payors (insurance companies, managed care

companies and self-insured employers) together, but NIHN does not render "basic health care services" as defined in Idaho Code § 41-3903(1), and as referenced in Idaho Code § 41-3904(4).

3. NIHN does not have any connections or affiliations with a "managed care organization" as defined by Idaho Code §41-3903(14).

4. NIHN is not part of an "organization" within the definition of "managed care organization" set forth in Idaho Code § 41-3903(14).

5. NIHN is not subject to the "any willing provider" statute set forth in Idaho Code § 41-3927, and as interpreted by *Idaho Cardiology Associates v. Idaho Physicians Network*, 141 Idaho 223, 108 P.3d 370 (2005).

DATED this 22nd day of October, 2008.

John T. Mitchell, District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of October, 2008, a true and correct copy of the foregoing document was served as follows:

Kevin C. Braley HOLLAND & HART LLP P.O. Box 2527 Boise, ID 83701	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile (208) 343-8869 <input type="checkbox"/> Overnight Delivery
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Kimbell D. Gourley TROUT JONES GLEDHILL FUHRMAN P. O. Box 1097 Boise, ID 83701	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile (208) 331-1529 <input type="checkbox"/> Overnight Delivery
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Jeanne Clausen, Deputy Clerk