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SPECIAL FEATURE

OVERVIEW OF THE REVISED JUSTICE/FTC ENFORCEMENT GUIDELINES FOR THE HEALTH-CARE INDUSTRY: PART II

E. John Steren

This is the second part of a two-part series on the Revised Justice/Federal Trade Commission Enforcement Guidelines for the Health Care Industry, which were issued on September 27, 1994. Part I of this article (November 28, 1994 Management Briefs) covered Statements 1 through 4, which focused on mergers among hospitals, hospital joint ventures involving high-technology or other expensive health-care equipment, hospital joint ventures involving specialized clinical or other expensive health-care services, and provider's collective provision of non-fee-related information to purchasers of health-care services. Part II focuses on Statements 5 through 9.

Statements 5 and 6: Exchanges of fee-related, price, and cost information

Two safety zones relate to information exchanges pertaining to the provision of fee-related information to purchasers of health-care services (Statement 5) and provider participation in exchanges of price and cost information (Statement 6). Although these safety zones deal with different information exchanges, the parameters of each are similar and, therefore, are discussed together.

To fall within either of these safety zones, the collection of fee, price, or cost

information that is available to competing providers must:

1. be collected by an independent third party
2. be more than 3 months old (Note: Pricing and cost data not shared between competing providers may be more current.)
3. contain information from at least five providers—with no individual provider's data representing more than 25% of the statistics.

The exchange of information between competing providers in contemplation or furtherance of an agreement between them would not be protected under these safety zones. Likewise, any boycott on the part of providers to force payors into accepting collectively determined fees would be subject to antitrust challenge.

Finally, the collection of anticipated fees, price, or cost information would not be covered by either of these safety

zones. However, the Agencies—recognizing the potential usefulness of this type of information—have decided to review these exchanges on a case-by-case basis. In doing so, the Agencies will consider the nature of the information provided, the extent of the communications between providers, and the reason for the exchange. Laboratories and other health-care providers must recognize that the exchange of anticipated fee, price, and cost information can easily lead to agreements between providers that could be considered unlawful under the antitrust laws.

The competitive implications of sharing fee, price, and cost information under this safety zone should not differ between health-care providers and laboratories. Therefore, there is no rational justification for not extending the security of this safety zone to laboratories. For example, the principles outlined earlier might come into play if a group of local laboratories were negotiating with a managed-care entity for the provision of clinical lab services statewide. The laboratories should be able to share dated information with the managed-care entity using an independent third party without much antitrust concern.

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SPECIAL FEATURE

COMBATING PACKRATISM: STRIPPING YOUR FILES

Jeff Davidson

As our society speeds off in all directions, it's understandable that more and more of us are hanging on to pieces of the past. To combat "packratism," first recognize that you remain the primary force preventing what you're holding on to from engulfing you. To take control, eliminate whatever clogs your system and interferes with your effectiveness.

We all tend to overcollect. You probably need to toss most of what is in your files, but we'll go easy for now. The three principles of combating packratism

are to:

1. break down horizontal piles
2. reread your priority list and ask key questions
3. master the art of creative trashing.

Principle 1: Break down horizontal piles

You cannot manage a horizontal pile; indeed, no one can efficiently negotiate this spatial arrangement. Human beings most effectively organize printed information vertically—either in

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a filing cabinet with all labeled tabs facing upward or in a vertical divider with tabs facing outward.

Horizontal piles cannot be a final resting place for the items in them because you always have to do something else with them. To know in seconds whether or not someone is efficient, visit his/her office or home and observe whether or not he/she maintains horizontal piles.

Principle 2: Devise a list of priorities and goals

Once you have devised this list, wade through each of your files and ask yourself four questions.

- ◆ Have I used this information in the last year?
- ◆ Are there any consequences of not retaining it?
- ◆ Does it support me, my family, job, or community?
- ◆ Is the information/item irreplaceable?

Feel free to retain the item(s) if you answer “yes” to any of the above questions. Nevertheless, in light of what you now know, your priorities, and the surrounding overglut, is retention warranted? So often the answer is “Toss it.”

Principle 3: Master the art of creative trashing

What else can you toss right now that barely exceeds the criteria for retention?

- ◆ Which books can you give away? What information that is old hat to you would be welcomed by a newer member of your organization?
- ◆ How many bags and boxes of old clothes and books can you donate to the Salvation Army or Goodwill? What about the hospitals, schools, libraries, and homes in your area? It is a lot easier to let go of items when you know they will benefit others.
- ◆ Place a box where you can see it (*e.g.*, in a closet, pantry, or other area) and add to it as you discover clothes that don't fit or items you choose not to hold on to.
- ◆ When the bag or box is full, drop it off. In addition to reducing the clutter in your home, you have now contributed to a worthy cause.

Consider every piece of paper, junk mail solicitation, note, document, book, article of clothing—indeed *anything* you retain—that does not support your

everyone, the answer is a resounding YES!

If you're still having second thoughts about tossing things, try this approach. View the item(s) or information on 5 separate days. If the item is best retained or is of value, then you will intuitively feel this during each review. At any point, you may toss the item. After the fifth review, feel free to retain it.

When you want to toss something but are getting weak in the knees, recall how good it felt to toss other items—how months passed and you never missed them. Then remember that in the overinformation era, injudicious attachment to information and things becomes the greatest impediment to breathing space. The ability to let them go is heaven.

As further reinforcement against overcollecting in the present, look to your past. Review old tax returns or checkbooks and reexamine all of your prior purchases, deductions, and check stubs. If you saved credit card receipts or telephone bills, scan them. You may be struck by the incongruity between your chosen priorities and what you have been paying for and accumulating.

If you can't bear to part with what you've collected, here are some parting options.

- ◆ Set up your own "informational retrieval plan." Copy the title pages, cover pages, mastheads, addresses, and/or telephone numbers onto single pages, add them to a database software program, or scan them.
- ◆ Develop a single file or 3-ring notebook, labeled "Just in Case," specifically for these 1-page files. Now you can find references quickly if you need to while not being bogged down.
- ◆ Box and store items of "possible future use." Remove them from your office, home, or immediate work area. Mark the box: "Review contents in April."

Always feel free to box and store items "of possible future use." Mark your calendar for a 6 or 12 month review, but get the box out of your office or home.

Remember, you are the primary—indeed the only—force that can prevent packratism from engulfing you. 

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priorities as hazardous to your breathing space and best tossed while still fresh. Declare your freedom from the clutter syndrome!

Once you adopt control measures, maintenance gets easier and easier.

- ◆ At least quarterly, reexamine everything you own and practice creative trashing. This will get easier and go faster each time you do it.
- ◆ Prune your holdings 1 week before your birthday and near New Year's Day. The realization of years passing just before your birthday or other notable milestone prompts you to toss what does not support you.
- ◆ If you have to, allow yourself one file drawer, closet, or storage locker as a dumping ground for whatever mess you want to accumulate. If you don't get rid of that stuff eventually, your executors will—and they'll charge your heirs for doing it!

OVERCOMING SECOND THOUGHTS ON TOSSING

Suppose you know you are retaining too much but reflexively you seek to hang on. For example, you often say to yourself: "What if I need this later? Shouldn't I hold on to it just in case?" How long will you hang on to white elephants, information crutches, and yesterday's news? When will you start trusting yourself? To overcome second thoughts on tossing, make function follow form. The guiding principle is: You only have so much space, and thank goodness it's not more!

Pretend you only had a 2-foot cube to pack all data items of importance in your life. Could you do it? For nearly