

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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NEUROLOGICAL SURGERY PRACTICE OF	:	
LONG ISLAND, PLLC,	:	
	:	
Plaintiff,	:	<b><u>COMPLAINT</u></b>
	:	
-against-	:	<b><u>JURY TRIAL DEMANDED</u></b>
	:	
EMPIRE HEALTHCHOICE HMO, INC. and	:	
EMPIRE HEALTHCHOICE ASSURANCE, INC.,	:	Case No. 21- cv - 2204
	:	
Defendants.	::	
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Plaintiff, Neurological Surgery Practice of Long Island, PLLC (“Neurological Surgery”), by its attorneys, Harris Beach, PLLC, alleges for its Complaint against Defendants, Empire Healthchoice HMO, Inc. and Empire Healthchoice Assurance, Inc. (“Empire”), as follows:

### **INTRODUCTION**

1. The world universally regards the American health care system as the finest in the world. Traditionally, the cornerstone of this system has been freestanding physician practices. These practices comprised of a single or a small number of physicians who practice the same medical specialty, have historically provided innovative, high-quality medical care to patients.

2. The secret to the success of these practices is freedom. The physicians themselves own these practices, and thus are free to decide all aspects of how to deliver their services to patients. Given the relatively small size of these practices, their physician-owners have developed longstanding, personal relationships with patients, which enhance both the quality of patient care and the overall patient experience.

3. Additionally, because these practices have traditionally been independent of any hospital, referring provider, or health plan, they have been able to recommend the best course of medical treatment for their patients free of any outside influence or conflict of interest.

4. They are also small enough to innovate nimbly. In summary, these small, freestanding, single specialty medical practices are the very essence of American capitalism.

5. As we explain in detail below, Neurological Surgery is a prime example of this small, freestanding, single specialty medical practice. Founded over three decades ago, it has focused on providing high quality neurosurgery care to patients throughout the New York metropolitan area. Owned by its physician providers, it traditionally has been independent of any hospital or health plan. Through hard work providing excellent care, Neurological Surgery has become the most innovative, high quality neurosurgery providers in the metropolitan area.

6. Unfortunately for Neurological Surgery and other freestanding surgery practices in the New York metropolitan area, Empire – one of the largest managed care organizations and health plans in the area– has embarked on a campaign of illegal and anti-competitive actions that directly target these practices, and are designed to strangle and, ultimately, force these freestanding neurosurgical practices out of business.

7. The means that Empire has employed to carry out their illegal and anti-competitive scheme is their knowing and intentional dramatic lowering of reimbursement rates to levels that are far below the costs of these practices to provide services. Putting it starkly, Empire is imposing shockingly low reimbursement rates on neurosurgery practices, including Neurological Surgery that they know are fake and manipulated.

8. Empire's illegal and anti-competitive actions have already significantly harmed Neurological Surgery and other freestanding neurological surgery practices in the New York

metropolitan area. If allowed to continue unchecked, Empire's actions will cause a substantial and unreasonable harm to competition in the metropolitan area. This will result in decreased output and quality of neurosurgery and other surgical services, higher prices, longer wait times, and loss of consumer choice. As we explain in detail below, this is precisely Empire's desired result, because the driving out of freestanding neurosurgery practices enables them to reap anti-competitive benefits through the use of these fake and manipulated reimbursement rates.

9. As we also explain in detail below, nothing more than greed motivates Empire's actions. While Empire is drastically cutting its reimbursement rates to neurosurgery (and other freestanding medical specialty practices), it is certainly not passing these "savings" on to its customers. Upon information and belief, for 2021, Empire has demanded premium increases from its commercial customers in excess of 15%. It sought average premium increases from the New York State Department of Financial Services for its individual and small group plans of more than 16% in 2021 (although the State granted far smaller increases),

10. During this same period, Empire's revenues and profits have dramatically increased. In January 2021, Empire's parent, Anthem, Inc., reported operating revenue of \$31.5 billion in the fourth quarter of 2020, an increase of \$4.4 billion, or 16.2 percent, from the fourth quarter 2019. Its benefit expense ratio was 88.9% in fourth quarter 2020, a decrease of 10 basis points from fourth quarter 2019. Operating cash flow was \$3.8 billion in fourth quarter 2020, an increase of \$2.5 billion over fourth quarter 2019.<sup>1</sup>

11. As Empire is fully aware of, its dramatic lowering of reimbursement rates is forcing many freestanding neurosurgical practices to leave the market. As we explain in detail

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<sup>1</sup> <https://www.businesswire.com/news/home/20210127005298/en/Anthem-Reports-Fourth-Quarter-and-Full-Year-2020-Results> (accessed Apr. 7, 2021).

below, this is causing significant harm to patients through the decreased availability of neurosurgical services, and reduced quality.

12. While Empire is dramatically lowering neurosurgery reimbursement rates across the board, it is well aware that the freestanding neurosurgery practices are withstanding the worst of this decrease. This is because hospital-based neurosurgery groups are largely immune to decreased reimbursement rates because of the hospitals' other revenue sources.

13. Indeed, as discussed in detail below, for every \$1 in direct reimbursement that hospitals receive from providing neurosurgery services, the hospitals receive \$14 in additional ancillary revenue generated from those neurosurgery services. Thus, as Empire is well aware, the hospitals can tolerate – and even accept – an artificial lowering of this \$1 in direct neurosurgery reimbursement to as low as 10¢, as long as the \$14 in ancillary reimbursement is preserved.

14. The hospitals can use this \$14 to help defray the high costs of providing neurosurgery services; while the freestanding practices such as Neurological Surgery are forced, pay these ever-increasing costs out of the 10¢ of direct reimbursement.

15. As a result, Neurological Surgery and other freestanding practices are falling further and further behind financially because of the dramatically declining reimbursement rates, which no longer even remotely reflect the high costs of providing neurosurgery care. Empire is well aware of this fact and, indeed, intends for it to occur so that it can drive the freestanding neurosurgery practices out of business.

16. The departure of freestanding neurosurgical (and other surgical) practices from the market is also decreasing competition among Empire and other major managed care companies in the New York market. This is because freestanding surgical practices fiercely

advocate for their patients, educate their patients about improper insurance practices, and expose the fact that many health plans currently offer illusory benefits and minimal coverage in many cases.

17. When freestanding practices educate patients in these ways, the patients put pressure on the health plans to innovate, improve their offerings, and change their ways. This significantly promotes competition among health plans in the market for purchasing health plan benefits. Elimination of freestanding surgical practice will grind this competition to a halt, and thus greatly harm the individual and corporate purchasers of health plan benefits.

18. As set forth in greater detail below, Empire's actions – particularly the systematic lowering of reimbursement rates for neurosurgery services, resulting in utterly fake and manipulated rates — has unreasonably restrained and damaged competition in the market for these services in violation of Section 1 of the Sherman Act., 15 U.S.C. § 1, and the New York State Donnelly Act, General Business Law §§ 340, *et seq.*

19. Through this lawsuit, Neurological Surgery seeks a declaration that Empire's actions in imposing these fake and manipulated reimbursement rates are illegal, a permanent injunction preventing Empire from continuing these anti-competitive practices, and compensatory damages for the financial harm Neurological Surgery has suffered because of Empire's anticompetitive actions. Neurological Surgery also seeks an award of attorneys' fees and such other and further relief as the Court may deem just and proper.

## **PARTIES**

### **Plaintiff**

20. Neurological Surgery Practice of Long Island, PLLC is a New York professional service limited liability corporation with its principal place of business located at 100 Merrick Road, Suite 128W, Rockville Centre, New York.

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