

Book Reviews

Health Care and Antitrust Law: Principles and Practice

John J. Miles

Clark Boardman Callaghan, Deerfield, IL, 1992, \$215 (3 looseleaf volumes)

HEALTH CARE AND ANTITRUST LAW: Principles and Practice is a three-volume work that is part of Clark Boardman Callaghan's Health Law Library series. The first two volumes of the set cover the substance of antitrust law and its relationship to healthcare in 18 chapters.

Volume 3 provides a selection of statutory material. Some of the key antitrust statutes (Sherman Act, Clayton Act, Robinson-Patman Act, Federal Trade Commission Act, etc.) are excerpted, whereas several other acts more closely related to healthcare are provided in full. The third volume also includes other source material on mergers (guidelines, reporting forms, opinions) from government agencies, Department of Justice (DOJ) business review letters, Federal Trade Commission (FTC) advisory opinions, and speeches on antitrust made in recent years by high-ranking government officials charged with antitrust enforcement.

Health Care and Antitrust Law is

typical of other series in law libraries. Just about every major legal subject is covered in multiple-volume sets that serve more as a reference manual than a work that would be read from cover to cover.

To write a legal manual that is really usable and practical, the author needs to be able to impart the wisdom of experience, not just the facts. Miles satisfies that dual need. He comes to his subject with considerable service in state and federal government antitrust enforcement and in private practice in the antitrust and health law sections of Jones, Day, Reaves & Pogue, Washington, DC. Eighty percent of his time is spent on the antitrust problems found

BOOK BRIEFS

America's Psychic Malignancy: The Problem of Crime, Substance Abuse, Poverty and Welfare—Identifying Causes with Possible Remedies

Norman Q. Brill, Charles C Thomas, Springfield, IL, 1993, 136 pp., \$29.75

The author argues that much of the problem of crime, poverty, welfare, substance abuse, and emotional disorders can be traced to early childhood experiences. He examines the problems, identifies some of their causes, and recommends expanded possible remedies, including expanded social programs for children.

What Are They Saying about the Theology of Suffering?

Lucien Richard, Paulist Press, Mahwah, NJ, 1992, 160 pp., \$7.95 (paperback)

Suffering—"the one experience that is most personal and existential"—is viewed by many as essentially meaningless, yet theologians often see it as a

starting point for theology. This text examines the thoughts of persons as diverse as Walter Brueggemann, Johannes B. Metz, Dorothy Soelle, Gustavo Gutierrez, and Stanley Hauerwas. It covers topics related to suffering such as the biblical view, the feminist perspective, liberation theology, and ethics.

Progressive Health Care Management Strategies

Donald N. Lombardi, American Hospital Publishing, Chicago, 1992, 371 pp. (paperback)

Progressive Health Care Management Strategies is intended as a handbook for professional healthcare managers. Part one explores the manager's role and presents strategies for managing human resources. The second part reviews organization-wide aspects of progressive healthcare management, including strategies and case studies. Five appendixes provide detailed checklists for examining organizational values, evaluating employee perfor-

mance, experimenting with motivational techniques, and implementing progressive community business strategies.

BOOKS RECEIVED

Belonging: Bonds of Healing and Recovery, Dennis Linn, Sheila Fabricant Linn, and Matthew Linn, Paulist Press, Mahwah, NJ, 1993

Managing in an Academic Health Care Environment, William F. Minogue, ed., American College of Physician Executives, Tampa, FL, 1992

Patient Education Series—Aerosol Therapy; Managing Breathing Problems; Using Oxygen Equipment, Center for Learning, Rocky River, OH, 1993

Woman, Why Do You Weep? Spirituality for Survivors of Childhood Sexual Abuse, Sandra M. Flaherty, Paulist Press, Mahwah, NJ, 1992

in healthcare. Anyone can read a statute, study court decisions, and review regulatory agency pronouncements, but making sense out of them and putting them in a sensible order require experience and analytical skills. This healthcare antitrust manual exhibits the efforts of an experienced legal practitioner.

In addition to extensive legal experience, Miles has two college degrees in economics. Antitrust law makes no sense without an understanding of economic concepts and how resources are distributed in the United States. Knowing how to judge the variety of means that support or hinder competition goes to the roots of the American economic system. As a significant part of that economic system, healthcare cannot escape from antitrust scrutiny simply because it is mostly not-for-profit or provides a needed service.

Miles has done a fine job of addressing how antitrust law relates to healthcare. As the publisher and author acknowledge, antitrust concerns in healthcare are a recent phenomenon, but they will remain important, at least as long as competition is a part of the healthcare delivery system.

A study of this manual, especially its early chapters, reveals the design of antitrust laws is not concerned with healthcare structures but with how these structures affect competition. Also, most of the antitrust statutes allow changes in enforcement efforts to keep current with the philosophical understanding of how the economy should work. This has, in fact, happened in healthcare antitrust enforcement.

Miles gives many examples throughout the text, including the appendixes, in references to court cases, agency actions, and official pronouncements that demonstrate both heightened interest in the competitive aspects of healthcare and a desire to enforce fair competition. Regulatory efforts have grown sophisticated in evaluating healthcare activities and in supporting many cooperative ventures in healthcare that

enhance competition and better serve the consumer. Antitrust regulations have never been opposed to "bigness" itself but to its effects. A well-prepared case for a merger or joint venture can usually succeed if it shows the benefits to competition. The test to make that case is one of reasonably reviewing the totality of the facts. Time and again, Miles clearly illustrates the theoretical and practical application of different healthcare situations to antitrust principles. Documentation abundant enough to please any lawyer (and possibly annoy other readers) exists throughout the work.

Particularly helpful is the listing of the court cases by their location in the federal circuits. Because the rule of reason is applied in good faith by different people, some arrangements are acceptable in one federal circuit but not in another. Often this difference is resolved over time by the Supreme Court or by legislation, but until then, an easy-to-use guide to the differences is most helpful.

One fault I find with this law manual, as with other law books, is an inadequate index. For some reason, the good indexes found in educational research—history books, for example—are rarely duplicated in legal research. For example, the Hart, Scott, Rodino Act is missing from the index. The index includes a number of references to premerger notification rules that the act made a part of antitrust law, but readers must know what the act is about to find it. This is a minor point and one that I hope can be fixed. An index is a great research tool that requires some imagination by the preparers to anticipate inquiries that are discussed in the work but not listed under all their possible headings.

Despite this flaw, the *Health Care and Antitrust Law* manual provides a compact, readable analysis of antitrust laws that should be valuable to healthcare lawyers who do not specialize in antitrust matters but must respond to antitrust implications in their clients' activities. Healthcare structures are hardly standing

still. Many different combinations are considered and need antitrust analysis. Although the manual is not a replacement for experienced antitrust analysis, it can provide basic, well-documented, and timely information.

Another audience for the manual could be healthcare executives or physicians who need to understand the antitrust aspects of healthcare. They may not appreciate some of the extensive documentation, but could benefit by selectively reading key concepts. The text of the work is well written and should be understandable to those planning healthcare cooperative ventures. They might even do a better job if they knew the antitrust pitfalls in advance instead of having to extricate themselves later.

I cannot judge whether the manual would be a welcome resource for healthcare antitrust specialists. I suspect it would have value as a quick reference to check details of a law or to find applicable court or regulatory decisions. In any event, it does have value for the healthcare lawyer and others working on healthcare issues.

It could be a valuable addition to a law library or a healthcare institution's library. The author and publisher plan to update the work regularly, which will be simple because the volumes are looseleaf binders. In fact, the text provides details on the joint DOJ and FTC merger guidelines promulgated as the work was being printed and distributed. This significant document will be discussed in the manual's first revision, but the current manual notifies the reader of the new guidelines, indicates what they are about, and includes a copy in the appendix. In addition to the new merger guidelines, other significant revisions will no doubt be needed to respond to the antitrust implications of the Clinton healthcare reform proposal.

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