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Doctors who make house calls at center of antitrust fight

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BOCA RATON —

Who says the house call is dead?

Certainly, not the companies that are waging a two-coast turf battle to protect their share of the burgeoning concierge medicine market.

As the traditional way Americans consume medicine shatters in the age of Obamacare, concierge medicine has emerged as a viable alternative for some patients

— and not just the uber wealthy or jet-setting celebrities.

For additional cost, a patient can get specialized attention from doctors, including house calls, longer visits and immediate scheduling of appointments. Some high-end concierge doctors even will travel to a vacation location if a patient needs care or — yes — make house calls.

And the company that dominates this medical niche is headquartered in Boca Raton: MDVIP Inc.



MDVIP corporate offices in Boca Raton, Fla. Photographed on Friday, May 22, 2015. (Thomas Cordy / The Palm Beach Post)

But one of MDVIP's competitors, Signature MD, has gained traction in a federal antitrust lawsuit, claiming MDVIP has created a monopoly in many regions through onerous non-compete clauses for its doctors, some who must pay \$1 million to get out of their contract.

In April, a federal judge in California cleared the way for the lawsuit by denying MDVIP's motion to dismiss the suit.

The turf battles extends to Palm Beach County, where MDVIP pursues a suit in circuit court against Marina Del Rey, Calif.-based Signature MD and a handful of employees, asserting theft of trade secrets.

MDVIP spokeswoman Nancy Udell says as a matter of policy the company doesn't speak on pending litigation. Previously, she has said the litigation in California is without merit and was retaliation for the lawsuit brought against it by MDVIP in Palm Beach County.

Signature MD claims the industry leader has bullied its way to the top by using the courts and non-compete agreements to keep its doctors from looking for a more lucrative deal with a competitor. Doctor pay a concierge company to help them transition into the new practice, market themselves as concierge physicians and handle billing and all things non-medical.

"The conduct of trying to tie up these physicians in perpetuity is pretty blatant. It's not going to be hard for a jury to understand why they are doing it," said attorney Maxwell Belcher, who represents Signature MD. "The 14th Amendment prohibits slavery. Their provisions make it impracticable for doctors to leave."

Belcher took over the case after MDVIP successfully removed Signature MD's previous counsel, arguing that they were privy to inside information because of their role in other litigation involving the Boca Raton company.

"Everyone is entitled to be desperate. You put the lawyers on trial, then you're desperate," Belcher said.

The lawsuit alleges that MDVIP threatens doctors with legal action for even inquiring about joining a competitor and forces them to sign non-disclosure agreements on non-confidential matters crucial to them joining up elsewhere.

Industry giant

So how big is MDVIP?

U.S. District Judge Dolly Gee spelled it out in an order denying the Boca Raton company's motion to dismiss on April 21:

- MDVIP has 71 percent of physicians concierge contracts
- MDVIP has 86 percent of patients enrolled in concierge medicine
- MDVIP has 65 percent to 100 percent of overall market share within a 25-mile radius of many large U.S. cities.

Signature MD, by comparison, has 7 percent of physician concierge contracts.

Companies such as MDVIP and Signature MD know concierge medicine is still, if not in its infancy, then in toddler stage with about 5,500 practices nationwide. Industry analysts estimate more than 1.5 million Americans get their care through concierge medicine, paying on average about \$1,800 a

year. Medicare and private insurance is accepted just like at traditional practices, which often carry four times the patient load.

Signature MD estimates it will pull in \$30 million in revenue this year. MDVIP is privately held and does not reveal its revenues.

Promising superior service ended up being used against MDVIP in an malpractice case in February. A jury ordered the company to pay \$8.5 million for not living up to its well-advertised promise of offering “exceptional care.” The plaintiff was a former cancer patient who lost her leg.

It’s the first time MDVIP, that has more than 200,000 clients in 43 states, has been held liable for the actions of one of its doctors.

A bigger threat to its bottom line may be Signature’s antitrust lawsuit.

Matt Jacobson started the competitor nine years ago with \$300,000. He said physicians around the country are watching the antitrust litigation in California. He accuses MDVIP of aiming to bleed its competitors dry with frivolous litigation and points to the lawsuit now in front of Palm Beach County Circuit Judge Jeffery Gillen that named as a defendant a data entry clerk who only briefly worked for MDVIP before taking a job with Signature MD.

“We have doctors who have informed us they are following the case,” Jacobson said. “They are glad we are doing this and say it was about time someone is doing something.”

Doctor makes house calls

Dr. Jim Williams is a Signature MD doctor. He made three house calls on Friday.

“I’m able to deliver a far superior quality of care than I ever was able to deliver before,” said Williams, who used to cater to thousands of patients while working with his father. Now he has about 300.

“The intimacy, the closeness, the time, the quality of interaction with patients is extraordinary.”

He said it isn’t so much that his patients have found a new modern way to consume medicine.

“They have rediscovered something, the way things used to be,” he said.

As for the antitrust lawsuit, Williams is like any other doctor. He wants the freedom to shop his talents to where it would make the most economic sense for himself and his patients.

And one of Signature MD’s arguments is that MDVIP’s onerous contracts and litigious ways are increasing the cost of doing business for everyone in the concierge niche.

Suit says

doctors targeted

But while Signature MD pursues litigation against MDVIP in California, the tables are turned in Palm Beach County.

In the lawsuit brought by MDVIP against Signature MD in front of Judge Gillen, the Boca Raton company alleges its competitor is targeting its doctors and qualified prospects by using confidential information gleaned from nine of MDVIP's previous employees. Signature MD claims many of these employees barely worked for MDVIP and had long left the company before signing on with the competitor.

Gail McQuilkin of Kozyak, Tropin and Throckmorton, attorney for Signature MD in Palm Beach County, said MDVIP filed the Palm Beach County suit not against doctors but against support staff.

One defendant, Daniel Gladstone, worked for a few months for MDVIP as a data entry clerk and now doesn't even work for Signature MD.

"It is very disturbing. I don't think it's a proper use of non-compete provisions in employment contracts," she said. "Non-compete provisions should apply to high-level people who have in-depth knowledge of the operation."