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# Chicago's Procrustean Bed: Applying Antitrust Law in Health Care

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## **Abstract**

Antitrust enforcement in health care has undergone considerable buffeting in recent years with government agencies losing a string of important cases in federal court and support for vigorous enforcement waning among some policymakers. Critics of doctrinal development in antitrust law have begun to question whether the underlying economic relationships are accurately reflected in the law of antitrust as applied in health care. This article advances the positive claim that antitrust doctrine often suppresses pertinent features of the health care marketplace and urges courts and enforcers to pause before applying precedent and evidentiary rules of thumb that do not fit the economic realities of contemporary health markets. It faults many, but certainly not all, analyses of trade restraints and consolidations for slavishly following the Chicago School template when a more economically-sound analysis requires appreciation of market imperfections in health care. While these errors do not always tilt in favor of leniency for antitrust defendants, they often tend to favor the status quo in markets that most economists agree are suboptimal. Like Procrustes, the mythical figure who lopped off guests' feet or stretched their legs so they would fit his bed, Chicago analysis may at times inappropriately adjust real world circumstances to accommodate its theory.

**Keywords:** Antitrust, health care, economics

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