

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS
JANUARY 1, 2017, TO JUNE 30, 2017

IN THE MATTER OF

CENTRACARE HEALTH SYSTEM

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket No. C-4594; File No. 161 0096
Complaint, October 5, 2016 – Decision, January 6, 2017

This consent order addresses the acquisition by CentraCare Health of certain assets of St. Cloud Medical Group, P.A. The complaint alleges that the Acquisition, if consummated, would violate Section 7 of the Clayton Act by substantially lessening competition for the provision of adult primary care, pediatric, and OB/GYN services in St. Cloud, Minnesota. The consent order facilitates former SCMG physicians finding alternate local employment by suspending enforcement of any non-compete provisions against any adult primary care, pediatric, or OB/GYN physician from SCMG to allow up to 14 such physicians to depart for another St. Cloud area practice; and requires CentraCare to provide sizeable departure payments to the first five physicians who leave CentraCare either to create a new medical practice or to join a small third-party medical practice in the St. Cloud area.

Participants

For the *Commission*: Robert Canterman, Malcolm Catt, Alpa Davis, Lisa De Marchi Sleight, Charles Dickinson, Guia Dixon, Elisa Kantor, David Laing, Rohan Pai, Neal Perlman, Amy Posner, Maren Schmidt, Eric Sprague, Michael Turner and Steve Vieux.

For the *Respondents*: Ken Field and Doug Litvack, Jones Day; Timothy Johnson, Gray Plant Mooty.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by the FTC Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondent CentraCare Health (“CentraCare”) and St. Cloud Medical Group P.A. (“SCMG”) have executed a merger agreement (“Acquisition”) in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I.**Nature of the Case**

1. CentraCare and SCMG are the two largest providers of primary care, pediatric care, and obstetrics/gynecology (“OB/GYN”) services in St. Cloud, Minnesota. CentraCare’s acquisition of SCMG would eliminate price and non-price competition, likely causing significant anticompetitive harm to residents and businesses in the St. Cloud area.

2. CentraCare and SCMG compete to be included in health insurance plans, and compete for patients within those health insurance plans. Health insurers and employers rely on the competition between CentraCare and SCMG to negotiate lower reimbursement rates, which are passed on to consumers through lower health insurance premiums and lower out-of-pocket costs. Competition also provides an incentive for CentraCare and SCMG to provide higher quality care and better services to patients.

3. CentraCare’s acquisition of SCMG would substantially increase CentraCare’s market share in three physician services sold to commercial health plans: (1) adult primary care; (2) pediatric primary care; and (3) OB/GYN. The levels of concentration in these markets that would result from the Acquisition create a strong presumption of anticompetitive harm under applicable case law and the U.S. Department of Justice and

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Federal Trade Commission Horizontal Merger Guidelines (“Merger Guidelines”). By eliminating SCMG as a potential alternative for health plans in the St. Cloud area, the Acquisition will likely allow CentraCare to increase the reimbursement rates for the services of current SCMG physicians, and potentially secure more favorable terms from health insurance plans for CentraCare services.

4. The competition eliminated through the Acquisition will not be sufficiently replaced in a timely manner by other providers.

5. Respondent and SCMG cannot show cognizable efficiencies that would offset the likely and substantial anticompetitive harm from the Acquisition.

6. Respondent and SCMG have shown that SCMG is financially failing, with no access to credit, and that physicians are and will continue to leave the practice. They have further shown that no alternative purchasers other than CentraCare are interested in acquiring the entire SCMG practice group.

II. Background

A.

Jurisdiction

7. Respondent and SCMG are, and at all relevant times have been, engaged in commerce or in activities affecting “commerce” as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

8. The Acquisition constitutes a merger subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

B.

Respondent and SCMG

9. Respondent CentraCare is a not-for-profit health system organized under and by virtue of the laws of Minnesota.

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CentraCare is headquartered at 1900 CentraCare Circle, St. Cloud, MN 56303. CentraCare owns and operates multiple clinics in the St. Cloud area that employ approximately 270 primary care and specialist physicians, including 55 adult primary care, 16 pediatric primary care, and 14 OB/GYN physicians. CentraCare also employs nearly 100 advanced practice providers (“APPs”). These clinics are vertically integrated with CentraCare’s other holdings, which include six hospitals, 18 multi-specialty clinics, four pharmacies, and six nursing homes in central Minnesota.

10. SCMG is a for-profit, physician-owned, professional organization under Minnesota law that is headquartered at 1301 33rd Street South, St. Cloud, MN 56301. It owns and operates four clinics in the St. Cloud area and employs approximately 40 physicians who provide primary care and specialty practice medical services. Approximately 36 of these physicians focus on adult primary care, pediatric primary care, and OB/GYN services. SCMG also employs approximately 20 APPs.

C.**The Acquisition**

11. As early as 2014, Respondent and SCMG began discussing a possible acquisition of SCMG by CentraCare. On February 29, 2016, the CentraCare board of directors entered into a definitive agreement to purchase SCMG’s medical practice and its related building partnership.

12. Respondent and SCMG intend to finalize this acquisition as early as October 6, 2016, and begin integrating SCMG’s operations into CentraCare immediately thereafter.

D.**Competition Between Healthcare Providers**

13. Competition between healthcare providers occurs in two basic stages. In the first stage, providers compete to be selected by health insurers as their in-network provider. The in-network providers benefit by gaining access to the health insurers’ members as patients. Health insurers seek to create provider

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networks with geographic coverage and a scope of services that attract and satisfy employers who buy group insurance coverage for employees, as well as independent purchasers of “non-group” insurance.

14. To gain in-network status, a provider engages in bilateral negotiations with the health insurer. One of the critical terms that a provider and a health insurer agree upon during their negotiation is the reimbursement rate paid by insurer to health care provider for its medical services to the health insurers’ members.

15. Health insurers act as employers’ agents in creating provider networks that offer convenience, high quality care, and competitive reimbursement rates. This is true whether employers purchase fully-insured health plans or are self-insured. “Fully-insured” health plans require covered employees and the employer to pay premiums, co-pays, and deductibles in exchange for access to a provider network and for insurance against the cost of future care. These costs are linked to the reimbursement rates that health insurers negotiate with each health care provider in their provider networks. “Self-insured” health plans also provide access to a provider network but the employer rather than the insurer assumes the risk for the cost of future care. Self-insured employers must pay the entirety of their employees’ health care claims (aside from member cost-sharing, such as deductibles and copayments) and, as a result, may immediately incur provider rate increases.

16. In the second basic stage of competition, providers compete with other independent providers in their networks to attract patients. Typically, health insurers offer multiple independent in-network providers, who compete to attract patients by offering better services, amenities, convenience, quality of care, and/or patient satisfaction.

III.

The Relevant Service Markets

17. There are three relevant physician service markets in which to analyze the effects of the Acquisition: adult primary care; pediatric primary care; and OB/GYN.

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18. Adult primary care physician services are general physician services provided to commercially insured patients aged 18 and over by physicians who offer internal medicine, family medicine, and general medical services. Physicians in other specialties are generally not a substitute for adult primary care physicians.

19. Pediatric primary care physician services are general physician services provided to commercially insured patients aged 17 and younger by physicians practicing pediatrics. Pediatricians receive additional training to treat pediatric health issues and physicians trained for other specialties generally do not have this required expertise.

20. OB/GYN physician services are reproductive health services provided to commercially insured female patients. Generally, physicians without additional training in treating female reproductive health are not a substitute for physicians providing OB/GYN services.

21. Health care providers sell adult primary care, pediatric primary care, and OB/GYN physician services to health insurers and their members.

22. Alternative care delivery models, such as retail clinics and telehealth, are not functionally interchangeable with in-person physician services. Retail clinics and telehealth are not equipped to treat the same range of chronic or high-acuity acute conditions as a traditional primary care practice.

23. Because of patient preferences, and because alternative care providers can only address a limited scope of health concerns, health plans must include a sufficient number of in-network adult primary care physicians, pediatric primary care physicians, and OB/GYNs to create an attractive health plan network, even if the cost of these services increased by a small but significant and non-transitory amount.

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IV.**The Relevant Geographic Market**

24. The relevant geographic market in which to analyze the effects of the Acquisition in the relevant service markets is the greater St. Cloud, Minnesota residential area, which contains the following zip codes: 55320, 56301, 56303, 56304, 56320, 56329, 56377, 56379, and 56387. This roughly corresponds to a radius of 20 miles around downtown St. Cloud.

25. Patients in the St. Cloud area strongly value access to adult primary care, pediatric primary care, and OB/GYN services close to where they live. Given these patient preferences, health insurers must include a sufficient number of adult primary care physicians, pediatric primary care physicians, and OB/GYN physicians in the St. Cloud area to create an attractive health plan network for employers whose employees reside in the St. Cloud area.

26. Accordingly, a hypothetical monopolist that controlled a substantial portion of these physicians in the St. Cloud area could profitably increase rates by at least a small but significant amount because health insurers could not practicably offer primary and other routine medical services from providers outside the St. Cloud area to their members. Thus, the area in which health insurers can practically turn for alternative providers of adult primary care physician services, pediatric primary care physician services, and OB/GYN physician services is limited to the St. Cloud area.

V.**Market Structure and the Acquisition's
Presumptive Illegality**

27. The Merger Guidelines and courts measure concentration using the Herfindahl-Hirschman Index ("HHI"). The HHI is calculated by totaling the squares of the market shares of every firm in the relevant market. Under the Merger Guidelines, a merger is presumed likely to create or enhance market power—and is presumptively illegal—when the post-merger HHI exceeds 2500 and the merger increases the HHI by more than 200 points.

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28. The HHIs that would result from the Acquisition confirm that it will lead to significant increases in market concentrations in already concentrated service markets. Each of the physician services markets have pre-merger HHIs of over 2500, and in each the HHI will increase well over 200 points. Indeed, CentraCare's post-Acquisition share in each of the physician service markets will be over 80%.

29. Accordingly, the Acquisition is presumptively unlawful. In each of the relevant markets, the market shares, post-merger concentration levels, and increase in concentration levels exceed the thresholds for a presumptively anticompetitive merger under the case law and the Merger Guidelines.

VI.**Anticompetitive Effects****A.****Elimination of Competition and Increased Bargaining
Leverage of CentraCare**

30. Health insurers must provide their members access to CentraCare or SCMG because they are the two largest providers of adult primary care, pediatric primary care, and OB/GYN services in the St. Cloud area. Competition between CentraCare and SCMG enables health insurers and employers to negotiate lower reimbursement rates and more favorable contract terms. SCMG is a low-cost provider of health care in St. Cloud, and health insurers have used the competition between CentraCare and SCMG to obtain more favorable contract terms from CentraCare, which is a higher cost health care provider. The Acquisition will eliminate competition between CentraCare and SCMG, substantially lessening overall competition in the relevant markets.

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B.

Loss of Non-Price Competition

31. CentraCare and SCMG compete to attract patients. Competition provides an incentive for CentraCare and SCMG to provide higher quality care and better service to patients.

32. After the Acquisition, CentraCare will face substantially less competition in the St. Cloud area for adult primary care, pediatric primary care, and OB/GYN physician services. As a result, the Acquisition will diminish CentraCare's incentive to improve or continue to offer high-quality care and better services.

VII.

Countervailing Factors

33. Entry by a sufficient number of physicians to counteract the anticompetitive effects due to the Acquisition will not be likely, timely, or sufficient. In order to counteract the anticompetitive effect of the Acquisition, an entrant or current St. Cloud competitor would need to bring in a sufficient number of physicians in the relevant service markets to counteract the competition being lost through the Acquisition. No entrant or current St. Cloud competitor will be able to introduce such a large number of physicians in a timely manner because, inter alia, it takes time for a new physician to achieve the patient volume of an established physician.

34. Respondent and SCMG also cannot demonstrate cognizable efficiencies that would be sufficient to rebut the presumption and evidence that the Acquisition likely would substantially lessen competition in the relevant market.

35. Any alleged cost savings from the integration of CentraCare's operations with SCMG's are speculative, not verifiable, and not merger specific. Nor is there evidence that any such savings would be competition-enhancing.

36. The Acquisition also is not necessary to increase clinical efficiencies. SCMG does not need to merge with CentraCare to transition from fee-for-service contracting to a value-based

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reimbursement model. Such a transition does not require a large number of physicians or an affiliation with a large integrated health system. Moreover, SCMG and CentraCare can integrate clinical services without merging, and in some respects have already begun to do so. Other independent practices in the St. Cloud area have integrated their electronic medical record systems with CentraCare successfully.

37. SCMG, however, has produced evidence that it is financially failing. SCMG's current financial status has weakened its standing with at least one lender, which froze the practice's only line of credit after reviewing its recent financial statements. The evidence indicates that certain SCMG physicians plan to leave the practice and possibly the St. Cloud area if the Acquisition is not consummated. Such physician departures would cause an immediate drop in revenues that could further destabilize the group.

38. After a good-faith, multi-year search, SCMG has been unable to find an alternative purchaser for the entire medical practice. At least one local provider, however, has expressed interest in expanding its practice by hiring some of SCMG's physicians. A number of SCMG's physicians are interested in joining that provider or other smaller, independent practices in the area.

X.**Violations Charged**

39. The allegations of Paragraphs 1 through 38 above are incorporated by reference as though fully set forth.

40. The acquisition described in Paragraph 11 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

41. The Acquisition, if consummated, may substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

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WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fifth day of October, issues its Complaint against said Respondent.

By the Commission.

**ORDER TO SUSPEND ENFORCEMENT OF
CENTRACARE HEALTH NON-COMPETES AND
MAINTAIN ASSETS**

The Federal Trade Commission (“Commission”), having initiated an investigation of the acquisition by CentraCare Health System of St. Cloud Medical Group, P.A. (“St. Cloud Medical Group”), and CentraCare Health System (hereafter referred to as “CentraCare Health” or “Respondent CentraCare Health”) having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent CentraCare Health with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18; and

Respondent CentraCare Health, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent CentraCare Health of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent CentraCare Health that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent CentraCare Health has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having

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accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order to Suspend Enforcement of the CentraCare Health Non-Competes and Maintain Assets (“Order to Suspend Non-Competes and Maintain Assets”):

1. Respondent CentraCare Health is a not-for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota with its office and principal place of business located at 1406 Sixth Avenue North, St. Cloud, MN 56303.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent CentraCare Health, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, all the capitalized terms used in this Order to Suspend Non-Competes and Maintain Assets, but not defined herein, shall have the meanings attributed to such terms in the Decision and Order contained in the Consent Agreement. In addition to the definitions in Paragraph I of the Decision and Order attached to the Agreement Containing Consent Orders, the following definitions shall apply:

- A. “Decision and Order” means:
 1. the Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and

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2. the Final Decision and Order issued and served by the Commission.
- B. “Monitor” means any monitor appointed pursuant to Paragraph III of the Order to Suspend Non-Competes and Maintain Assets or pursuant to the Decision and Order.
- C. “Suspension Period” means the time period that CentraCare Health is required to suspend enforcement of the CentraCare Health Non-Compete Provisions for either St. Cloud Physicians or CentraCare Physicians, if necessary, beginning when the Order to Suspend Non-Competes and Maintain Assets becomes final, until the end of the First Release Period or, if necessary, the end of the Second Release Period.

II.
SUSPEND NON-COMPETES

IT IS FURTHER ORDERED that:

- A. For the duration of the Suspension Period, CentraCare Health shall not enforce any CentraCare Health Non-Compete Provisions against any St. Cloud Physician, or CentraCare Physician, if necessary, for any activity that the St. Cloud Physician or CentraCare Physician engages in that Relates To providing Termination Notification; *PROVIDED, HOWEVER*, that this Paragraph II.A does not prohibit CentraCare Health from enforcing any CentraCare Non-Compete Provisions against any St. Cloud Physician who terminates Contract Services prior to the date the Decision and Order becomes final and before the start of the First Release Period, or in the case of a CentraCare Physician before the start of the Second Release Period.
- B. Within two (2) days of the Agreement Containing Consent Orders in this matter being placed on the public record, CentraCare Health shall send the letter attached as Appendix A to this Order by first-class

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mail and by email, return receipt requested, to each St. Cloud Physician.

- C. CentraCare Health shall inform the Monitor, in writing, that the notices sent pursuant to this Paragraph II have been sent and received.
- D. For any activity Related To this Paragraph II, CentraCare Health shall waive all rights to seek or obtain legal or equitable relief for breach of contract or for violation by any St. Cloud Physician or CentraCare Physician of any CentraCare Non-Compete Provisions.
- E. CentraCare Health shall not take any other action to discourage, impede, or otherwise prevent any St. Cloud Physician from seeking to terminate Contract Services, pursuant to this Paragraph II or pursuant to the Decision and Order, including, but not limited to, revoking any payments to the St. Cloud Physicians resulting from the Acquisition, or offering any incentive to the St. Cloud Physician to decline employment with Third Party Medical Practice, or to create a New Third Party Medical Practice.
- F. The purpose of this Paragraph is to ensure that those St. Cloud Physicians and/or CentraCare Physicians who seek to terminate their Contract Services can offer Physician Services in a Third Party Medical Practice or a New Third Party Medical Practice in competition with CentraCare Health and to mitigate the lessening of competition alleged in the Commission's Complaint.

III.**ESCROW FOR DEPARTURE BONUSES**

IT IS FURTHER ORDERED that at the time of the Acquisition, CentraCare Health shall deposit into an escrow account, pursuant to oversight and consultation with the Monitor, a sum of five-hundred thousand dollars (\$500,000), that may be used as departure bonuses pursuant to and for the purposes set forth in Paragraphs II.G. and II.H. of the Decision and Order.

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IV.
ASSET MAINTENANCE

IT IS FURTHER ORDERED that:

A. Until the end of the First Release Period, CentraCare Health shall:

1. Retain and maintain all office space and physical locations used by the St. Cloud Physicians as currently used before the Acquisition. *Provided, however,* that CentraCare Health may improve and supplement such spaces and locations, and add Physicians and staff to such locations;
2. Not transfer the St. Cloud Physicians, or decrease or change their workloads or practice areas from what the St. Cloud Physicians were practicing before the Acquisition including, but not limited to, allowing certain St. Cloud Physicians who are Adult Primary Care Physicians to continue to deliver babies in the same manner and locations as done before the Acquisition. *Provided, however,* that, after providing notice to the Monitor, CentraCare Health may determine, pursuant to its existing policies, to suspend a St. Cloud Physician from continuing all or part of his or her practice, if necessary, to protect patient safety;
3. Retain all St. Cloud Employees and support for the St. Cloud Physicians such that the St. Cloud Physicians seamlessly will be able to move to a Third Party Medical Practice, if they choose, or create a New Third Party Medical Practice. *Provided, however,* that CentraCare Health may make changes in personnel if the Monitor is notified of such changes, and the Monitor approves the changes after consultation with the Commission staff and the affected St. Cloud Physicians.

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4. Not change Payer contracts or reimbursement rates or processes such that changes would affect a St. Cloud Physician's ability to move to a St. Cloud Medical Practice. *Provided, however,* that CentraCare Health may make changes in Payer contracts for the St. Cloud Physicians if the Monitor is notified of such changes, and the Monitor approves the changes after consultation with Commission staff and the affected St. Cloud Physicians.

B. The purpose of this Paragraph IV is for CentraCare Health to maintain those assets and personnel from the St. Cloud Medical Group such that, during the Suspension Period and the First Release Period, St. Cloud Physicians will easily be able to move to a Third Party Medical Practice or create a New Third Party Medical Practice with his or her patients and without any significant difficulties.

V.

FACILITATE ST. CLOUD EMPLOYEE INTERVIEWS

IT IS FURTHER ORDERED that beginning no later than the Acquisition Date until the end of the First Release Period, Respondent CentraCare Health shall, in a manner consistent with local labor laws:

A. facilitate employment interviews between any St. Cloud Employee, who has been requested to join a St. Cloud Physician who has submitted an Acceptable Termination, and any Third Party Medical Practice to which a St. Cloud Physician is hired or a New Third Party Medical Practice during the First Release Period ("Designated Third Party Medical Practice");

B. with respect to each St. Cloud Employee who receives an offer of employment from a Designated Third Party Medical Practice, not prevent, prohibit, or restrict, or threaten to prevent, prohibit, or restrict the St. Cloud Employee from being employed by the Designated Third Party Medical Practice, and shall not offer any incentive to the St. Cloud Employee to decline employment with the Designated Third Party Medical Practice

C. eliminate any contractual provisions, confidentiality restrictions, or other restrictions entered into or imposed by

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CentraCare Health that would otherwise prevent the St. Cloud Employee from being employed by the Designated Third Party Medical Practice, and

D. unless alternative arrangements are agreed upon with the Designated Third Party Medical Practice, retain the obligation for the benefit of any St. Cloud Employee who accepts employment with the Designated Third Party Medical Practice all accrued bonuses, vested pensions, and other accrued benefits.

VI.
MONITOR

IT IS FURTHER ORDERED that:

A. Richard Shermer of R. Shermer & Company shall be appointed Monitor to assure that CentraCare Health expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order to Suspend Non-Competes and Maintain Assets.

B. No later than one (1) day after this Order to Suspend Non-Competes and Maintain Assets issues, CentraCare Health shall, pursuant to the Monitor Agreement, attached as Appendix B and Confidential Appendix B-1 to this Order to Suspend Non-Competes and Maintain Assets, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities in a manner consistent with the purposes of this Order to Suspend Non-Competes and Maintain Assets.

C. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of CentraCare Health, which consent shall not be unreasonably withheld. If CentraCare Health has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to CentraCare Health of the identity of any proposed Monitor, CentraCare Health shall be deemed to have consented to the selection of the

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proposed Monitor. Not later than ten (10) days after appointment of a substitute Monitor, CentraCare Health shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor CentraCare Health's compliance with the terms of this Order to Suspend Non-Competes and Maintain Assets and the Decision and Order in a manner consistent with the purposes of the Orders.

- D. CentraCare Health shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor CentraCare Health's compliance with the terms of this Order to Suspend Non-Competes and Maintain Assets, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Order to Suspend Non-Competes and Maintain Assets and in consultation with the Commission, including, but not limited to:
 - a. receiving Termination Notifications from St. Cloud Physicians and CentraCare Physicians;
 - b. notifying each Physician that submitted a Termination Notification whether or not such notification will be an Acceptable Termination;

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- c. forwarding such Acceptable Terminations to CentraCare Health pursuant to the Decision and Order; and
 - d. assuring that CentraCare Health expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order to Suspend Non-Competes and Maintain Assets and the Decision and Order.
- 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
- 3. The Monitor shall serve for such time as is necessary to monitor CentraCare Health's compliance with this Order to Suspend Non-Competes and Maintain Assets.
- 4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to CentraCare Health's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, Related To CentraCare Health's compliance with its obligations under this Order to Suspend Non-Competes and Maintain Assets. CentraCare Health shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor CentraCare Health's compliance with this Order to Suspend Non-Competes and Maintain Assets.
- 5. The Monitor shall serve, without bond or other security, at the expense of CentraCare Health on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of CentraCare Health, such consultants, accountants, attorneys and other representatives

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and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.

6. CentraCare Health shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.
7. CentraCare Health shall report to the Monitor in accordance with the requirements of this Order to Suspend Non-Competes and Maintain Assets and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by CentraCare Health and any reports submitted by a current or former St. Cloud Physician with respect to the performance of CentraCare Health's obligations under this Order to Suspend Non-Competes and Maintain Assets.
8. Within one (1) month from the date the Monitor is appointed pursuant to this Paragraph, every sixty (60) days thereafter, until the end of the Second Release Period, and otherwise as requested by the Commission, the Monitor shall report in writing to the Secretary of the Commission, with a copy to the Compliance Division, concerning performance by CentraCare Health of its obligations under this Order to Suspend Non-Competes and Maintain Assets.

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9. CentraCare Health may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement Relating To Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph VI.C., above.
- G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Suspend Non-Competes and Maintain Assets.
- H. The Monitor appointed pursuant to this Order to Suspend Non-Competes and Maintain Assets may be the same Person appointed as Monitor under the Decision and Order.

VII.
COMPLIANCE REPORTS

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Suspend Non-Competes and Maintain Assets becomes final, and every thirty (30) days thereafter until this Order to Suspend Non-Competes and Maintain Assets terminates, CentraCare shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this

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Order to Suspend Non-Competes and Maintain Assets. *Provided, however,* that CentraCare Health may combine the reports required under this Order to Suspend Non-Competes and Maintain Assets with the reports required under the Decision and Order after the Decision and Order becomes final.

VIII.
NOTIFICATION

IT IS FURTHER ORDERED that CentraCare Health shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of CentraCare Health,
- B. Any proposed acquisition, merger or consolidation of CentraCare Health, or
- C. Any other change in CentraCare Health, including but not limited to assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order to Suspend Non-Competes and Maintain Assets.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order to Suspend Non-Competes and Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to CentraCare Health, CentraCare Health shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of CentraCare Health and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of CentraCare Health related to compliance with this Order to Suspend Non-Competes and Maintain Assets, which copying services shall be provided by CentraCare Health at the request of the authorized

Order to Maintain Assets

representative(s) of the Commission and at the expense of CentraCare Health; and

- B. Upon five (5) days' notice to CentraCare Health and without restraint or interference from CentraCare Health, to interview officers, directors, or employees of CentraCare Health, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order to Suspend Non-Competes and Maintain Assets shall terminate when the First Release Period or Second Release Period terminates, whichever comes first.

By the Commission.

Order to Maintain Assets

Appendix A*APPENDIX A - Letter to St. Cloud Physicians*

Dear Physician:

CentraCare Health System ("CentraCare Health") has entered into an agreement with the Federal Trade Commission to resolve allegations that its acquisition of the St. Cloud Medical Group and employment of the Adult Primary Care Physicians (including Urgent Care Physicians), OB/GYNs, and Pediatricians will restrict competition in violation of Section 7 of the Clayton Act. Although CentraCare Health has not admitted liability or admitted that the facts alleged in the Commission's complaint (other than jurisdictional facts) are true, it has agreed to two FTC orders containing certain terms that the Commission believes will ameliorate the competitive effects of the acquisition relating to these three practice areas.

For your convenience, CentraCare Health's obligations under the two FTC Orders, including the terms under which you may terminate your employment, are summarized below. These obligations are described more fully in the FTC's Orders and its Analysis to Aid Public Comment that are both attached to this letter. The two orders are (1) the "Order to Suspend Enforcement of CentraCare Health Non-Competes and Maintain Assets" or "Order to Suspend Non-Competes and Maintain Assets" and (2) the Decision and Order ("D&O").

Nothing in this summary is intended to modify any of the terms of the Commission's Orders or to provide legal advice.

Suspension of Enforcement of CentraCare Health Non-Competes

The first order establishes a period of time during which you, as a St. Cloud Physician (defined as an Adult Primary Care Physician, OB/GYN, or Pediatrician) currently employed by CentraCare Health, by virtue of the recent acquisition, may explore all employment and professional opportunities in the St. Cloud area, whether as an employee, a member of a medical group, or in private practice. You may enter into discussions and negotiations for new employment during this period. During this period, called the "Suspension Period," CentraCare Health cannot enforce any non-compete or non-solicitation provisions in your employment contract to interfere with your discussions with potential partners or employers.

The Suspension Period does not apply to any physician practicing in areas other than the three practice areas of Adult Primary Care, OB/GYN, or Pediatrics.

Notice of Termination of Employment

During this Suspension Period, you may submit your Termination Notice to the Monitor (identified below), but you may not actually terminate your employment before the "First Release Period" begins (described below). *If you terminate your employment with CentraCare Health before the First Release Period, CentraCare Health may pursue its non-compete or non-solicitation contract rights against you.*

Order to Maintain Assets

If you submit a Termination Notice to the Monitor during this Suspension Period, and if the conditions below are met, your name will be included on the list of physicians terminating their employment with CentraCare Health in the event that the D&O is made final. (Until any list is provided to CentraCare Health, your Termination Notice will remain confidential with the Monitor.)

You *must* follow the procedures listed below, and the Termination Notice *must* contain certain critical information, in order to become an Acceptable Termination that allows you to leave CentraCare Health and continue practicing in the St. Cloud area without violating your employment contract:

- You must submit your Termination Notice to the Monitor.
- Your Termination Notice must contain a statement that you intend to practice in the St. Cloud area for at least two years after you leave CentraCare Health. The St. Cloud area includes the zip codes 56303, 56304, 56387, 56377, 56301, 56379, 55320, 56320, and 56329, including and surrounding St. Cloud, Minnesota.
- Your Termination Notice must contain either (a) a valid offer of employment or other affiliation with another medical practice that accepts commercial payers, *i.e.*, not a Veterans Affairs hospital, in the St. Cloud area for a period of at least one year, or (b) a detailed and verifiable business plan to begin a new medical practice in the St. Cloud area.

There is a limit to the number of Adult Primary Care Physicians, OB/GYNs, and Pediatricians who will be allowed to terminate under the FTC Orders (described below). The Monitor will keep track of the order in which doctors submit their Termination Notices. The Monitor will keep the names of the physicians who have submitted notices confidential from CentraCare Health until the notices forwarded to CentraCare Health as physicians permitted to terminate their employment with CentraCare Health pursuant to the FTC Orders.

Termination Conditions – First Release Period

The second order, the D&O, if made final by the Commission after a period allowing for public comment (usually around 30 days), will allow you to terminate your employment with CentraCare Health without penalty, subject to the conditions described in the D&O and the Order to Suspend Non-Competes and Maintain Assets. The Monitor will send you an email when the time starts allowing you to terminate your employment with CentraCare Health after an Acceptable Termination notice has been received. This time period is called the “First Release Period” and runs for up to ninety (90) days.

- During this ninety (90) day period, you may begin or continue discussions and negotiations for new employment. If you decide to terminate your employment, you may notify the Monitor of your intention, by following the procedures listed above.

Order to Maintain Assets

- You must be or have been among the first fourteen (14) physicians to submit your notice to terminate employment. To protect the confidentiality of the doctors who want to leave, the Monitor will submit to CentraCare Health no more than the first fourteen (14) notices he receives.
- CentraCare Health must allow the first fourteen (14) physicians who have given notice to the Monitor and satisfied all of the conditions described above to terminate their employment without any penalty.
- You must leave employment with CentraCare Health within 60 days of CentraCare Health receiving your notice from the Monitor, but you may not leave prior to the Monitor delivering your notice to CentraCare Health.
- If at least eight (8) physicians terminate their employment with CentraCare Health by the end of the ninety (90) days, the First Release Period ends and no more employment terminations will be permitted under the Orders beyond a total of fourteen (14). After that, CentraCare Health may pursue its legal remedies against any employee who *subsequently* terminates employment with CentraCare Health in a manner that may violate that employee's contract.
- The Order to Suspend Non-Competes and Maintain Assets will continue in effect even after the Commission votes to accept (or reject) the D&O, the conclusion of this time period cannot be determined at this time. It will, however, not end until the requisite number of doctors leave CentraCare Health or ten years lapse from the date the D&O becomes final.
- If you are *not* among the first fourteen (14) physicians who submit Acceptable Termination notices, the Monitor will inform you of that fact

Termination Conditions – Second Release Period

If at the end of the First Release Period fewer than eight (8) doctors have notified the Monitor of their intent to terminate employment in accordance with the FTC Orders, the period in which physicians may continue to explore other employment opportunities and leave CentraCare Health's employment without penalty will remain open through a "Second Release Period." In the Second Release Period, physicians from CentraCare Health practicing in the three designated practice areas also will have the option to leave. This Second Release Period will remain open until eight (8) (rather than fourteen (14)) Adult Primary Care Physicians, OB/GYNs, or Pediatricians in total have terminated their employment with CentraCare Health in accordance with the FTC Orders, or ten years lapse from the date the D&O becomes final. *If you are not among the eight (8) physicians who submit Acceptable Termination notices during this period, the Monitor will inform you of that fact.*

Order to Maintain Assets

Termination Conditions – Departure Bonuses

The D&O requires CentraCare Health to pay departure bonuses to physicians who terminate their employment with CentraCare Health pursuant to the FTC Orders and who meet certain additional conditions. A \$100,000 departure bonus is available to the first five (5) St. Cloud and/or CentraCare Physicians who choose to leave CentraCare and:

- Start his or her (or their) own medical practice in the St. Cloud area, **OR**
- Choose to be a part of a St. Cloud area medical practice consisting of fewer than five (5) Adult Primary Care Physicians, OB/GYNs, and Pediatricians at the time of the Orders.

Physicians receiving a departure bonus count towards the fourteen (14) or eight (8), depending on the Release Period, total physicians that CentraCare must allow to terminate their employment pursuant to the FTC Orders.

Asset Maintenance

The Order to Suspend Non-Competes and Maintain Assets also contains provisions requiring CentraCare Health to limit changes to the facilities you use and your medical practice, in general, to facilitate your decision to stay or leave CentraCare Health. The goal is to keep your medical practice as similar as possible to avoid disruptions while you make your decision. If you decide to leave CentraCare Health, the FTC Orders have provisions that will facilitate the transfer of patients with you to your new practice and the ability of those patients to have their medical information transferred as well. If you find that there are changes happening that are contrary to this goal, please notify the Monitor.

Important Reminders

- The Orders do not *require* any doctor to terminate employment with CentraCare Health or to work for any other entity.
- The Orders do not *require* CentraCare Health to fire any doctors.
- The Orders *only apply to* Adult Primary Care Physicians, OB/GYNs, and Pediatricians.
- The Orders prohibit CentraCare Health from enforcing any non-compete or non-solicitation provisions in any contract, pursuing any breach of contract action, or taking any retaliatory action against any physician who either left under the terms of the Orders or who sought other employment as allowed by the Orders but decided not to leave.
- If you terminate your employment at times or under terms not described in the

Order to Maintain Assets

D&O, the D&O does not prohibit CentraCare Health from pursuing its contract rights.

- CentraCare Health will send an email to all CentraCare physicians (including the former St. Cloud physicians) when the time has closed for any more physicians to leave under the FTC Orders.

If you have questions about the information contained in this letter or in the Analysis to Aid Public Comment, including questions regarding timing or implementation of the Orders, please contact:

Monitor:

Dick Shermer at 214-668-0294, or dshermer@rshermer.com, and
Kevin Wilson at 303-619-6938, or kwilson@rshermer.com.

You may also call Eric D. Rohlck, an attorney at the Federal Trade Commission, at 202-326-2681, if you prefer.

Order to Maintain Assets

Appendix B**MONITOR AGREEMENT (DRAFT)**

Monitor Agreement (the "Agreement"), dated as of September 28, 2016, between CentraCare Health, ~~Inc.~~^{LLC} ("the Respondent"), and Richard A. Shermer of R. Shermer & Company, P.O. Box 294199, Lewisville, Texas 75029 (the "Monitor").

Preliminary Statements

WHEREAS the Federal Trade Commission (the "Commission") is considering for public comment an Agreement Containing Consent Orders with Respondent or its parent company, which provides, among other things, that Respondent.....and engage a monitor to monitor Respondent's compliance with its obligations under the Order

WHEREAS, the Commission is expected to issue the Agreement Containing Consent Orders and appoint the Monitor pursuant to the Orders to monitor Respondent's compliance with the terms of the Orders, and the Monitor has consented to such appointment;

WHEREAS, the Orders further provide that Respondent shall execute an agreement, subject to prior approval of the Commission, conferring all the rights and powers necessary to permit Monitor to carry out its duties and responsibilities pursuant to the Orders;

WHEREAS, this Agreement, although executed by Monitor and Respondent, is not effective for any purpose, including but not limited to imposing rights and responsibilities on Respondent or Monitor under the Orders, until the Order to Maintain Assets has been issued and this Agreement has been approved by the Commission;

WHEREAS, the parties to this Agreement intend to be legally bound, subject only to the Commission's approval of this Agreement.

NOW, THEREFORE, the parties agree as follows:

DEFINITIONS

- A. "Respondent" means CentraCare Health, ~~Inc.~~^{LLC}, with its principal place of business at 1406 Sixth Avenue North, St. Cloud, MN 56303, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by CentraCare, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. All other capitalized words or phrases appearing in this Agreement that are not otherwise defined herein are deemed to have the defined meanings assigned to them in the Order.

Order to Maintain Assets

ARTICLE I

1.1 Powers of the Monitor. Monitor shall have the rights, duties, powers and authority conferred upon Monitor by the Orders that are necessary for Monitor to monitor Respondent's compliance with the Orders. No later than one day after the Order becomes final, Respondent hereby transfers to Monitor all rights, powers, and authorities necessary to permit Monitor to perform its duties and responsibilities pursuant to the Order to Maintain Assets and consistent with the purposes of the Decision and Order. Any descriptions thereof contained in this Agreement in no way modify Monitor's powers and authority or Respondent's obligations under the Orders.

1.2 Monitor's Duties. Monitor shall monitor Respondent's compliance with the Orders, including, but not limited to:

- a. Assuring that Respondent expeditiously complies with all of the obligations, and performs all of responsibilities, of Respondent as required by the Orders in this matter;
- b. Monitoring Relevant Agreements; and
- c. Assuring that Confidential Business Information is not received or used by Respondent or Other Parties, except as allowed in the Orders in this matter.

1.3 Duration of Monitor's Authority. Monitor shall have all powers and duties described above and consistent with the Orders for the term set forth in the Orders.

1.4 Confidential and Proprietary Information. Monitor shall enter into a confidentiality agreement, agreeing to be bound by the terms and conditions of the Orders. Monitor must retain and maintain all Material Confidential Information it receives from either Respondent or Other Parties on a confidential basis, except as is permitted by the Orders. Monitor may disclose confidential information only to persons employed by or working with Monitor under this Agreement, to persons employed at the Commission, and as permitted by Respondent or Other Parties with respect to information they provided Monitor. Monitor shall require any person retained by Monitor to assist in carrying out the duties and responsibilities of Monitor to execute a confidentiality agreement that requires the same standard of care and obligations of confidentiality to which Monitor must adhere under this Agreement. Monitor shall maintain the confidentiality, for a period of five (5) years after the termination of this Agreement, of all other aspects of the performance of its duties under this Agreement and shall not disclose any confidential information relating thereto.

1.5 Restrictions. Monitor shall not be involved in any way in the management, production, supply and trading, sales marketing, and financial operations of the competing products of Respondent.

1.6 Reports. Monitor shall report to the Commission pursuant to the terms of the Orders and as otherwise requested by the Commission staff.

1.7 Access to Records, Documents and Facilities. Subject to any demonstrated legally recognized privilege, Monitor shall have full and complete access to

Order to Maintain Assets

Respondent's personnel, to include those employees designated to be transferred to an acquirer, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as Monitor may reasonably request, related to Respondent's compliance with the obligations of Respondent under the Orders in this matter. Documents, records and other relevant information are to be provided in an electronic format if they exist in that form. Respondent shall cooperate with any reasonable request of Monitor and shall take no action to interfere with or impede Monitor's ability to monitor Respondent's compliance with the Orders.

ARTICLE II

2.1 Retention and Payment of Counsel, Consultants, and other Assistants.

Monitor shall have the authority to employ, at the cost and expense of the Respondent, (with the written prior approval of Respondent which shall not be unreasonably withheld) such attorneys, consultants, accountants, and other representatives and assistants as are necessary to carry out the Monitor's duties and responsibilities as allowed pursuant to the Orders.

2.2 Compensation. Monitor shall be compensated by Respondent for his services under this Agreement, including all work in connection with the negotiation and preparation of this Monitor Agreement, pursuant to the fee schedule attached as Confidential Exhibit A for time spent in connection with the discharge of its duties under this Agreement and the Orders. In addition, Respondent will pay: (a) out-of-pocket expenses reasonably incurred by Monitor in the performance of its duties under the orders; and (b) fees and disbursements reasonably incurred by any advisor appointed by Monitor pursuant to the first paragraph in Article II. At its own expense, Respondent may retain an independent auditor to verify such invoices. Monitor shall provide Respondent with monthly invoices for time and expenses. Respondent shall pay such invoices within thirty (30) days of receipt. The Monitor and Respondent shall submit any disputes about invoices to the Commission for assistance in resolving such disputes.

2.3 To the extent available, Respondent will provide the Monitor with temporary workspace and access to office equipment owned or used by Respondent at sites the Monitor is required to visit in order to fulfill its obligations under this Agreement. Monitor agrees to comply with all of Respondents' safety and security regulations, instructions and procedures while at Respondents' sites.

ARTICLE III

3.1 Monitor's Liabilities and Indemnification. Respondent shall indemnify the Monitor and hold Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by Monitor. The Monitor's maximum liability to Respondents relating to services rendered in accordance with this Agreement (regardless of form of action, whether in contract, statutory law, or tort) shall

Order to Maintain Assets

be limited to an amount equal to the total sum of the fees paid to the Monitor by the Respondent. Any claim arising from this Agreement that Respondents may have against the Monitor must be brought no later than one (1) year following the termination or expiration of this Agreement. In the performance of its duties under this Agreement, the Monitor shall exercise the standard of care and diligence that would be expected of a reasonable person in the conduct of his own business affairs. The Monitor shall not be liable for any delays or other failures to perform resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority. The Monitor warrants that it will perform its obligations hereunder in good faith. R. Shermer & Company disclaims other warranties, expressed or implied, other than those expressly agreed to in writing between the Parties.

3.2 Monitor's Removal. If the Commission determines that Monitor ceases to act or fail to act diligently and consistent with the purpose of the Orders, Respondent shall terminate this Agreement and appoint a substitute Monitor, subject to Commission approval and consistent with the Orders.

3.3 Approval by the Commission. This Agreement shall have no force or effect until approved by the Commission, other than the confidentiality provisions herein.

3.4 Termination: This Agreement shall terminate the earlier of: (a) thirty (30) days following the termination date set forth in the applicable Order; (b) Respondent's receipt of written notice from the Commission that the Commission has determined that Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor; (c) with at least thirty (30) days advance notice to be provided by Monitor to Respondent and to the Commission, upon resignation of the Monitor; or (d) when the Respondent's last obligation under the Orders and the Relevant Agreements that pertains to the Monitors' service has been fully performed; provided, however, that the Commission may require that the Respondent extend this Agreement or enter into an additional agreement with the Monitor as may be necessary or appropriate to accomplish the purposes of the Orders. If this Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force.

3.5 Conflicts of Interest: If Monitor becomes aware during the term of this Agreement that it has or may have a conflict of interest that may affect or could have the appearance of affecting performance by the Monitor of any of its duties under this Agreement, Monitor shall promptly inform Respondent and the Commission of any such conflict.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

MONITOR:

Richard A. Shermer

Richard A. Shermer
President, R. Shermer & Company

Order to Maintain Assets

RESPONDENT:

CentraCare Health, Inc., *System*

By: *PJ Bitt*
Sr. V.P. + General Counsel

Decision and Order

**NON-PUBLIC APPENDIX B-1 – MONITOR
COMPENSATION**

**[Redacted From the Public Record Version, But Incorporated
By Reference]**

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the acquisition by CentraCare Health System of St. Cloud Medical Group, P.A. (“St. Cloud Medical Group”), and CentraCare Health System (hereafter referred to as “CentraCare Health” or “Respondent CentraCare Health”) having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent CentraCare Health with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18; and

Respondent CentraCare Health, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent CentraCare Health of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent CentraCare Health that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent CentraCare Health has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Suspend Enforcement of CentraCare Health Non-Competes and Maintain

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Assets (“Order to Suspend Enforcement and Maintain Assets”), and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent CentraCare Health is a not-for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota with its office and principal place of business located at 1406 Sixth Avenue North, St. Cloud, MN 56303.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent CentraCare Health, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “CentraCare Health System” means CentraCare Health, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by CentraCare Health, the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “St. Cloud Medical Group” means St. Cloud Medical Group, P.A., a multi-specialty medical clinic serving the St. Cloud, Minnesota, area. St. Cloud Medical

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Group is located at 1301 33rd St S, St Cloud, MN 56301.

- D. “Acceptable Termination” means any termination of employment with CentraCare Health resulting from:
1. a Termination Notification that, upon consultation between the Monitor and the Commission’s staff, is submitted, after this Order becomes final, to CentraCare Health by the Monitor, and
 2. Where the St. Cloud Physician or CentraCare Physician has a valid offer or contract to work for or Participate with a Third Party Medical Practice, other than CentraCare Health, for a period of at least one year after such termination, or the creation of a New Third Party Medical Practice.
- E. “Acquisition” means the acquisition by CentraCare Health of St. Cloud Medical Group on or about October 1, 2016.
- F. “Acquisition Agreement” means the February 29, 2016, Stock Purchase Agreement by and among CentraCare Health Services, St. Cloud Medical Group, P.A., and the Shareholders listed on Schedule 1 to the Stock Purchase Agreement.
- G. “Adult Primary Care Services” means primary care Physician services that encompass general medicine, internal medicine, and family medicine provided to patients 18 years and older.
- H. “CentraCare Health Non-Compete Provisions” means:
1. any provision in the Acquisition Agreement or other agreement Relating To the Acquisition or the employment of a St. Cloud Physician that impedes, interferes with, or prevents a St. Cloud Physician from interviewing, discussing employment or Participation with, or Participating in a Third Party Medical Practice or New Third Party Medical

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Practice other than at CentraCare Health including, but not limited to, any provision:

- a. as it Relates To disclosing the identities of, or communicating with patients treated by a St. Cloud Physician, and the status or transfer of health records of such patients; and
 - b. as it Relates To interfering with relationships between CentraCare Health and patients treated by a St. Cloud Physician.
2. any agreement Relating To the employment of a CentraCare Physician that impedes, interferes with, or prevents a CentraCare Physician from interviewing, discussing employment or Participation with, or Participating in a Third Party Medical Practice or New Third Party Medical Practice other than at CentraCare Health including, but not limited to, any provision:
- a. as it Relates To disclosing the identities of, communicating with patients treated by a CentraCare Physician, and the status or transfer of health records of such patients; and
 - b. as it Relates To interfering with relationships between CentraCare Health and patients treated by the CentraCare Physician.
- I. “CentraCare Physician” means a Physician who provides Adult Primary Care Services, Pediatric Services, or Obstetric Services in the St. Cloud Geographic Area as an employee of CentraCare Health, and is not a St. Cloud Physician.
- J. “Contract Services” means any service performed pursuant to any Employment Agreement or Participation agreement between CentraCare Health and a St. Cloud Physician, a CentraCare Physician, or, for purposes of Paragraph V of this Order, other Physicians located in the St. Cloud Geographic Area.

Decision and Order

- K. “Employment Agreement” means any employment agreement or other agreement Relating To a St. Cloud Physician working for or Participating with CentraCare Health entered between CentraCare Health and a St. Cloud Physician on or about October 1, 2016, or any employment agreement or other agreement Relating To a CentraCare Physician working for or Participating with CentraCare Health.
- L. “First Release Period” means ninety (90) days starting from the date this Order becomes final.
- M. “Monitor” means the Person appointed to act as monitor by the Commission pursuant to Paragraph VII of this Order.
- N. “New Third Party Medical Practice” means the creation of or proposal to create a new Third Party Medical Practice by a St. Cloud Physician or St. Cloud Physicians, or by a CentraCare Physician or CentraCare Physicians. The New Third Party Medical Practice must, to the Monitor’s satisfaction after consultation with the Commission, have viable plans for a medical practice including, but not limited to, financial projections, suitable office location, staffing, and outfitting.
- O. “Obstetric Services” means obstetric and gynecologic physician services Related To women’s reproductive health, pregnancy and childbirth.
- P. “Participate” in an entity or an arrangement means (1) to be a partner, joint venturer, shareholder, owner, member, or employee of such entity or arrangement, or (2) to provide services, agree to provide services, or offer to provide services through such entity or arrangement. This definition applies to all tenses and forms of the word “participate,” including but not limited to, “participating,” “participated,” “participation,” and “participant.”

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- Q. “Payer” means any Person that pays, or arranges for the payment, for all or any part of any physician services for itself or for any other person, as well as any person that develops, leases, or sells access to networks of physicians.
- R. “Pediatric Services” means primary care Physician services provided to children under the age of 18.
- S. “Person” means any natural person or artificial person, including, but not limited to, any corporation, unincorporated entity, or government entity. For the purpose of this Order, any corporation includes the subsidiaries, divisions, groups, and affiliates controlled by it.
- T. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- U. “Physician Services” mean Adult Primary Care Services, Obstetric Services, and Pediatric Services.
- V. “Relating To” means pertaining in any way to, and is not limited to that which pertains exclusively to or primarily to. This definition applies to all tenses and forms of the word “relate to,” including but not limited to,” “relates to,” and “related to.”
- W. “Second Release Period” means the period of time beginning on the date the First Release Period ends if the Commission has not received Acceptable Terminations of eight (8) St. Cloud Physicians, until eight (8) St. Cloud Physicians and CentraCare Physicians, in total, have submitted Acceptable Terminations, pursuant to this Order.
- X. “St. Cloud Employee” means a person employed by St. Cloud Medical Group, not including a St. Cloud Physician, before the Acquisition.
- Y. “St. Cloud Geographic Area” means the locations within the zip codes 56303, 56304, 56387, 56377,

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56301, 56379, 55320, 56320, and 56329, including and surrounding St. Cloud, Minnesota.

- Z. “St. Cloud Physician” means a Physician who provides Adult Primary Care Services, Pediatric Services, or Obstetric Services in the St. Cloud Geographic Area as an employee of CentraCare Health and who, prior to providing Contract Services for CentraCare Health, offered Physician Services as a Participant in St. Cloud Medical Group.
- AA. “Suspension Period” means the time period that CentraCare Health is required to suspend enforcement of the CentraCare Health Non-Compete Provisions for either St. Cloud Physicians or CentraCare Physicians beginning when the Order to Suspend Enforcement and Maintain Assets becomes final until the end of the First Release Period or, if necessary, the end of the Second Release Period.
- BB. “Termination Notification” means written notification submitted to the Monitor by a St. Cloud Physician or CentraCare Physician of that Physician’s intention to terminate his or her Employment Agreement and intention to Participate in a Third Party Medical Practice for a period of at least two (2) years after such termination or create a New Third Party Medical Practice.
- CC. “Third Party Medical Practice” means Physician Services offered in the St. Cloud Geographic Area by a Physician Participating in a medical practice or in an employment arrangement that accepts reimbursements from commercial Payers. A Third Party Medical Practice does not include, among other things, a Veterans Administration facility.

Decision and Order

II.

IT IS FURTHER ORDERED that CentraCare Health shall:

- A. Suspend enforcement of any of the CentraCare Non-Compete Provisions against any St. Cloud Physician for any activity that the St. Cloud Physician engaged in during the Suspension Period through the First Release Period and, if necessary, the Second Release Period, that Relates To providing a Termination Notification and an Acceptable Termination; *provided, however*, that this Paragraph II.A does not prohibit CentraCare Health from enforcing any of the CentraCare Health Non-Compete Provisions against any St. Cloud Physician who terminates Contract Services prior to the First Release Period.
- B. Within two (2) days of the Agreement Containing Consent Order in this matter being placed on the public record, send the letter attached as Appendix A to this Order by first-class mail and by email, return receipt requested, to each St. Cloud Physician.
- C. Inform the Monitor, in writing, that the notices sent pursuant to this Paragraph II have been sent and received.
- D. For each Termination Notification that is (1) submitted during the First Release Period and (2) received by CentraCare Health as an Acceptable Termination, terminate Contract Services of the St. Cloud Physician who submitted that Termination Notification, and allow that St. Cloud Physician to leave CentraCare Health's employment on or before sixty (60) days of CentraCare Health's receipt of such notification from the Monitor;
- E. For any activity Related To this Paragraph II, waive all rights to seek or obtain legal or equitable relief for breach of contract for violation by any St. Cloud Physician of any of the CentraCare Health Non-Compete Provisions; and

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- F. Not take any other action to discourage, impede, or otherwise prevent any St. Cloud Physician from terminating Contract Services pursuant to this Paragraph II including, but not limited to, revoking any payments to the St. Cloud Physicians resulting from the Acquisition, or offering any incentive to the St. Cloud Physician to decline employment with a Third Party Medical Practice.

Provided, however, upon receipt by the Commission of CentraCare Health's verified report of Acceptable Termination of fourteen (14) St. Cloud Physicians, the First Release Period shall end immediately, CentraCare Health will not be required to release any additional St. Cloud Physicians, and the Second Release Period will not start. *Provided, further, however,* that, if during the First Release Period there are more than fourteen (14) Acceptable Terminations, the Monitor, after consultation with the Commission's staff and the Persons where the St. Cloud Physicians plan to Participate or be employed, shall forward to CentraCare Health the first fourteen (14) such notifications received by the Monitor and shall not reveal the identity of any of the additional St. Cloud Physicians who submitted Termination Notifications. *Provided, further, however,* that if at the end of the First Release Period, CentraCare Health has submitted a verified report to the Commission that it has Acceptable Terminations of eight (8) St. Cloud Physicians, the Second Release Period will not start pursuant to Paragraph III.

- G. At the time of the Acquisition, deposit into an escrow account, pursuant to oversight and consultation with the Monitor, a sum of five hundred thousand dollars (\$500,000), payable in individual, one hundred thousand dollar (\$100,000) amounts as departure bonuses to up to five (5) St. Cloud Physicians or CentraCare Physicians who submit Acceptable Terminations during the First Release Period, or Second Release Period if there is one:

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1. To move to a Third Party Medical Practice with fewer than five (5) Physicians offering Physician Services, as of the date the Order becomes final; or
2. For the creation of a New Third Party Medical Practice.

Provided, however, that if more than five (5) St. Cloud Physicians or CentraCare Physicians submit Acceptable Terminations pursuant to this Paragraph, the Monitor shall forward to CentraCare Health the first five (5) such Acceptable Terminations received by the Monitor. *Provided, further, however,* that any escrow amounts not distributed will be returned to CentraCare, with interest.

- H. The purpose of this Paragraph II, including the departure bonus in Paragraph II.G., is to mitigate the competitive effects in the Commission's Complaint by giving individual physicians who formerly practiced in St. Cloud Medical Group or at CentraCare Health the incentive to leave CentraCare Health to practice Physician Services in competition with CentraCare Health. Acceptance of the departure bonus by an individual physician serves to ensure CentraCare Health's compliance with this Order. The departure bonuses provided for under this Paragraph II: (1) are not an exchange (or offer to exchange) of anything of value in an effort to induce (or reward) the referral of federal health care program business from any St. Cloud Physician or CentraCare Physician receiving such bonus to CentraCare; (2) are not considered to vary with or take into account the volume or value of any past or future referrals of federal health care program business referred by any St. Cloud Physician or CentraCare Physician to CentraCare Health; and (3) do not create any new or continuing financial relationship between the accepting St. Cloud Physician or CentraCare Physician and CentraCare Health for purposes of encouraging or expecting more referrals to, or medical tests from, CentraCare Health.

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III.

IT IS FURTHER ORDERED that, if after the expiration of the First Release Period, CentraCare Health has not received Acceptable Terminations for at least eight (8) St. Cloud Physicians:

- A. CentraCare Health shall send a notice in a form similar to Appendix B of this Order by email and first class mail, return receipt requested, effectively giving notice to all CentraCare Physicians that there is one or more openings for CentraCare Physicians to leave CentraCare Health and practice at a Third Party Medical Practice or create a New Third Party Medical Practice, pursuant to this Order;
- B. CentraCare Health shall inform the Monitor, in writing, that the notices sent pursuant to this Paragraph III have been sent and received
- C. For a period of time until a total of eight (8) St. Cloud Physicians and CentraCare Physicians in total have given Acceptable Terminations, CentraCare Health shall not enforce, directly or indirectly, the CentraCare Health Non-Compete Provisions Relating To CentraCare Physicians against any CentraCare Physician seeking to provide Termination Notification;
- D. Upon Acceptable Termination of any CentraCare Physician, CentraCare Health shall terminate Contract Services of each such CentraCare Physician and allow that physician to leave CentraCare Health's employment on or before ninety (90) days from the date such notification was received;
- E. For any activity Related To this Paragraph III, CentraCare Health shall waive all rights to seek or obtain legal or equitable relief for breach of contract for violation by any CentraCare Physician of any of the CentraCare Health Non-Compete Provisions; and

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- F. CentraCare Health shall not take any other action to discourage, impede, or otherwise prevent any CentraCare Physician from terminating Contract Services pursuant to this Paragraph III including, but not limited to, not offering any incentive to the CentraCare Physician to decline employment with the Third Party Medical Practice.

Provided, however, that CentraCare Health shall not be required to suspend or continue to suspend its CentraCare Health Non-Compete Provisions, nor be required to allow any CentraCare Physician to leave CentraCare Health pursuant to this Order after the Second Release Period; and *provided, further, however,* that once eight (8) St. Cloud Physicians and/or CentraCare Physicians, in total, have submitted Acceptable Terminations, CentraCare Health shall not be required to suspend or continue to suspend its CentraCare Health Non-Compete Provisions, nor be required to allow any CentraCare Physician or St. Cloud Physicians to leave CentraCare Health for a Third Party Medical Practice or create a New Third Party Medical Practice, pursuant to this Order.

- G. The purpose of this Paragraph III is to ensure that those St. Cloud Physicians and CentraCare Physicians who terminate their Contract Services can offer Physician Services in a Third Party Medical Practice or New Third Party Medical Practice in competition with CentraCare Health and to mitigate the lessening of competition alleged in the Commission's Complaint.

IV.**IT IS FURTHER ORDERED** that:

- A. With respect to each St. Cloud Physician and CentraCare Physician who terminates his or her Contract Services pursuant to Paragraph II or III of this Order:

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1. CentraCare Health shall not:
 - a. Offer any incentive to such Physician to decline to provide Physician Services in a Third Party Medical Practice or New Third Party Medical Practice and shall retain the obligation to pay for the benefit of any St. Cloud Physician and the CentraCare Physician who accepts employment with the Third Party Medical Practice, or creates a New Third Party Medical Practice, all accrued bonuses, vested pensions, and other accrued benefits;
 - b. Enforce any provision of such Physician's Employment Agreement that would prevent that Physician from informing patients treated by that Physician of his or her Third Party Medical Practice, or New Third Party Medical Practice, and providing Physician Services to those patients;
 - c. Enforce any of the CentraCare Health Non-Compete Provisions for any activity Relating To terminating Contract Services;
 - d. Require any St. Cloud Physician or CentraCare Physician, prior to terminating his or her Contract Services, to enter into an agreement to provide any payment to CentraCare Health;
 - e. Prevent, impede, or otherwise interfere with the provision of Physician Services by such St. Cloud Physician or CentraCare Physician;
 - f. For a period of two (2) years from the date such Physician terminates his or her Contract Services, directly or indirectly, solicit, induce, or attempt to solicit or induce the employment of such St. Cloud Physician or CentraCare Physician. *Provided, however*, that CentraCare Health may make general advertisements for Physicians including, but not limited to, in

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newspapers, trade publications, websites, or other media not targeted specifically at the Physicians who so terminated their employment or who were released from the CentraCare Health Non-Compete Provisions. *Provided, further, however,* that CentraCare Health may employ any former St. Cloud Physician or CentraCare Health Physician who applies to Participate with CentraCare Health as long as such Physician was not solicited by CentraCare Health in violation of this Paragraph.

- g. For a period of three (3) years from the end of the First Release Period, or Second Release Period, if applicable, deny, terminate or suspend medical staff privileges, or reduce or change medical staff membership status from the status existing as of the Acquisition, of St. Cloud Physicians or CentraCare Physicians who have terminated their employment with CentraCare Health pursuant to this Order, based solely on the status of that Physician's lack of employment by CentraCare Health. *Provided, however,* that CentraCare Health may deny, terminate or suspend such Physician's medical staff privileges, or reduce or change medical staff membership status, due to (a) quality or patient safety determinations; or (b) violations by such Physician of facility rules and regulations or standards of conduct that apply to all medical staff members.
- 2. CentraCare Health shall within thirty (30) days of such Physician's termination:
 - a. Inform all patients of such Physician that such Physician has left CentraCare Health or St. Cloud Medical Group and where such Physician is practicing, including an address and phone number; and

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- b. Inform all patients of such Physician that they have a right to their medical records, and to have those records transferred without cost.
- B. The purpose of this Paragraph IV is to ensure that those St. Cloud Physicians and CentraCare Physicians who terminate their Contract Services can offer Physician Services in a Third Party Medical Practice or New Third Party Medical Practice in competition with CentraCare Health and to mitigate the lessening of competition alleged in the Commission's Complaint.

V.

IT IS FURTHER ORDERED that for a period of three (3) years from the date this Order becomes final, CentraCare Health shall not, without providing advance written notification to the Commission in the manner described in this paragraph, directly or indirectly:

- A. Acquire any assets of or financial interest in any group consisting of three (3) or more Physicians that provides Physician Services in the St. Cloud Geographic Area; or
- B. Enter into any Contract Services with any group of Physicians or individual Physicians located in the St. Cloud Geographic Area who provide Physician Services in the St. Cloud Geographic Area.

Said advance written notification shall contain (i) either a detailed term sheet for the proposed acquisition or the proposed agreement with all attachments, and (ii) documents that would be responsive to Item 4(c) and Item 4(d) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a, and Rules, 16 C.F.R. § 801-803, Relating To the proposed transaction (hereinafter referred to as "the Notification").

provided, however, that (i) no filing fee will be required for the Notification, (ii) an original and one copy of the Notification shall

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be filed only with the Secretary of the Commission and need not be submitted to the United States Department of Justice, and (iii) the Notification is required from CentraCare Health and not from any other party to the transaction. CentraCare Health shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), CentraCare Health shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

provided, further, however, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

VI.**IT IS FURTHER ORDERED** that:

- A. Anytime during the First Release Period, Respondent CentraCare Health shall, in a manner consistent with local labor laws:
 - 1. facilitate employment interviews between any St. Cloud Employee, who has been requested to join a St. Cloud Physician who has submitted an Acceptable Termination, and any Third Party Medical Practice to which a St. Cloud Physician is hired or a New Third Party Medical Practice during the First Release Period (“Designated Third Party Medical Practice”);
 - 2. with respect to each St. Cloud Employee who receives an offer of employment from a Designated Third Party Medical Practice, not prevent, prohibit, or restrict, or threaten to prevent, prohibit, or

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restrict the St. Cloud Employee from being employed by the Designated Third Party Medical Practice, and shall not offer any incentive to the St. Cloud Employee to decline employment with the Designated Third Party Medical Practice; and

3. eliminate any contractual provisions, confidentiality restrictions, or other restrictions entered into or imposed by CentraCare Health that would otherwise prevent the St. Cloud Employee from being employed by the Designated Third Party Medical Practice;
 4. unless alternative arrangements are agreed upon with the Designated Third Party Medical Practice, retain the obligation for the benefit of any St. Cloud Employee who accepts employment with the Designated Third Party Medical Practice all accrued bonuses, vested pensions, and other accrued benefits.
- B. CentraCare Health shall not, for a period of two (2) years following the Acquisition, directly or indirectly, solicit, induce, or attempt to solicit or induce any St. Cloud Employee who is employed by or Participating at a Designated Third Party Medical Practice to terminate his or her employment relationship with the Designated Third Party Medical Practice, unless that employment relationship has already been terminated by the Designated Third Party Medical Practice; *provided, however,* that CentraCare Health may place general advertisements for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the former St. Cloud Employees; *provided further, however,* that CentraCare Health may hire former St. Cloud Employees who apply for employment with CentraCare Health as long as such employees were not solicited by CentraCare Health in violation of this Paragraph.

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VII.**IT IS FURTHER ORDERED** that:

- A. Richard Shermer of R. Shermer & Company shall be appointed Monitor to assure that CentraCare Health expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.
- B. No later than one (1) day after this Order issues, CentraCare Health shall, pursuant to the Monitor Agreement, attached as Appendix C and Confidential Appendix C-1 to this Order, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities in a manner consistent with the purposes of this Order.
- C. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of CentraCare Health, which consent shall not be unreasonably withheld. If CentraCare Health has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to CentraCare Health of the identity of any proposed Monitor, CentraCare Health shall be deemed to have consented to the selection of the proposed Monitor. Not later than ten (10) days after appointment of a substitute Monitor, CentraCare Health shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor CentraCare Health's compliance with the terms of this Order and the Order to Suspend Enforcement and Maintain Assets in a manner consistent with the purposes of this Order.
- D. CentraCare Health shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

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1. The Monitor shall have the power and authority to monitor CentraCare Health's compliance with the terms of this Order and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission, including, but not limited to:
 - a. receiving Termination Notifications from St. Cloud Physicians and CentraCare Physicians;
 - b. notifying each Physician that submitted a Termination Notification whether or not such notification will be an Acceptable Termination;
 - c. forwarding such Acceptable Terminations to CentraCare Health pursuant to this Order; and
 - d. assuring that CentraCare Health expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.
2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Monitor shall serve for such time as is necessary to monitor CentraCare Health's compliance with the Paragraphs II, III, IV.A.1.a-e, IV.A.2., and VI.A. of this Order.
4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to CentraCare Health's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, Related To CentraCare Health's compliance with its obligations under this Order. CentraCare Health shall cooperate with any reasonable request of the Monitor and shall take no

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action to interfere with or impede the Monitor's ability to monitor CentraCare Health's compliance with this Order.

5. The Monitor shall serve, without bond or other security, at the expense of CentraCare Health on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of CentraCare Health, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
6. CentraCare Health shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.
7. CentraCare Health shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by CentraCare Health and any reports submitted by a current or former St. Cloud Physician or CentraCare Physician with respect to the performance of CentraCare Health's obligations under this Order.

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8. Within one (1) month from the date the Monitor is appointed pursuant to this Paragraph, every sixty (60) days thereafter, until the end of the Second Release Period, if triggered, and otherwise as requested by the Commission, the Monitor shall report in writing to the Secretary of the Commission, with a copy to the Compliance Division, concerning performance by CentraCare Health of its obligations under this Order.
 9. CentraCare Health may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement Relating To Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph VII.C., above.
- G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
- H. The Monitor appointed pursuant to this Order may be the same Person appointed as Monitor under the Order to Suspend Enforcement and Maintain Assets.

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VIII.**IT IS FURTHER ORDERED** that:

- A. No later than thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until CentraCare Health has fully complied, as relevant, with Paragraphs II, III, IV.A. (except IV.A.1.f. and IV.A.1.g.), and VI.A. of this Order, CentraCare Health shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with all the terms of this Order. CentraCare Health shall submit at the same time a copy of these reports to the Monitor.
- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next four (4) years, CentraCare Health shall submit to the Commission verified written reports setting forth in detail the manner and form in which it is complying and has complied with this Order.

IX.

IT IS FURTHER ORDERED that CentraCare Health shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of CentraCare Health;
- B. Any proposed acquisition, merger or consolidation of CentraCare Health; or
- C. Any other change in the CentraCare Health, including but not limited to assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

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X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to CentraCare Health, CentraCare Health shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of CentraCare Health and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of CentraCare Health Related To compliance with this Order, which copying services shall be provided by CentraCare Health at the request of the authorized representative(s) of the Commission and at the expense of CentraCare Health; and
- B. Upon five (5) days' notice to CentraCare Health and without restraint or interference from CentraCare Health, to interview officers, directors, or employees of CentraCare Health, who may have counsel present, regarding such matters

XI.

IT IS FURTHER ORDERED that this Order shall terminate January 6, 2027.

By the Commission.

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Appendix A*APPENDIX A - Letter to St. Cloud Physicians*

Dear Physician:

CentraCare Health System ("CentraCare Health") has entered into an agreement with the Federal Trade Commission to resolve allegations that its acquisition of the St. Cloud Medical Group and employment of the Adult Primary Care Physicians (including Urgent Care Physicians), OB/GYNs, and Pediatricians will restrict competition in violation of Section 7 of the Clayton Act. Although CentraCare Health has not admitted liability or admitted that the facts alleged in the Commission's complaint (other than jurisdictional facts) are true, it has agreed to two FTC orders containing certain terms that the Commission believes will ameliorate the competitive effects of the acquisition relating to these three practice areas.

For your convenience, CentraCare Health's obligations under the two FTC Orders, including the terms under which you may terminate your employment, are summarized below. These obligations are described more fully in the FTC's Orders and its Analysis to Aid Public Comment that are both attached to this letter. The two orders are (1) the "Order to Suspend Enforcement of CentraCare Health Non-Competes and Maintain Assets" or "Order to Suspend Non-Competes and Maintain Assets" and (2) the Decision and Order ("D&O").

Nothing in this summary is intended to modify any of the terms of the Commission's Orders or to provide legal advice.

Suspension of Enforcement of CentraCare Health Non-Competes

The first order establishes a period of time during which you, as a St. Cloud Physician (defined as an Adult Primary Care Physician, OB/GYN, or Pediatrician) currently employed by CentraCare Health, by virtue of the recent acquisition, may explore all employment and professional opportunities in the St. Cloud area, whether as an employee, a member of a medical group, or in private practice. You may enter into discussions and negotiations for new employment during this period. During this period, called the "Suspension Period," CentraCare Health cannot enforce any non-compete or non-solicitation provisions in your employment contract to interfere with your discussions with potential partners or employers.

The Suspension Period does not apply to any physician practicing in areas other than the three practice areas of Adult Primary Care, OB/GYN, or Pediatrics.

Notice of Termination of Employment

During this Suspension Period, you may submit your Termination Notice to the Monitor (identified below), but you may not actually terminate your employment before the "First Release Period" begins (described below). *If you terminate your employment with CentraCare Health before the First Release Period, CentraCare Health may pursue its non-compete or non-solicitation contract rights against you.*

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If you submit a Termination Notice to the Monitor during this Suspension Period, and if the conditions below are met, your name will be included on the list of physicians terminating their employment with CentraCare Health in the event that the D&O is made final. (Until any list is provided to CentraCare Health, your Termination Notice will remain confidential with the Monitor.)

You *must* follow the procedures listed below, and the Termination Notice *must* contain certain critical information, in order to become an Acceptable Termination that allows you to leave CentraCare Health and continue practicing in the St. Cloud area without violating your employment contract:

- You must submit your Termination Notice to the Monitor.
- Your Termination Notice must contain a statement that you intend to practice in the St. Cloud area for at least two years after you leave CentraCare Health. The St. Cloud area includes the zip codes 56303, 56304, 56387, 56377, 56301, 56379, 55320, 56320, and 56329, including and surrounding St. Cloud, Minnesota.
- Your Termination Notice must contain either (a) a valid offer of employment or other affiliation with another medical practice that accepts commercial payers, *i.e.*, not a Veterans Affairs hospital, in the St. Cloud area for a period of at least one year, or (b) a detailed and verifiable business plan to begin a new medical practice in the St. Cloud area.

There is a limit to the number of Adult Primary Care Physicians, OB/GYNs, and Pediatricians who will be allowed to terminate under the FTC Orders (described below). The Monitor will keep track of the order in which doctors submit their Termination Notices. The Monitor will keep the names of the physicians who have submitted notices confidential from CentraCare Health until the notices forwarded to CentraCare Health as physicians permitted to terminate their employment with CentraCare Health pursuant to the FTC Orders.

Termination Conditions – First Release Period

The second order, the D&O, if made final by the Commission after a period allowing for public comment (usually around 30 days), will allow you to terminate your employment with CentraCare Health without penalty, subject to the conditions described in the D&O and the Order to Suspend Non-Competes and Maintain Assets. The Monitor will send you an email when the time starts allowing you to terminate your employment with CentraCare Health after an Acceptable Termination notice has been received. This time period is called the “First Release Period” and runs for up to ninety (90) days.

- During this ninety (90) day period, you may begin or continue discussions and negotiations for new employment. If you decide to terminate your employment, you may notify the Monitor of your intention, by following the procedures listed above.

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- You must be or have been among the first fourteen (14) physicians to submit your notice to terminate employment. To protect the confidentiality of the doctors who want to leave, the Monitor will submit to CentraCare Health no more than the first fourteen (14) notices he receives.
- CentraCare Health must allow the first fourteen (14) physicians who have given notice to the Monitor and satisfied all of the conditions described above to terminate their employment without any penalty.
- You must leave employment with CentraCare Health within 60 days of CentraCare Health receiving your notice from the Monitor, but you may not leave prior to the Monitor delivering your notice to CentraCare Health.
- If at least eight (8) physicians terminate their employment with CentraCare Health by the end of the ninety (90) days, the First Release Period ends and no more employment terminations will be permitted under the Orders beyond a total of fourteen (14). After that, CentraCare Health may pursue its legal remedies against any employee who *subsequently* terminates employment with CentraCare Health in a manner that may violate that employee's contract.
- The Order to Suspend Non-Competes and Maintain Assets will continue in effect even after the Commission votes to accept (or reject) the D&O, the conclusion of this time period cannot be determined at this time. It will, however, not end until the requisite number of doctors leave CentraCare Health or ten years lapse from the date the D&O becomes final.
- If you are *not* among the first fourteen (14) physicians who submit Acceptable Termination notices, the Monitor will inform you of that fact

Termination Conditions – Second Release Period

If at the end of the First Release Period fewer than eight (8) doctors have notified the Monitor of their intent to terminate employment in accordance with the FTC Orders, the period in which physicians may continue to explore other employment opportunities and leave CentraCare Health's employment without penalty will remain open through a "Second Release Period." In the Second Release Period, physicians from CentraCare Health practicing in the three designated practice areas also will have the option to leave. This Second Release Period will remain open until eight (8) (rather than fourteen (14)) Adult Primary Care Physicians, OB/GYNs, or Pediatricians in total have terminated their employment with CentraCare Health in accordance with the FTC Orders, or ten years lapse from the date the D&O becomes final. *If you are not among the eight (8) physicians who submit Acceptable Termination notices during this period, the Monitor will inform you of that fact.*

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Termination Conditions – Departure Bonuses

The D&O requires CentraCare Health to pay departure bonuses to physicians who terminate their employment with CentraCare Health pursuant to the FTC Orders and who meet certain additional conditions. A \$100,000 departure bonus is available to the first five (5) St. Cloud and/or CentraCare Physicians who choose to leave CentraCare and:

- Start his or her (or their) own medical practice in the St. Cloud area, **OR**
- Choose to be a part of a St. Cloud area medical practice consisting of fewer than five (5) Adult Primary Care Physicians, OB/GYNs, and Pediatricians at the time of the Orders.

Physicians receiving a departure bonus count towards the fourteen (14) or eight (8), depending on the Release Period, total physicians that CentraCare must allow to terminate their employment pursuant to the FTC Orders.

Asset Maintenance

The Order to Suspend Non-Competes and Maintain Assets also contains provisions requiring CentraCare Health to limit changes to the facilities you use and your medical practice, in general, to facilitate your decision to stay or leave CentraCare Health. The goal is to keep your medical practice as similar as possible to avoid disruptions while you make your decision. If you decide to leave CentraCare Health, the FTC Orders have provisions that will facilitate the transfer of patients with you to your new practice and the ability of those patients to have their medical information transferred as well. If you find that there are changes happening that are contrary to this goal, please notify the Monitor.

Important Reminders

- The Orders do not *require* any doctor to terminate employment with CentraCare Health or to work for any other entity.
- The Orders do not *require* CentraCare Health to fire any doctors.
- The Orders *only apply to* Adult Primary Care Physicians, OB/GYNs, and Pediatricians.
- The Orders prohibit CentraCare Health from enforcing any non-compete or non-solicitation provisions in any contract, pursuing any breach of contract action, or taking any retaliatory action against any physician who either left under the terms of the Orders or who sought other employment as allowed by the Orders but decided not to leave.
- If you terminate your employment at times or under terms not described in the

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D&O, the D&O does not prohibit CentraCare Health from pursuing its contract rights.

- CentraCare Health will send an email to all CentraCare physicians (including the former St. Cloud physicians) when the time has closed for any more physicians to leave under the FTC Orders.

If you have questions about the information contained in this letter or in the Analysis to Aid Public Comment, including questions regarding timing or implementation of the Orders, please contact:

Monitor:

Dick Shermer at 214-668-0294, or dshermer@rshermer.com, and
Kevin Wilson at 303-619-6938, or kwilson@rshermer.com.

You may also call Eric D. Rohlck, an attorney at the Federal Trade Commission, at 202-326-2681, if you prefer.

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Appendix B***APPENDIX B - Letter to CentraCare Health Physicians***

Dear Physician:

CentraCare Health System ("CentraCare Health") has entered into an agreement with the Federal Trade Commission to resolve allegations that its acquisition of the St. Cloud Medical Group and employment of the Adult Primary Care Physicians (including Urgent Care Physicians), OB/GYNs, and Pediatricians will restrict competition in violation of Section 7 of the Clayton Act. Although CentraCare Health has not admitted liability or admitted that the facts alleged in the Commission's complaint (other than jurisdictional facts) are true, it has agreed to two FTC orders containing certain terms which the Commission believes will ameliorate the competitive effects of the acquisition relating to these three practice areas.

For your convenience, CentraCare Health's obligations under the two FTC Orders, including the terms under which you may terminate your employment, are summarized below. These obligations are described more fully in the FTC's Orders and its Analysis to Aid Public Comment that are both attached to this letter. The two orders are (1) the "Order to Suspend Enforcement of CentraCare Health Non-Competes and Maintain Assets" or "Order to Suspend Non-Competes and Maintain Assets" and (2) the Decision and Order ("D&O").

Nothing in this summary is intended to modify any of the terms of the Commission's Orders or to provide legal advice.

Suspension of Enforcement of CentraCare Health Non-Competes

The first order establishes a period of time during which the St. Cloud Physicians and now CentraCare Physicians (defined as an Adult Primary Care Physician, OB/GYN, or Pediatrician) currently employed by CentraCare Health are allowed to explore all employment and professional opportunities in the St. Cloud area, whether as an employee, a member of a medical group, or in private practice without CentraCare Health enforcing the non-compete provisions of your employment contracts. During this period called the "Suspension Period," CentraCare Health cannot enforce any non-compete or non-solicitation provisions in your employment contract to interfere with your discussions with potential St. Cloud partners or employers during this time period.

The Suspension Period does not apply to any physician practicing in areas other than the three practice areas of Adult Primary Care, OB/GYN, or Pediatrics.

Termination Conditions

The second order, the D&O, was made final on _____. Under the D&O, the former St. Cloud Physicians were allowed to terminate their employment with CentraCare Health without penalty subject to the conditions described in the D&O and the Order to Suspend Non-Competes and Maintain Assets. The St. Cloud Physicians had ninety (90) days during the "First Release Period" to terminate their employment. During the First Release Period, a

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maximum of fourteen (14) or a minimum of eight (8) St. Cloud Physicians practicing in the three practice areas could have terminated their employment and worked in the St. Cloud area without CentraCare Health enforcing its non-compete provisions.

CentraCare Health did not receive eight (8) Acceptable Terminations from the St. Cloud Physicians during the First Release Period. Consequently, the Second Release Period under the D&O begins [_____]. Under the Second Release Period, up to ____ (X) CentraCare Physicians practicing in the three practice areas have the opportunity to give a notice of termination, terminate their employment at CentraCare Health, and continue practicing in the St. Cloud area without violating their employment contract.

In order to take advantage of this opportunity, you *must* follow certain procedures and the Termination Notice *must* contain certain critical information in order to become an Acceptable Termination:

- You must submit your Termination Notice to the Monitor.
- Your Termination Notice must contain a statement that you intend to practice in the St. Cloud area for at least two years after you leave CentraCare Health. The St. Cloud area includes the zip codes 56303, 56304, 56387, 56377, 56301, 56379, 55320, 56320, and 56329, including and surrounding St. Cloud, Minnesota.
- Your Termination Notice must contain either (a) a valid offer of employment or other affiliation with another medical practice that accepts commercial payers, *i.e.*, not a Veterans Affairs hospital, in the St. Cloud area for a period of at least one year, or (b) a detailed and verifiable business plan to begin a new medical practice in the St. Cloud area.

As noted above, there is only a limited number of Adult Primary Care Physicians, OB/GYNs, and Pediatricians who will be allowed to terminate under the FTC Orders. The Monitor will keep track of the order in which doctors submit their Termination Notices. The Monitor will keep the names of the physicians who have submitted notices confidential from CentraCare Health until the notices are forwarded to CentraCare Health as physicians permitted to terminate their employment with CentraCare Health pursuant to the FTC Orders.

- CentraCare Health must allow the first ____ (X) physicians who give notice to the Monitor and satisfy all of the conditions described above to terminate their employment without any penalty.
- You must leave employment with CentraCare Health within 60 days of CentraCare Health receiving your notice from the Monitor, but you may not leave prior to the Monitor delivering your notice to CentraCare Health.
- Once ____ (X) physicians terminate their employment with CentraCare Health, no more employment terminations will be permitted under the Orders. After that,

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CentraCare Health may pursue its legal remedies against any employee who *subsequently* terminates employment with CentraCare Health in a manner that may violate that employee's contract.

- The Order to Suspend Non-Competes and Maintain Assets will continue in effect until the requisite number of doctors leave CentraCare Health or ten years lapse from the date the D&O becomes final.

[MODIFY or DELETE AS NECESSARY]**Termination Conditions – Departure Bonuses**

The D&O requires CentraCare Health to pay departure bonuses to physicians who terminate their employment with CentraCare Health pursuant to the FTC Orders and who meet certain additional conditions. A \$100,000 departure bonus is available to the first ____ (X) St. Cloud and/or CentraCare Physicians who choose to leave CentraCare and:

- Start his or her (or their) own medical practice in the St. Cloud area, OR
- Choose to be a part of a St. Cloud area medical practice consisting of fewer than five (5) Adult Primary Care Physicians, OB/GYNs, and Pediatricians at the time of the Orders.

Physicians receiving a departure bonus count towards the remaining ____ physicians who CentraCare must allow to terminate their employment pursuant to the FTC Orders.

Important Reminders

- The Orders do not *require* any doctor to terminate employment with CentraCare Health or to work for any other entity.
- The Orders do not *require* CentraCare Health to fire any doctors.
- The Orders *only apply to* Adult Primary Care Physicians, OB/GYNs, and Pediatricians.
- The Orders prohibit CentraCare Health from enforcing any non-compete or non-solicitation provisions in any contract, pursuing any breach of contract action, or taking any retaliatory action against any physician who either left under the terms of the Orders or who sought other employment as allowed by the Orders but decided not to leave.
- If you terminate your employment at times or under terms not described in the D&O, the D&O does not prohibit CentraCare Health from pursuing its contract rights.

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- CentraCare Health will send an email to all CentraCare Physicians (including the former St. Cloud Physicians) when the time has closed for any more physicians to leave under the FTC Orders.

If you have questions about the information contained in this letter or in the Analysis to Aid Public Comment, including questions regarding timing or implementation of the Orders, please contact:

Monitor:

Dick Shermer at 214-668-0294, or dshermer@rshermer.com, and

Kevin Wilson at 303-619-6938, or kwilson@rshermer.com.

You may also call Eric D. Rohlck, an attorney at the Federal Trade Commission, at 202-326-2681, if you prefer.

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Appendix C**MONITOR AGREEMENT (DRAFT)**

Monitor Agreement (the "Agreement"), dated as of September 28, 2016, between CentraCare Health, ~~Inc.~~ ("the Respondent"), and Richard A. Shermer of R. Shermer & Company, P.O. Box 294199, Lewisville, Texas 75029 (the "Monitor").

Preliminary Statements

WHEREAS the Federal Trade Commission (the "Commission") is considering for public comment an Agreement Containing Consent Orders with Respondent or its parent company, which provides, among other things, that Respondent.....and engage a monitor to monitor Respondent's compliance with its obligations under the Order

WHEREAS, the Commission is expected to issue the Agreement Containing Consent Orders and appoint the Monitor pursuant to the Orders to monitor Respondent's compliance with the terms of the Orders, and the Monitor has consented to such appointment;

WHEREAS, the Orders further provide that Respondent shall execute an agreement, subject to prior approval of the Commission, conferring all the rights and powers necessary to permit Monitor to carry out its duties and responsibilities pursuant to the Orders;

WHEREAS, this Agreement, although executed by Monitor and Respondent, is not effective for any purpose, including but not limited to imposing rights and responsibilities on Respondent or Monitor under the Orders, until the Order to Maintain Assets has been issued and this Agreement has been approved by the Commission;

WHEREAS, the parties to this Agreement intend to be legally bound, subject only to the Commission's approval of this Agreement.

NOW, THEREFORE, the parties agree as follows:

DEFINITIONS

- A. "Respondent" means CentraCare Health, ~~Inc.~~ ^{Shermer}, with its principal place of business at 1406 Sixth Avenue North, St. Cloud, MN 56303, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by CentraCare, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. All other capitalized words or phrases appearing in this Agreement that are not otherwise defined herein are deemed to have the defined meanings assigned to them in the Order.

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ARTICLE I

1.1 Powers of the Monitor. Monitor shall have the rights, duties, powers and authority conferred upon Monitor by the Orders that are necessary for Monitor to monitor Respondent's compliance with the Orders. No later than one day after the Order becomes final, Respondent hereby transfers to Monitor all rights, powers, and authorities necessary to permit Monitor to perform its duties and responsibilities pursuant to the Order to Maintain Assets and consistent with the purposes of the Decision and Order. Any descriptions thereof contained in this Agreement in no way modify Monitor's powers and authority or Respondent's obligations under the Orders.

1.2 Monitor's Duties. Monitor shall monitor Respondent's compliance with the Orders, including, but not limited to:

- a. Assuring that Respondent expeditiously complies with all of the obligations, and performs all of responsibilities, of Respondent as required by the Orders in this matter;
- b. Monitoring Relevant Agreements; and
- c. Assuring that Confidential Business Information is not received or used by Respondent or Other Parties, except as allowed in the Orders in this matter.

1.3 Duration of Monitor's Authority. Monitor shall have all powers and duties described above and consistent with the Orders for the term set forth in the Orders.

1.4 Confidential and Proprietary Information. Monitor shall enter into a confidentiality agreement, agreeing to be bound by the terms and conditions of the Orders. Monitor must retain and maintain all Material Confidential Information it receives from either Respondent or Other Parties on a confidential basis, except as is permitted by the Orders. Monitor may disclose confidential information only to persons employed by or working with Monitor under this Agreement, to persons employed at the Commission, and as permitted by Respondent or Other Parties with respect to information they provided Monitor. Monitor shall require any person retained by Monitor to assist in carrying out the duties and responsibilities of Monitor to execute a confidentiality agreement that requires the same standard of care and obligations of confidentiality to which Monitor must adhere under this Agreement. Monitor shall maintain the confidentiality, for a period of five (5) years after the termination of this Agreement, of all other aspects of the performance of its duties under this Agreement and shall not disclose any confidential information relating thereto.

1.5 Restrictions. Monitor shall not be involved in any way in the management, production, supply and trading, sales marketing, and financial operations of the competing products of Respondent.

1.6 Reports. Monitor shall report to the Commission pursuant to the terms of the Orders and as otherwise requested by the Commission staff.

1.7 Access to Records, Documents and Facilities. Subject to any demonstrated legally recognized privilege, Monitor shall have full and complete access to

Decision and Order

Respondent's personnel, to include those employees designated to be transferred to an acquirer, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as Monitor may reasonably request, related to Respondent's compliance with the obligations of Respondent under the Orders in this matter. Documents, records and other relevant information are to be provided in an electronic format if they exist in that form. Respondent shall cooperate with any reasonable request of Monitor and shall take no action to interfere with or impede Monitor's ability to monitor Respondent's compliance with the Orders.

ARTICLE II

2.1 Retention and Payment of Counsel, Consultants, and other Assistants. Monitor shall have the authority to employ, at the cost and expense of the Respondent, (with the written prior approval of Respondent which shall not be unreasonably withheld) such attorneys, consultants, accountants, and other representatives and assistants as are necessary to carry out the Monitor's duties and responsibilities as allowed pursuant to the Orders.

2.2 Compensation. Monitor shall be compensated by Respondent for his services under this Agreement, including all work in connection with the negotiation and preparation of this Monitor Agreement, pursuant to the fee schedule attached as Confidential Exhibit A for time spent in connection with the discharge of its duties under this Agreement and the Orders. In addition, Respondent will pay: (a) out-of-pocket expenses reasonably incurred by Monitor in the performance of its duties under the orders; and (b) fees and disbursements reasonably incurred by any advisor appointed by Monitor pursuant to the first paragraph in Article II. At its own expense, Respondent may retain an independent auditor to verify such invoices. Monitor shall provide Respondent with monthly invoices for time and expenses. Respondent shall pay such invoices within thirty (30) days of receipt. The Monitor and Respondent shall submit any disputes about invoices to the Commission for assistance in resolving such disputes.

2.3 To the extent available, Respondent will provide the Monitor with temporary workspace and access to office equipment owned or used by Respondent at sites the Monitor is required to visit in order to fulfill its obligations under this Agreement. Monitor agrees to comply with all of Respondents' safety and security regulations, instructions and procedures while at Respondents' sites.

ARTICLE III

3.1 Monitor's Liabilities and Indemnification. Respondent shall indemnify the Monitor and hold Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by Monitor. The Monitor's maximum liability to Respondents relating to services rendered in accordance with this Agreement (regardless of form of action, whether in contract, statutory law, or tort) shall

Decision and Order

be limited to an amount equal to the total sum of the fees paid to the Monitor by the Respondent. Any claim arising from this Agreement that Respondents may have against the Monitor must be brought no later than one (1) year following the termination or expiration of this Agreement. In the performance of its duties under this Agreement, the Monitor shall exercise the standard of care and diligence that would be expected of a reasonable person in the conduct of his own business affairs. The Monitor shall not be liable for any delays or other failures to perform resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority. The Monitor warrants that it will perform its obligations hereunder in good faith. R. Shermer & Company disclaims other warranties, expressed or implied, other than those expressly agreed to in writing between the Parties.

3.2 Monitor's Removal. If the Commission determines that Monitor ceases to act or fail to act diligently and consistent with the purpose of the Orders, Respondent shall terminate this Agreement and appoint a substitute Monitor, subject to Commission approval and consistent with the Orders.

3.3 Approval by the Commission. This Agreement shall have no force or effect until approved by the Commission, other than the confidentiality provisions herein.

3.4 Termination: This Agreement shall terminate the earlier of: (a) thirty (30) days following the termination date set forth in the applicable Order; (b) Respondent's receipt of written notice from the Commission that the Commission has determined that Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor; (c) with at least thirty (30) days advance notice to be provided by Monitor to Respondent and to the Commission, upon resignation of the Monitor; or (d) when the Respondent's last obligation under the Orders and the Relevant Agreements that pertains to the Monitors' service has been fully performed; provided, however, that the Commission may require that the Respondent extend this Agreement or enter into an additional agreement with the Monitor as may be necessary or appropriate to accomplish the purposes of the Orders. If this Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force.

3.5 Conflicts of Interest: If Monitor becomes aware during the term of this Agreement that it has or may have a conflict of interest that may affect or could have the appearance of affecting performance by the Monitor of any of its duties under this Agreement, Monitor shall promptly inform Respondent and the Commission of any such conflict.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

MONITOR:

Richard A. Shermer

Richard A. Shermer
President, R. Shermer & Company

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RESPONDENT:

CentraCare Health, Inc. *System*By: *Pat Bitt*
Sr. V.P. General Counsel

Concurring Statement

NON-PUBLIC APPENDIX C-1
MONITOR COMPENSATION**[Redacted From the Public Record Version, But Incorporated**
By Reference]**Concurring Statement of Maureen K. Ohlhausen**

I have reason to believe that CentraCare Health System's (CentraCare) acquisition of St. Cloud Medical Group, P.A. (SCMG), if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, by substantially lessening competition for the provision of adult primary care, pediatric, and OB/GYN services in St. Cloud, Minnesota. I also believe the Consent Agreement, subject to final approval, represents the outcome most likely to minimize competitive harm and care disruption to the residents of the St. Cloud area. I write separately because, although it is a close determination, I do not believe SCMG meets the stringent failing firm criteria set forth in the Horizontal Merger Guidelines and case law.¹

Because of SCMG's financial challenges and facts unique to the SCMG practice structure and management, physicians are leaving the group, and compelling evidence indicates that, absent the acquisition, additional physicians plan to leave the group and possibly the area. This would diminish the competitive significance of SCMG and create potential disruptions to care and possible physician shortages in the St. Cloud area. These circumstances raise serious concerns about the likelihood that the Commission will be able to preserve competition and access to care for patients if it were to prevail in its challenge.

¹ See, e.g., U.S. DEP'T OF JUSTICE & FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES § 11 (2010); *Citizen Publishing v. United States*, 394 U.S. 131 (1969) (establishing a three-prong test for satisfying the failing firm defense); *Fed. Trade Comm'n v. Arch Coal, Inc.*, 329 F. Supp. 2d 109, 154 (D.D.C. 2004).

Analysis to Aid Public Comment

Given this difficult scenario, I agree with my colleagues that the Consent Agreement presents the best opportunity to keep the SCMG physicians in the market, ensure ongoing access to care and minimal disruption for area patients, and permit the expansion of local competitive alternatives to CentraCare for the relevant physician services. Accordingly, I support the Consent Agreement on the basis that it is in the public interest.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT****I. Overview**

The Federal Trade Commission has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from CentraCare Health that is designed to mitigate the anticompetitive effects that would result from CentraCare’s acquisition of St. Cloud Medical Group, P.A. (“SCMG”), the two largest providers of adult primary care, pediatric, and obstetric/gynecological (“OB/GYN”) services in the St. Cloud, Minnesota area. The Commission’s willingness to accept this Consent Agreement is premised on the fact that SCMG is a financially failing physician practice group that has been unable to find an alternative purchaser for the entire practice as well as concerns regarding disruptions to patient care and possible physician shortages.

On February 29, 2016, CentraCare entered a definitive agreement to acquire all outstanding shares of stock in SCMG (“the Acquisition”). Under the terms of the Acquisition, CentraCare is to directly employ all of SCMG’s physicians and advanced practice providers (“APPs”). The Commission’s Complaint alleges that the Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, by substantially lessening competition for the provision of adult

Analysis to Aid Public Comment

primary care, pediatric, and OB/GYN services in St. Cloud, Minnesota.

As the Complaint alleges, however, SCMG has recently lost its sole remaining line of credit and appears unlikely to be able to improve its financial condition. Physicians are leaving the group, and there is compelling evidence that others will depart the practice (and potentially the St. Cloud area) if the Acquisition is not consummated. Such physician departures would cause an immediate decline in revenues that could further destabilize the group. Although SCMG made a good-faith, but ultimately unsuccessful, multi-year effort to find an alternative buyer for the entire medical group, one local provider has recently expressed interest in employing a subset of the group, and other smaller, independent practices in the St. Cloud area have indicated that they also would consider hiring some SCMG physicians.

In light of this interest, the proposed Consent Agreement is designed to facilitate former SCMG physicians finding alternate local employment by suspending enforcement of any non-compete provisions against any adult primary care, pediatric, or OB/GYN physician from SCMG to allow up to 14 such physicians to depart for another St. Cloud area practice. It also encourages the creation of new competitors and the strengthening of smaller competitors by requiring CentraCare to provide sizeable departure payments to the first five physicians who leave CentraCare either to create a new medical practice or to join a small third-party medical practice in the St. Cloud area.

The Consent Agreement includes an Order to Suspend Enforcement of CentraCare Non-Competes and Maintain Assets, which is final immediately, and a Decision and Order, which is subject to the Commission's final approval. The Consent Agreement has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received and then decide whether it should withdraw from, modify, or make final the proposed Decision and Order.

Analysis to Aid Public Comment

The purpose of this analysis is to facilitate public comment on the Consent Agreement. The analysis is not intended to constitute an official interpretation of the Consent Agreement or to modify its terms in any way. Further, the Consent Agreement has been entered into for settlement purposes only and does not constitute an admission by Respondent that it violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

II. The Parties

CentraCare is a non-profit organization providing healthcare services through its owned hospitals, medical clinics, pharmacies, nursing homes, and home health operations throughout central Minnesota. CentraCare is the parent entity to CentraCare Clinic, a multi-specialty physician practice employing family medicine, internal medicine, pediatric, and OB/GYN physicians, among other specialists. CentraCare Clinic has 16 locations across central Minnesota, with five of those offices located within 20 miles of St. Cloud. CentraCare Clinic is the largest provider of adult primary care, pediatric, and OB/GYN services in the St. Cloud area, with approximately 102 adult primary care physicians, 28 pediatricians, and 25 OB/GYNs.

SCMG is a physician-owned multi-specialty medical clinic that operates four clinics in and around St. Cloud. SCMG's 40 physicians mainly provide family medicine, pediatrics, and OB/GYN services, but SCMG also offers surgical, occupational medicine, and rehabilitation services. SCMG also employs approximately 20 APPs.

III. The Complaint

The Complaint alleges that the proposed Acquisition will substantially increase CentraCare's market share in the St. Cloud area for the provision of adult primary care, pediatric, and OB/GYN services to commercially insured patients. According to the Complaint, by eliminating SCMG as a potential alternative in the St. Cloud area, the Acquisition likely will increase CentraCare's bargaining power vis-à-vis commercial health plans, allowing CentraCare to increase reimbursement rates and to secure more favorable terms. In addition, the Complaint alleges

Analysis to Aid Public Comment

that the Acquisition likely will result in the loss of non-price competition between CentraCare and SCMG that currently results in quality and service benefits to patients. The Complaint further alleges that competition eliminated by the Acquisition is unlikely to be sufficiently replaced in a timely manner by other providers entering the market. The Complaint recognizes, however, that SCMG is unlikely to survive on its own, and that, despite a good-faith search, it has not identified an alternative buyer for the entire group.

IV. The Consent Agreement

The goal of the Consent Agreement is to mitigate the competitive effects of the Acquisition by preserving, to the extent possible, competition for adult primary care, pediatric, and OB/GYN services in the St. Cloud area. At least one local provider may be a viable alternative purchaser to CentraCare for a portion of the practice in that they have the capacity and the desire to employ some SCMG physicians. Likewise, some SCMG physicians appear interested in these opportunities. Those parties need additional time to pursue such an arrangement, and other interested local providers looking to add physicians may be identified during this time as well.

The Commission believes that the Consent Agreement presents the best opportunity to keep the SCMG physicians in the St. Cloud market, ensuring ongoing access to care and minimal disruption for St. Cloud area patients, while allowing local competitive alternatives to CentraCare for the relevant physician services to expand. The Consent Agreement will allow current SCMG physicians to accept alternative local employment opportunities post-acquisition without the risk of violating non-compete provisions in their employment contracts.

Specifically, the Consent Agreement provides that following the issuance of a final Decision and Order and during the 90-day First Release Period, former SCMG physicians can terminate their employment with CentraCare without penalty if the physician:

- (1) Submits notice of an intention to terminate employment with CentraCare to a monitor who has been appointed by the Commission to assist in implementing the Consent

Analysis to Aid Public Comment

Agreement in a manner that assures each physician's confidentiality;

- (2) States the intention to continue to practice in the St. Cloud area for at least two years;
- (3) Is among the first 14 physicians to submit a notice to terminate employment; and
- (4) Leaves employment with CentraCare within 60 days of CentraCare receiving notice from the monitor.

CentraCare may request that the First Release Period be terminated as soon as the monitor has determined that 14 physicians have met the requirements to terminate.

If, at the end of the First Release Period, fewer than eight physicians have notified the monitor of their intent to terminate employment, a Second Release Period will commence. During the Second Release Period, CentraCare must also suspend the non-compete agreements of legacy CentraCare adult primary care, pediatric, and OB/GYN physicians (that is, those who did not come from SCMG) so that these physicians may explore and accept alternate employment opportunities in the St. Cloud area. The Second Release Period will end as soon as the monitor has informed CentraCare that eight physicians have met the requirements to terminate without penalty.

To encourage the creation of new competitors and strengthening of smaller competitors, CentraCare also will deposit \$500,000 into an escrow account to be awarded as \$100,000 departure payments to the first five physicians who leave CentraCare either to create a new medical practice or to join a third-party medical practice that has five or fewer physicians in the St. Cloud area.

Paragraphs II and III describe the basic terms under which physicians may terminate their employment with CentraCare. They prohibit CentraCare from: (1) enforcing any non-compete, non-solicitation, or non-interference provisions in their employment agreements; (2) pursuing any breach of contract action for violation of any of these provisions; or (3) taking any

Analysis to Aid Public Comment

retaliatory action against any physician who either leaves under the terms of the Decision and Order or who decides not to leave after exploring other employment as allowed by the Decision and Order. The Decision and Order does not, however, require CentraCare to allow physicians to terminate their employment agreements in a manner other than that specified in the Decision and Order.

Paragraph IV includes a number of provisions to ensure that CentraCare will not take any actions to discourage physicians from exploring opportunities to leave or from leaving CentraCare's employment pursuant to the Decision and Order. In addition, Paragraph IV.A.1.f prohibits CentraCare from soliciting the employment of any physician that has departed CentraCare pursuant to the Consent Orders for a period of two years.

Paragraph V requires CentraCare to give advanced notification for future acquisitions or employment contracts involving certain adult primary care, pediatrics, and OB/GYN services in the St. Cloud area for a period of three years.

Paragraph VI requires CentraCare during the First Release Period to facilitate and not interfere with the search for alternate St. Cloud area employment by former SCMG employees, such as APPs and nurses. Paragraph VI also prohibits CentraCare from attempting to re-hire those employees for a period of two years.

Paragraph VII specifies the rules governing the work of the monitor.

The remaining order provisions are standard reporting requirements to allow the Commission to monitor on-going compliance with the provisions of the Decision and Order.

In addition to the Decision and Order, the Consent Agreement includes an Order to Suspend Enforcement of CentraCare's Non-Competes and Maintain Assets that goes into effect immediately. The purposes of this Order are (1) to permit former SCMG physicians to explore alternative employment opportunities in the St. Cloud area; and (2) to maintain those assets and personnel from the SMCG to make the transition to a different practice as easy as possible.

Complaint

IN THE MATTER OF

**VALEANT PHARMACEUTICALS
INTERNATIONAL, INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

*Docket No. C-4602; File Nos. 151 0236
161 0028*

Complaint, January 25, 2017 – Decision, January 25, 2017

This consent order addresses the \$69.1 million acquisition by Valeant Pharmaceuticals International, Inc. of certain assets of Paragon Holdings I, Inc. The complaint alleges that the acquisition violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by lessening competition in the markets for polymer discs, or “buttons,” used to make three different types of rigid gas permeable contact lenses: orthokeratology contact lenses, large-diameter scleral contact lenses, and general vision correction contact lenses. The consent order requires Valeant to divest Paragon in its entirety, including the assets of Pelican Products LLC, a manufacturer of contact lens packaging.

Participants

For the *Commission*: *Stuart Hirschfeld* and *Danica Noble*.

For the *Respondent*: *Joseph Ciani-Dausch* and *Stephen Sunshine, Skadden, Arps, Slate, Meagher & Flom*.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that the above-named respondent Valeant Pharmaceuticals International, Inc. (“Valeant”) acquired Paragon Holdings I, Inc. (“Paragon”), and that acquisition violated Section 5 of the Federal Trade Commission Act as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows: