UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Maureen K. Ohlhausen
Terrell McSweeny

In the Matter of	)	
Cabell Huntington Hospital, Inc. **a corporation;**	)	**Docket No. 9366**
Pallottine Health Services, Inc. **a corporation;**	)	**PROVISIONALLY REDACTED PUBLIC VERSION**
and	)	
St. Mary's Medical Center, Inc. **a corporation.**	)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by the Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondents Cabell Huntington Hospital, Inc. ("Cabell"), Pallottine Health Services, Inc. ("PHS"), and St. Mary's Medical Center, Inc. ("St. Mary's"), having executed an agreement pursuant to which Cabell will become the sole member, and thereby acquire all the assets, of St. Mary's (the "Definitive Agreement") 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 Section 5 of the FTC Act, 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 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I.

NATURE OF THE CASE

1. Cabell's proposed acquisition of St. Mary's (the "Acquisition") is likely to substantially lessen competition for healthcare services in Huntington, West Virginia, and its surrounding communities. The Acquisition would lead to increased healthcare costs for local residents and reduce the merging parties'

incentives to maintain and improve quality of care. If allowed to proceed, the Acquisition would create a dominant firm with a near monopoly over general acute care (or "GAC") inpatient hospital services and outpatient surgical services in and around Huntington.

2. Cabell and St. Mary's are general acute care hospitals located only three miles apart in Huntington, and they directly compete with one another to provide inpatient and outpatient services. As the only two hospitals in Huntington, Cabell and St. Mary's have a long history of close competition that has yielded numerous price and quality benefits for consumers.

3. As Cabell's CFO emphasized in 2013, St. Mary's is Cabell's "main competitor for all but our exclusive services," which are limited to three service lines: neonatal ICU, pediatric ICU, and burn. Other documents from the two hospitals,

B.

Respondents

16. Respondent Cabell is a not-for-profit, 303-bed hospital incorporated under and by virtue of the laws of West Virginia. Cabell is headquartered at 1340 Hal Greer Boulevard, Huntington, West Virginia, 25701. During the fiscal year ending September 30, 2014, Cabell earned $439 million in revenue.

17. In addition to its main hospital, Cabell owns and operates the 72-bed Hoops Family Children's Hospital, an outpatient surgery center, and, together with the Marshall University Joan C. Edwards School of Medicine ("Marshall"), the Edwards Comprehensive Cancer Center. Pursuant to a management agreement, Cabell also manages Pleasant Valley Hospital, a 201-bed community hospiomman C Uo(s)10te

calculated; they attribute market share to all hospitals accounting for admissions of patients residing in the Four-County Huntington Area, regardless of whether the hospital is physically located in the Four-County Huntington Area.

GENERAL ACUTE CARE INPATIENT HOSPITAL SERVICES		
Provider	**Market Share**	**Post-Acquisition**
Cabell Huntington Hospital	40.8%	**75.4%**
St. Mary's Medical Center	34.6%	
King's Daughters Medical Center	9.8%	9.8%
Our Lady of Bellefonte Hospital	4.4%	4.4%
Charleston Area Medical Center	4.0%	4.0%
Other	6.4%	6.4%
HHI	**2,999**	**5,824**
Change in HHI		**+2,825**

41. As the above table reflects, no hospital other than the merging parties and King's

VI.

49. A merger between hospitals that are close substitutes in the eyes of health plans and their members therefore tends to lead to increased bargaining leverage for the merged entity and, as a result, higher negotiated rates, because it eliminates an available alternative for health plans. This increase in leverage is greater when the merging hospitals are closer substitutes for (competitors to) each other.

50. Increase

identified "Negotiating Power" with "Third party payers" as the first "main reason[]" to affiliate.

66. Health plans have also confirmed that the Acquisition would enhance Cabell's bargaining leverage. Multiple health plans have expressed concerns that the combined Cabell/St. Mary's will have the ability to increase rates. As one health plan executive declared, [redacted] Likewise, [redacted] informed Cabell that [redacted] employee similarly reported her [redacted]

67. The Acquisition would also eliminate competition to contain list prices and costs. Cabell and St. Mary's closely track each other's list prices. For example, in July 2014, Cabell's CFO explained, "We have a [redacted] compared to St. Mary's (higher) for the same DRG's. This is of concern in terms of competitiveness in the future with payers." With respect to the pricing of individual services, St. Mary's deliberately sets its charges lower than Cabell's for many services, and Cabell has lowered its charges on multiple services to match St. Mary's. At times, this competition threatened to become a "downward spiral," as Cabell's CFO put it, with St. Mary's "discount[ing] to meet and/or beat" Cabell's prices.

68. With respect to cost, Cabell was aware that its higher cost structure, due primarily to higher employee salaries and benefits, placed it at a competitive disadvantage vis-à-vis St. Mary's. Cabell examines St. Mary's salaries and benefits at least once a year. After St. Mary's froze its defined benefit retirement plan, Cabell made plans to do the same. Cabell has received complaints from patients and employers about its higher prices relative to those at St. Mary's and other facilities in the region. After one such complaint, Cabell's CFO wrote, in January 2014, "I believe we have three years at best to get our costs in line with St. Mary's."

69. Aware that the vigorous competition between them forces lower list prices and larger discounts for health plans, and creates pressure to reduce costs, Cabell and St. Mary's have made periodic efforts to limit competition between them.

70. In 1994, Cabell and St. Mary's, along with local physicians, formed a so-called PHO named Tri-State Health Partners, Inc. ("Tri-State"). Two small hospitals in the region, Pleasant Valley Hospital and Williamson Memorial Hospital, subsequently joined Tri-State. Through Tri-State, Cabell and St. Mary's jointly negotiated contracts with multiple health plans, including [redacted] and [redacted]. These contracts—which are evergreen, meaning that they have no

termination date and automatically renew—have identical, low discounts (5% off charges) for both Cabell and St. Mary's.

71. In or about 2003, Tri-State ceased to function and was "administratively dissolved" by the state for failure to file annual reports. Nonetheless, and despite the absence of any clinical integration or other efficiencies that might have once justified the PHO (if such integration or efficiencies ever did exist), Cabell and St. Mary's maintained Tri-State as a "shell" corporation, which kept their favorable, jointly negotiated health plan contracts in place. As a Cabell employee wrote in 2012, "Tri-State Health Partners has ceased ongoing operations. The entity has zero employees, zero revenues and . . . has also been administratively dissolved by the State. My understanding is that the only reason Articles of Dissolution have not been filed is to ensure that a few PPO network contracts entered into roughly ten-fifteen years ago remain in place."

72. To this day, contracts negotiated through Tri-State remain in effect for Cabell and St. Mary's with [redacted], and other area health plans, despite efforts by health plans to renegotiate the contract terms.

73. In 2013, as competition between them intensified, St. Mary's and Cabell had multiple meetings in an effort to "resurrect" Tri-State and "look for opportunities for this PHO with other contracts." Cabell and St. Mary's also communicated with each other in recent years about their individual negotiations, including prospective rates and contract termination, with certain health plans.

74. In addition, prior to 2009, the hospitals maintained a "friendly agreement" whereby each hospital agreed not to put up billboards in the other's "backyard." In 2009, St. Mary's broke this agreement by placing a billboard near Cabell. Cabell responded with the "'nuclear option,' buying up as many available billboards in [St. Mary's] backyard as we could." In 2011-2012, the hospitals reached a new agreement to allocate billboard locations, and, in 2013-2014, they continued their pattern of negotiation and competitive retaliation on advertising.

75. Evidence also suggests that Cabell and St. Mary's coordinated by allocating certain high-end service lines. A healthcare marketing firm retained by St. Mary's wrote in 2013 that the hospitals had maintained a "gentlemen's agreement," which allocated services that each hospital would "own" within the market. Pursuant to this understanding, St. Mary's key services included cardiac care and cancer services. According to this document, the "competitive market" between Cabell and St. Mary's ended this "mutual understanding," and Cabell became "very aggressive in growing these services." The events described by this document are consistent with the facts, including Cabell's opening of the Edwards Comprehensive Cancer Center in 2006 and Cabell's 2013 receipt of Certificate of

Need approval to offer primary percutaneous coronary intervention ("PCI"), a cardiac catheterization service.

76. The Acquisition would fulfill and make permanent Cabell and St. Mary's efforts to coordinate, depriving consumers of the competitive benefits from any reduction or cessation of these efforts.

C.

The Acquisition Would Eliminate Quality and Service Competition

77. Cabell and St. Mary's compete vigorously on non-price dimensions, particularly patient service and clinical quality, and patients benefit substantially from this competition. As St. Mary's CEO acknowledged, competition among hospitals creates "incentives for investing dollars into their operations to provide and improve quality to expand services for patients." Competition between these two hospitals has brought advances in services and quality for residents of the Four-County Huntington Area.

78. Documents and testimony reveal that, prior to announcing the Acquisition, Cabell and St. Mary's were each striving to seize patient volume and market share from the other—and feared the other hospital was doing the same. Documents show that the hospitals viewed each other as "competitive threats" in areas including emergency services, surgery, and cancer care.

79. Cabell and St. Mary's compare their quality and patient satisfaction metrics to one another's. For example, after a quality-ranking company released new, "disturbing" results showing that St. Mary's had scored much higher than Cabell on six service lines, Cabell's Director of Strategic Marketing sent an email to other executives asking, "Is this something we should look into from a quality perspective?" Similarly, St. Mary's benchmarked quality measures, such as average emergency room wait times and patient perceptions of cleanliness, responsiveness, staff and physician communication, pain management, and other factors, against Cabell.

80. Documents comparing emergency room (or "ER") services reflect Cabell's and St. Mary's close competition on quality. A St. Mary's executive boasted that patients' transition from the ER to inpatient beds was "seamless," while "one very big issue at CHH is that [patients] would sit for hours." In light of reports that Cabell had low ER volumes and was losing ER market share to St. Mary's, Cabell's VP of Marketing asked, [redacted] Cabell also [redacted] which St. Mary's executives understood as "yet another move to impact EMS volumes to CHH [Cabell Huntington Hospital] vs. SMMC." St. Mary's has also explored improvements to better compete with

commercially insured, Medicare, Medicaid, and self-pay patients. Post-Acquisition, the hospitals would no longer be spurred by each other to improve the quality of their services, add service lines, obtain new technologies, recruit new physicians, and increase patient safety, comfort, and convenience. Already, these effects from the pending Acquisition can be seen: St. Mary's has put on hold plans to build

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D.

Temporary Conduct Remedies Would Not Prevent Competitive Harm or Replicate Market Competition

86.

West Virginia's CON laws apply to outpatient facilities and services. No company or group of physicians has declared plans to open a new outpatient surgical center in the Four-County Huntington Area.

VIII.

EFFICIENCIES

102. Efficiencies that could outweigh the Acquisition's likely significant harm to competition are lacking here.

103. [redacted] of Respondents' claimed cost savings are to be achieved through elimination of purportedly redundant employees (Full Time Equivalents or "FTEs"). Respondents assert that [redacted] FTEs can be eliminated within [redacted] years after the Acquisition closes. [redacted] of the claimed cost savings are to be achieved through purchasing changes, including obtaining better rates from suppliers and other vendors. These asserted savings have not been substantiated and face multiple practical obstacles.

104. Nor are the claimed cost savings merger-specific. There are significant, unexplored savings opportunities available to Cabell and St. Mary's independently, without the Acquisition, and St. Mary's could also achieve savings through a less competitively-harmful acquisition by one of the multiple alternative bidders in the 2014 RFP.

105. Even if a portion of the claimed efficiencies were to be realized, they would be offset by the costs of integrating the two hospitals, [redacted] Post-Acquisition, [redacted] this expense would offset any cognizable savings.

106. Respondents also claim that the Acquisition will lead to quality enhancement opportunities, but these claims are likewise unsubstantiated and largely lack merger-specificity. Respondents assert that the merged entity will realize volume-related improvements in the quality of care through the consolidation of certain clinical service lines. Respondents' analysis on this issue is conclusory and does not account for the fact that the procedures with demonstrated volume-outcome relationships are already largely consolidated at one or the other hospital, and that certain key services may not be consolidated. Respondents also project quality improvements from "standardization" across the two facilities and the building of a "bridge" between the two hospitals' electronic health records systems to render them interoperable. Neither of these initiatives has been substantiated, and neither is merger-specific.

any other combinations of their businesses in the relevant markets with any other company operating in the relevant markets.

5. A requirement to file periodic compliance reports with the Commission.

6. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to restore St. Mary's as a viable, independent competitor in the relevant markets.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this fifth day of November, 2015.

By the Commission.

Donald S. Clark
Secretary

SEAL: