

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

In the Matter of

CENTRACARE HEALTH SYSTEM,
a corporation.

Docket No. C4594

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

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.tdit73-1(eEBTd ()Tj -0.00

F. “Acquisition Agreement” means the February 29, 2016, Stock Purchase Agreement by and among CentraCare Health

Physician,

- 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, 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.

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
- 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:
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

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 seek in, in ways(y)1(si)-5(ikeh)]Tc0.9(n)1(a

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 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 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

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.

- 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 itHe(epe)-1(n)5b-2(h'5(ooks)-1(, doc)-

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,

XI.

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

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: January 6, 2017

APPENDIX A – LETTER TO ST. CLOUD PHYSICIANS

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

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 allow

- 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

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

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.

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 area the

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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 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

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,

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

- CentraCare Health will send an email to all

APPENDIX C -- MONITOR AGREEMENT

NON-PUBLIC APPENDIX C-1
MONITOR COMPENSATION

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