

**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. C-4594

**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

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 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.

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.

**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

- 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 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 Moni

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

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

B.

APPENDIX A

If you submit a Termination Notice to the Monitor during this Suspension and if the conditions below are met, your name will be included on the list of physicians terminating their

- x 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
- x 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.
- x 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
- x If at least eight (8) physicians terminate their employment with CentraCare Health by the end of the ninety (90) days, the First Release Period adds 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.
- x The Order to Suspend, Compete 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.
- x 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

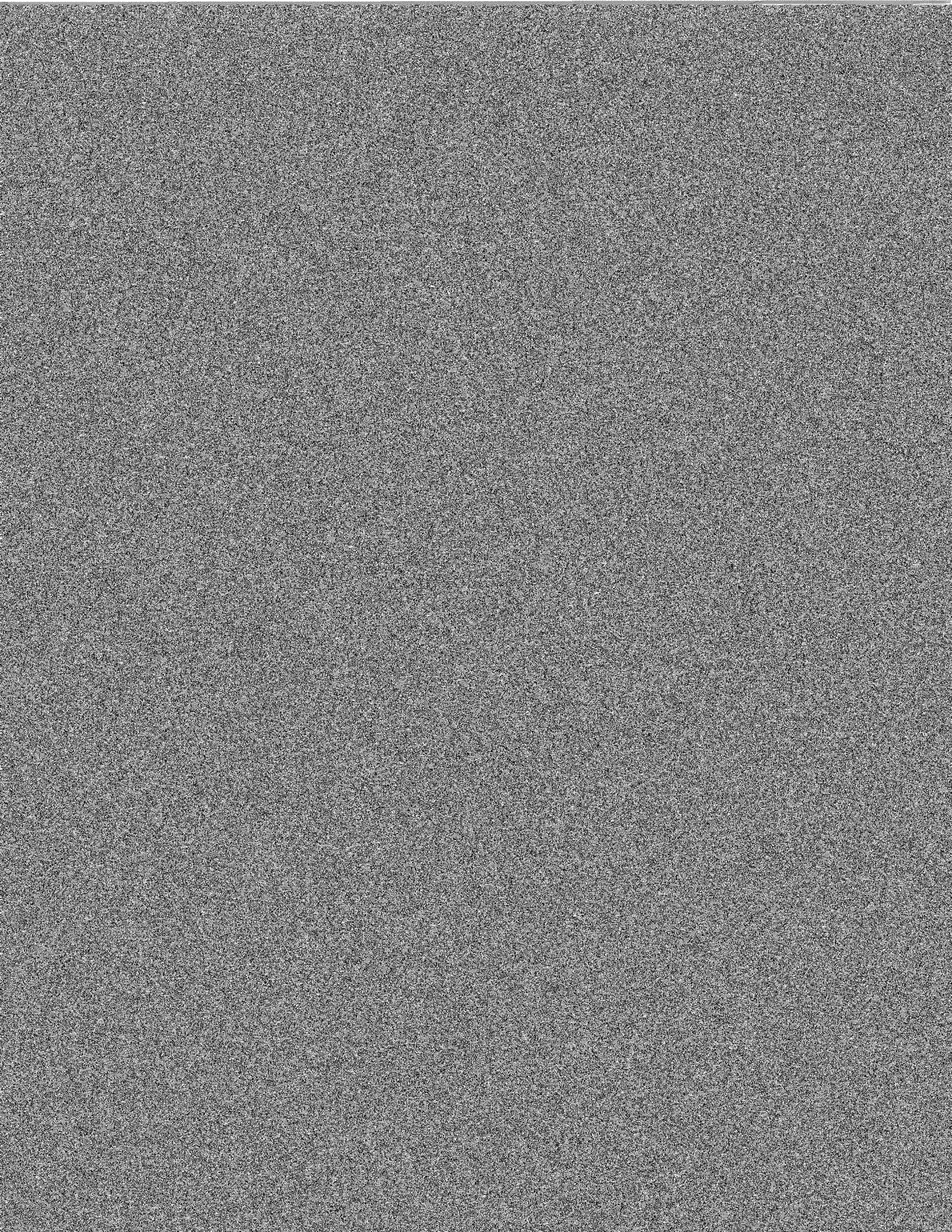
If at the end of the First Release Period fewer than eight (8) doctors have notified the Monitor of their intent to terminate employment in accordance with the FTC Order, the period in which physicians may continue to explore other employment opportunities and leave CentraCare Health's employment without 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 Order 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.

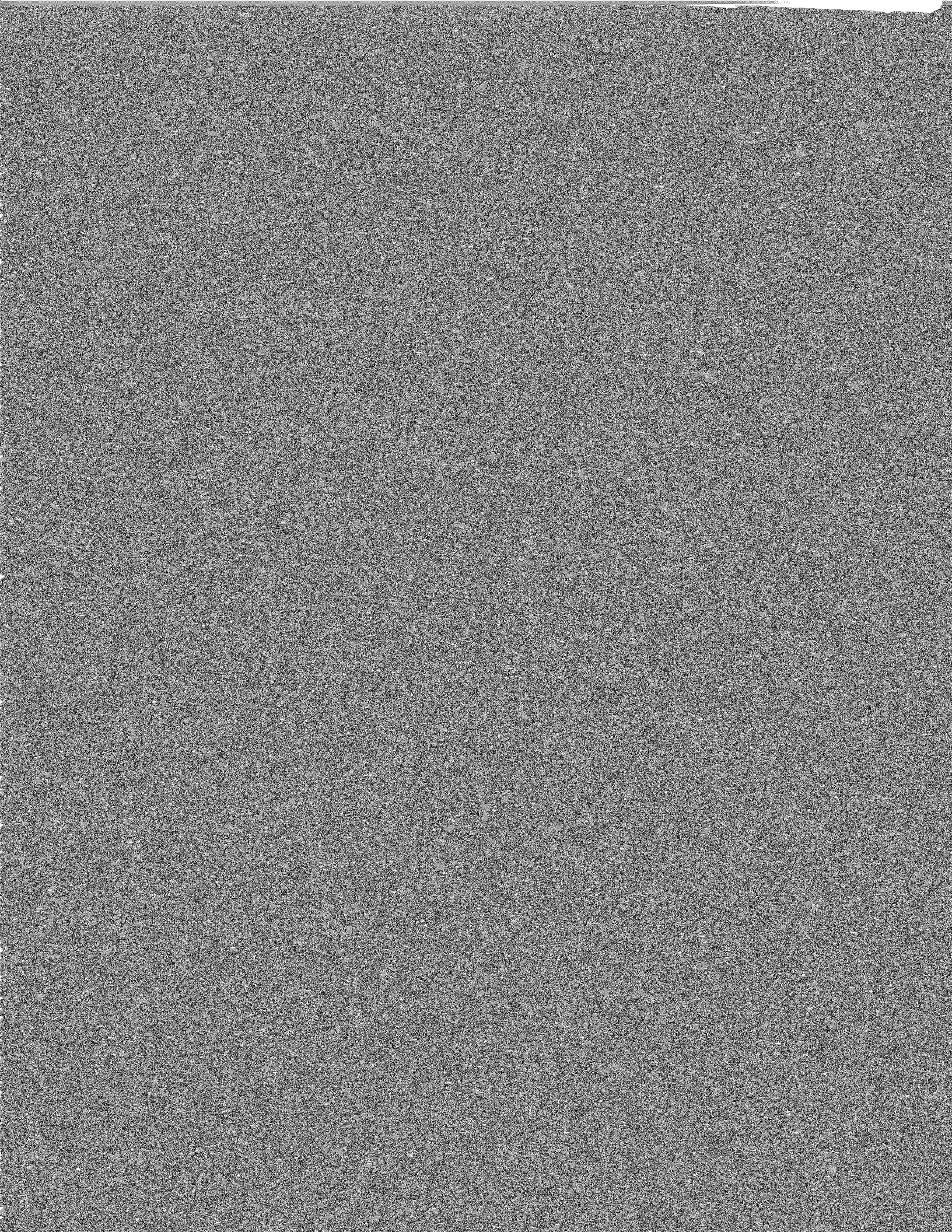
Termination Conditions – Departure Bonuses

The D&O requires CentraCare Health to pay departure bonuses to physicians who terminate their employment with CentraCare Health pursuant to the FTC Order and 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

APPENDIX B – MONITOR AGREEMENT

MONITOR AGREEMENT (DRAFT)





NON-PUBLIC APPENDIX B-1 – MONITOR COMPENSATION

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