

Plaintiffs' Closing Statement

***Federal Trade Commission
& State of North Dakota
v.
Sanford Health, Sanford Bismarck
& Mid Dakota Clinic, P.C.***

November 3, 2017



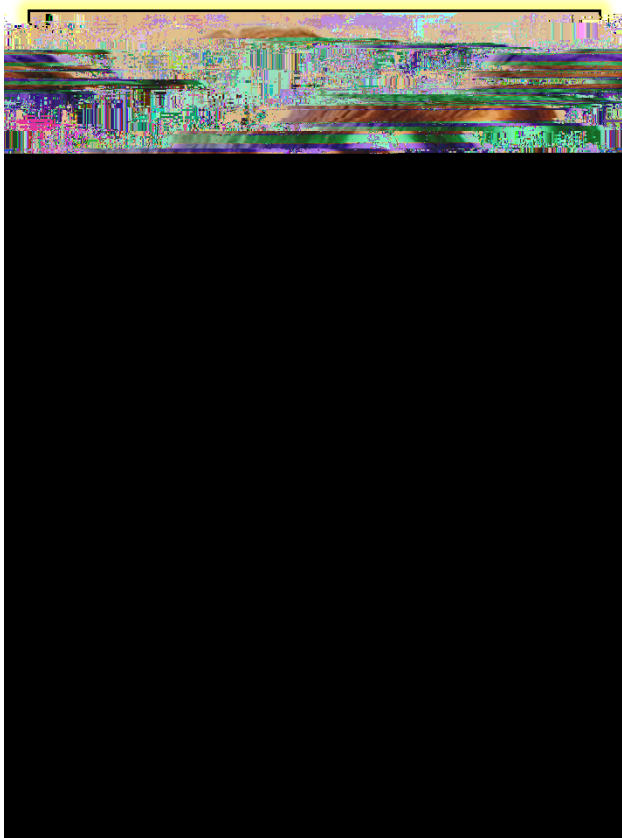
- Illegal merger to near-monopoly of two physician services groups
- Plaintiffs showed that the merger is presumptively unlawful
- Defendants failed to rebut the presumption
- Under the applicable legal standard (FTC Act section 13(b)), the Court can—and should—preserve competition pending resolution of the hearing on the merits



Presumption**>2500****>200**

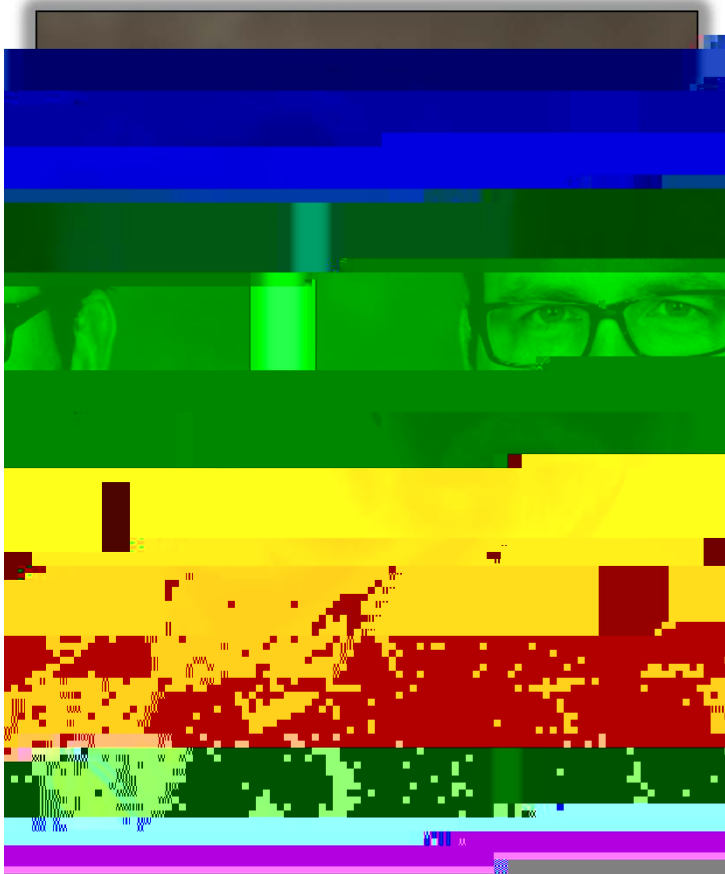
Adult PCP	3,891	7,422	3,531	85.7%
Pediatricians	5,333	9,726	4,393	98.6%
OB/GYN	6,211	7,363	1,152	84.6%
General Surgery	5,362	9,964	4,602	99.8%

- HHI measures market conc



Chelsey Matter, BCBS-ND

- BCBS-ND confirms Plaintiffs' market definition
- BCBS-ND confirms Sanford would have increased leverage after the merger



Michael Lenz, Medica

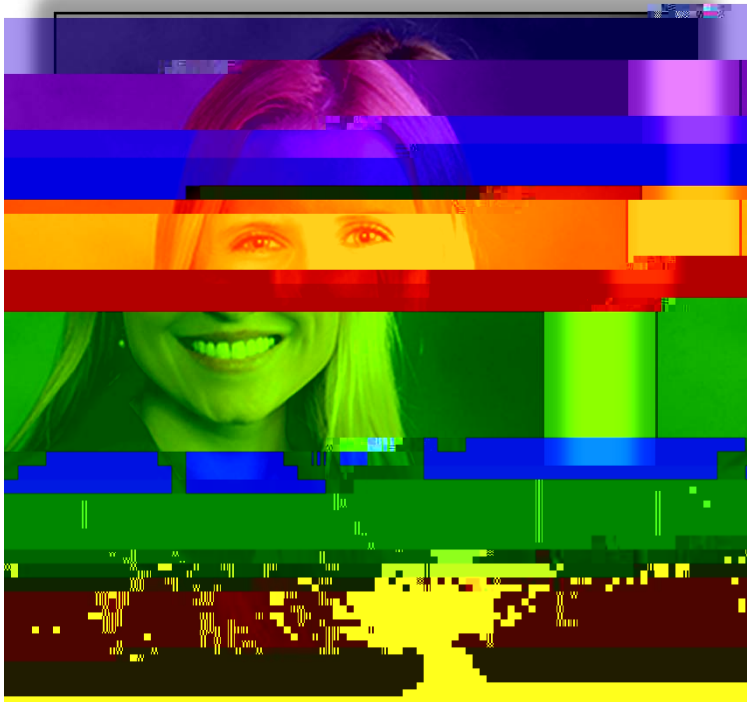
- Medica confirms Plaintiffs' market definition
- Medica would be a “price taker” — “Price-taker means that we don't have any leverage”
- The combination of Sanford/MDC “would just make their club even bigger”
- New agreement does little to protect Medica

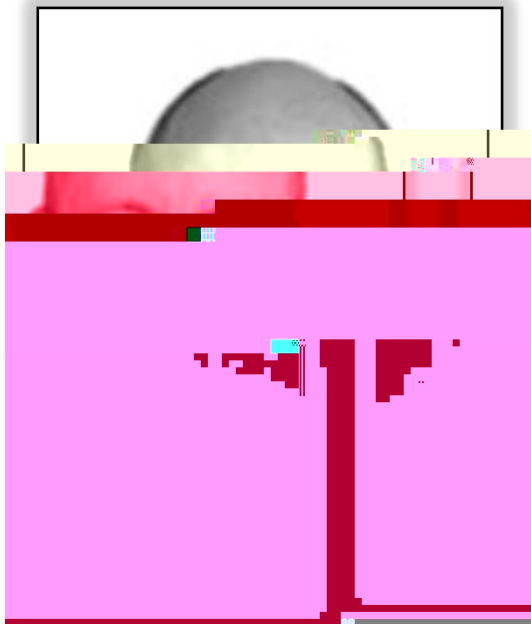




Dr. Jan Bury
Mid Dakota Clinic

- Competition between Sanford and Mid Dakota Clinic “sets the bar a little higher” and “keeps everyone honest”
- “It’s healthy [for patients] to have the right to choose ... If you remove competition, you’re doing a disservice” to the Bismarck-Mandan community





Dr. Thomas Respass

- All of Defendants' cost savings efficiency claims are not substantiated or not merger-specific
- Mid Dakota Clinic is a financially stable entity



Dr. Ashish Jha

- Stronger Together is “wholly insufficient” on its own to deliver defendants’ alleged quality synergies
- Defendants are already achieving other Stronger Together efficiencies or could achieve them without the proposed merger

- Defendants failed to rebut presumption
 - Entry/expansion are not timely, likely, and sufficient
 - Efficiencies are speculative and not merger specific
 - Power buyer not able to resist price increase by monopolist

“[W]e frequently need to go beyond market shares and structural presumptions and really understand the dynamics of the markets we are evaluating.”

–Acting Chairman Ohlhausen

Acting Chairman Ohlhausen **voted to block** this merger

Conclusion

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