

**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

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 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
 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 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. 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.
 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 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 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;
 - 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 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.
 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 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. 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.

Donald S. Clark
Secretary

SEAL
ISSUED: October 5, 2016

APPENDIX A—LETTER TO ST. CLOUD PHYSICIANS

APPENDIX B – MONITOR AGREEMENT

NON-PUBLIC APPENDIX B-1 – MONITOR COMPENSATION

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