

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 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 which 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-Competes and Maintain Assets” and (2) the Decision and Order (“D&O”).

Nothing in this summary is intended to modify any of the terms of the Commission’s Orders or to provide legal advice.

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 potential St. Cloud partners or employers during this time period.

The Suspension Period does not apply to any physician practicing in areas other than the three practice areas of Adult Primary Care, OB/GYN, or Pediatrics.

Termination Conditions

The second order, the D&O, was made final on _____. Under the D&O, the former St. Cloud Physicians were allowed to terminate their employment with CentraCare Health 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

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 ____ (X) 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 remaining ____ physicians who CentraCare must allow to terminate their employment pursuant to the FTC Orders.

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.