



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)

) PUBLIC DOCUMENT

) OSF Healthcare System,
) a corporation, and)

) Docket No. 9349

) Rockford Health System,
) a corporation.)
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_____)

**COMPLAINT COUNSEL’S FIRST SET OF REQUESTS FOR ADMISSIONS TO
RESPONDENTS**

Pursuant to the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.32, and the Scheduling Order entered by Chief Administrative Law Judge Chappell on December 20, 2011, Complaint Counsel hereby requests that Respondents respond to the following Requests for Admission (“RFA”) in accordance with the Definitions and Instructions set forth below:

1. Admit that RHS and OSF St. Anthony each offer a high quality of patient care and achieve high patient satisfaction levels.
2. Admit that adult primary care physician services sold to commercial health plans constitutes a relevant product market.
3. Admit that an adult primary care physician services market properly excludes OB/GYN services and pediatric services.
4. Admit that general acute care inpatient hospital services sold to commercial health plans constitutes a relevant product market.
5. Admit that the general acute care inpatient hospital services market properly excludes outpatient services.
6. Admit that if RHS, OSF St. Anthony, and SwedishAmerican could set prices for general acute care inpatient hospital services sold to commercial health plans jointly, they could raise their reimbursement rates for those services by 5 to 10 percent or more for at least one of RHS, OSF St. Anthony, or SwedishAmerican.
7. Admit that RHS, OSF St. Anthony, and SwedishAmerican are the only competitors for general acute care inpatient hospital services that are located in the relevant geographic

market as defined by Respondents.

8. Admit that the relevant geographic market, as it is defined by Respondent, for adult primary care physician services is no broader than the relevant geographic market, as it is defined by Respondent, for general acute care inpatient hospital services.
9. Admit that absent the acquisition, RHS and OSF St. Anthony would continue any current projects, as well as pursue new initiatives, to maintain and continue to improve their quality of care and patient satisfaction levels.
10. Admit that the acquisition will create the largest provider of general acute care inpatient hospital services in Rockford, regardless of whether market share is measured by discharges, patient days, or admissions.
11. Admit that the opinions of the United States District Court for the Northern District of Illinois, Western Division, in *United States v. Rockford Mem. Corp.*, 716 F. Supp. 1251 (N.D. Ill 1989) and the United States Court of Appeals for the Seventh Circuit in *United States v. Rockford Mem. Corp.*, 898 F.2d 1278 (7th Cir. 1990) do not include a statement that the proposed merger between SwedishAmerican and RHS would not have violated the antitrust laws if neither SwedishAmerican nor RHS had the largest market share in the relevant market.
12. Admit that the relevant geographic markets for both the general acute care inpatient hospital services market and the adult primary care physician services market in this case is no broader than the geographic market defined in the opinion of the Northern District of Illinois, Western Division, in *United States v. Rockford Mem. Corp.*, 716 F. Supp. 1251 (N.D. Ill 1989).
13. Admit that you are aware of no commercial health plan that currently markets or offers to Rockford employers or plan sponsors a PPO network that includes only one of RHS, OSF St. Anthony, or SwedishAmerican as an in-network provider of general acute care inpatient hospital services.
14. Admit that in 2010, Health Alliance Medical Plans accounted for less than 1 percent of the commercial inpatient admissions at RMH and OSF St. Anthony.
15. Admit that during negotiations with commercial health plans over provider contracts, one objective of Respondents is to obtain rates and other contract terms that are as favorable as possible to Respondents.
16. Admit that RHS's Board of Directors, OSF's Board of Directors, and the Sisters of the Third Order of St. Francis do not negotiate or approve provider contracts with commercial health plans.
17. Admit that in their ordinary course, Respondents' employees utilize or otherwise review

market shares that are calculated based on patient days.

18. Admit that Respondents have not yet made final decisions regarding whether to consolidate trauma services after the acquisition is consummated, or where such services would be consolidated.
19. Admit that whether SwedishAmerican takes steps toward seeking a Level 1 designation for its trauma services is a factor that Respondents will consider when deciding whether to consolidate trauma services after the acquisition is consummated.
20. Admit that Respondents have not yet made final decisions regarding whether to consolidate cardiac surgery, elective interventional cardiology services, or cardiac electrophysiology services after the acquisition is consummated.
21. Admit that physician resistance to consolidation of trauma services, cardiac surgery, elective interventional cardiology services, or cardiac electrophysiology services may cause Respondents to elect not to consolidate one or all of these services if the acquisition is consummated, or may delay the consolidation of such services.
22. Admit that certain RHS and OSF executives have criticized the quality of the work done by FTI in assessing the cost savings or efficiencies that may result from the acquisition.
23. Admit that certain RHS and OSF executives have expressed the belief that the FTI assessment of the cost savings or efficiencies that may result from the acquisition overstates the amount or extent of cost savings or efficiencies that are likely to be achieved if the acquisition is consummated.
24. Admit that whether the acquisition will cause OSF St. Anthony to avoid constructing a new bed tower will depend, in part, on Respondents' ability to consolidate clinical services at either RMH or OSF St. Anthony after the acquisition is consummated.
25. Admit that the capital budgets for OSF St. Anthony for 2010 and 2011 did not allocate or designate any funds to constructing a new bed tower in the next three years.
26. Admit that RHS and OSF St. Anthony can accomplish some of the efficiencies that are contemplated in the FTI Merger Report either independently or through some means other than the acquisition.
27. Admit that on or about February, 2011, FTI estimated that it could assist RHS to achieve a \$10.1 to \$15.7 million reduction in RHS's annual recurring operating costs in the absence of any merger, joint venture, or affiliation with OSF.
28. Admit that on or about February, 2011, FTI estimated that it could assist OSF St. Anthony to achieve a \$16.1 to \$22.8 million reduction in OSF St. Anthony's annual recurring operating costs in the absence of any merger, joint venture, or affiliation with

RHS.

29. Admit that with the exception of any plans contemplated by RHS, OSF St. Anthony, or SwedishAmerican, you are unaware of any attempt by any entity since at least 2000 to construct a new general acute care hospital in Rockford.
30. Admit that, based on the current forecasts and projections used by Respondents in the ordinary course of business, RHS and OSF St. Anthony are not at risk of closing during at least the next five years if the acquisition is not consummated.
31. Admit that even when a provider contract specifies reimbursement from the commercial health plan to Respondents based on a pay for value, pay for performance, patient centered medical homes, or risk-sharing payment methodology, the level or dollar amount of reimbursement is still a negotiated term..
32. Admit that in 2010 and year-to-date through November, 2011, RHS and OSF St. Anthony had cost coverage ratios over 200% with some commercial health plans.
33. Admit that the majority of both RHS's and OSF St. Anthony's provider contracts with commercial health plans identify a specific price term(s) for general acute care inpatient hospital services that is different from the price term(s) for outpatient services.
34. Admit that as measured by inpatient admissions, the volume of general acute care inpatient hospital services obtained by residents of Rockford increased between 2007 and 2010.
35. Admit that management plans created in the ordinary course of business by OSF St. Anthony indicate that the population living in OSF St. Anthony's primary service area is expected to grow through at least 2014.
36. Admit that in the weeks before October 26, 2005, Mr. Smith, RHS's Director of Managed Care at that time, spoke with an employee of SwedishAmerican and was told that SwedishAmerican was not in a bid process with Blue Cross Blue Shield of Illinois at that time.
37. Admit that on or about December, 2007, Mary Carlis, OSF St. Anthony's Director of Revenue, received a call from an employee of SwedishAmerican to discuss the income limits that OSF St. Anthony used to determine eligibility for charity care assistance.
38. Admit that after receiving the call referenced in RFA 37, OSF St. Anthony shared information regarding its charity care assistance policy with RHS or SwedishAmerican.
39. Admit that during 2007, OSF retained a healthcare consulting firm, Health Care Futures, that conducted interviews with executives of RHS, SwedishAmerican, and certain other hospitals, and shared its notes from those interviews with OSF St. Anthony and/or RHS.

40. Admit that the notes OSF received from the interview referenced in RFA 39 by Health Care Futures of an RHS executive included discussion of RHS's financial condition, physician employment strategy, the potential construction of a new RHS hospital in Rockford, and the potential for Advocate Health Care to affiliate with a Rockford provider.
41. Admit that the notes OSF received of the interview referenced in RFA 39 by Health Care Futures of a SwedishAmerican executive included discussion of SwedishAmerican's financial condition, physician employment strategy, contractual relationships with regional hospitals, and perspective on competition from hospitals outside Rockford.
42. Admit that the provider contracts between OSF St. Francis Medical Center and Humana, Blue Cross Blue Shield of Illinois, Health Alliance, and Aetna each include a term that precludes the health plan from including Methodist Medical Center as an in-network provider in the health plan's provider network.
43. Admit that in support of a proposed merger between SwedishAmerican and OSF, SwedishAmerican or their attorneys represented to the Department of Justice in or around 1997 that if that merger was blocked, it was likely that either SwedishAmerican, OSF Saint Anthony, or both, would fail and exit the market.
44. Admit that Respondents expect or anticipate that the Patient Protection and Affordable Care Act of 2010 will lower the percentage of the Rockford population that will not have health insurance, relative to the percentage of the Rockford population that would not have health insurance in the absence of this legislation.
45. Admit that Respondents have not yet been able to project, estimate, or otherwise analyze in the ordinary course of business how the Patient Protection and Affordable Care Act of 2010 will change or affect Respondents' revenues, expenses, or operating income, in any of the ways that such terms may be used by Respondents in the ordinary course of business.

DEFINITIONS

- A. The term “acquisition” means the proposed transaction between OSF Healthcare System and Rockford Health System as contemplated under the parties’ Affiliation Agreement dated January 31, 2011.
- B. The term “adult primary care physician services” means those services provided by physicians practicing in internal medicine, family practice, and general practice, to patients who are 18 years or older.
- C. The term “commercial health plan” means any health maintenance organization, preferred provider arrangement or organization, managed healthcare plan of any kind, self-insured health benefit plan, or any other private healthcare plan or insurance of any kind, but excluding Medicare, Medicaid, and any other governmental healthcare plan or insurance of any kind.
- D. The term “cost coverage ratio” means the ratio used to determine the cost coverage for the provision of care as determined by taking net revenue (by payor) divided by the fully allocated expenses associated with the provision of care (by payor).
- E. The terms “each,” “any,” and “all” mean “each and every.”
- F. The term “fee for service” means a payment methodology by which a health plan reimburses a provider at an agreed-upon reimbursement rate for each individual service, procedure, or patient encounter that the health plan’s members receive from the provider.
- G. The term “FTI” means FTI Consulting, its domestic and foreign parents, predecessors, divisions, subsidiaries (including, but not limited to, FTI Healthcare and Compass Lexecon), affiliates, partnerships and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms “subsidiary”, “affiliate” and “joint venture” refer to any person in which there is partial (25 percent or more) or total ownership or control between the Company and any other person.
- H. The term “FTI Merger Report” is PX0001, which is a report prepared by FTI Healthcare and titled “Business Efficiencies Report for the RHS-OSF Affiliation,” dated December 14, 2010.
- I. The term “hospital” means a facility that provides the relevant services as defined herein.
- J. The term “general acute care inpatient hospital services” means those medical and surgical diagnostic and treatment services that include an overnight hospital stay, including, but not limited to, many emergency services, internal medicine services, and surgical procedures.
- K. The terms “or” and “and” have both conjunctive and disjunctive meanings.

- L. The term “OSF” means OSF Healthcare System, its domestic and foreign parents, predecessors, divisions, subsidiaries (including, but not limited to OSF St. Anthony’s Medical Center (“OSF St. Anthony”)), affiliates, partnerships and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms “subsidiary”, “affiliate” and “joint venture” refer to any person in which there is partial (25 percent or more) or total ownership or control between the Company and any other person.
- M. The term “outpatient services” refers to medical services, other than physician office visits, that do not require the patient to stay overnight.
- N. The term “provider” means a facility that provides any of the relevant services as defined herein, including, but not limited to, hospitals, physician group practices, outpatient clinics, ambulatory surgery centers or other healthcare facilities.
- O. The term “provider contract” means the contract or agreement between a health plan and a provider that specifies the reimbursement rates that the health plan will pay to the provider for treating the health plan’s members, among other terms and conditions that dictate the relationship between the hospital and an in-network provider.
- P. The term “provider network” means a health plan’s preferred panel of in-network providers at which the health plan’s members can obtain care without having to pay the higher out-of-pocket costs that the health plan’s members must pay to obtain care at an out-of-network provider.
- Q. The term “RHS” means Rockford Health System, its domestic and foreign parents, predecessors, divisions, subsidiaries (including but not limited to Rockford Memorial Hospital), affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms “subsidiary”, “affiliate” and “joint venture” refer to any person in which there is partial (25 percent or more) or total ownership or control between Rockford Health System and any other person.
- R. The term “RMH” means Rockford Memorial Hospital.
- S. The term “Rockford” means the Rockford Metropolitan Statistical Area (“MSA”), as defined by the U.S. Office of Management and Budget and used by the U.S. Census Bureau.
- T. The term “SwedishAmerican” means SwedishAmerican Health System, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms “subsidiary”, “affiliate” and “joint venture” refer to any person in which there is partial (25 percent or more) or total ownership or control between

SwedishAmerican Health System and any other person.

INSTRUCTIONS

- A. These RFAs call for Respondent(s) to make a reasonable inquiry into the information available from their documents, employees, contractors and agents to answer each RFA.
- B. Each RFA is to be answered separately and under oath.
- C. Each answer to these RFAs shall specifically admit or deny the statement or set forth in detail the reasons why Respondent(s) cannot truthfully admit or deny the statement.
- D. If Respondent(s) cannot admit or deny the entire RFA, it shall specify what portion of the statement is true and qualify or deny the remainder. When qualifying an answer, provide all facts and bases that Respondent(s) contend(s) support its refusal to admit to the statement.
- E. Respondent(s) shall not give lack of information or knowledge as a reason for failure to admit or deny unless after a reasonable inquiry the information available to Respondent(s) does not provide a sufficient basis for admitting or denying the RFA. In such instances, Respondent(s) shall describe the unavailable information and its efforts to obtain this information.
- F. If Respondent(s) objects to a RFA, it shall set forth the basis for its objection. Any ground not stated in an objection shall be waived. All objections must be made with particularity and must set forth all the information upon which Respondent(s) intends to rely in response to any motion to compel.
- G. Whenever necessary to bring within the scope of a RFA a response that might otherwise be construed to be outside its scope, the following constructions should be applied:
 - 1. Construing the terms “and” and “or” in the disjunctive or conjunctive, as necessary, to make the RFA more inclusive;
 - 2. Construing the singular form of any word to include the plural and the plural form to include the singular;
 - 3. Construing the past tense of the verb to include the present tense and the present tense to include the past tense;
 - 4. Construing the masculine form to include the feminine form;
 - 5. Construing the term “Date” to mean exact day, month, and year if ascertainable; if not, the closest approximation that can be made by means of relationship to other events, locations, or matters; and

6. Construing negative terms to include the positive and vice versa.
- H. An answer should not be supplied by reference to an answer to another RFA unless the information provided is intended to be identical in all respects.
- I. If Respondent(s) claims any ambiguity in interpreting a RFA or a definition or instruction applicable thereto, Respondent(s) shall set forth as part of its response the language deemed to be ambiguous and the interpretation used in responding to the RFA, and shall respond to the RFA as Respondent(s) interprets it.
- J. If Respondent(s) cannot find in the Definitions section or in the body of the RFAs the definition for a word that is otherwise ambiguous, Respondent(s) shall interpret the word according to its usage at Respondent(s) and state in the answer to the RFA, Respondent(s) definition of the word.
- K. If any privilege is claimed as a ground for not responding to a RFA, provide a privilege log describing the basis for the claim of privilege and all information necessary for the Court to assess the claim of privilege, in accordance with Rule 3.31(c)(2) of the FTC Rules of Practice. The privilege log shall include the following: (i) specific grounds for the claim of privilege; (ii) the date of the privileged communication; (iii) the persons involved in the privileged communication; (iv) a description of the subject matter of the privileged communication in sufficient detail to assess the claim of privilege; and (v) the specific RFA to which the privileged information is responsive.
- L. All questions relating to these RFAs should be directed to Kenneth Field at (202) 326-2868.

M. The answers to these RFAs should be produced to Kenneth Field at the Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington D.C. 20580.

Dated: December 22, 2011

/s/ Kenneth Field
Kenneth Field
Complaint Counsel
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001
(202) 326-2868

CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Requests for Admission has been prepared by me or under my personal supervision from records of Respondents, and is complete and correct to the best of my knowledge and belief.

Where copies rather than original documents have been submitted, the copies are true, correct, and complete copies of the original documents. If Complaint Counsel uses such copies in any court or administrative proceeding, Respondents will not object based upon Complaint Counsel not offering the original document.

(Signature of Official)

(Title/Company)

(Typed Name of Above Official)

(Office Telephone)

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2012, I filed the foregoing documents electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing documents to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing documents to:

Alan I. Greene
Matthew J. O'Hara
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CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

February 21, 2012

By: s/ Sarah Swain
Attorney