

3. CentraCare's acquisition of SCMG would substantially increase CentraCare's market share in three physician services sold to commercial health plans: (1) adult primary care; (2) pediatric primary care; and (3) OB/GYN. The levels of concentration in these markets that would result from the Acquisition create a strong presumption of anticompetitive harm under applicable case law and the U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines"). By eliminating SCMG as a potential alternative for health plans in the St. Cloud area, the Acquisition will likely allow CentraCare to increase the reimbursement rates for the services of current SCMG physicians, and potentially secure more favorable terms from health insurance plans for CentraCare services.
4. The competition eliminated through the Acquisition will not be sufficiently replaced in a timely manner by other providers.
5. Respondent and SCMG cannot show cognizable efficiencies that would offset the likely and substantial anticompetitive harm from the Acquisition.
6. Respondent and SCMG have shown that SCMG is financially failing, with no access to credit, and that physicians are and will continue to leave the practice. They have further shown that no alternative purchasers other than CentraCare are interested in acquiring the entire SCMG practice group.

II.

BACKGROUND

A.

Jurisdiction

7. Respondent and SCMG are, and at all relevant times have been, engaged in commerce or in activities affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.
8. The Acquisition constitutes a merger subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

B.

Respondent and SCMG

9. Respondent CentraCare is a not-for-profit health system organized under and by virtue of the laws of Minnesota. CentraCare is headquartered at 1900 CentraCare Circle, St. Cloud, MN 56303. CentraCare owns and operates multiple clinics in the St. Cloud area that employ approximately 270 primary care and specialist physicians, including 55 adult primary care, 16 pediatric primary care, and 14 OB/GYN physicians. CentraCare also

employs nearly 100 advanced practice providers (“APPs”). These clinics are vertically integrated with CentraCare’s other holdings, which include six hospitals, 18 multi-specialty clinics, four pharmacies, and six nursing homes in central Minnesota.

10. SCMG is a for-profit, physician-owned, professional organization under Minnesota law that is headquartered at 1301 33rd Street South, St. Cloud, MN 56301. It owns and operates four clinics in the St. Cloud area and employs approximately 40 physicians who provide primary care and specialty practice medical services. Approximately 36 of these physicians focus on adult primary care, pediatric primary care, and OB/GYN services. SCMG also employs approximately 20 APPs.

C.

The Acquisition

11. As early as 2014, Respondent and SCMG began discussing a possible acquisition of SCMG by CentraCare. On February 29, 2016, the CentraCare board of directors entered into a definitive agreement to purchase SCMG’s medical practice and its related building partnership.
12. Respondent and SCMG intend to finalize this acquisition as early as October 6, 2016, and begin integrating SCMG’s operations into CentraCare immediately thereafter.

D.

Competition Between Healthcare Providers

13. Competition between healthcare providers occurs in two basic stages. In the first stage, providers compete to be selected by health insurers as their in-network provider. The in-network providers benefit by gaining access to the health insurers’ members as patients. Health insurers seek to create provider networks with geographic coverage and a scope of services that attract and satisfy employers who buy group insurance coverage for employees, as well as independent purchasers of “non-group” insurance.
14. To gain in-network status, a provider engages in bilateral negotiations with the health insurer. One of the critical terms that a provider and a health insurer agree upon during their negotiation is the reimbursement rate paid by insurer to health care provider for its medical services to the health insurers’ members.
15. Health insurers act as employers’ agents in creating provider networks that offer convenience, high quality care, and competitive reimbursement rates. This is true whether employers purchase fully-insured health plans or are self-insured. “Fully-insured” health plans require covered employees and the employer to pay premiums, co-pays, and deductibles in exchange for access to a provider network and for insurance against the cost of future care. These costs are linked to the reimbursement rates that health insurers negotiate with each health care provider in their provider networks. “Self-insured” health

plans also provide access to a provider network but the employer rather than the insurer assumes the risk for the cost of future care. Self-insured employers must pay the entirety of their employees' health care claims (aside from member cost-sharing, such as deductibles and copayments) and, as a result, may immediately incur provider rate increases.

16. In the second basic stage of competition, providers compete with other independent providers in their networks to attract patients. Typically, health insurers offer multiple independent in-network providers, who compete to attract patients by offering better services, amenities, convenience, quality of care, and/or patient satisfaction.

III.

THE RELEVANT SERVICE MARKETS

17. There are three relevant physician service markets in which to analyze the effects of the Acquisition: adult primary care; pediatric primary care; and OB/GYN.
18. Adult primary care physician services are general physician services provided to commercially insured patients aged 18 and over by physicians who offer internal medicine, family medicine, and general medical services. Physicians in other specialties are generally not a substitute for adult primary care physicians.
19. Pediatric primary care physician services are general physician services provided to commercially insured patients aged 17 and younger by physicians practicing pediatrics. Pediatricians receive additional training to treat pediatric health issues and physicians trained for other specialties generally do not have this required expertise.
20. OB/GYN physician services are reproductive health services provided to commercially insured female patients. Generally, physicians without additional training in treating female reproductive health are not a substitute for physicians providing OB/GYN services.
21. Health care providers sell adult primary care, pediatric primary care, and OB/GYN physician services to health insurers and their members.
22. Alternative care delivery models, such as retail clinics and telehealth, are not functionally interchangeable with in-person physician services. Retail clinics and telehealth are not equipped to treat the same range of chronic or high-acuity acute conditions as a traditional primary care practice.
23. Because of patient preferences, and because alternative care providers can only address a limited scope of health concerns, health plans must include a sufficient number of in-network adult primary care physicians, pediatric primary care physicians, and OB/GYNs to create an attractive health plan network, even if the cost of these services increased by a small but significant and non-transitory amount.

IV.

THE RELEVANT GEOGRAPHIC MARKET

24. The relevant geographic market in which to analyze the effects of the Acquisition in the relevant service markets is the greater St. Cloud, Minnesota residential area, which contains the following zip codes: 55320, 56301, 56303, 56304, 56320, 56329, 56377, 56379, and 56387. This roughly corresponds to a radius of 20 miles around downtown St. Cloud.
25. Patients in the St. Cloud area strongly value access to adult primary care, pediatric primary care, and OB/GYN services close to where they live. Given these patient preferences, health insurers must include a sufficient number of adult primary care physicians, pediatric primary care physicians, and OB/GYN physicians in the St. Cloud area to create an attractive health plan network for employers whose employees reside in the St. Cloud area.
26. Accordingly, a hypothetical monopolist that controlled a substantial portion of these physicians in the St. Cloud area could profitably increase rates by at least a small but significant amount because health insurers could not practicably offer primary and other routine medical services from providers outside the St. Cloud area to their members. Thus, the area in which health insurers can practically turn for alternative providers of adult primary care physician services, pediatric primary care physician services, and OB/GYN physician services is limited to the St. Cloud area.

V.

MARKET STRUCTURE AND THE ACQUISITION'S PRESUMPTIVE ILLEGALITY

27. The Merger Guidelines and courts measure concentration using the Herfindahl-Hirschman Index (“HHI”). The HHI is calculated by totaling the squares of the market shares of every firm in the relevant market. Under the Merger Guidelines, a merger is presumed likely to create or enhance market power—and is presumptively illegal—when the post-merger HHI exceeds 2500 and the merger increases the HHI by more than 200 points.
28. The HHIs that would result from the Acquisition confirm that it will lead to significant increases in market concentrations in already concentrated service markets. Each of the physician services markets have pre-merger HHIs of over 2500, and in each the HHI will increase well over 200 points. Indeed, CentraCare’s post-Acquisition share in each of the physician service markets will be over 80%.

29. Accordingly, the Acquisition is presumptively unlawful. In each of the relevant markets, the market shares, post-merger concentration levels, and increase in concentration levels exceed the thresholds for a presumptively anticompetitive merger under the case law and the Merger Guidelines.

VI.

ANTICOMPETITIVE EFFECTS

A.

Elimination of Competition and Increased Bargaining Leverage of CentraCare

30. Health insurers must provide their members access to CentraCare or SCMG because they are the two largest providers of adult primary care, pediatric primary care, and OB/GYN services in the St. Cloud area. Competition between CentraCare and SCMG enables health insurers and employers to negotiate lower reimbursement rates and more favorable contract terms. SCMG is a low-cost provider of health care in St. Cloud, and health insurers have used the competition between CentraCare and SCMG to obtain more favorable contract terms from CentraCare, which is a higher cost health care provider. The Acquisition will eliminate competition between CentraCare and SCMG, substantially lessening overall competition in the relevant markets.

B.

Loss of Non-Price Competition

31. CentraCare and SCMG compete to attract patients. Competition provides an incentive for CentraCare and SCMG to provide higher quality care and better service to patients.
32. After the Acquisition, CentraCare will face substantially less competition in the St. Cloud area for adult primary care, pediatric primary care, and OB/GYN physician services. As a result, the Acquisition will diminish CentraCare's incentive to improve or continue to offer high-quality care and better services.

VII.

COUNTERVAILING FACTORS

33. Entry by a sufficient number of physicians to counteract the anticompetitive effects due to the Acquisition will not be likely, timely, or sufficient. In order to counteract the anticompetitive effect of the Acquisition, an entrant or current St. Cloud competitor would need to bring in a sufficient number of physicians in the relevant service markets to counteract the competition being lost through the Acquisition. No entrant or current St. Cloud competitor will be able to introduce such a large number of physicians in a timely

manner because, inter alia, it takes time for a new physician to achieve the patient volume of an established physician.

34. Respondent and SCMG also cannot demonstrate cognizable efficiencies that would be sufficient to rebut the presumption and evidence that the Acquisition likely would substantially lessen competition in the relevant market.
35. Any alleged cost savings from the integration of CentraCare's operations with SCMG's are speculative, not verifiable, and not merger specific. Nor is there evidence that any such savings would be competition-enhancing.
36. The Acquisition also is not necessary to increase clinical efficiencies. SCMG does not need to merge with CentraCare to transition from fee-for-service contracting to a value-based reimbursement model. Such a transition does not require a large number of physicians or an affiliation with a large integrated health system. Moreover, SCMG and CentraCare can integrate clinical services without merging, and in some respects have already begun to do so. Other independent practices in the St. Cloud area have integrated their electronic medical record systems with CentraCare successfully.
37. SCMG, however, has produced evidence that it is financially failing. SCMG's current financial status has weakened its standing with at least one lender, which froze the practice's only line of credit after reviewing its recent financial statements. The evidence indicates that certain SCMG physicians plan to leave the practice and possibly the St. Cloud area if the Acquisition is not consummated. Such physician departures would cause an immediate drop in revenues that could further destabilize the group.
38. After a good-faith, multi-year search, SCMG has been unable to find an alternative purchaser for the entire medical practice. At least one local provider, however, has expressed interest in expanding its practice by hiring some of SCMG's physicians. A number of SCMG's physicians are interested in joining that provider or other smaller, independent practices in the area.

X.

VIOLATIONS CHARGED

39. The allegations of Paragraphs 1 through 38 above are incorporated by reference as though fully set forth.
40. The acquisition described in Paragraph 11 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.
41. The Acquisition, if consummated, may substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

42. **WHEREFORE, THE PREMISES CONSIDERED**, the Federal Trade Commission on this fifth day of October, issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: