

APPENDIX A - Letter to St. Cloud 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 that 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 you, as a St. Cloud Physician (defined as an Adult Primary Care Physician, OB/GYN, or Pediatrician) currently employed by CentraCare Health, by virtue of the recent acquisition, may 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. You may enter into discussions and negotiations for new employment during this period. 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 partners or employers.

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.

Notice of Termination of Employment

During this Suspension Period, you may submit your Termination Notice to the Monitor (identified below), but you may not actually terminate your employment before the “First Release Period” begins (described below). *If you terminate your employment with CentraCare Health **before** the First Release Period, CentraCare Health **may pursue** its non-compete or non-solicitation contract rights against you.*

If you submit a Termination Notice to the Monitor during this Suspension Period, and if the conditions below are met, your name will be included on the list of physicians terminating their employment with CentraCare Health in the event that the D&O is made final. (Until any list is provided to CentraCare Health, your Termination Notice will remain confidential with the Monitor.)

You *must* follow the procedures listed below, and the Termination Notice *must* contain certain critical information, in order to become an Acceptable Termination that allows you to leave CentraCare Health and continue practicing in the St. Cloud area without violating your employment contract:

- 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.

There is a limit to the number of Adult Primary Care Physicians, OB/GYNs, and Pediatricians who will be allowed to terminate under the FTC Orders (described below). 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 forwarded to CentraCare Health as physicians permitted to terminate their employment with CentraCare Health pursuant to the FTC Orders.

Termination Conditions – First Release Period

The second order, the D&O, if made final by the Commission after a period allowing for public comment (usually around 30 days), will allow you to terminate your 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 Monitor will send you an email when the time starts allowing you to terminate your employment with CentraCare Health after an Acceptable Termination notice has been received. This time period is called the “First Release Period” and runs for up to ninety (90) days.

- During this ninety (90) day period, you may begin or continue discussions and negotiations for new employment. If you decide to terminate your employment, you may notify the Monitor of your intention, by following the procedures listed above.

- You must be or have been among the first fourteen (14) physicians to submit your notice to terminate employment. To protect the confidentiality of the doctors who want to leave, the Monitor will submit to CentraCare Health no more than the first fourteen (14) notices he receives.
- CentraCare Health must allow the first fourteen (14) physicians who have given notice to the Monitor and satisfied 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.
- If at least eight (8) physicians terminate their employment with CentraCare Health by the end of the ninety (90) days, the First Release Period ends and no more employment terminations will be permitted under the Orders beyond a total of fourteen (14). 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 even after the Commission votes to accept (or reject) the D&O, the conclusion of this time period cannot be determined at this time. It will, however, not end until the requisite number of doctors leave CentraCare Health or ten years lapse from the date the D&O becomes final.
- If you are *not* among the first fourteen (14) physicians who submit Acceptable Termination notices, the Monitor will inform you of that fact

Termination Conditions – Second Release Period

If at the end of the First Release Period fewer than eight (8) doctors have notified the Monitor of their intent to terminate employment in accordance with the FTC Orders, the period in which physicians may continue to explore other employment opportunities and leave CentraCare Health's employment without penalty will remain open through a "Second Release Period." In the Second Release Period, physicians from CentraCare Health practicing in the three designated practice areas also will have the option to leave. This Second Release Period will remain open until eight (8) (rather than fourteen (14)) Adult Primary Care Physicians, OB/GYNs, or Pediatricians in total have terminated their employment with CentraCare Health in accordance with the FTC Orders, or ten years lapse from the date the D&O becomes final. *If you are not among the eight (8) physicians who submit Acceptable Termination notices during this period, the Monitor will inform you of that fact.*

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 five (5) 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 fourteen (14) or eight (8), depending on the Release Period, total physicians that CentraCare must allow to terminate their employment pursuant to the FTC Orders.

Asset Maintenance

The Order to Suspend Non-Competes and Maintain Assets also contains provisions requiring CentraCare Health to limit changes to the facilities you use and your medical practice, in general, to facilitate your decision to stay or leave CentraCare Health. The goal is to keep your medical practice as similar as possible to avoid disruptions while you make your decision. If you decide to leave CentraCare Health, the FTC Orders have provisions that will facilitate the transfer of patients with you to your new practice and the ability of those patients to have their medical information transferred as well. If you find that there are changes happening that are contrary to this goal, please notify the Monitor.

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.