

**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**

**DECISION AND ORDER**

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 thereupon issued its Complaint and its Order to Suspend Enforcement of CentraCare Health Non-Competes and Maintain Assets (“Order to Suspend Enforcement and Maintain Assets”), 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, and having duly considered the comments received from interested persons, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

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, as used in this Order, the following definitions shall apply:

- A. “CentraCare Health System” means CentraCare Health, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by CentraCare Health, the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “St. Cloud Medical Group” means St. Cloud Medical Group, P.A., a multi-specialty medical clinic serving the St. Cloud, Minnesota, area. St. Cloud Medical Group is located at 1301 33rd St S, St Cloud, MN 56301.
- D. “Acceptable Termination” means any termination of employment with CentraCare Health resulting from:
  1. a Termination Notification that, upon consultation between the Monitor and the Commission’s staff, is submitted, after this Order becomes final, to CentraCare Health by the Monitor, and
  2. Where the St. Cloud Physician or CentraCare Physician has a valid offer or contract to work for or Participate with a Third Party Medical Practice, other than CentraCare Health, for a period of at least one year after such termination, or the creation of a New Third Party Medical Practice.
- E. “Acquisition” means the acquisition by CentraCare Health of St. Cloud Medical Group on or about October 1, 2016.

- F. “Acquisition Agreement” means the February 29, 2016, Stock Purchase Agreement by and among CentraCare Health Services, St. Cloud Medical Group, P.A., and the Shareholders listed on Schedule 1 to the Stock Purchase Agreement.
- G. “Adult Primary Care Services” means primary care Physician services that encompass general medicine, internal medicine, and family medicine provided to patients 18 years and older.
- H. “CentraCare Health Non-Compete Provisions” means:
1. any provision in the Acquisition Agreement or other agreement Relating To the Acquisition or the employment of a St. Cloud Physician that impedes, interferes with, or prevents a St. Cloud Physician from interviewing, discussing employment or Participation with, or Participating in a Third Party Medical Practice or New Third Party Medical Practice other than at CentraCare Health including, but not limited to, any provision:
    - a. as it Relates To disclosing the identities of, or communicating with patients treated by a St. Cloud Physician, and the status or transfer of health records of such patients; and
    - b. as it Relates To interfering with relationships between CentraCare Health and patients treated by a St. Cloud Physician.
  2. any agreement Relating To the employment of a CentraCare Physician that impedes, interferes with, or prevents a CentraCare Physician from interviewing, discussing employment or Participation with, or Participating in a Third Party Medical Practice or New Third Party Medical Practice other than at CentraCare Health including, but not limited to, any provision:
    - a. as it Relates To disclosing the identities of, communicating with patients treated by a CentraCare Physician, and the status or transfer of health records of such patients; and
    - b. as it Relates To interfering with relationships between CentraCare Health and patients treated by the CentraCare Physician.
- I. “CentraCare Physician” means a Physician who provides Adult Primary Care Services, Pediatric Services, or Obstetric Services in the St. Cloud Geographic Area as an employee of CentraCare Health, and is not a St. Cloud Physician.
- J. “Contract Services” means any service performed pursuant to any Employment Agreement or Participation agreement between CentraCare Health and a St. Cloud

Physician, a CentraCare Physician, or, for purposes of Paragraph V of this Order, other Physicians located in the St. Cloud Geographic Area.

- K. “Employment Agreement” means any employment agreement or other agreement Relating To a St. Cloud Physician working for or Participating with CentraCare Health entered between CentraCare Health and a St. Cloud Physician on or about October 1, 2016, or any employment agreement or other agreement Relating To a CentraCare Physician working for or Participating with CentraCare Health.
- L. “First Release Period” means ninety (90) days starting from the date this Order becomes final.
- M. “Monitor” means the Person appointed to act as monitor by the Commission pursuant to Paragraph VII of this Order.
- N. “New Third Party Medical Practice” means the creation of or proposal to create a new Third Party Medical Practice by a St. Cloud Physician or St. Cloud Physicians, or by a CentraCare Physician or CentraCare Physicians. The New Third Party Medical Practice must, to the Monitor’s satisfaction after consultation with the Commission, have viable plans for a medical practice including, but not limited to, financial projections, suitable office location, staffing, and outfitting.
- O. “Obstetric Services” means obstetric and gynecologic physician services Related To women’s reproductive health, pregnancy and childbirth.
- P. “Participate” in an entity or an arrangement means (1) to be a partner, joint venturer, shareholder, owner, member, or employee of such entity or arrangement, or (2) to provide services, agree to provide services, or offer to provide services through such entity or arrangement. This definition applies to all tenses and forms of the word “participate,” including but not limited to, “participating,” participated,” “participation,” and “participant.”
- Q. “Payer” means any Person that pays, or arranges for the payment, for all or any part of any physician services for itself or for any other person, as well as any person that develops, leases, or sells access to networks of physicians.
- R. “Pediatric Services” means primary care Physician services provided to children under the age of 18.
- S. “Person” means any natural person or artificial person, including, but not limited to, any corporation, unincorporated entity, or government entity. For the purpose of this Order, any corporation includes the subsidiaries, divisions, groups, and affiliates controlled by it.

- T. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- U. “Physician Services” mean Adult Primary Care Services, Obstetric Services, and Pediatric Services.
- V. “Relating To” means pertaining in any way to, and is not limited to that which pertains exclusively to or primarily to. This definition applies to all tenses and forms of the word “relate to,” including but not limited to,” “relates to,” and “related to.”
- W. “Second Release Period” means the period of time beginning on the date the First Release Period ends if the Commission has not received Acceptable Terminations of eight (8) St. Cloud Physicians, until eight (8) St. Cloud Physicians and CentraCare Physicians, in total, have submitted Acceptable Terminations, pursuant to this Order.
- X. “St. Cloud Employee” means a person employed by St. Cloud Medical Group, not including a St. Cloud Physician, before the Acquisition.
- Y. “St. Cloud Geographic Area” means the locations within the zip codes 56303, 56304, 56387, 56377, 56301, 56379, 55320, 56320, and 56329, including and surrounding St. Cloud, Minnesota.
- Z. “St. Cloud Physician” means a Physician who provides Adult Primary Care Services, Pediatric Services, or Obstetric Services in the St. Cloud Geographic Area as an employee of CentraCare Health and who, prior to providing Contract Services for CentraCare Health, offered Physician Services as a Participant in St. Cloud Medical Group.
- AA. “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 beginning when the Order to Suspend Enforcement and Maintain Assets becomes final until the end of the First Release Period or, if necessary, the end of the Second Release Period.
- BB. “Termination Notification” means written notification submitted to the Monitor by a St. Cloud Physician or CentraCare Physician of that Physician’s intention to terminate his or her Employment Agreement and intention to Participate in a Third Party Medical Practice for a period of at least two (2) years after such termination or create a New Third Party Medical Practice.
- CC. “Third Party Medical Practice” means Physician Services offered in the St. Cloud Geographic Area by a Physician Participating in a medical practice or in an employment arrangement that accepts reimbursements from commercial Payers. A Third Party

Medical Practice does not include, among other things, a Veterans Administration facility.

## II.

**IT IS FURTHER ORDERED** that CentraCare Health shall:

- A. Suspend enforcement of any of the CentraCare Non-Compete Provisions against any St. Cloud Physician for any activity that the St. Cloud Physician engaged in during the Suspension Period through the First Release Period and, if necessary, the Second Release Period, that Relates To providing a Termination Notification and an Acceptable Termination; *provided, however*, that this Paragraph II.A does not prohibit CentraCare Health from enforcing any of the CentraCare Health Non-Compete Provisions against any St. Cloud Physician who terminates Contract Services prior to the First Release Period.
- B. Within two (2) days of the Agreement Containing Consent Order in this matter being placed on the public record, 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. Inform the Monitor, in writing, that the notices sent pursuant to this Paragraph II have been sent and received.
- D. For each Termination Notification that is (1) submitted during the First Release Period and (2) received by CentraCare Health as an Acceptable Termination, terminate Contract Services of the St. Cloud Physician who submitted that Termination Notification, and allow that St. Cloud Physician to leave CentraCare Health's employment on or before sixty (60) days of CentraCare Health's receipt of such notification from the Monitor;
- E. For any activity Related To this Paragraph II, waive all rights to seek or obtain legal or equitable relief for breach of contract for violation by any St. Cloud Physician of any of the CentraCare Health Non-Compete Provisions; and
- F. Not take any other action to discourage, impede, or otherwise prevent any St. Cloud Physician from terminating Contract Services pursuant to this Paragraph II 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 a Third Party Medical Practice.

*Provided, however*, upon receipt by the Commission of CentraCare Health's verified report of Acceptable Termination of fourteen (14) St. Cloud Physicians, the First Release Period shall end immediately, CentraCare Health will not be required to release any additional St. Cloud Physicians, and the Second Release Period will not start. *Provided, further, however*, that, if during the First Release Period there are more than fourteen (14) Acceptable Terminations, the

Monitor, after consultation with the Commission's staff and the Persons where the St. Cloud Physicians plan to Participate or be employed, shall forward to CentraCare Health the first fourteen (14) such notifications received by the Monitor and shall not reveal the identity of any of the additional St. Cloud Physicians who submitted Termination Notifications. *Provided, further, however,* that if at the end of the First Release Period, CentraCare Health has submitted a verified report to the Commission that it has Acceptable Terminations of eight (8) St. Cloud Physicians, the Second Release Period will not start pursuant to Paragraph III.

G. At the time of the Acquisition, deposit into an escrow account, pursuant to oversight and consultation with the Monitor, a sum of five hundred thousand dollars (\$500,000), payable in individual, one hundred thousand dollar (\$100,000) amounts as departure bonuses to up to five (5) St. Cloud Physicians or CentraCare Physicians who submit Acceptable Terminations during the First Release Period, or Second Release Period if there is one:

1. To move to a Third Party Medical Practice with fewer than five (5) Physicians offering Physician Services, as of the date the Order becomes final; or
2. For the creation of a New Third Party Medical Practice.

*Provided, however,* that if more than five (5) St. Cloud Physicians or CentraCare Physicians submit Acceptable Terminations pursuant to this Paragraph, the Monitor shall forward to CentraCare Health the first five (5) such Acceptable Terminations received by the Monitor. *Provided, further, however,* that any escrow amounts not distributed will be returned to CentraCare, with interest.

H. The purpose of this Paragraph II, including the departure bonus in Paragraph II.G., is to mitigate the competitive effects in the Commission's Complaint by giving individual physicians who formerly practiced in St. Cloud Medical Group or at CentraCare Health the incentive to leave CentraCare Health to practice Physician Services in competition with CentraCare Health. Acceptance of the departure bonus by an individual physician serves to ensure CentraCare Health's compliance with this Order. The departure bonuses provided for under this Paragraph II: (1) are not an exchange (or offer to exchange) of anything of value in an effort to induce (or reward) the referral of federal health care program business from any St. Cloud Physician or CentraCare Physician receiving such bonus to CentraCare; (2) are not considered to vary with or take into account the volume or value of any past or future referrals of federal health care program business referred by any St. Cloud Physician or CentraCare Physician to CentraCare Health; and (3) do not create any new or continuing financial relationship between the accepting St. Cloud Physician or CentraCare Physician and CentraCare Health for purposes of encouraging or expecting more referrals to, or medical tests from, CentraCare Health.

### III.

**IT IS FURTHER ORDERED** that, if after the expiration of the First Release Period, CentraCare Health has not received Acceptable Terminations for at least eight (8) St. Cloud Physicians:

- A. CentraCare Health shall send a notice in a form similar to Appendix B of this Order by email and first class mail, return receipt requested, effectively giving notice to all CentraCare Physicians that there is one or more openings for CentraCare Physicians to leave CentraCare Health and practice at a Third Party Medical Practice or create a New Third Party Medical Practice, pursuant to this Order;
- B. CentraCare Health shall inform the Monitor, in writing, that the notices sent pursuant to this Paragraph III have been sent and received
- C. For a period of time until a total of eight (8) St. Cloud Physicians and CentraCare Physicians in total have given Acceptable Terminations, CentraCare Health shall not enforce, directly or indirectly, the CentraCare Health Non-Compete Provisions Relating To CentraCare Physicians against any CentraCare Physician seeking to provide Termination Notification;
- D. Upon Acceptable Termination of any CentraCare Physician, CentraCare Health shall terminate Contract Services of each such CentraCare Physician and allow that physician to leave CentraCare Health's employment on or before ninety (90) days from the date such notification was received;
- E. For any activity Related To this Paragraph III, CentraCare Health shall waive all rights to seek or obtain legal or equitable relief for breach of contract for violation by any CentraCare Physician of any of the CentraCare Health Non-Compete Provisions; and
- F. CentraCare Health shall not take any other action to discourage, impede, or otherwise prevent any CentraCare Physician from terminating Contract Services pursuant to this Paragraph III including, but not limited to, not offering any incentive to the CentraCare Physician to decline employment with the Third Party Medical Practice.

*Provided, however,* that CentraCare Health shall not be required to suspend or continue to suspend its CentraCare Health Non-Compete Provisions, nor be required to allow any CentraCare Physician to leave CentraCare Health pursuant to this Order after the Second Release Period; and *provided, further, however,* that once eight (8) St. Cloud Physicians and/or CentraCare Physicians, in total, have submitted Acceptable Terminations, CentraCare Health shall not be required to suspend or continue to suspend its CentraCare Health Non-Compete Provisions, nor be required to allow any CentraCare Physician or St. Cloud Physicians to leave



CentraCare Health for a Third Party Medical Practice or create a New Third Party Medical Practice, pursuant to this Order.

- G. The purpose of this Paragraph III is to ensure that those St. Cloud Physicians and CentraCare Physicians who terminate their Contract Services can offer Physician Services in a Third Party Medical Practice or New Third Party Medical Practice in competition with CentraCare Health and to mitigate the lessening of competition alleged in the Commission's Complaint.

#### IV.

**IT IS FURTHER ORDERED** that:

- A. With respect to each St. Cloud Physician and CentraCare Physician who terminates his or her Contract Services pursuant to Paragraph II or III of this Order:
1. CentraCare Health shall not:
    - a. Offer any incentive to such Physician to decline to provide Physician Services in a Third Party Medical Practice or New Third Party Medical Practice and shall retain the obligation to pay for the benefit of any St. Cloud Physician and the CentraCare Physician who accepts employment with the Third Party Medical Practice, or creates a New Third Party Medical Practice, all accrued bonuses, vested pensions, and other accrued benefits;
    - b. Enforce any provision of such Physician's Employment Agreement that would prevent that Physician from informing patients treated by that Physician of his or her Third Party Medical Practice, or New Third Party Medical Practice, and providing Physician Services to those patients;
    - c. Enforce any of the CentraCare Health Non-Compete Provisions for any activity Relating To terminating Contract Services;
    - d. Require any St. Cloud Physician or CentraCare Physician, prior to terminating his or her Contract Services, to enter into an agreement to provide any payment to CentraCare Health;
    - e. Prevent, impede, or otherwise interfere with the provision of Physician Services by such St. Cloud Physician or CentraCare Physician;
    - f. For a period of two (2) years from the date such Physician terminates his or her Contract Services, directly or indirectly, solicit, induce, or attempt to solicit or induce the employment of such St. Cloud Physician or

CentraCare Physician. *Provided, however,* that CentraCare Health may make general advertisements for Physicians including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the Physicians who so terminated their employment or who were released from the CentraCare Health Non-Compete Provisions. *Provided, further, however,* that CentraCare Health may employ any former St. Cloud Physician or CentraCare Health Physician who applies to Participate with CentraCare Health as long as such Physician was not solicited by CentraCare Health in violation of this Paragraph.

- g. For a period of three (3) years from the end of the First Release Period, or Second Release Period, if applicable, deny, terminate or suspend medical staff privileges, or reduce or change medical staff membership status from the status existing as of the Acquisition, of St. Cloud Physicians or CentraCare Physicians who have terminated their employment with CentraCare Health pursuant to this Order, based solely on the status of that Physician's lack of employment by CentraCare Health. *Provided, however,* that CentraCare Health may deny, terminate or suspend such Physician's medical staff privileges, or reduce or change medical staff membership status, due to (a) quality or patient safety determinations; or (b) violations by such Physician of facility rules and regulations or standards of conduct that apply to all medical staff members.

2. CentraCare Health shall within thirty (30) days of such Physician's termination:

- a. Inform all patients of such Physician that such Physician has left CentraCare Health or St. Cloud Medical Group and where such Physician is practicing, including an address and phone number; and
- b. Inform all patients of such Physician that they have a right to their medical records, and to have those records transferred without cost.

B. The purpose of this Paragraph IV is to ensure that those St. Cloud Physicians and CentraCare Physicians who terminate their Contract Services can offer Physician Services in a Third Party Medical Practice or New Third Party Medical Practice in competition with CentraCare Health and to mitigate the lessening of competition alleged in the Commission's Complaint.

V.

**IT IS FURTHER ORDERED** that for a period of three (3) years from the date this Order becomes final, CentraCare Health shall not, without providing advance written notification to the Commission in the manner described in this paragraph, directly or indirectly:

- A. Acquire any assets of or financial interest in any group consisting of three (3) or more Physicians that provides Physician Services in the St. Cloud Geographic Area; or
- B. Enter into any Contract Services with any group of Physicians or individual Physicians located in the St. Cloud Geographic Area who provide Physician Services in the St. Cloud Geographic Area.

Said advance written notification shall contain (i) either a detailed term sheet for the proposed acquisition or the proposed agreement with all attachments, and (ii) documents that would be responsive to Item 4(c) and Item 4(d) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a, and Rules, 16 C.F.R. § 801-803, Relating To the proposed transaction (hereinafter referred to as “the Notification”).

*provided, however,* that (i) no filing fee will be required for the Notification, (ii) an original and one copy of the Notification shall be filed only with the Secretary of the Commission and need not be submitted to the United States Department of Justice, and (iii) the Notification is required from CentraCare Health and not from any other party to the transaction. CentraCare Health shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), CentraCare Health shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

*provided, further, however,* that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

## VI.

### **IT IS FURTHER ORDERED** that:

- A. Anytime during the First Release Period, Respondent CentraCare Health shall, in a manner consistent with local labor laws:
1. 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”);
  2. 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; and
  3. 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;
  4. 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.
- B. CentraCare Health shall not, for a period of two (2) years following the Acquisition, directly or indirectly, solicit, induce, or attempt to solicit or induce any St. Cloud Employee who is employed by or Participating at a Designated Third Party Medical Practice to terminate his or her employment relationship with the Designated Third Party Medical Practice, unless that employment relationship has already been terminated by the Designated Third Party Medical Practice; *provided, however*, that CentraCare Health may place general advertisements for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the former St. Cloud Employees; *provided further, however*, that CentraCare Health may hire former St. Cloud Employees who apply for employment with CentraCare Health as long as such employees were not solicited by CentraCare Health in violation of this Paragraph.

## VII.

**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.
- B. No later than one (1) day after this Order issues, CentraCare Health shall, pursuant to the Monitor Agreement, attached as Appendix C and Confidential Appendix C-1 to this Order, 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.
- 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 and the Order to Suspend Enforcement and Maintain Assets in a manner consistent with the purposes of this Order.
- 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 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 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 this 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.
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 the Paragraphs II, III, IV.A.1.a-e, IV.A.2., and VI.A. of this Order.
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. 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.
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 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 or CentraCare Physician with respect to the performance of CentraCare Health's obligations under this Order.

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, if triggered, 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.
  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 VII.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.
  - H. The Monitor appointed pursuant to this Order may be the same Person appointed as Monitor under the Order to Suspend Enforcement and Maintain Assets.

## VIII.

### **IT IS FURTHER ORDERED** that:

- A. No later than thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until CentraCare Health has fully complied, as relevant, with Paragraphs II, III, IV.A. (except IV.A.1.f. and IV.A.1.g.), and VI.A. of this Order, CentraCare Health 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 all the terms of this Order. CentraCare Health shall submit at the same time a copy of these reports to the Monitor.
- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next four (4)

years, CentraCare Health shall submit to the Commission verified written reports setting forth in detail the manner and form in which it is complying and has complied with this Order.

**IX.**

**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 the 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.

**X.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, 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, 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



**XI.**

**IT IS FURTHER ORDERED** that this Order shall terminate January 6, 2027.

By the Commission.

Donald S. Clark  
Secretary

SEAL  
ISSUED: January 6, 2017

**APPENDIX A – LETTER TO ST. CLOUD PHYSICIANS**

## ***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](mailto:dshermer@rshermer.com), and  
Kevin Wilson at 303-619-6938, or [kwilson@rshermer.com](mailto:kwilson@rshermer.com).

You may also call Eric D. Rohlck, an attorney at the Federal Trade Commission, at 202-326-2681, if you prefer.

**APPENDIX B – LETTER TO CENTRACARE PHYSICIANS**



## ***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](mailto:dshermer@rshermer.com), and  
Kevin Wilson at 303-619-6938, or [kwilson@rshermer.com](mailto:kwilson@rshermer.com).

You may also call Eric D. Rohlck, an attorney at the Federal Trade Commission, at 202-326-2681, if you prefer.

**APPENDIX C -- MONITOR AGREEMENT**

**NON-PUBLIC APPENDIX C-1**  
**MONITOR COMPENSATION**

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