

**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**

**ORDER TO SUSPEND ENFORCEMENT OF  
CENTRACARE HEALTH NON-COMPETES AND MAINTAIN ASSETS**

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

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, all the capitalized terms used in this Order to Suspend Non-Competes and Maintain Assets, but not defined herein, shall have the meanings attributed to such terms in the Decision and Order contained in the Consent Agreement. In addition to the definitions in Paragraph I of the Decision and Order attached to the Agreement Containing Consent Orders, the following definitions shall apply:

- A. “Decision and Order” means:
  1. the Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
  2. the Final Decision and Order issued and served by the Commission.
- B. “Monitor” means any monitor appointed pursuant to Paragraph III of the Order to Suspend Non-Competes and Maintain Assets or pursuant to the Decision and Order.
- C. “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, if necessary, beginning when the Order to Suspend Non-Competes and Maintain Assets becomes final, until the end of the First Release Period or, if necessary, the end of the Second Release Period.

**II.**  
**SUSPEND NON-COMPETES**

**IT IS FURTHER ORDERED** that:

- A. For the duration of the Suspension Period, CentraCare Health shall not enforce any CentraCare Health Non-Compete Provisions against any St. Cloud Physician, or CentraCare Physician, if necessary, for any activity that the St. Cloud Physician or CentraCare Physician engages in that Relates To providing Termination Notification; *PROVIDED, HOWEVER*, that this Paragraph II.A does not prohibit CentraCare Health from enforcing any CentraCare Non-Compete Provisions against any St. Cloud Physician who terminates Contract Services prior to the date the Decision and Order becomes final and before the start of the First Release Period, or in the case of a CentraCare Physician before the start of the Second Release Period.
- B. Within two (2) days of the Agreement Containing Consent Orders in this matter being placed on the public record, CentraCare Health shall 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. CentraCare Health shall inform the Monitor, in writing, that the notices sent pursuant to this Paragraph II have been sent and received.
- D. For any activity Related To this Paragraph II, CentraCare Health shall waive all rights to seek or obtain legal or equitable relief for breach of contract or for violation by any St. Cloud Physician or CentraCare Physician of any CentraCare Non-Compete Provisions.
- E. CentraCare Health shall not take any other action to discourage, impede, or otherwise prevent any St. Cloud Physician from seeking to terminate Contract Services, pursuant to this Paragraph II or pursuant to the Decision and Order, 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 Third Party Medical Practice, or to create a New Third Party Medical Practice.
- F. The purpose of this Paragraph is to ensure that those St. Cloud Physicians and/or CentraCare Physicians who seek to terminate their Contract Services can offer Physician Services in a Third Party Medical Practice or a New Third Party Medical Practice in competition with CentraCare Health and to mitigate the lessening of competition alleged in the Commission's Complaint.

**III.**  
**ESCROW FOR DEPARTURE BONUSES**

**IT IS FURTHER ORDERED** that at the time of the Acquisition, CentraCare Health shall deposit into an escrow account, pursuant to oversight and consultation with the Monitor, a sum of five-hundred thousand dollars (\$500,000), that may be used as departure bonuses pursuant to and for the purposes set forth in Paragraphs II.G. and II.H. of the Decision and Order.

**IV.**  
**ASSET MAINTENANCE**

**IT IS FURTHER ORDERED** that:

- A. Until the end of the First Release Period, CentraCare Health shall:
1. Retain and maintain all office space and physical locations used by the St. Cloud Physicians as currently used before the Acquisition. *PROVIDED, HOWEVER*, that CentraCare Health may improve and supplement such spaces and locations, and add Physicians and staff to such locations;
  2. Not transfer the St. Cloud Physicians, or decrease or change their workloads or practice areas from what the St. Cloud Physicians were practicing before the Acquisition including, but not limited to, allowing certain St. Cloud Physicians who are Adult Primary Care Physicians to continue to deliver babies in the same manner and locations as done before the Acquisition. *PROVIDED, HOWEVER*, that, after providing notice to the Monitor, CentraCare Health may determine, pursuant to its existing policies, to suspend a St. Cloud Physician from continuing all or part of his or her practice, if necessary, to protect patient safety;
  3. Retain all St. Cloud Employees and support for the St. Cloud Physicians such that the St. Cloud Physicians seamlessly will be able to move to a Third Party Medical Practice, if they choose, or create a New Third Party Medical Practice. *PROVIDED, HOWEVER*, that CentraCare Health may make changes in personnel if the Monitor is notified of such changes, and the Monitor approves the changes after consultation with the Commission staff and the affected St. Cloud Physicians.
  4. Not change Payer contracts or reimbursement rates or processes such that changes would affect a St. Cloud Physician's ability to move to a St. Cloud Medical Practice. *PROVIDED, HOWEVER*, that CentraCare Health may make changes in Payer contracts for the St. Cloud Physicians if the Monitor is notified of such

changes, and the Monitor approves the changes after consultation with Commission staff and the affected St. Cloud Physicians.

- B. The purpose of this Paragraph IV is for CentraCare Health to maintain those assets and personnel from the St. Cloud Medical Group such that, during the Suspension Period and the First Release Period, St. Cloud Physicians will easily be able to move to a Third Party Medical Practice or create a New Third Party Medical Practice with his or her patients and without any significant difficulties.

**V.**

**FACILITATE ST. CLOUD EMPLOYEE INTERVIEWS**

**IT IS FURTHER ORDERED** that beginning no later than the Acquisition Date until the end of the First Release Period, Respondent CentraCare Health shall, in a manner consistent with local labor laws:

- A. 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”);
- B. 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
- C. 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, and
- D. 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.

**VI.**  
**MONITOR**

**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 to Suspend Non-Competes and Maintain Assets.
- B. No later than one (1) day after this Order to Suspend Non-Competes and Maintain Assets issues, CentraCare Health shall, pursuant to the Monitor Agreement, attached as Appendix B and Confidential Appendix B-1 to this Order to Suspend Non-Competes and Maintain Assets, 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 to Suspend Non-Competes and Maintain Assets.
- 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 to Suspend Non-Competes and Maintain Assets and the Decision and Order in a manner consistent with the purposes of the Orders.
- 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 to Suspend Non-Competes and Maintain Assets, 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 to Suspend Non-Competes and Maintain Assets 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 the Decision and 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 to Suspend Non-Competes and Maintain Assets and the Decision and 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 this Order to Suspend Non-Competes and Maintain Assets.
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 to Suspend Non-Competes and Maintain Assets. 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 to Suspend Non-Competes and Maintain Assets.
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 to Suspend Non-Competes and Maintain Assets 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 with respect to the performance of CentraCare Health's obligations under this Order to Suspend Non-Competes and Maintain Assets.
  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, 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 to Suspend Non-Competes and Maintain Assets.
  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 VI.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 to Suspend Non-Competes and Maintain Assets.
  - H. The Monitor appointed pursuant to this Order to Suspend Non-Competes and Maintain Assets may be the same Person appointed as Monitor under the Decision and Order.

**VII.**  
**COMPLIANCE REPORTS**

**IT IS FURTHER ORDERED** that within thirty (30) days after the date this Order to Suspend Non-Competes and Maintain Assets becomes final, and every thirty (30) days thereafter until this Order to Suspend Non-Competes and Maintain Assets terminates, CentraCare 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 this Order to Suspend Non-Competes and Maintain Assets. *PROVIDED, HOWEVER*, that CentraCare Health may combine the reports required under this Order to Suspend Non-Competes and Maintain Assets with the reports required under the Decision and Order after the Decision and Order becomes final.

**VIII.**  
**NOTIFICATION**

**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 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 to Suspend Non-Competes and Maintain Assets.

**IX.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order to Suspend Non-Competes and Maintain Assets, 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 to Suspend Non-Competes and Maintain Assets, 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.

**X.**

**IT IS FURTHER ORDERED** that this Order to Suspend Non-Competes and Maintain Assets shall terminate when the First Release Period or Second Release Period terminates, whichever comes first.

By the Commission.

Donald S. Clark  
Secretary

SEAL  
ISSUED: October 5, 2016

**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 – MONITOR AGREEMENT**

## MONITOR AGREEMENT (DRAFT)

Monitor Agreement (the "Agreement"), dated as of September 28, 2016, between CentraCare Health, ~~Inc.~~ ("the Respondent"), and Richard A. Shermer of R. Shermer & Company, P.O. Box 294199, Lewisville, Texas 75029 (the "Monitor").

### Preliminary Statements

WHEREAS the Federal Trade Commission (the "**Commission**") is considering for public comment an Agreement Containing Consent Orders with Respondent or its parent company, which provides, among other things, that Respondent.....and engage a monitor to monitor Respondent's compliance with its obligations under the Order

WHEREAS, the Commission is expected to issue the Agreement Containing Consent Orders and appoint the Monitor pursuant to the Orders to monitor Respondent's compliance with the terms of the Orders, and the Monitor has consented to such appointment;

WHEREAS, the Orders further provide that Respondent shall execute an agreement, subject to prior approval of the Commission, conferring all the rights and powers necessary to permit Monitor to carry out its duties and responsibilities pursuant to the Orders;

WHEREAS, this Agreement, although executed by Monitor and Respondent, is not effective for any purpose, including but not limited to imposing rights and responsibilities on Respondent or Monitor under the Orders, until the Order to Maintain Assets has been issued and this Agreement has been approved by the Commission;

WHEREAS, the parties to this Agreement intend to be legally bound, subject only to the Commission's approval of this Agreement.

NOW, THEREFORE, the parties agree as follows:

### DEFINITIONS

- A. "Respondent" means CentraCare Health, ~~Inc.~~ <sup>system</sup>, with its principal place of business at 1406 Sixth Avenue North, St. Cloud, MN 56303, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by CentraCare, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. All other capitalized words or phrases appearing in this Agreement that are not otherwise defined herein are deemed to have the defined meanings assigned to them in the Order.

## ARTICLE I

1.1 Powers of the Monitor. Monitor shall have the rights, duties, powers and authority conferred upon Monitor by the Orders that are necessary for Monitor to monitor Respondent's compliance with the Orders. No later than one day after the Order becomes final, Respondent hereby transfers to Monitor all rights, powers, and authorities necessary to permit Monitor to perform its duties and responsibilities pursuant to the Order to Maintain Assets and consistent with the purposes of the Decision and Order. Any descriptions thereof contained in this Agreement in no way modify Monitor's powers and authority or Respondent's obligations under the Orders.

1.2 Monitor's Duties. Monitor shall monitor Respondent's compliance with the Orders, including, but not limited to:

- a. Assuring that Respondent expeditiously complies with all of the obligations, and performs all of responsibilities, of Respondent as required by the Orders in this matter;
- b. Monitoring Relevant Agreements; and
- c. Assuring that Confidential Business Information is not received or used by Respondent or Other Parties, except as allowed in the Orders in this matter.

1.3 Duration of Monitor's Authority. Monitor shall have all powers and duties described above and consistent with the Orders for the term set forth in the Orders.

1.4 Confidential and Proprietary Information. Monitor shall enter into a confidentiality agreement, agreeing to be bound by the terms and conditions of the Orders. Monitor must retain and maintain all Material Confidential Information it receives from either Respondent or Other Parties on a confidential basis, except as is permitted by the Orders. Monitor may disclose confidential information only to persons employed by or working with Monitor under this Agreement, to persons employed at the Commission, and as permitted by Respondent or Other Parties with respect to information they provided Monitor. Monitor shall require any person retained by Monitor to assist in carrying out the duties and responsibilities of Monitor to execute a confidentiality agreement that requires the same standard of care and obligations of confidentiality to which Monitor must adhere under this Agreement. Monitor shall maintain the confidentiality, for a period of five (5) years after the termination of this Agreement, of all other aspects of the performance of its duties under this Agreement and shall not disclose any confidential information relating thereto.

1.5 Restrictions. Monitor shall not be involved in any way in the management, production, supply and trading, sales marketing, and financial operations of the competing products of Respondent.

1.6 Reports. Monitor shall report to the Commission pursuant to the terms of the Orders and as otherwise requested by the Commission staff.

1.7 Access to Records, Documents and Facilities. Subject to any demonstrated legally recognized privilege, Monitor shall have full and complete access to

Respondent's personnel, to include those employees designated to be transferred to an acquirer, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as Monitor may reasonably request, related to Respondent's compliance with the obligations of Respondent under the Orders in this matter. Documents, records and other relevant information are to be provided in an electronic format if they exist in that form. Respondent shall cooperate with any reasonable request of Monitor and shall take no action to interfere with or impede Monitor's ability to monitor Respondent's compliance with the Orders.

## ARTICLE II

2.1 Retention and Payment of Counsel, Consultants, and other Assistants. Monitor shall have the authority to employ, at the cost and expense of the Respondent, (with the written prior approval of Respondent which shall not be unreasonably withheld) such attorneys, consultants, accountants, and other representatives and assistants as are necessary to carry out the Monitor's duties and responsibilities as allowed pursuant to the Orders.

2.2 Compensation. Monitor shall be compensated by Respondent for his services under this Agreement, including all work in connection with the negotiation and preparation of this Monitor Agreement, pursuant to the fee schedule attached as Confidential Exhibit A for time spent in connection with the discharge of its duties under this Agreement and the Orders. In addition, Respondent will pay: (a) out-of-pocket expenses reasonably incurred by Monitor in the performance of its duties under the orders; and (b) fees and disbursements reasonably incurred by any advisor appointed by Monitor pursuant to the first paragraph in Article II. At its own expense, Respondent may retain an independent auditor to verify such invoices. Monitor shall provide Respondent with monthly invoices for time and expenses. Respondent shall pay such invoices within thirty (30) days of receipt. The Monitor and Respondent shall submit any disputes about invoices to the Commission for assistance in resolving such disputes.

2.3 To the extent available, Respondent will provide the Monitor with temporary workspace and access to office equipment owned or used by Respondent at sites the Monitor is required to visit in order to fulfill its obligations under this Agreement. Monitor agrees to comply with all of Respondents' safety and security regulations, instructions and procedures while at Respondents' sites.

## ARTICLE III

3.1 Monitor's Liabilities and Indemnification. Respondent shall indemnify the Monitor and hold Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation 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 gross negligence, willful or wanton acts, or bad faith by Monitor. The Monitor's maximum liability to Respondents relating to services rendered in accordance with this Agreement (regardless of form of action, whether in contract, statutory law, or tort) shall

be limited to an amount equal to the total sum of the fees paid to the Monitor by the Respondent. Any claim arising from this Agreement that Respondents may have against the Monitor must be brought no later than one (1) year following the termination or expiration of this Agreement. In the performance of its duties under this Agreement, the Monitor shall exercise the standard of care and diligence that would be expected of a reasonable person in the conduct of his own business affairs. The Monitor shall not be liable for any delays or other failures to perform resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority. The Monitor warrants that it will perform its obligations hereunder in good faith. R. Shermer & Company disclaims other warranties, expressed or implied, other than those expressly agreed to in writing between the Parties.

3.2 Monitor's Removal. If the Commission determines that Monitor ceases to act or fail to act diligently and consistent with the purpose of the Orders, Respondent shall terminate this Agreement and appoint a substitute Monitor, subject to Commission approval and consistent with the Orders.

3.3 Approval by the Commission. This Agreement shall have no force or effect until approved by the Commission, other than the confidentiality provisions herein.

3.4 Termination: This Agreement shall terminate the earlier of: (a) thirty (30) days following the termination date set forth in the applicable Order; (b) Respondent's receipt of written notice from the Commission that the Commission has determined that Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor; (c) with at least thirty (30) days advance notice to be provided by Monitor to Respondent and to the Commission, upon resignation of the Monitor; or (d) when the Respondent's last obligation under the Orders and the Relevant Agreements that pertains to the Monitors' service has been fully performed; provided, however, that the Commission may require that the Respondent extend this Agreement or enter into an additional agreement with the Monitor as may be necessary or appropriate to accomplish the purposes of the Orders. If this Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force.

3.5 Conflicts of Interest: If Monitor becomes aware during the term of this Agreement that it has or may have a conflict of interest that may affect or could have the appearance of affecting performance by the Monitor of any of its duties under this Agreement, Monitor shall promptly inform Respondent and the Commission of any such conflict.

---

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

**MONITOR:**

Richard A. Shermer

Richard A. Shermer  
President, R. Shermer & Company

**RESPONDENT:**

CentraCare Health, Inc. *System*

By: *P. B. H.*  
*sr. v.p. + General Counsel*

**NON-PUBLIC APPENDIX B-1 – MONITOR COMPENSATION**

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