

# Plaintiffs' Closing Statement

---

***Federal Trade Commission  
& State of North Dakota  
v.  
Sanford Health, Sanford Bismarck  
& Mid Dakota Clinic, P.C.***

November 3, 2017



# Overview

- Illegal merger to near-monopoly of two physician services groups
- Plaintiffs showed that the merger is presumptively unlawful
- Defendants failed to rebut the presumption
- Under the applicable legal standard (FTC Act section 13(b)), the Court can—and should—preserve competition pending resolution of the hearing on the merits

# Plaintiffs are Likely to Succeed on the Merits

- Plaintiffs established rebuttable presumption
  - Defined relevant market
  - Showed high concentration levels and change in HHI
  - The merger is presumptively unlawful under Clayton Act § 7

# Post-Merger Concentration Levels Far Exceed Presumption

Product Market	Pre-Merger HHI	Post-Merger HHI	Change in HHI	Post-Merger Share (%)
<b>Presumption</b>		<b>&gt;2500</b>	<b>&gt;200</b>	
Adult PCP	3,891	7,422	3,531	85.7%
Pediatricians	5,333	9,726	4,393	98.6%
OB/GYN	6,211	7,363	1,152	84.6%
General Surgery	5,362	9,964	4,602	99.8%

- HHI measures market concentration pre- and post-merger
- Presumption:
  - Post-merger HHI over 2500, and
  - Post-merger change in HHI over 200

# Blue Cross Blue Shield of North Dakota



Chelsey Matter, BCBS-ND

- BCBS-ND confirms Plaintiffs' market definition
- BCBS-ND confirms Sanford would have increased leverage after the merger

# Medica



Michael Lenz, Medica

- Medica confirms Plaintiffs' market definition
- Medica would be a “price taker” — “Price-taker means that we don't have any leverage”
- The combination of Sanford/MDC “would just make their club even bigger”
- New agreement does little to protect Medica

# CHI St. Alexis



Kurt Schley  
CHI St. Alexis

- CHI has no pediatricians, OB/GYNs, or general surgeons
- Entry to replicate lost competition would take CHI St. Alexis a long time

# Dr. Jan Bury



Dr. Jan Bury  
Mid Dakota Clinic

- Competition between Sanford and Mid Dakota Clinic “sets the bar a little higher” and “keeps everyone honest”
- “It’s healthy [for patients] to have the right to choose ... If you remove competition, you’re doing a disservice” to the Bismarck-Mandan community



# National Information Solutions Cooperative



Ms. Kari Reichert, NISC

- NISC confirms Plaintiffs' market definition
- Employees would view a weak provider network as a pay cut

# Seth B. Sacher, Ph.D.



Dr. Seth Sacher

- Proposed transaction dramatically increases concentration in four relevant markets
- Significantly increases Sanford's bargaining leverage
- Leads to higher prices for commercial insurers, employers, employees, and their families
- Reduces non-price competition that benefits all patients in the Bismarck-Mandan Area

# Dr. Thomas Respass



Dr. Thomas Respass

- All of Defendants' cost savings efficiency claims are not substantiated or not merger-specific
- Mid Dakota Clinic is a financially stable entity

# Dr. Ashish Jha



Dr. Ashish Jha

- *Stronger Together* is “wholly insufficient” on its own to deliver defendants’ alleged quality synergies
- Defendants are already achieving other *Stronger Together* efficiencies or could achieve them without the proposed merger

# Defendants Response Falls Short

- Defendants failed to rebut presumption
  - Entry/expansion are not timely, likely, and sufficient
  - Efficiencies are speculative and not merger specific
  - Power buyer not able to resist price increase by monopolist

## Plaintiffs' Case Reflects Market Dynamics

“[W]e frequently need to go beyond market shares and structural presumptions and really understand the dynamics of the markets we are evaluating.”

*–Acting Chairman Ohlhausen*

Acting Chairman Ohlhausen **voted to block** this merger

# Conclusion

***Federal Trade Commission  
& State of North Dakota  
v.  
Sanford Health, Sanford Bismarck  
& Mid Dakota Clinic, P.C.***

November 3, 2017

