

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**FEDERAL TRADE COMMISSION**

**and**

**STATE OF ILLINOIS**

*Plaintiffs,*

**v.**

**ADVOCATE HEALTH CARE NETWORK,**

**ADVOCATE HEALTH AND HOSPITALS CORP.,**

**and**

**NORTHSHORE UNIVERSITY HEALTHSYSTEM,**

*Defendants.*

**Case No.: 1:15-cv-11473  
Judge Jorge L. Alonso  
Mag. Judge Jeffrey Cole**

**DEFENDANTS ADVOCATE HEALTH CARE NETWORK AND ADVOCATE HEALTH  
AND HOSPITAL CORP.'S ANSWER TO COMPLAINT**

Advocate Health Care Network and Advocate Health and Hospitals Corporation (collectively, "Advocate"), by and through its attorneys, admits, denies, and avers as follows with respect to the Complaint.

Advocate denies the allegations and legal conclusions contained in the FTC's unnumbered introductory paragraph. Advocate further states that the Complaint is an imprudent and fundamentally unsound application of the antitrust laws to the merger between Advocate and NorthShore University Health System ("NorthShore") that seeks to perpetuate the status quo at the expense of innovation that would benefit consumers. The respondents' businesses face fierce competition today and in the future from a strong and expanding set of competitors in an urban

Chicago metropolitan area. Additionally, the proposed merger between Advocate and NorthShore (“Transaction”) will be procompetitive, and will result in substantial merger-specific pricing efficiencies, cost synergies, and other procompetitive effects all of which will directly benefit consumers and patients throughout Chicago. Advocate does not concede any of the anti-competitive effects proffered by the Commission, but in any event represents that the foregoing precompetitive benefits are substantial and will greatly outweigh any and all proffered anticompetitive effects.

**I.**

**NATURE OF THE CASE**

1. Advocate denies the allegations of Paragraph 1 of the Complaint, except that Advocate admits that (a) both it and NorthShore provide, among other services, general acute care (“GAC”) inpatient hospital services to patients located in the Chicago, Illinois area, and (b) the Transaction would join these two hospital systems into one integrated health system.

2. To the extent that the allegations of Paragraph 2 state a legal conclusion, Advocate avers that it need not respond. Advocate denies the remaining allegations of Paragraph 2 of the Complaint, and specifically denies that the proposed Transaction is anticompetitive or would “cause significant harm to consumers.”

3. Advocate denies the allegations of Paragraph 3 of the Complaint, and specifically denies that Advocate and NorthShore are each other’s “close” or “closest” competitors. Advocate avers that in 2007 the Commission found that no other hospitals constrain Evanston Hospital, Glenbrook Hospital, and Highland Park Hospital, as these three hospitals comprise their own geographic market. Advocate also avers that the Commission’s selective quotation of unidentified written material or communications, offered without context, is misleading as framed.

4. Advocate denies the allegations of Paragraph 4 of the Complaint.

5. To the extent that the allegations of Paragraph 5 state a legal conclusion, Advocate avers that it need not respond. Advocate denies the remaining allegations of Paragraph 5 of the Complaint, except that Advocate admits that it has, at all times, affiliated with networks of physicians and offered a suite of GAC inpatient hospital services, among other services it provides to Chicago patients.

6. Advocate denies the allegations of Paragraph 6 of the Complaint, except that Advocate admits that both it and NorthShore routinely seek inclusion in commercial payers' hospital networks.

7. Advocate denies the allegations of Paragraph 7 of the Complaint.

8. Advocate denies the allegations of Paragraph 8 of the Complaint.

9. Advocate denies the allegations of Paragraph 9 of the Complaint.

10. Advocate denies the allegations of Paragraph 10 of the Complaint.

## **II.**

### **BACKGROUND**

#### **A.**

##### **Jurisdiction and Venue**

11. Advocate avers that Paragraph 11 of the Complaint states legal conclusions, and therefore no response is required.

12. Advocate admits the allegations in Paragraph 12 of the Complaint.

13. Advocate admits that the language of Section 13(b) of the FTC Act quoted in Paragraph 13 is accurate.

14. Advocate avers that Paragraph 14 of the Complaint states legal conclusions, and therefore no response is required.

**B.**

**The Parties**

15. Advocate admits the allegations in the first sentence of Paragraph 15. Answering further, Advocate avers that the Commission, other federal agencies and the federal courts are vested with authority and responsibility for enforcing Section 7 of the Clayton Act and Section 5 of the FTC Act.

16. Advocate admits the allegations in Paragraph 16 of the Complaint.

17. Advocate admits the allegations in Paragraph 17 of the Complaint.

18. Advocate avers that the term “largest hospital system in the Chicago metropolitan area” is ambiguous as framed, and therefore denies that allegation as stated. Advocate admits the remaining allegations in Paragraph 18 of the Complaint.

19. Advocate admits the allegations in Paragraph 19 of the Complaint.

20. Advocate admits the allegations in Paragraph 15 of the Complaint.

21. Advocate lacks sufficient knowledge or information to affirm or deny the allegations contained in Paragraph 21 of the Complaint.

22. Advocate lacks sufficient knowledge or information to affirm or deny the allegations contained in Paragraph 22 of the Complaint.

**C.**

**The Transaction and the Commission’s Response**

23. Advocate avers that the phrase “11th largest non-profit hospital system in the United States” is ambiguous as framed and therefore denies that allegation. Advocate admits the remaining allegations in Paragraph 23 of the Complaint.

24. Advocate admits that the Commission initiated an administrative proceeding that will commence according to the FTC rules on administrative proceedings. Advocate denies the remaining allegations in Paragraph 24 of the Complaint.

25. Advocate lacks sufficient knowledge or information to affirm or deny the allegations contained in Paragraph 25 of the Complaint.

### **III.**

#### **THE RELEVANT SERVICE MARKET**

26. To the extent that the allegations of Paragraph 26 state a legal conclusion, Advocate avers that it need not respond. Advocate denies the remaining allegations of Paragraph 26 of the Complaint.

27. To the extent that the allegations of Paragraph 27 state a legal conclusion, Advocate avers that it need not respond. Advocate denies the remaining allegations of Paragraph 27 of the Complaint.

28. To the extent that the allegations of Paragraph 28 state a legal conclusion, Advocate avers that it need not respond. Advocate denies the remaining allegations of Paragraph 28 of the Complaint.

29. To the extent that the allegations of Paragraph 29 state a legal conclusion, Advocate avers that it need not respond. Advocate denies the remaining allegations of Paragraph 29 of the Complaint.

### **IV.**

**THE RELEVANT GEOGRAPHIC MARKET**

30. To the extent that the allegations of Paragraph 30 state a legal conclusion, Advocate avers that it need not respond. Advocate denies the remaining allegations of Paragraph 30 of the Complaint, and specifically denies that the “North Shore Area,” as defined in Paragraph 30, is the relevant geographic market for purposes of analyzing the Transaction under the Federal Antitrust laws.

31. To the extent that the allegations of Paragraph 31 state a legal conclusion, Advocate avers that it need not respond. Advocate denies the remaining allegations of Paragraph 31 of the Complaint.

32. Advocate denies the allegations of Paragraph 32 of the Complaint, and avers that the Commission’s selective reference to unidentified written material or communications, offered without context, is misleading as framed. Advocate avers that, of the 27% of patients residing within the North Shore Area that the Commission concedes leave the North Shore Area to receive GAC services, a large number of such patients seek inpatient, outpatient, and physician care at great distances from the locations of the Advocate and NorthShore hospitals that are located within the North Shore Area.

33. To the extent that the allegations of Paragraph 33 state a legal conclusion, Advocate avers that it need not respond. Advocate denies the remaining allegations of Paragraph 33 of the Complaint.

34. Advocate denies the allegations in Paragraph 34 of the Complaint. To the extent that the allegations of Paragraph 34 state a legal conclusion, Advocate avers that it need not respond. Advocate further avers that, of the 27% of patients residing within the North Shore Area that the Commission concedes leave the North Shore Area to receive GAC services, a large

number of such patients seek inpatient, outpatient, and physician care at great distances from the locations of the Advocate and NorthShore hospitals that are located within the North Shore Area.

**V.**

**MARKET STRUCTURE AND THE TRANSACTION'S PRESUMPTIVE ILLEGALITY**

35. Advocate denies the allegations contained in Paragraph 35 of the Complaint except that it admits that both it and NorthShore are among the providers of GAC inpatient services within the Chicago, Illinois area.

36. To the extent that the allegations of Paragraph 36 state a legal conclusion, Advocate avers that it need not respond. Advocate denies the remaining allegations of Paragraph 36 of the Complaint.

37. Advocate admits that the Herfindahl-Hirschmann Index is a mathematical formula that purports to measure market concentration. To the extent that the remaining allegations of Paragraph 37 state a legal conclusion, Advocate avers that it need not respond. To the extent a response is required, Advocate denies the remaining allegations of Paragraph 37 of the Complaint.

**VI.**

**ANTICOMPETITIVE EFFECTS**

**A.**

**Competition Among Hospitals Benefits Consumers**

38. Advocate denies the allegations in Paragraph 38 of the Complaint, except that it avers that inclusion in commercial payers' provider networks, and attracting patients, are two of the many ways in which hospitals may compete.

39. Advocate avers that the phrase “the first stage of hospital competition” is ambiguous as framed and therefore denies that allegation. Advocate admits the remaining allegations in Paragraph 39 of the Complaint.

40. Advocate denies the allegations contained in Paragraph 40 of the Complaint.

41. Advocate lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 41 of the Complaint.

42. Advocate lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 42 of the Complaint.

43. Advocate denies the allegations contained in Paragraph 43 of the Complaint.

44. Advocate denies the allegations contained in Paragraph 44 of the Complaint.

45. Advocate denies the allegations contained in Paragraph 45 of the Complaint.

46. Advocate denies the allegations contained in Paragraph 46 of the Complaint.

**B.**

**The Transaction Would Eliminate Beneficial Price Competition**

47. Advocate denies the allegations contained in Paragraph 47 of the Complaint, and avers that the Commission’s selective quotation of unidentified written material or communications, offered without context, is misleading as framed. Advocate further avers that the Commission itself found in 2007 that no other hospitals constrain Evanston Hospital, Glenbrook Hospital, and Highland Park Hospital, as these three hospitals comprise their own geographic market.

48. Advocate avers that diversion analysis is a mathematical construct that purports to estimate the extent to which firms providing certain services or products are substitutes. Advocate denies the remaining allegations contained in Paragraph 48 of the Complaint.

49. Advocate denies the allegations in Paragraph 49 of the Complaint.

50. Advocate denies the allegations in Paragraph 50 of the Complaint.

51. Advocate denies the allegations in Paragraph 51 of the Complaint.

52. Advocate denies the allegations in Paragraph 52 of the Complaint, except that Advocate admits that narrow network products often offer fewer participating hospitals but at significantly reduced prices relative to other available provider networks, while simultaneously offering hospitals increased volumes of patients and procedures.

53. Advocate denies the allegations in Paragraph 53 of the Complaint.

### C.

#### **The Transaction Would Eliminate Vital Quality and Service Competition**

54. Advocate denies the allegations contained in Paragraph 54 of the Complaint, except that Advocate admits that it and NorthShore each compete with a number of different hospital systems within the Chicago, Illinois area.

55. Advocate denies the allegations of Paragraph 55 of the Complaint and avers that the Commission's selective quotation of unidentified written material or communications, offered without context, is misleading as framed.

56. Advocate denies the allegations of Paragraph 56 of the Complaint.

57. Advocate denies the allegations of Paragraph 57 of the Complaint. Advocate avers that patients and consumers will benefit from the merger in the form of increased insurance options through a more attractive ANHP high performing network as well as an overall lower cost of care.

### VII.

#### **ENTRY BARRIERS**

58. Advocate denies the allegations contained in Paragraph 58 of the Complaint.

59. Advocate denies the allegations contained in Paragraph 59 of the Complaint.

60. Advocate denies the allegations contained in Paragraph 60 of the Complaint, except that Advocate admits the state of Illinois requires hospitals in some instances to apply for a Certificate of Need in order to build new or expand current facilities.

61. Advocate denies the allegations contained in Paragraph 61 of the Complaint.

## VIII.

### **EFFICIENCIES**

62. Advocate denies the allegations contained in Paragraph 62 of the Complaint.

63. Advocate denies the allegations contained in Paragraph 63 of the Complaint. Advocate avers that the Transaction will result in substantial merger-specific price efficiencies stemming from a high-performance narrow network insurance product, and additionally will result in cost savings for clinical services stemming from coordination among providers and scale-related cost savings.

64. Advocate denies the allegations contained in Paragraph 64 of the Complaint.

## IX.

### **LIKELIHOOD OF SUCCESS ON THE MERITS, BALANCE OF EQUITIES, AND NEED FOR RELIEF**

65. To the extent that the allegations of Paragraph 65 state a legal conclusion, Advocate avers that it need not respond. Advocate denies the remaining allegations of Paragraph 65 of the Complaint.

66. Advocate denies the allegations in Paragraph 66 of the Complaint.

67. Advocate denies the allegations in Paragraph 67 of the Complaint.

68. Advocate denies the allegations in Paragraph 68 of the Complaint.

69. Advocate denies the allegations in Paragraph 69 of the Complaint.

**ADVOCATE'S AFFIRMATIVE DEFENSES**

Advocate asserts the following defenses, without assuming the burden of proof on such defenses that would otherwise rest with the Commission:

1. The Complaint fails to state a claim on which relief can be granted.
2. Granting the relief sought is contrary to the public interest.
3. The alleged relevant geographic market fails as a matter of law.
4. The Complaint fails to allege a plausible relevant product market.
5. The Complaint fails to allege undue share in any plausibly defined relevant market.
6. The Complaint fails to allege any plausible harm to competition.
7. The Complaint fails to allege any plausible harm to any consumers.
8. The Complaint fails to allege any plausible harm to consumer welfare.
9. The alleged harm to potential competition is not actionable.
10. Plaintiffs' claims are barred in whole or in part by the doctrine of judicial estoppel. In 2007 the Commission found that no other hospitals constrain Evanston Hospital, Glenbrook Hospital, and Highland Park Hospital, as these three hospitals comprise their own geographic market.
11. New entry and expansion by competitors is easy, and can be timely, likely, and sufficient, such that it will ensure that there will be no harm to competition, consumers, or consumer welfare.
12. The customers at issue in the Complaint have a variety of tools to ensure that they receive competitive pricing and terms for the products and services at issue in the Complaint.

13. The combination of Advocate's and NorthShore's hospital systems will be pro-competitive, and will result in substantial merger-specific pricing efficiencies, cost synergies, and other procompetitive effects all of which will directly benefit consumers and patients throughout Chicago. Advocate does not concede any of the anticompetitive effects proffered by the Commission, but in any event represents that the foregoing precompetitive benefits are substantial and will greatly outweigh any and all proffered anticompetitive effects.

14. Advocate has not knowingly or intentionally waived any applicable defenses, and it reserves the right to assert and rely upon other applicable defenses that may become available or apparent throughout the course of the action. Advocate reserves the right to amend, or seek to amend, its answer or affirmative defenses.

**NOTICE OF CONTEMPLATED RELIEF**

WHEREFORE, Advocate requests that the Court enter judgment in its favor as follows:

- A. The Complaint be dismissed with prejudice;
- B. None of the Complaint's contemplated relief issues to the FTC;
- C. Costs incurred in defending this action be awarded to Advocate, including attorneys' fees; and
- D. Any and all other relief as the Commission may deem just and proper.



**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of January, 2016, a true and correct copy of Defendants Advocate Health Care Network and Advocate Health and Hospitals Corp.'s Answer to Complaint was filed electronically using the Court's CM/ECF system, which sent service to the following counsel of record:

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