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March 23, 2016

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CALIFORNIA
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ILLINOIS
NEW JERSEY
NEW YORK
PENNSYLVANIA
WASHINGTON D.C.
WISCONSIN

**Re: Federal Trade Commission and State of Illinois v. Advocate Health
Care Network, et al.: 15-cv-11473**

Dear Tom and Sean:

On February 18, pursuant to Fed. R. Civ. P. 68, we proposed terms to you under which the Defendants would agree to settle the claims in the FTC's Complaint and terminate the proceedings now pending in the Northern District of Illinois and before the Commission.

We write today to confirm that offer and enclose a proposed order as a Fed. R. Civ. P. 68 Offer of Judgment.

Very truly yours,

Robert W. McCann

cc: David E. Dahlquist, Esq.
J. Robert Robertson, Esq.

**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
CORPORATION,

and

NORTHSHORE UNIVERSITY
HEALTHSYSTEM,

Defendants.

Case No.: 15-cv-11473
Judge Jorge L. Alonso
Magistrate Judge Jeffrey Cole

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiffs Federal Trade Commission and State of Illinois filed their Complaint on December 21, 2015, alleging that the proposed merger between Defendants Advocate Health Care Network (“Advocate”) and NorthShore University Health System (“NorthShore”) would violate Section 7 of the Clayton Act, 15 U.S.C. § 18 by reducing competition for certain inpatient general acute care hospital services within an alleged geographic market containing the four NorthShore hospitals and two Advocate hospitals, and alleging that the merger would lead to increases in the prices paid by commercial health plans for inpatient hospital services;

AND WHEREAS, Defendants have made an Offer of Judgment pursuant Fed. R. Civ. P. 68 and submitted a Proposed Final Judgment to reflect that offer;

AND WHEREAS, Plaintiffs and Defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

AND WHEREAS, Defendants will agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the anticompetitive effects alleged in the Complaint;

NOW THEREFORE, before any testimony is taken, without this Final Judgment constituting any evidence against or admission by Defendants regarding any issue of fact or law, and upon consent of the parties to this action, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against the Defendants under Section 7 of the Sherman Act, 15 U.S.C. § 18.

II. DEFINITIONS

As used in this Final Judgment:

(A) “Advocate” means Defendants Advocate Health Care Network and Advocate Health and Hospitals Corporation, each an Illinois nonprofit corporation, and their respective successors, assigns, and controlled subsidiaries and affiliates.

(B) “ANHP” means Advocate NorthShore Health Partners, the entity created by the merger of Advocated Health Care Network and NorthShore University HealthSystem.

(C) “ANHP Hospital” means Christ Medical Center, Condell Medical Center, Evanston Hospital, Glenbrook Hospital, Good Samaritan Hospital, Good Shepherd Hospital, Highland Park Hospital, Illinois Masonic Medical Center, Lutheran General Hospital, Sherman Hospital, Skokie Hospital, South Suburban Hospital, and Trinity Hospital.

(D) “Annual” means on the period coinciding with the ANHP fiscal year, to wit, each twelve-month period beginning January 1 and ending December 31.

(E) “CPI-U” means the Consumer Price Index For All Urban Consumers calculated by the United States Bureau of Labor Statistics.

(F) “Fee-For-Service Contract” means a Payor Contract under which payment for Inpatient Hospital Services is made on a basis other than a Risk-Based Payment.

(G) “Independent Auditor” means an accounting or consulting firm reasonably acceptable to the Federal Trade Commission.

(H) “Inpatient Hospital Services” means inpatient acute care services provided by an ANHP Hospital.

(I) “NorthShore” means Defendant NorthShore University HealthSystem, an Illinois nonprofit corporation and its successors, assign, and controlled subsidiaries and affiliates.

(J) “Payor” means a non-governmental sponsor or underwriter of a health insurance plan or prepaid medical plan.

(K) “Payor Contract” means a contract between ANHP (or an ANHP subsidiary) and a Payor.

(L) “Risk Based Payment” means a payment arrangement under which ANHP bears all or a portion of the insurance risk that otherwise would be borne by the Payor for the cost of services provided to the members of a health plan, including without limitation: (i) capitation

payment, to wit, payment on the basis of a fixed periodic per-member amount that is independent of the quantity of health services actually used by that member in that period; (ii) budgeted payment, to wit, an arrangement under which fee-for-service or other unit-of-service based payments for health services to a defined population during a period are reconciled against a budgeted total expenditure amount for the period, and under which the provider must repay all or a portion of any amount by which actual expenditures exceed the budget for that period; and (iii) bundled payment, to wit, a single comprehensive payment made for a group of related services, based on the expected costs for a clinically-defined episode of care.

III. PROHIBITED CONDUCT

Until the expiration of this Final Judgment, commencing with the Annual period beginning on January 1, 2017, ANHP shall not cause the aggregate rates for Inpatient Hospital Services charged under any Fee-For-Service Contract at any ANHP Hospital to increase on an Annual basis at a rate that exceeds the greater of (i) the rate of increase in the CPI-U for the same Annual period or (ii) 1.0%.

IV. REQUIRED CONDUCT

(A) Within 90 days following the end of each Annual period, commencing with the Annual period beginning on January 1, 2017, ANHP shall submit to the Federal Trade Commission the report of an Independent Auditor (the “Report”) documenting the rate of increase under Fee-For-Service Contracts in the prior Annual period, such Report to be prepared solely at the expense of ANHP.

(B) If the Report demonstrates compliance with Section III of this Final Judgment, ANHP shall also submit a certification of compliance signed by an officer of ANHP.

(C) In the event that the Report demonstrates that ANHP has not fully complied with Section III in the preceding Annual period, the Report shall identify each Payor that received a rate increase in excess of that permitted by Section III and the amount of each such Payor's excess rate increase (the "Excess Rate Increase"). Within 90 days following the submission of the Report, ANHP shall:

- (1) Refund each such Excess Rate Increase in full to the applicable Payor;
- (2) Agree to rate adjustments under each Fee-For-Service Contract for which an Excess Rate Increase occurred reasonably calculated to prevent an Excess Rate Increase in the succeeding Annual period; and
- (3) Certify compliance with this Section IV(C) to the Federal Trade Commission. Such certification shall be given by an officer of ANHP, and shall contain a description of all actions taken to comply with this Section IV(C).

(D) On an Annual basis, beginning with the Annual period ending in 2017, ANHP shall produce and make available to the public a report of its performance on industry-standard quality and safety measures, including the individual performance of each ANHP Hospital.

V. ENFORCEMENT AND INSPECTION

(A) For purposes of determining or securing compliance with this Final Judgment, or of any related orders, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the Federal Trade Commission, including consultants and other retained persons, shall, upon written request and reasonable notice to Defendants, be permitted:

- (1) access during Defendants' office hours to inspect and copy, or at the option of the Federal Trade Commission, to require Defendants to provide hard copy or

electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, directors, employees, or agents, who may be represented by counsel, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

(B) No information or documents obtained by the means provided in Section V(A) shall be divulged by the Federal Trade Commission to any person other than an authorized representative of the Federal Trade Commission, except as required by law, court rule, or court order in the course of legal proceedings to which the Federal Trade Commission is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law. If at the time information or documents are furnished by Defendants to the Federal Trade Commission, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the Federal Trade Commission shall give Defendants ten calendar days' notice prior to divulging such material in any legal proceeding.

(C) ANHP further consents to enforcement of this Final Judgment in arbitration by any Payor to remedy an Excess Rate Increase. Any such arbitration proceeding shall be held in Chicago, Illinois, and conducted through, and under the Commercial Arbitration Rules of, the American Arbitration Association ("AAA"). Arbitration shall be commenced by completing

and filing with AAA a Demand for Arbitration form in accordance with the Commercial Arbitration Rules setting forth a description of the dispute, and an estimation of the amount in dispute, and sending notice of the Demand to ANHP. The arbitration shall be held before a single arbitrator, who shall be selected by agreement of the ANHP and the Payor within 30 days of the date the Demand for Arbitration is filed. If the ANHP and the Payor are unable to agree on the selection of an arbitrator within such time, AAA shall select an independent arbitrator. The arbitrator may not certify a class or conduct class-based arbitration. The arbitrator may not vary or ignore the terms of this Final Judgment. Unless otherwise agreed by the Payor and ANHP, the decision of the arbitrator shall be rendered within 90 days of the date that the arbitrator is appointed. The decision of the arbitrator shall be final and binding on ANHP and the Payor. The award of the arbitrator may be confirmed or enforced by this Court.

VI. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

VII. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire seven (7) years from the date of its entry. Upon the motion of Plaintiff Federal Trade Commission, this Court may extend such period if the Court finds that Defendants have materially failed to comply with the terms of this Final Judgment during its effective period.

VIII. NOTICE

For purposes of this Final Judgment, any notice or other communication required to be filed with or provided to the Federal Trade Commission shall be sent to the person at the addresses set forth below (or such other address as the United States may specify in writing to any Defendant):

[to be inserted]

[copy to State of Illinois]

IX. PUBLIC INTEREST DETERMINATION

Based upon the record before the Court, entry of this Final Judgment is in the public interest.

Dated: _____

United States District Judge

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that Defendants' Proposed Final Judgment was served this 23rd day of March, 2016, upon the following counsel via email:

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