PUBLIC VERSION

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

The Penn State Hershey Medical Center,
a corporation,

and

PinnacleHealth System,
a corporation.

Docket No. 93[illegible] ORIGINAL

RESPONDENTS' ANSWERS AND DEFENSES

In accordance with Rule 3.12 of the Federal Trade Commission's ("the Commission's") Rules of Practice for Adjudicative Proceedings, Respondents Penn State Hershey Medical Center ("Hershey"), and Pinnacle Health System ("Pinnacle"; collectively, "Respondents"), by and through their attorneys, admit, deny, and aver as follows with respect to the Administrative Complaint ("Complaint") filed by the Commission. To the extent not specifically admitted in the following paragraphs, the allegations in the Complaint are denied.

I. Nature of the Case[1]

1. Respondents admit that they intend to come under common control. Respondents deny that they are the two largest health systems in the greater Harrisburg, Pennsylvania area. The remaining allegations set forth in Paragraph 1 constitute legal conclusions to which no response is required. To the extent a response is required, Respondents deny those allegations.

2. Respondents admit that Hershey owns and operates the Milton S. Hershey Medical Center, a general acute-care ("GAC") hospital located in Dauphin County. Respondents admit that Pinnacle operates once licensed GAC hospital on three separate campuses, including two campuses in Dauphin County. Respondents further admit that, collectively, they operate the only three hospital campuses in Dauphin County. Respondents also admit that they are both high-quality health systems. Respondents deny the remaining allegations set forth in Paragraph 2.

3. Respondents deny the allegations set forth in Paragraph 3.

4. The allegations set forth in Paragraph 4 constitute legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations.

5. Respondents deny the allegations set forth in Paragraph 5.

6. Respondents deny the allegations set forth in the first and second sentences of Paragraph 6. The allegations set forth in the third sentence of Paragraph 6 constitute legal

[1] For the Court's ease of reference, Respondents' Answer tracks the Complaint's section headings. In so doing, Respondents do not admit or concede the factual bases or legal conclusions subsumed by the Complaint's headings.

20. The allegations set forth in Paragraph 20 constitute legal conclusions to which no response is required. To the extent a response is required, Respondents deny those allegations.

21. Respondents lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 21, and therefore deny them.

22. Respondents lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 22, and therefore deny them.

23. Respondents lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 23, and therefore deny them.

24. Respondents lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 24, and therefore deny them.

25. Respondents lack knowledge or information sufficient to form a belief as to the allegations set forth in the first sentence of Paragraph 25, and therefore deny them. The remaining allegations set forth in Paragraph 25 constitute legal conclusions to which no response is required. To the extent a response is required, Respondents lack knowledge or information sufficient to form a belief as to the allegations, and therefore deny them.

V. Market Structure and the Merger's Presumptive Illegality

26. Respondents deny the allegations set forth in Paragraph 26.

27. Respondents deny the allegations set forth in Paragraph 27.

28. The allegations set forth in Paragraph 28 constitute legal conclusions to which no response is required. To the extent a response is required, Respondents deny those allegations.

29. The allegations set forth in Paragraph 29 constitute legal conclusions to which no response is required. To the extent a response is required, Respondents deny those allegations.

30. Respondents deny the allegations set forth in Paragraph 30.

VI. Anticompetitive Effects

A. Hospital Competition Yields Lower Prices and Higher Quality

31. Respondents deny the allegations set forth in Paragraph 31.

32. Respondents deny the allegations set forth in the first sentence of Paragraph 32. Respondents admit that hospitals negotiate contracts with health plans, and that these contracts include reimbursement rates for services rendered to a health plan's members. Respondents lack knowledge or information sufficient to form a belief as to the remaining allegations set forth in Paragraph 32, and therefore deny them.

33. Respondents lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 33, and therefore deny them.

34. Respondents lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 34, and therefore deny them.

35. Respondents lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 35, and therefore deny them.

54. Respondents lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 54, and therefore deny them.

55. Respondents deny the allegations set forth in Paragraph 55.

D. The Merger Eliminates Vital Quality Competition

56. Respondents deny the allegations set forth in Paragraph 56.

57. Respondents admit that Pinnacle has always endeavored to provide high-quality service that satisfies patients. Respondents deny the remaining allegations set forth in Paragraph 57.

58. Respondents deny the allegations set forth in Paragraph 58.

59. Respondents admit that Pinnacle has improved the quality of care and implemented operational improvements and best practices in its hospitals. Respondents lack knowledge or information sufficient to form a belief as to the "internal documents" the Commission references, and therefore deny the allegations insofar as they rely on any such documents. Respondents deny the remaining allegations set forth in Paragraph 59.

60. Respondents admit that Hershey has begun constructing a new outpatient ambulatory facility and has expanded outpatient services in Cumberland County. Respondents deny the remaining allegations set forth in Paragraph 60.

61. Respondents admit that Hershey strives to reduce costs and improve its quality and efficiency. Respondents deny the remaining allegations set forth in Paragraph 61.

62. Respondents admit that they intend, post-Merger, to move certain low-acuity cases from Hershey to Pinnacle and certain high-acuity cases from Pinnacle to Hershey. Respondents deny the remaining allegations set forth in Paragraph 62.

E. Respondents' Recent [redacted] Agreements With [redacted] Would Not Prevent Competitive Harm

63. Respondents admit the allegations set forth in the first and second sentences of Paragraph 63. Respondents lack knowledge or information sufficient to form a belief as to the allegations in the fourth sentence of Paragraph 63, and therefore deny them. Respondents deny the remaining allegations set forth in Paragraph 63.

64. Respondents deny the allegations set forth in Paragraph 64.

65. Respondents deny the allegations set forth in Paragraph 65.

66. Respondents deny the allegations set forth in Paragraph 66.

67. Respondents deny the allegations set forth in Paragraph 67.

VII. Entry Barriers

68. The allegations set forth in Paragraph 68 constitute legal conclusions to which no response is required. To the extent a response is required, Respondents lack knowledge or information sufficient to form a belief as to the allegations, and therefore deny them.

FOURTH DEFENSE

The alleged relevant service market definition fails as a matter of law.

FIFTH DEFENSE

The alleged relevant geographic market definition fails as a matter of law.

SIXTH DEFENSE

The Complaint fails to allege harm to competition.

SEVENTH DEFENSE

The Complaint fails to allege harm to any consumers.

EIGHTH DEFENSE

The Complaint fails to allege harm to consumer welfare.

NINTH DEFENSE

Any purported alleged harm to potential competition is not actionable.

TENTH DEFENSE

The combination of Respondents' businesses will be procompetitive. The merger will result in substantial merger-specific efficiencies, cost synergies, quality-of-care improvements, and other procompetitive effects that will directly benefit consumers. These benefits greatly outweigh any and all proffered anticompetitive effects.

ELEVENTH DEFENSE

This administrative proceeding is invalid because the appointment of the Administrative Law Judge ("ALJ") is unconstitutional under the Appointments Clause.

RESERVATION OF RIGHTS TO ASSERT ADDITIONAL DEFENSES

Respondents have not knowingly or intentionally waived any applicable defenses, and they reserve the right to assert and rely upon other applicable defenses that may become available or apparent throughout the course of the action. Respondents reserve the right to amend, or seek to amend, their answer or affirmative defenses.

NOTICE OF CONTEMPLATED RELIEF

WHEREFORE, Respondents respectfully request that the Commission enter judgment in their favor as follows:

A. That the Complaint be dismissed with prejudice;

B. That none of the Complaint's contemplated relief issue to the Commission;

C. That costs incurred in defending against this action be awarded to Respondents; and

D. That any and all other relief as the Commission may deem just and proper be awarded to Respondents.

CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2016, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

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Jared P. Nagley
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