

**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT**

*In the Matter of CentraCare Health System
File No. 161-0096*

I. Overview

The Federal Trade Commission has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from CentraCare Health that is designed to mitigate the anticompetitive effects that would result from CentraCare’s acquisition of St. Cloud Medical Group, P.A. (“SCMG”), the two largest providers of adult primary care, pediatric, and obstetric/gynecological (“OB/GYN”) services in the St. Cloud, Minnesota area. The Commission’s willingness to accept this Consent Agreement is premised on the fact that SCMG is a financially failing physician practice group that has been unable to find an alternative purchaser for the entire practice as well as concerns regarding disruptions to patient care and possible physician shortages.

On February 29, 2016, CentraCare entered a definitive agreement to acquire all outstanding shares of stock in SCMG (“the Acquisition”). Under the terms of the Acquisition, CentraCare is to directly employ all of SCMG’s physicians and advanced practice providers (“APPs”). The Commission’s Complaint alleges that the Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, by substantially lessening competition for the provision of adult primary care, pediatric, and OB/GYN services in St. Cloud, Minnesota.

As the Complaint alleges, however, SCMG has recently lost its sole remaining line of credit and appears unlikely to be able to improve its financial condition. Physicians are leaving the group, and there is compelling evidence that others will depart the practice (and potentially the St. Cloud area) if the Acquisition is not consummated. Such physician departures would cause an immediate decline in revenues that could further destabilize the group. Although SCMG made a good-faith, but ultimately unsuccessful, multi-year effort to find an alternative buyer for the entire medical group, one local provider has recently expressed interest in employing a subset of the group, and other smaller, independent practices in the St. Cloud area have indicated that they also would consider hiring some SCMG physicians.

In light of this interest, the proposed Consent Agreement is designed to facilitate former SCMG physicians finding alternate local employment by suspending enforcement of any non-compete provisions against any adult primary care, pediatric, or OB/GYN physician from SCMG to allow up to 14 such physicians to depart for another St. Cloud area practice. It also encourages the creation of new competitors and the strengthening of smaller competitors by requiring CentraCare to provide sizeable departure payments to the first five physicians who leave CentraCare either to create a new medical practice or to join a small third-party medical practice in the St. Cloud area.

The Consent Agreement includes an Order to Suspend Enforcement of CentraCare Non-Competes and Maintain Assets, which is final immediately, and a Decision and Order, which is subject to the Commission's final approval. The Consent Agreement has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received and then decide whether it should withdraw from, modify, or make final the proposed Decision and Order.

The purpose of this analysis is to facilitate public comment on the Consent Agreement. The analysis is not intended to constitute an official interpretation of the Consent Agreement or to modify its terms in any way. Further, the Consent Agreement has been entered into for settlement purposes only and does not constitute an admission by Respondent that it violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

II. The Parties

CentraCare is a non-profit organization providing healthcare services through its owned hospitals, medical clinics, pharmacies, nursing homes, and home health operations throughout central Minnesota. CentraCare is the parent entity to CentraCare Clinic, a multi-specialty physician practice employing family medicine, internal medicine, pediatric, and OB/GYN physicians, among other specialists. CentraCare Clinic has 16 locations across central Minnesota, with five of those offices located within 20 miles of St. Cloud. CentraCare Clinic is the largest provider of adult primary care, pediatric, and OB/GYN services in the St. Cloud area, with approximately 102 adult primary care physicians, 28 pediatricians, and 25 OB/GYNs.

SCMG is a physician-owned multi-specialty medical clinic that operates four clinics in and around St. Cloud. SCMG's 40 physicians mainly provide family medicine, pediatrics, and OB/GYN services, but SCMG also offers surgical, occupational medicine, and rehabilitation services. SCMG also employs approximately 20 APPs.

III. The Complaint

The Complaint alleges that the proposed Acquisition will substantially increase CentraCare's market share in the St. Cloud area for the provision of adult primary care, pediatric, and OB/GYN services to commercially insured patients. According to the Complaint, by eliminating SCMG as a potential alternative in the St. Cloud area, the Acquisition likely will increase CentraCare's bargaining power vis-à-vis commercial health plans, allowing CentraCare to increase reimbursement rates and to secure more favorable terms. In addition, the Complaint alleges that the Acquisition likely will result in the loss of non-price competition between CentraCare and SCMG that currently results in quality and service benefits to patients. The Complaint further alleges that competition eliminated by the Acquisition is unlikely to be sufficiently replaced in a timely manner by other providers entering the market. The Complaint recognizes, however, that SCMG is unlikely to survive on its own, and that, despite a good-faith search, it has not identified an alternative buyer for the entire group.

IV. The Consent Agreement

The goal of the Consent Agreement is to mitigate the competitive effects of the Acquisition by preserving, to the extent possible, competition for adult primary care, pediatric, and OB/GYN services in the St. Cloud area. At least one local provider may be a viable alternative purchaser to CentraCare for a portion of the practice in that they have the capacity and the desire to employ some SCMG physicians. Likewise, some SCMG physicians appear interested in these opportunities. Those parties need additional time to pursue such an arrangement, and other interested local providers looking to add physicians may be identified during this time as well.

The Commission believes that the Consent Agreement presents the best opportunity to keep the SCMG physicians in the St. Cloud market, ensuring ongoing access to care and minimal disruption for St. Cloud area patients, while allowing local competitive alternatives to CentraCare for the relevant physician services to expand. The Consent Agreement will allow current SCMG physicians to accept alternative local employment opportunities post-acquisition without the risk of violating non-compete provisions in their employment contracts.

Specifically, the Consent Agreement provides that following the issuance of a final Decision and Order and during the 90-day First Release Period, former SCMG physicians can terminate their employment with CentraCare without penalty if the physician:

- (1) Submits notice of an intention to terminate employment with CentraCare to a monitor who has been appointed by the Commission to assist in implementing the Consent Agreement in a manner that assures each physician's confidentiality;
- (2) States the intention to continue to practice in the St. Cloud area for at least two years;
- (3) Is among the first 14 physicians to submit a notice to terminate employment; and
- (4) Leaves employment with CentraCare within 60 days of CentraCare receiving notice from the monitor.

CentraCare may request that the First Release Period be terminated as soon as the monitor has determined that 14 physicians have met the requirements to terminate.

If, at the end of the First Release Period, fewer than eight physicians have notified the monitor of their intent to terminate employment, a Second Release Period will commence. During the Second Release Period, CentraCare must also suspend the non-compete agreements of legacy CentraCare adult primary care, pediatric, and OB/GYN physicians (that is, those who did not come from SCMG) so that these physicians may explore and accept alternate employment opportunities in the St. Cloud area. The Second Release Period will end as soon as the monitor has informed CentraCare that eight physicians have met the requirements to terminate without penalty.

To encourage the creation of new competitors and strengthening of smaller competitors, CentraCare also will deposit \$500,000 into an escrow account to be awarded as \$100,000 departure payments to the first five physicians who leave CentraCare either to create a new medical practice or to join a third-party medical practice that has five or fewer physicians in the St. Cloud area.

Paragraphs II and III describe the basic terms under which physicians may terminate their employment with CentraCare. They prohibit CentraCare from: (1) enforcing any non-compete, non-solicitation, or non-interference provisions in their employment agreements; (2) pursuing any breach of contract action for violation of any of these provisions; or (3) taking any retaliatory action against any physician who either leaves under the terms of the Decision and Order or who decides not to leave after exploring other employment as allowed by the Decision and Order. The Decision and Order does not, however, require CentraCare to allow physicians to terminate their employment agreements in a manner other than that specified in the Decision and Order.

Paragraph IV includes a number of provisions to ensure that CentraCare will not take any actions to discourage physicians from exploring opportunities to leave or from leaving CentraCare's employment pursuant to the Decision and Order. In addition, Paragraph IV.A.1.f prohibits CentraCare from soliciting the employment of any physician that has departed CentraCare pursuant to the Consent Orders for a period of two years.

Paragraph V requires CentraCare to give advanced notification for future acquisitions or employment contracts involving certain adult primary care, pediatrics, and OB/GYN services in the St. Cloud area for a period of three years.

Paragraph VI requires CentraCare during the First Release Period to facilitate and not interfere with the search for alternate St. Cloud area employment by former SCMG employees, such as APPs and nurses. Paragraph VI also prohibits CentraCare from attempting to re-hire those employees for a period of two years.

Paragraph VII specifies the rules governing the work of the monitor.

The remaining order provisions are standard reporting requirements to allow the Commission to monitor on-going compliance with the provisions of the Decision and Order.

In addition to the Decision and Order, the Consent Agreement includes an Order to Suspend Enforcement of CentraCare's Non-Competes and Maintain Assets that goes into effect immediately. The purposes of this Order are (1) to permit former SCMG physicians to explore alternative employment opportunities in the St. Cloud area; and (2) to maintain those assets and personnel from the SMCG to make the transition to a different practice as easy as possible.