

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

Hackensack Meridian Health, Inc.,

and

Englewood Healthcare Foundation.

Docket No. 9399

**ANSWER AND AFFIRMATIVE DEFENSES OF RESPONDENT
HACKENSACK MERIDIAN HEALTH, INC.**

Hackensack Meridian *Health*, Inc. (“HMH”), by and through its attorneys, hereby admits, denies, and avers as follows with respect to the Complaint. To the extent not specifically admitted in the following paragraphs, the allegations in the Complaint are denied.

GENERAL RESPONSE TO THE COMMISSION’S ALLEGATIONS

HMH denies the allegations and legal conclusions contained in the Federal Trade Commission’s unnumbered introductory paragraph.

HMH further states that the merger between it and Englewood Healthcare Foundation (“Englewood”) is procompetitive, will result in substantial merger-specific pricing efficiencies, quality improvements, increased access to tertiary and quaternary services, and other procompetitive effects—all of which will directly benefit insurers, employers, and patients in and around northern New Jersey.

I.

NATURE OF THE CASE¹

1. HMH denies the allegations of Paragraph 1 of the Complaint, except that HMH admits that (a) HMH and Englewood entered into an affiliation agreement dated September 23, 2019, whereby HMH will become the sole member and the ultimate parent entity of Englewood (the “Transaction”), and (b) Englewood is a hospital and health system operating in Bergen County, New Jersey, among others areas.

2. HMH admits that, among other things, its facilities provide inpatient general acute care (“GAC”) services to patients in Bergen County and elsewhere. HMH denies the remaining allegations of Paragraph 2 of the Complaint, and specifically denies that “[t]he Proposed Transaction would enhance HMH’s dominant position in Bergen County,” that HMH and Englewood “compete[] head-to-head,” and that the “Proposed Transaction would eliminate this competition.”

3. To the extent that Paragraph 3 purports to describe or quote documents and/or testimony, HMH avers that such documents and/or testimony speak for themselves and, as such, no response is required. To the extent a response is required, HMH denies that Paragraph 3 accurately characterizes the quoted documents and/or testimony and denies that the Commission has provided the full context of the documents and/or testimony.

4. HMH denies the allegations of Paragraph 4 of the Complaint, and specifically denies that the Transaction “will substantially lessen competition” and that the “relevant geographic market for evaluating the Proposed Transaction is no broader than Bergen County.”

5. HMH denies the allegations of Paragraph 5 of the Complaint.

¹ For ease of reference, HMH’s Answer utilizes the section numbering and headings in the Complaint. In so doing, HMH does not admit or concede the factual bases or legal conclusions included in the Complaint’s headings.

6. HMM admits that the 2010 Horizontal Merger Guidelines describe the Herfindahl-Hirschmann Index, which is a formula that purports to be a measurement of market concentration. HMM denies the remaining allegations of Paragraph 6 of the Complaint.

7. HMM admits that, among other things, HMM provides inpatient GAC services to patients in Bergen County, among other areas. HMM lacks sufficient knowledge or information to affirm or deny the allegations regarding Englewood contained in the second to last sentence of Paragraph 7 of the Complaint, and these allegations are therefore denied. HMM denies the remaining allegations of Paragraph 7 of the Complaint as to it, and specifically denies that HMM and Englewood are “close competitors.”

8. HMM lacks sufficient knowledge or information to affirm or deny the allegations contained in the second sentence of Paragraph 8 of the Complaint, and these allegations are therefore denied. HMM denies the remaining allegations of Paragraph 8 of the Complaint, except that HMM admits that it negotiates and seeks to contract with commercial insurers that offer health insurance plans to individuals, employers, and their employees, among others, in northern New Jersey and elsewhere.

9. HMM lacks information sufficient to admit or deny the allegations in the first sentence of Paragraph 9 about the quality of the medical services provided by Englewood, and these allegations are therefore denied. HMM admits that, among others, (a) HMM owns and operates Hackensack University Medical Center (“HUMC”), located in Bergen County, New Jersey, and (b) HMM owns a partial interest in a joint venture that operates Pascack Valley Medical Center, also located in Bergen County, New Jersey. HMM denies the remaining allegations of Paragraph 9 of the Complaint, and specifically denies that “insurers would have few alternatives for inpatient GAC hospital services in Bergen County” after the Transaction.

10. HMH admits that it has made facility improvements and expanded its service lines to provide high-quality access to care for patients. HMH lacks information sufficient to admit or deny the allegations regarding Englewood, and these allegations in Paragraph 10 of the Complaint are therefore denied. HMH denies the remaining allegations of Paragraph 10 of the Complaint.

11. HMH denies the allegations of Paragraph 11 of the Complaint.

12. HMH denies the allegations of Paragraph 12 of the Complaint.

II.

JURISDICTION

13. HMH avers that Paragraph 13 of the Complaint states legal conclusions, and therefore no response is required. To the extent a response is required, HMH denies the allegations.

14. HMH avers that Paragraph 14 of the Complaint states legal conclusions, and therefore no response is required. To the extent a response is required, HMH denies the allegations.

III.

RESPONDENTS

15. HMH denies the allegations of Paragraph 15 of the Complaint, except that HMH admits that (a) it is a New Jersey not-for-profit corporation that operates a health system headquartered in Edison, New Jersey, (b) it employs over 35,000 people throughout New Jersey, and (c) HMH reported \$5.9 billion in system wide revenue in 2019.

16. HMH denies the allegations in the first and second sentences of Paragraph 16 of the Complaint, except that HMH admits that it was formed through several mergers with certain

hospitals and health systems in New Jersey over the past several years, including the merger of Hackensack University Health Network and Meridian Health on July 1, 2016. HMH admits the allegations in the fourth sentence of Paragraph 16 of the Complaint, except that HMH denies that HMH merged with JFK Health System on January 3, 2018 and avers that the merger was effective on January 1, 2018. HMH denies the allegations in the last sentence of Paragraph 16 of the Complaint, except that HMH admits that the merger of Carrier Clinic was effective on January 1, 2019. HMH admits the remaining allegations in Paragraph 16 of the Complaint.

17. HMH denies the allegations in the second sentence of Paragraph 17 of the Complaint, except that HMH admits that there are over 7,000 physicians and practitioners employed by or affiliated with HMH. HMH admits the remaining allegations in Paragraph 17 of the Complaint.

18. HMH admits the allegations in Paragraph 18 of the Complaint.

19. HMH admits that Englewood is a New Jersey not-for-profit corporation headquartered in Englewood, New Jersey that includes a hospital and health system. HMH lacks sufficient knowledge or information to affirm or deny the remaining allegations contained in Paragraph 19 of the Complaint, and these allegations are therefore denied.

20. HMH admits that Englewood operates an inpatient GAC services hospital in Bergen County, New Jersey. HMH lacks sufficient knowledge or information to affirm or deny the remaining allegations contained in Paragraph 20 of the Complaint, and these allegations are therefore denied.

21. HMH admits that Englewood Health Physician Network provides primary care and specialty services in New Jersey and New York. HMH lacks sufficient knowledge or

information to affirm or deny the remaining allegations contained in Paragraph 21 of the Complaint, and these allegations are therefore denied.

IV.

THE PROPOSED TRANSACTION

22. HMH lacks sufficient knowledge or information to affirm or deny the allegations in Paragraph 22 of the Complaint, and these allegations are therefore denied.

23. HMH admits that it submitted a bid to Englewood in April 2019 and entered into a definitive affiliation agreement with Englewood on September 23, 2019. HMH lacks sufficient knowledge or information to affirm or deny the remaining allegations in Paragraph 23 of the Complaint, and these allegations are therefore denied.

24. HMH admits that it entered into a timing agreement with the Commission, as revised, and avers that the content of that timing agreement speaks for itself.

V.

RELEVANT SERVICE MARKET

25. To the extent that the allegations of Paragraph 25 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations of Paragraph 25 of the Complaint.

26. To the extent that the allegations of Paragraph 26 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations of Paragraph 26 of the Complaint.

27. To the extent that the allegations of Paragraph 27 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations of Paragraph 27 of the Complaint.

28. To the extent that the allegations of Paragraph 28 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations of Paragraph 28 of the Complaint.

29. To the extent that the allegations of Paragraph 29 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations of Paragraph 29 of the Complaint.

V.

RELEVANT GEOGRAPHIC MARKET

30. To the extent that the allegations of Paragraph 30 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations of Paragraph 30 of the Complaint, and specifically denies that the relevant geographic market within which to analyze inpatient GAC hospital services is no broader than Bergen County, New Jersey.

31. HMH admits that Bergen County is located in northeast New Jersey and is one of the most populous counties in the state, and further admits that Bergen County is bordered to the north and east by New York and is located across the Hudson River from Manhattan, New York. HMH lacks sufficient knowledge or information to affirm or deny the remaining allegations in Paragraph 31 of the Complaint, and these allegations are therefore denied.

32. To the extent that the allegations of Paragraph 32 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations of Paragraph 32 of the Complaint.

33. HMH lacks sufficient knowledge or information to affirm or deny the allegations in the first sentence of Paragraph 33 of the Complaint, and these allegations are therefore denied.

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

34. HMH lacks sufficient knowledge or information to affirm or deny the allegations in the first sentence of Paragraph 34 of the Complaint, and these allegations are therefore denied. To the extent that the allegations in the second sentence of Paragraph 34 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required to the second sentence of Paragraph 34, HMH denies these allegations.

35. HMH admits that it analyzes competition in Bergen County, among other areas. HMH lacks sufficient knowledge or information to affirm or deny the remaining allegations regarding Englewood in the second sentence of Paragraph 35 of the Complaint, and these allegations are therefore denied. HMH denies the remaining allegations of Paragraph 35, and specifically denies that Bergen County is “the main area of competition” between any of HMH’s hospitals and Englewood.

VI.

MARKET STRUCTURE AND THE PROPOSED TRANSACTION’S PRESUMPTIVE ILLEGALITY

36. HMH admits that the Herfindahl-Hirschmann Index is a formula described in the 2010 Horizontal Merger Guidelines that purports to be a measurement of market concentration. To the extent that the remaining allegations in Paragraph 36 of the Complaint state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies these allegations.

37. To the extent that the allegations of Paragraph 37 of the Complaint state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH

denies the allegations of Paragraph 37, and specifically denies that the relevant geographic market within which to analyze inpatient GAC hospital services is no broader than Bergen County, New Jersey.

38. To the extent that the allegations of Paragraph 38 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations of Paragraph 38.

VII.

ANTICOMPETITIVE EFFECTS

39. To the extent that the allegations in the first sentence of Paragraph 39 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations in the first sentence of Paragraph 39 of the Complaint. HMH denies the remaining allegations in Paragraph 39 of the Complaint.

A.

Competition between Hospitals Benefits Consumers

40. HMH denies the allegations in Paragraph 40 of the Complaint, except that HMH admits that, among other forms of competition, hospitals and health systems seek contracts with commercial insurers and seek to attract patients to their facilities.

41. HMH denies the allegations in Paragraph 41 of the Complaint, except that HMH admits that to become an in-network provider, a hospital or health system negotiates with a commercial insurer and, if mutually agreeable terms can be reached, enters into a contract.

42. HMH lacks sufficient knowledge or information to admit or deny the allegations contained in the first and second sentences of Paragraph 42 of the Complaint, and these

allegations are therefore denied. HMH denies the remaining allegations contained in Paragraph 42 of the Complaint.

43. HMH lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 43 of the Complaint, and these allegations are therefore denied.

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

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

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

B.

The Proposed Transaction Would Eliminate Close Competition between HMH and Englewood

47. HMH denies the allegations in the first sentence of Paragraph 47 of the Complaint. To the extent that the second and third sentences of Paragraph 47 purport to describe or quote documents and/or testimony, HMH avers that such documents and/or testimony speak for themselves and, as such, no response is required. To the extent a response is required, HMH denies that Paragraph 47 accurately characterizes the quoted documents and/or testimony and denies that the Commission has provided the full context of the documents and/or testimony.

48. HMH denies the allegations contained in Paragraph 48 of the Complaint.

49. HMH denies the allegations contained in Paragraph 49 of the Complaint, and specifically denies that there is “close head-to-head competition” between HMH and Englewood.

50. HMH denies the allegations contained in Paragraph 50 of the Complaint.

C.

The Proposed Transaction Will Eliminate Non-Price Competition

51. HMH denies the allegations contained in Paragraph 51 of the Complaint, except that HMH admits that there are several hospitals and health systems in northern New Jersey and New York that provide inpatient GAC services and compete with HMH, Englewood, or both.

52. HMH admits that it is in the process of a \$714 million modernization project at HUMC which will, among other things, enhance its operating rooms, patient rooms, and facilities, but these investments will not add new inpatient beds, and further admits that HMH has invested in its physician networks and facilities to provide high quality services to patients. HMH lacks sufficient knowledge or information to affirm or deny the remaining allegations regarding Englewood contained in the first, second, and third sentences of Paragraph 52 of the Complaint, and these allegations are therefore denied. HMH denies the remaining allegations in Paragraph 52 of the Complaint.

53. HMH denies the allegations in Paragraph 53 of the Complaint, and specifically denies that there will be any reduction in the quality of medical care, facilities, or service offerings as a result of the Transaction, and avers that patients will benefit from the Transaction with respect to the quality of and access to care and services.

VIII.

LACK OF COUNTERVAILING FACTORS

A.

Entry Barriers

54. HMH denies the allegations contained in Paragraph 54 of the Complaint.

55. HMH denies the allegations contained in Paragraph 55 of the Complaint.

B.

Efficiencies

56. HMH denies the allegations contained in Paragraph 56 of the Complaint. HMH avers that the Transaction will result in substantial merger-specific price reductions to commercial insurers and employers and will generate substantial cost savings and efficiencies.

IX.

VIOLATION

COUNT I – ILLEGAL AGREEMENT

57. In answer to the averments of Paragraph 57 of the Complaint, HMH hereby incorporates by reference its responses to each and every averment contained in Paragraphs 1 through 56 of the Complaint as if set forth fully herein.

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

COUNT II – ILLEGAL ACQUISITION

59. In answer to the averments of Paragraph 59 of the Complaint, HMH hereby incorporates by reference its responses to each and every averment contained in Paragraphs 1 through 56 of the Complaint as if set forth fully herein.

60. HMH denies the allegations contained in Paragraph 60 of the Complaint.

HMH'S AFFIRMATIVE DEFENSES

HMH 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 in the Complaint is contrary to the public interest.

3. The alleged relevant service market for inpatient general acute care hospital services fails as a matter of law.
4. The alleged relevant geographic market for inpatient general acute care hospital services fails as a matter of law.
5. The Complaint fails to allege any plausible harm to competition.
6. The Complaint fails to allege any plausible harm to any consumers or to consumer welfare.
7. New entry and expansion by competitors can be timely, likely, and sufficient, and such ease of entry will ensure that there will be no harm to competition, patients and consumers, or consumer welfare.
8. The insurers and other payors 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.
9. The proposed transaction will be procompetitive, and will result in substantial merger-specific pricing efficiencies, quality improvements, enhanced access to services, and other procompetitive effects, all of which will directly benefit insurers, employers, and patients in and around northern New Jersey. HMH does not concede any of the anticompetitive effects proffered by the Commission; moreover, the foregoing precompetitive benefits are substantial and will greatly outweigh any and all alleged anticompetitive effects.

RESERVATION OF RIGHTS TO ASSERT ADDITIONAL DEFENSES

HMH 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. HMH reserves the right to amend, or seek to amend, its answer or affirmative defenses.

NOTICE OF CONTEMPLATED RELIEF

WHEREFORE, Hackensack Meridian *Health*, Inc. requests that the Commission 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 Federal Trade Commission;
- C. Costs incurred in defending this action be awarded to Respondents; and
- D. Any and all other relief as the Commission may deem just and proper.

Dated: December 17, 2020

Respectfully submitted,

/s/ Paul H. Saint-Antoine

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*Counsel for Respondent Hackensack Meridian
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer was electronically filed using the FTC's administrative e-filing system, causing the document to be served on the following registered participants:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Washington, DC, 20580

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20590

I further certify that I have served via electronic mail a copy of the foregoing on the following:

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