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Brackbill, Robert

From: Samuel R. Marshall [smarshall@ifpenn.org]
Sent: Thursday, April 12, 2012 4:57 PM
To: Brackbill, Robert
Subject: Highmark/West Penn proposal
Attachments: brackbilltes.doc; upmcagagree2.pdf; upmcagagree1.pdf

Bob:

Attached are our comments on the proposed acquisition, the enclosures referred to in the letter, in advance of the April 17 hearing.

Thanks, and please call with any questions.

Sam Marshall

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Samuel R. Marshall
President & CEO

April 12, 2012

Robert Brackbill, Chief
Company Licensing Division
Pennsylvania Insurance Department
1345 Strawberry Square
Harrisburg, PA 17120

Re: Highmark's proposed affiliation with West Penn Allegheny Health System

Dear Mr. Brackbill:

Thank you for the opportunity to comment on Highmark's proposed acquisition of West Penn Allegheny Health System. The Insurance Federation is a trade association representing, among others, commercial health insurers that compete – or at least try to compete – with Highmark; we also work with West Penn as a provider of care for those we insure and as a network provider. So we're able to offer some unique perspectives on this.

At the outset, we note some obvious considerations that should guide the Insurance Department's review of this proposal.

First, this is a unique proposal from Highmark. Hospitals and insurers have become affiliates to perform Integrated Delivery Systems – witness UPMC and UPMC Health. But to our knowledge, this is the first time an insurer proposes to become the purchaser and driving force in the IDS. That doesn't make the proposal a bad idea, just an unprecedented one that highlights the degree of difficulty and risk in making it work.

Second, West Penn faces serious and immediate problems – not just in terms of needing money, but in needing patients. So Highmark isn't just proposing to become an IDS – it is proposing to save a struggling health system in an area dominated by another health system that is by all measures robust and well-regarded. And everyone acknowledges that for the proposal to work, West Penn will need those new patients to come from not just UPMC but the remaining community hospitals – because the number of patients in this region is relatively flat. That also doesn't make this a bad proposal, but provides still more of a challenge for it to work.

Third, Highmark's commitment to becoming an IDS has put it in the position of losing its contracts with the dominant health system in the region – UPMC – as it embarks on becoming a rival to UPMC rather than a partner with it, as in the past.

Again, that doesn't make this a bad proposal – but it highlights the risk involved for Highmark: It is committed to becoming an IDS, itself an unprecedented step for any health insurer, by buying a struggling health system (and spending considerably more in developing other health care facilities), and by foregoing its relation with the largest health system in its region, and at a time when its rating has gone down.

Of course, Highmark doesn't want to forego its relation with UPMC – just the opposite, it wants the legislation protecting its relation. That, however, is impractical – rivals don't make good partners – and would be outrageously anti-competitive on the provider and certainly the insurance ends.

Fourth, Highmark is going through its own management changes with the sudden departure of long-time CEO Ken Melani. That happens in corporate America, and Highmark will undoubtedly find an able successor. But nobody knows whether that successor shares the same commitment and expertise to becoming an IDS. The Highmark Board has emphasized its commitment to becoming an IDS, with the purchase of West Penn at the core – but a new CEO may have other priorities or goals and should have the chance to make a fresh decision, and the Insurance Department has to know who that CEO is if it is to give a meaningful evaluation of the ability of Highmark to operate as an IDS built around its acquisition of West Penn.

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Still, as competing insurers who have long dealt with the West Penn Allegheny Health System, we want it to remain a viable provider in this region. Generally, we favor competition on both sides of the health insurance equation – both among insurers and hospitals. Just as competition can make Highmark a better insurer, it can make UPMC a better provider – and a vibrant and viable West Penn would be a major part of that. And so far, Highmark has emerged as the only one willing to commit the dollars needed for this – and it is the only one with a potential source of patients to send to West Penn, too.

Your task is to determine whether and on what terms Highmark might be able to make West Penn a viable health system going forward.

We'll leave the questions on the fiscal prudence and practicality of this proposal to others. Our concern as competitors is that the Insurance Department ensure that Highmark's proposed acquisition make West Penn viable and accessible for the entire insurance marketplace, not just a means by which Highmark is able to further its monopoly position in this region. In essence, any approval should require that West Penn will remain open, at competitive rates and terms, to the patients of other insurers and to the networks of other insurers, with the entire region benefitting from choice and competition among insurers and providers.

At least in the immediate future, this might not be a problem: Highmark might not want competitors such as Aetna, Cigna, Health America and United to have West Penn in their networks at competitive rates; but for now, West Penn needs patients from those insurers for it to be viable.

Our concern is that this could soon change: Highmark could shut out other insurers from West Penn, replacing the patients from our policyholder bases with those of Highmark. Its investment in West Penn could be one where the primary beneficiary is Highmark, with the health system becoming closed to all but Highmark insureds.

We recognize that Highmark's investment in West Penn is to to benefit Highmark, not just West Penn, and we're not recommending terms that would prevent Highmark from realizing that benefit: It is the one making a risk-laden investment, so it should bear the ramifications, both positive and negative. Our concern is that, as the insurer with monopoly status in its region, it not use the purchase of West Penn to restrain its competitors – that wouldn't make West Penn more viable or help consumers, just make Highmark more dominant.

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To that end, we recommend any approval of this acquisition safeguard competition and consumer choice, in addition to whatever fiscal safeguards you determine. Among the safeguards:

- **Any approval of Highmark's acquisition should be conditioned on an orderly and prompt ending of its contracts with UPMC.**

This acquisition will immediately make Highmark a formidable Integrated Delivery System, given its dominance of the insurance market. As Highmark notes, it will be a competitor of UPMC – but it also is lobbying for statutory perpetuation of its provider contracts with UPMC, thereby seeking the best of both worlds as an IDS and a health insurer.

In essence, Highmark wants not only to own one of the two major health systems – its goal in this acquisition - but to also simultaneously maintain its provider contracts with the other, a goal it is also pursuing with the Insurance Department and the General Assembly. We don't think that is fair to UPMC: That would require it to partner with an entity who is its avowed rival.

It also isn't fair to consumers, who will benefit from more competition among health insurers, not less. Highmark's market share is already a prohibitive barrier to competition – monopolies, by definition, tend to be self-perpetuating. Allowing it to own one of the two major health systems while guaranteeing its contract with the other – a guarantee no other insurer enjoys – will only heighten the barrier.

The Insurance Department should examine the insurers in other Integrated Delivery Systems similar to the one Highmark proposes to establish – namely, those of UPMC and Geisinger. We are not aware of any statutory protections given to those insurers, neither of which have insurance market shares remotely close to that of Highmark, in their contracts with providers outside their IDSs.

We also note the irony of the insurer with the monopoly market share (and the funds and market share that make establishing an IDS plausible) asserting it deserves statutory protection to contract with a provider which is now also a rival. That's a protection insurers with much smaller market shares don't have in trying to contract with providers – despite the insurance laws generally recognizing the value of competition.

If Highmark wants to become an Integrated Delivery System and own one of its region's major health systems, so be it. But one term of any approval of that acquisition should be that Highmark no longer also have a contract with the other major provider. We recognize the uncertainty of Highmark's existing contract with UPMC, both if and when it might end. We recommend that if Highmark's West Penn acquisition is approved within the next year, its UPMC contracts terminate no later than January 1, 2014.

- **Any approval of Highmark's acquisition should be conditioned on protections that ensure West Penn remains open to other insurers and their policyholders on fair terms.**

As already noted, we believe West Penn's viability is enhanced by it continuing to contract on competitive terms with insurers other than Highmark, since those other insurers provide needed patients and revenue to West Penn.

We recognize, however, that this could change: Highmark could push a high percentage of its insureds to West Penn to meet its capacity needs, and prohibit West Penn from contracting at competitive terms with other insurers.

Any approval of this acquisition should expressly prohibit this – Highmark should not be allowed to use its ownership of West Penn to have it refuse to enter into contracts that would otherwise benefit West Penn, if not Highmark.

To that end, we recommend the Insurance Department adopt conditions consistent with the May 25, 2007 Final Order in Commonwealth v. UPMC et al. A copy of that Order, negotiated by then Attorney General Tom Corbett and filed with the U.S. District Court for the Western District, is attached.

The Order approved another major health-related acquisition in this region, that of UPMC acquiring Mercy Health System. The concern the Attorney General addressed was similar to the one we've noted here – that the acquisition could harm competition. The terms and conditions set forth in that Order should also be imposed here. They begin at p. 6 of the Order, with measures dealing with contracting with other insurers beginning on p. 17. They are designed to ensure what we've been recommending here: That the newly acquired or created health system be open to all health insurers in the market place.

The Commonwealth entered into a similar Order on October 19, 2001 in **In Re: Children's Hospital of Pittsburgh**, approving, with conditions, UPMC's acquisition of Children's Hospital of Pittsburgh. A copy of that is also attached, and it is equally illustrative of the terms that should be imposed here.

- **Any approval of Highmark's acquisition should be conditioned on proper monitoring, auditing and reporting of financial developments and compliance with these safeguards.**

Everyone acknowledges the high degree of risk involved in Highmark's proposal, both to its financial status and to the insurance and health care markets in this region. Everyone should also acknowledge that the projections underlying this proposal aren't firm – projections never are.

Accordingly, any approval of this proposal should come with extensive financial monitoring and means for early detections of problems and the flexibility for the Insurance Department to impose changes. Highmark's investment here goes to its core mission – its goal is to reinvent itself – and its funds come not from shareholders or investors, but its policyholders' premiums. It is the dominant insurer in the region, and for its non-profit business, it operates without the safety net of Guaranty Association protection should it go insolvent.

No business is guaranteed success, of course. But in this case, the Department should impose ongoing monitoring, auditing and reporting that go beyond normal solvency requirements – because the risk is that much more, and the dependency of the region that much greater.

The monitoring, auditing and reporting also needs to take place with the other safeguards we've recommended. Further, all such reports should be public – as the best way to verify compliance is through confirming with the other parties protected by these safeguards.

We recognize that the U.S. Department of Justice's antitrust division recently closed its investigation of this proposed acquisition, concluding it is not a threat to competition. Maybe not – if the terms and conditions we've outlined here are included in any approval of this.

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But to summarize, absent the terms and conditions we've recommended, this acquisition will create new barriers to competition, not just perpetuate the existing ones:

- Allowing Highmark to own one of the region's two major health systems while protecting its contractual status with the other is an unprecedented and undeserved advantage to the insurer with a monopoly share, with no consumer benefit, especially after the federal reforms take place on January 1, 2014. Highmark should either be an Integrated Delivery System or a conventional, albeit large, health insurer in this region – but not both.

- Any approval of Highmark's acquisition of West Penn should come with guarantees that West Penn will remain open to other health insurers and therefore to the region through a competitive market.

Thank you for the opportunity to comment. We look forward to further discussions on this, and we are happy to answer any questions from the Insurance Department or others.

Sincerely,

Samuel R. Marshall

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

IN RE: CHILDREN'S HOSPITAL OF)
PITTSBURGH AND CHILDREN'S)
HOSPITAL OF PITTSBURGH) NO. 6425 of 2001
FOUNDATION)

FINAL ORDER

INTRODUCTION

UPMC Health System ("UPMCHS") and Children's Hospital of Pittsburgh ("Children's") agreed on May 16, 2001, to merge Children's into the UPMCHS and have since entered into a definitive agreement on September 5, 2001. The Office of Attorney General of the Commonwealth ("Attorney General") is responsible for reviewing transactions effecting a fundamental corporate change which involve a transfer of ownership or control of charitable assets. UPMCHS and Children's have cooperated fully with the Attorney General's investigation of the proposed consolidation. The Attorney General has concluded its investigation of the proposed consolidation of UPMCHS and Children's, during which some concerns were raised regarding access to the charitable assets and services of Children's and the impact of this transaction on competition for healthcare services and the economy of Western Pennsylvania. UPMCHS and Children's do not believe that the consolidation impairs access or will adversely impact competition and the economy of Western Pennsylvania and desire to assure the Attorney General that they intend to operate Children's in accordance with their mission and continue their commitment of providing quality, affordable, and accessible health care to the community.

It is hereby ORDERED:

I. Interpretative Principles

1. UPMCHS and Children's Hospital of Pittsburgh have represented to this Court, the Attorney General and the public at large that the primary purposes of this transaction are to allow Children's Hospital of Pittsburgh to upgrade its facility, enhance its research and clinical programs and to continue to allow access to the facility for all children in need of medically necessary health services at reasonable prices regardless of which health plan is insuring them or whether or not a child is insured at all.
2. To that end, whenever a conflict arises over the meaning of this Final Order, it shall be interpreted to mean that Children's will continue to be accessible, as historically it has been accessible, to all children of the Service Area for needed medically necessary health services which Children's provides regardless of ability to pay or participation in a health plan.

II. Jurisdiction

3. This Court has jurisdiction over the subject matter of this action and each of the parties consenting to this Final Order.

III. Definitions

As used in this Final Order:

4. "UPMC Health System" ("UPMCHS") means the nonprofit tax-exempt corporation organized under the laws of the Commonwealth of Pennsylvania having its principal address at 200 Lothrop Street, Pittsburgh, PA 15213.

5. "Children's Hospital of Pittsburgh" ("Children's") means the nonprofit tax-exempt corporation organized under the laws of the Commonwealth of Pennsylvania having its principal address at 3705 Fifth Avenue, Pittsburgh, PA 15213.
6. "Managed-Care Plan" means a health maintenance organization, preferred provider organization, or other health-service purchasing program which uses financial or other incentives to prevent unnecessary services and includes some form of utilization review.
7. "Health Plan" means all types of organized health-service purchasing programs, including but not limited to, health insurance or managed-care plans, offered by government, for-profit or non-profit third-party payors, health care providers or any other entity.
8. "Health-Care Provider" means hospitals, laboratories, physicians, physician networks, and other health care professionals.
9. "Acquire" means to purchase the whole or the majority of the assets, stock, equity, capital or other interest of a corporation or other business entity, or to receive the right or ability to designate or otherwise control the majority of directors or trustees of a corporation or other business entity.
10. "Hospital" means a health care facility, licensed as a hospital, having a duly organized governing body with overall administrative and professional responsibility, and an organized professional staff that provides 24-hour inpatient care, that may also provide outpatient services, and that has, as a primary function, the provision of inpatient services for medical diagnosis, treatment and

care of physically injured or sick persons with short-term or episodic health problems or infirmities.

11. For purposes of this Final Order, "Service Area of Children's" means the Pennsylvania counties of: Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Clarion, Clearfield, Crawford, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland.
12. "Most Favored Nations Clause" shall mean any term in a provider contract that allows the buyer to receive the benefit of a better payment rate, term or condition than that the seller gives another provider for the same service.
13. "Medically Necessary Health Services" shall mean existing medical or surgical diagnostic treatment or care generally accepted for the treatment, diagnosis, maintenance or improvement of the health needs of the child.

IV. Terms

14. **Access to Children's Hospital**
 - 14.1. Children's and the University of Pittsburgh Physicians ("UPP") who practice full-time at Children's ("the pediatric specialists of UPP" hereafter) shall remain accessible to all children in the Service Area of Children's. Children's will provide care to all children and families who seek treatment for medically necessary health care, consistent with its historical practices.
 - 14.2. A child's ability to pay, health plan, or insurance carrier shall not be relevant to the determination of whether medically necessary services will

be provided by Children's or the pediatric specialists of UPP to children who live in the Service Area of Children's.

- 14.3. All children who reside in the Service Area of Children's may have access to and receive medically necessary hospital services from Children's and physician services from the pediatric specialists of UPP. Such children who reside in the Service Area of Children's and are covered by a third party payor or health plan shall pay no more than the co-payments, deductibles, or other out-of-pocket costs associated with such care than they would have paid had Children's and the pediatric specialists of UPP at Children's participated in the third party payments program or health plan of which such children are members, except if the conditions of paragraph 14.8 relating to Section 11.3 of the Integration and Affiliation Agreement have occurred. This paragraph shall not apply to payments to be made to physicians who are not employed by UPP or Children's, but who have staff privileges at Children's and provide care there.
- 14.4. UPMCHS and all insurers, networks and other payors seeking a contract, shall negotiate in good faith concerning contracts for services at Children's and by the pediatric specialists of UPP.
- 14.5. UPMCHS shall not unreasonably terminate any provider contracts to which Children's or the pediatric specialists of UPP are parties as of the date of entry of this Final Order. However, such contracts may expire at the end of their term and not be considered unreasonably terminated by

UPMCHS. Any renewals would be subject to Paragraphs 14.6 through 14.19.

14.6. Any health plan or third party payor may at its option agree to participate in the three-step contract resolution provisions of this Judgment contained in paragraphs 14.6 to 14.19.

A. First step - period of good faith negotiations. If no contract is reached during that period;

B. Second step - the process described in Section 11.3 of the Integration and Affiliation Agreement by and among Children's Hospital of Pittsburgh, Children's Hospital of Pittsburgh Foundation and UPMC Health System, dated September 5, 2001 ("Integration and Affiliation Agreement"), shall occur. If a decision adverse to a health plan is made after the process in Section 11.3 of the Integration and Affiliation Agreement;

C. Third Step - the health plan may request binding arbitration as outlined in paragraphs 14.9 to 14.15.

14.7. A health plan may give notice of its agreement to utilize the contract resolution provisions of this Judgment at least 90 days prior to the expiration of an existing contract with Children's or the pediatric specialists of UPP. If a health plan does not have an existing contract with Children's, it may give such notice at any time after it has notified Children's, UPMCHS or the pediatric specialists of UPP in writing of its interest in a contract with Children's hospital and/or physician services.

Once a health plan makes payment required by paragraphs 14.16 or 14.17 of this Final Order, it may represent that Children's and/or the pediatric specialists of UPP participate in the health plan products for which it is seeking a contract.

- 14.8. A health plan, Children's, UPMCHS, and/or the pediatric specialists of UPP shall negotiate in good faith toward a contract for Children's services and the services of the pediatric specialists of UPP for at least 90 days. In the event that an existing contract has expired and a contract is not reached for the services of Children's and/or the pediatric specialists of UPP, or 90 days has passed, in the case of a health plan without an existing contract, the process set forth in Section 11.3 of the Integration and Affiliation Agreement shall be followed. The health plans will be given a reasonable opportunity to address the UPMCHS Executive Committee and the Foundation Affiliation Oversight Committee prior to their taking any final vote as outlined in Section 11.3 of the Integration and Affiliation Agreement. UPMCHS and Children's shall provide the health plan with a copy of Section 11.3 of the Integration and Affiliation Agreement and the names of the members of the UPMCHS Executive Committee and the Foundation Affiliation Oversight Committee. Once this process under Section 11.3 of the Integration and Affiliation Agreement is invoked, it shall be concluded and the decision of the Committees communicated to the health plan within 90 days.

- 14.9. At the conclusion of the process described in Section 11.3 of the Integration and Affiliation Agreement, a dissatisfied health plan may trigger arbitration, as set forth below, before an independent body. To trigger arbitration, a health plan must make a written request of Children's, UPMCHS or UPP, whichever is applicable.
- A. The arbitration panel will be an independent body made up of seven representatives. The Children's Foundation shall appoint three members; the Mayor of the City of Pittsburgh shall appoint one member; the Allegheny County Chief Executive shall appoint one member; and the Pittsburgh Regional Healthcare Initiative shall appoint two members.
- B. The health plans and UPMCHS, the pediatric specialists of UPP or Children's, whichever is applicable, shall each submit to the independent body their last contract offer and a statement of contract issues outlining those which have been agreed to and those which remain in dispute.
- C. The independent body may reject a request for arbitration if the disputed contract issues and terms exceed the agreed upon contract issues and terms and order the parties to engage in another 60 days of negotiation.
- D. The independent body may retain such experts or consultants, none of whom may have any connection or affiliation with the health plan, Children's, UPMCHS or the pediatric specialists of UPP, to

aid it in its deliberations. The cost of such experts or consultants shall be divided equally between the health plan on the one hand, and Children's, UPMCHS or the pediatric physicians of UPP on the other hand.

14.10. If during the course of the negotiation process outlined above, UPMCHS, Children's, the pediatric specialists of UPP, or the health plan has failed to propose a contract prior to arbitration, the arbitration panel shall impose the proposed terms of the party which did make a proposal. If both sides submit proposed contracts, the independent body shall inform UPMCHS, Children's, the pediatric physicians and the health plan of information the independent body believes would be helpful in making a decision. The independent body shall not prohibit the presentation to it for consideration of information by UPMCHS, Children's, the pediatric specialists of UPP, or the health plan, including but not limited, to the following:

- A. The current contract between the health plan and Children's or UPP.
- B. The historic reimbursement contract rates for Western Pennsylvania and Allegheny County.
- C. The rate of inflation as measured by the Medical Care Portion of the Consumer Price Index, since the current contract between the health plan and the provider was entered and the extent to which any price increases built into the contract were less than the rate of inflation.

- Dawn Taylor*
- D. Inflation factors in Western Pennsylvania and Allegheny County for healthcare and medical services.
- E. The average reimbursement rates for other children's hospitals ranked in the top five nationally by U.S. News & World Report, as collected and aggregated by the Children's Health Corporation of America, as adjusted for the difference in the cost of living for the Pittsburgh MSA as compared to the home MSA of each of the five hospitals.
- F. The costs incurred in providing services to Children's patients.
- G. The actuarial impact of a proposed contract or rates charged by the health plan and a comparison of these rates in the Service Area of Children's with health plan rates in other parts of the country.
- H. Whether a price proposed by the provider for Children's services or for services of the pediatric specialists of UPP would subsidize the UPMC Health Plan.
- I. The price paid by the health plan at similar children's hospitals.
- J. Whether a proposed risk contract puts UPMCHS at risk to provide additional care without additional compensation.
- K. The expected patient volume, which likely will result from the contract.

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14.11. The independent body shall not consider the extent to which a health plan is or is not purchasing other hospital or physician services from UPMCHS.

- 14.12. Once the arbitration process has been invoked, the independent body shall set rules for confidentiality, exchange and verification of information and procedures to insure the fairness for all involved.
- 14.13. The independent body may select either the health plan's contract or the contract of Children's, UPMCHS or the pediatric physicians of UPP, whichever is applicable, or impose contract terms it believes are reasonable. The parties are bound by the decision of the independent body.
- 14.14. Because of the important interests affected, the arbitration process shall commence within twenty (20) days after triggered by a health plan and shall not exceed three (3) days, and the independent body shall render its determination within seven (7) days after the conclusion of the review. The parties, by agreement, or the independent body, because of the complexity of the issues involved, may extend any of the time periods in this section, but the arbitration process shall take no more than ninety (90) days.
- 14.15. UPMCHS, Children's or the pediatric specialists of UPP and the health plans shall each bear the cost of their respective presentations to the independent body and shall each bear one-half of any other costs associated with the independent review.
- 14.16. During the above independent final review, if a health plan has a contract for Children's services and the pediatric specialists of UPP, they will continue to pay the reimbursement rates set forth in that contract. This

amount will be adjusted retroactively to reflect the actual pricing agreed to in the contract.

- 14.17. If a health plan has no contract for Children's services and the pediatric specialists of UPP, the health plan shall pay for all services by Children's or the pediatric specialists of UPP, for which payment has not been made, an amount equal to the average reimbursement rates for other children's hospitals ranked in the top five nationally by U.S. News & World Report, as collected and aggregated by the Children's Health Corporation of America, as adjusted for the difference in the cost of living for the Pittsburgh MSA as compared to the home MSA of each of the five hospitals. This amount will be adjusted retroactively to reflect the actual pricing agreed to in the contract.
- 14.18. If the amounts paid pursuant to paragraphs 14.16 and 14.17 are less than the amounts owed under the contract awarded as the result of arbitration, the health plan shall pay interest on the difference. If the amounts paid pursuant to paragraphs 14.16 and 14.17 are greater than the amounts owed under the contract awarded as the result of arbitration, UPMCHS, Children's or the pediatric specialists of UPP shall pay interest on the difference. For purposes of calculating interest due under this paragraph, the interest rate shall be the U.S. prime lending rate offered by Mellon Bank of Pittsburgh or its successor as of the date of the independent body's decision on arbitration.

14.19. It shall not be a violation of this agreement for UPMCHS to offer one contract which includes hospital and pediatric specialists of UPP, subject to the provisions of Section 19.

15. **Staff Privileges**

15.1. UPMCHS and Children's shall maintain the current medical staff at Children's Hospital using criteria as set forth in the current Children's medical staff bylaws and credentialing policy and as established by the Joint Commission on Accreditation of Health Care Organizations and consistent with practices and contractual obligations at Children's as of the date of this Final Order and any current or future regulatory requirements.

15.2. Employment by UPMCHS or participation in the UPMC Health Plan shall not be criteria for granting staff privileges at Children's.

15.3. UPMCHS and Children's shall not prohibit, as a condition of staff privileges at Children's, a physician from practicing at other facilities. UPMCHS and Children's may not engage in "economic credentialing" meaning that staff privileges at Children's are granted or conditioned on the amount of business or patients a physician brings or may bring to Children's, unless related to quality of care requirements.

16. **Nonexclusivity**

16.1. UPMCHS shall not enter into a provider contract with any health plan on terms which prohibit Children's from contracting with any other health plan for any services Children's offers.

- 16.2. UPMCHS shall not enter into a provider contract with any health plan on terms which prohibit the health plan from contracting with any other health care provider for pediatric hospital or physician services.
- 16.3. UPMCHS shall not prohibit pediatric physicians, who are members in any UPMC physician-hospital network, but who are not employees of UPP or UPMCHS, from participating in any other physician-hospital networks, health plans, or integrated delivery systems.
17. **Employment of Physicians** - UPMCHS shall give the Attorney General 30 days notice prior to the closing of any agreement to employ or acquire a pediatric primary care physician or group practice within Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland Counties. This obligation to give notice shall not arise if the employment or acquisition of a pediatric primary care physician will not increase the number of pediatric primary care physicians UPMCHS and Children's employs in counties listed in this paragraph beyond the number employed on the date of entry of this Final Order.
18. **Residency Programs** - UPMCHS and Children's shall continue to offer pediatric residency rotations to hospitals in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland Counties to the extent they currently do so.
19. **Non-Tying Provision**
- 19.1. UPMCHS shall not require an insurer, network or other payor to have a contract with any or all UPMCHS-owned facilities as a condition of having a contract for Children's services or the services of the pediatric specialists of UPP.

- 19.2. UPMCHS shall not require that an insurer, network or other payor agree not to contract with certain hospitals, health systems or other providers as a condition of having a contract for Children's services or the services of the pediatric specialists of UPP.
- 19.3. UPMCHS shall not require a hospital, health system or other provider to have a contract with the UPMC Health Plan in order for that hospital, health system or other provider to be able to refer patients to Children's.
- 19.4. UPMCHS shall not require that a hospital, health system or other provider agree not to contract with certain insurers, networks or other payors in order for that hospital, health system or other provider to be able to refer patients to Children's.

20. **Nondiscrimination**

- 20.1. UPMCHS shall not discriminate against a patient of Children's or the pediatric specialists of UPP from the Service Area of Children's based upon the location where the patient resides, the patient's health plan or the patient's choice of primary care physician.
- 20.2. UPMCHS shall not discriminate against health plans, physicians or other medical providers based on ownership or employment of health plans, physicians or other medical providers in the provision of medically necessary services, or the release of medical records or information about patients who receive treatment or services from Children's or the pediatric specialists at UPP.

21. **"Most Favored Nations" Provisions in Contracts With Health Plans -**

UPMCHS shall not enter into any provider contract for Children's services with any health plan on terms that include a "most favored nations clause." If there is an existing "most favored nations clause" in current Children's provider contracts, UPMCHS agrees not to renew or extend such contracts without deleting that clause. UPMCHS shall inform the Attorney General of the presence of a "most favored nations clause" in any existing Children's provider contract by providing a list of such contracts to the Attorney General not more than sixty (60) days from entry of this Final Order.

22. **Future Sales and Acquisitions of Hospital Assets -** UPMCHS shall not acquire

any hospital in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington or Westmoreland County, or permit any hospital in these counties to acquire UPMCHS, without providing written notice at least ninety (90) days prior to the date of closing consistent with the Commonwealth of Pennsylvania, Office of Attorney General, Review Protocol for Fundamental Change Transactions Affecting Health Care Nonprofits. UPMCHS agrees in regard to the above to waive the confidentiality protections under the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(h), the Antitrust Civil Process Act, 15 U.S.C. §§ 1311 ~~et seq~~ and any other applicable confidentiality provisions in effect as of the date of this Final Order, for the purpose of allowing the United States Department of Justice or the Federal Trade Commission and the Pennsylvania Office of Attorney General to share documents, information and analyses.

23. **Binding on Successors and Assigns** - The terms of this Final Order are binding on UPMCHS and Children's, their directors, officers, managers, employees, successors and assigns, including but not limited to, any person or entity to whom UPMCHS or Children's may be sold, leased or otherwise transferred, during the term of the Final Order. UPMCHS and Children's shall not permit any substantial part of UPMCHS and Children's to be acquired by any other entity unless that entity agrees in writing to be bound by the provisions of this Final Order.
24. **Transfer of Children's Functions to Another UPMCHS Facility** - If any clinical service currently provided at Children's as of the date of this Final Order is relocated from Children's to another UPMCHS facility, the terms of this Final Order shall apply to that clinical service.
25. **Complaint Procedure** - Any person, health care provider, health plan, or consumer of medical services, who wishes to report a possible violation of this Final Order shall send a written description of the alleged violation to the Chief Deputy Attorney General, Antitrust Section, Office of Attorney General, and the Chief Deputy Attorney General, Charitable Trusts & Organizations Section, 14th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120 and to UPMCHS's President, 200 Lothrop Street, Pittsburgh, PA 15213. UPMCHS shall respond in writing to the complainant and to the Attorney General within thirty (30) days from the receipt of any complaint. If the complaint is still unresolved, the Attorney General will attempt to negotiate a satisfactory resolution. If UPMCHS believes a complaint to be frivolous, it may so advise the Attorney General, and its obligations under this paragraph will be satisfied unless it is otherwise advised

by the Attorney General to respond more fully to the complaint. UPMCHS will cooperate with the Attorney General to attempt to resolve the complaint.

26. **Compliance** - If the Attorney General receives a complaint pursuant to paragraph 25 of this Final Order, upon reasonable notice during normal business hours, any duly authorized representative of the Attorney General shall be permitted:

A. access to all non-privileged books, ledgers, accounts, correspondence, memoranda, other records and documents relevant to the complaint, in the possession or under the control of UPMCHS, relating to any matters contained in this Final Order; and

B. to interview officers, managers or employees regarding any matters relevant to the complaint contained in this Final Order.

27. **Reimbursement of Expenses** - Upon entry of this Final Order, Children's and UPMCHS shall jointly pay \$50,000 to reimburse the Attorney General's costs incurred to conduct its investigation, which payment shall be used for future Public Protection Division purposes.

28. **Enforcement**

28.1. If the Attorney General believes that there has been a violation of this Final Order, UPMCHS shall be promptly notified thereof. The Attorney General shall thereafter permit UPMCHS a reasonable opportunity to cure any alleged violation without instituting legal action. If the alleged violation is not substantially cured by UPMCHS within sixty (60) days of the notification, the Attorney General may thereafter seek to undertake any remedial action deemed appropriate. This time period shall be extended in

circumstances where the sixty (60) day period is not sufficient time to cure the alleged violation.

28.2. If the Attorney General prevails, in any action or proceeding it brings to enforce this Final Order or otherwise arising out of or relating hereto, the Court shall award costs and expenses, including a reasonable sum for attorneys' fees.

29. **Legal Exposure** - No provision of this Final Order shall be interpreted or construed to require UPMCHS to take any action, or to prohibit UPMCHS from taking any action, if that requirement or prohibition would expose UPMCHS to significant risk of liability for any type of negligence (including negligent credentialing or negligence in making referrals) or malpractice.

30. **Notices** - All notices required by this Final Order shall be sent by certified or registered mail, return receipt requested, postage prepaid, or by hand delivery, to:

If to the Attorney General:

Chief Deputy Attorney General
Charitable Trusts & Organizations Section
Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120
and

Chief Deputy Attorney General
Antitrust Section
Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120

If to UPMCHS:

President, UPMCHS
200 Lothrop Street
Pittsburgh, PA 15213

cc to:

Senior Vice President and Counsel
UPMC Health System
Suite 11086, Forbes Tower
200 Lothrop Street
Pittsburgh, PA 15213-2582

31. **Averment of Truth** - UPMCHS and Children's aver that, to the best of their knowledge, the information they have provided to the Attorney General in connection with this Final Order is true, and that no material information has been intentionally withheld.
32. **Termination** - This Final Order shall expire on the twentieth (20th) anniversary of its date of entry if it has not terminated prior to that time as provided in Paragraph 33.
33. **Modification** - If either the Attorney General or UPMCHS believes that modification of this Final Order would be in the public interest, that party shall give notice to the other, and the parties shall attempt to agree on a modification. If the parties agree on a modification, they shall jointly petition the Court to modify the Final Order. If the parties cannot agree on a modification, the party seeking modification may petition the Court for modification and shall bear the burden of persuasion that the requested modification is in the public interest.
34. **Retention of Jurisdiction** - Unless this Final Order is terminated early pursuant to Paragraph 33, jurisdiction is retained by the Orphans Court Division of the

Court of Common Pleas of Allegheny County for twenty (20) years to enable any party to apply to this Court for such further orders and directions as may be necessary and appropriate for the interpretation, modification and enforcement of this Final Order.

35. **No Admission of Liability** - UPMCHS and Children's, desiring to resolve the Attorney General's concerns without trial or adjudication of any issue of fact or law, have consented to entry of this Final Order, which is not an admission of liability by UPMCHS or Children's as to any issue of fact or law and may not be offered or received into evidence in any action as an admission of liability.
36. **Condition Precedent** - This Final Order shall become null and void if the definitive agreement between UPMCHS, Children's and Children's Hospital of Pittsburgh Foundation dated September 5, 2001 is terminated, enjoined or otherwise not performed.

Dated this ____ day of October, 2001

COMMONWEALTH OF PENNSYLVANIA UPMC HEALTH SYSTEM

By: _____
D. Michael Fisher
Attorney General

(717) 783-2853

Alexis L. Barbieri
Executive Deputy Attorney General
Director, Public Protection Division

James A. Donahue, III
Chief Deputy Attorney General
Antitrust Section
(717) 787-4530

Mark A. Pacella
Chief Deputy Attorney General
Charitable Trusts and
Organizations Section
(717) 783-2853

Attorneys for the Commonwealth of
Pennsylvania, Office of Attorney
General, 14th Floor, Strawberry Square,
Harrisburg, PA 17120

By: _____
Jeffrey A. Romoff, President and Chief
Executive Officer

Attest:

CHILDREN'S HOSPITAL OF PITTSBURGH
and CHILDREN'S HOSPITAL OF
PITTSBURGH FOUNDATION

By: _____
Ronald L. Violi, President

Attest:

Wendelynn J. Newton, Esquire
Buchanan Ingersoll Professional Corporation
One Oxford Center, 20th Floor
301 Grant Street
Pittsburgh, PA 15219-1410
(412) 562-8932

Counsel for UPMCCHS, Children's Hospital of
Pittsburgh and Children's Hospital of Pittsburgh
Foundation

Edwin L. Klett, Esquire
Klett, Rooney Lieber & Schorling, P.C.
40th Floor, One Oxford Centre
Pittsburgh, PA 15219-6498
(412) 392-2178

Counsel for UPMCCHS

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

IN RE: CHILDREN'S HOSPITAL OF)
PITTSBURGH AND CHILDREN'S)
HOSPITAL OF PITTSBURGH) NO. 6425 of 2001
FOUNDATION)

Pennsylvania Nonprofit Corporations

FINAL ORDER

HONORABLE ROBERT A. KELLY

Copies Sent To:

Alexis L. Barbieri
Executive Deputy Attorney General
Director, Public Protection Division

James A. Donahue
Chief Deputy Attorney General
Antitrust Section

Mark A. Pacella
Chief Deputy Attorney General
Charitable Trusts & Organizations Section

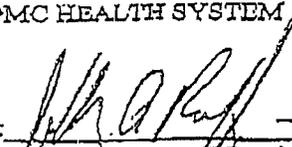
Office of Attorney General
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COMMONWEALTH OF PENNSYLVANIA UPMC HEALTH SYSTEM

By: _____
D. Michael Fisher
Attorney General

By:  _____
Jeffrey A. Romoff, President and Chief
Executive Officer

(717) 783-2853

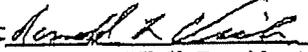
Attest:

Alexis L. Barbieri
Executive Deputy Attorney General
Director, Public Protection Division

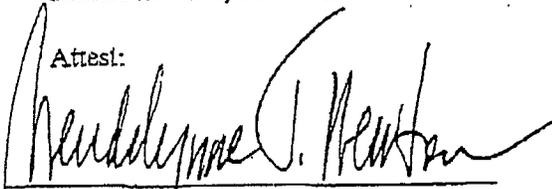
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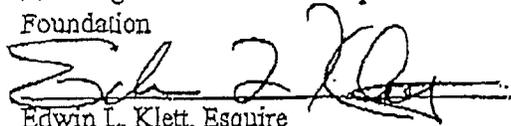
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Ronald L. Violi, President

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By: _____
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Attest:

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and CHILDREN'S HOSPITAL OF
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By: _____
Ronald L. Violi, President

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Pittsburgh, PA 15219-6498
(412) 392-2178

Counsel for UPMCHS

Judgment constituting any evidence against, or any admission by, any party regarding any such issue of fact or law. The essence of this Final Judgment is to enjoin Defendant UPMC from certain practices subsequent to the acquisition of the Acquired Parties in order to compensate for the loss of competition alleged in the Complaint;

Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

II. Jurisdiction

1. This Court has jurisdiction over the Defendants and subject matter of this action. The Complaint states a claim upon which relief may be granted against Defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18). This Court has jurisdiction over the state claims pursuant to 28 U.S.C. §1367(a).

III. Definitions

As used in this Final Order:

2. "Acquire" means to purchase the whole or the majority of the assets, stock, equity, capital or other interest of a corporation or other business entity or to receive the right or ability to designate or otherwise control the majority of directors or trustees of a corporation or other business entity.

3. "Acquired Party" or "Acquired Parties" means Defendants The Mercy Hospital of Pittsburgh, Mercy Primary Care, Inc., Emergency Medicine Association of Pittsburgh, Mercy Physician Group, and Mercy Neurosurgery Group.

4. "Catholic Health East" ("CHE") means the not-for-profit, tax-exempt Corporation based in Newtown Square, Pennsylvania, which is the parent corporation of a multi-institutional non-

profit Catholic health system that includes a number of acute care hospitals and a network of other Health-Care Providers located in eleven eastern states extending from Maine to Florida, and which includes Pittsburgh Mercy Health System, Inc. ("PMHS") and Mercy Hospital of Pittsburgh ("MHP"). CHE is a corporation organized under the laws of the Commonwealth of Pennsylvania, having its principal address at 14 Campus Boulevard, Newtown Square, PA 19073.

5. "Closing" means the satisfaction of all conditions and occurrence of all events necessary to transfer control of the Acquired Parties to UPMC.

6. "Geographic Market," for purposes of this Final Order, but without constituting Defendants' agreement that the same is a relevant geographic market for antitrust purposes, means Counties of Allegheny, Beaver, Butler, Fayette, Washington and Westmoreland.

7. "Health-Care Provider" means hospitals, laboratories, physicians, physician networks and other health care professionals.

8. "Health Plan" means any type of organized health-service purchasing or third-party payment program, including, but not limited to, health insurance and managed-care plans, whether offered by government, for-profit or non-profit, third-party payors, Health-Care Providers or any other entity.

9. "Hospital" means a health care facility, licensed as a hospital, having a duly-organized governing body with overall administrative and professional responsibility and an organized professional staff that provides 24-hour inpatient care, that may also provide outpatient services, and that has as a primary function the provision of inpatient services for medical diagnosis, treatment and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

10. "Inflation Index" means the FY 2002-based Medicare Hospital Inpatient PPS market basket index published annually by the Centers for Medicaid and Medicare Services.

11. "The Mercy Hospital of Pittsburgh" ("MHP") means the not-for-profit, tax-exempt Health-Care Provider based in Pittsburgh, Pennsylvania. MHP is a tertiary acute care hospital located in the City of Pittsburgh, and is the largest component of the PMHS System. MHP is a major provider of health care to the poor and underserved. MHP is a corporation organized under the laws of the Commonwealth of Pennsylvania, having its principal address at 1400 Locust Street, Pittsburgh, PA 15219.

12. "MHP Payor Contract" means a contract between Mercy and a Health Plan for the furnishing of inpatient and/or outpatient health care services at Mercy to Health Plan members, and that is in effect immediately prior to the Closing.

13. "MHP Specialty Services" means the following services provided at Mercy or, under the circumstances described in Paragraph 35, at another UPMC Hospital: Burn Treatment, Level I Trauma, Obstetrical Services, and Gynecological Oncology Services, and MHP's Breast Clinic. For purposes of this definition, "MHP's Breast Clinic" refers to the following services: Screening Mammography (CPT Code 76092); Diagnostic Mammography (CPT Codes 76090, 76091, and 76096); Stereotactic Breast Imaging and Biopsy (CPT Code 76095); MRI of Breast (CPT Codes 76093 and 76094), and Digital Bone Densitometry (CPT Code 78350); and X-ray of Mammary Ducts (CPT Codes 76086 and 76088).

14. "Most Favored Nations Clause" ("MFN") means any written or unwritten agreement between a provider and a Health Plan that allows the Health Plan to receive the benefit of a better payment rate, term or condition that the provider gives to another Health Plan.

15. "Pittsburgh Mercy Health System, Inc." ("PHMS") means the not-for-profit, tax-exempt Health-Care Provider based in Pittsburgh, Pennsylvania, including its subsidiaries and sponsored by the Sisters of Mercy of the Americas, Regional Community of Pittsburgh. PHMS is part of the CHE system and serves as the parent corporation of a multi-institutional local Catholic health system that operates in Southwestern Pennsylvania. PMHS is the parent corporation of the Acquired Parties. PMHS is a corporation organized under the laws of the Commonwealth of Pennsylvania, having its principal address at 1400 Locust Street, Pittsburgh, PA 15219.

16. "Unreasonably Terminate" means to terminate for any reason other than cause.

17. "UPMC Health Plan" means the Health Plan owned by UPMC which is licensed by the Pennsylvania Department of Insurance.

18. "UPMC Health System" d/b/a University of Pittsburgh Medical Center ("UPMC") means the not-for-profit, tax-exempt corporation organized under the laws of the Commonwealth of Pennsylvania having its principal address at 200 Lothrop Street, Pittsburgh, PA 15213. UPMC is the corporate parent of the UPMC Hospitals, UPMC Health Plan, and other Health-Care Providers throughout Western Pennsylvania.

19. "UPMC Hospitals" means the Hospitals operated by the following UPMC subsidiaries: UPMC Presbyterian-Shadyside, Children's Hospital of Pittsburgh of UPMC, Magee Women's Hospital of UPMC, UPMC Braddock, UPMC McKeesport, UPMC Passavant, UPMC South Side, UPMC St. Margaret, UPMC Bedford Memorial, UPMC Horizon, and UPMC Northwest, as well as (a) UPMC Mercy, as defined herein and (b) any other Hospital acquired by UPMC during the term of this Final Order.

20. "UPMC Mercy" means MHP subsequent to the Closing.

IV. Terms

From and after the Closing, for the period set forth below, UPMC, CHE and PMHS shall comply with the following to the extent the same are applicable to each of them:

21. **Good Faith Negotiations Between UPMC and Health Plans**

21.1. UPMC shall negotiate in good faith concerning Health Plan contracts for inpatient and outpatient hospital services at UPMC Mercy.

21.2. UPMC shall not Unreasonably Terminate any MHP Payor Contract prior to the end of the term in effect as of the date hereof or such date as extended pursuant to Paragraph 21.3 of this Order. Provided, however, that UPMC shall not be in violation of this Final Order and shall have no further obligation to a Health Plan under this paragraph in the event that the consent of the Health Plan is necessary to assign such MHP Payor Contract to UPMC and such consent is not given. Renewals of MHP Payor Contracts are subject to Paragraphs 21.5 through 21.16 hereof.

21.3. UPMC shall offer to each Health Plan that is party to an MHP Payor Contract the opportunity to extend such Contract to a date that is eight (8) years from the date of this Final Order, provided: (a) the Health Plan must agree that on each Contract anniversary date, if such contract does not contain a methodology for adjusting rates over time, the rates of payment under such Contract will be increased by the annual increase in the Inflation Index; and (b) the Health Plan must elect such extension within 30 days of UPMC's offer. UPMC shall extend such contract if its offer is accepted.

21.4. In the event UPMC relocates or consolidates the provision of an MHP Specialty Service at another UPMC Hospital, UPMC shall honor the terms of each MHP

Payor Contract for the affected MHP Specialty Service at the UPMC Hospital to which the affected Service is transferred or consolidated (the "Transferee Hospital"). For the purposes of this Paragraph 21.4:

- A. Subject to the exceptions stated in Paragraph B, an MHP Specialty Service will be deemed "relocated" or "consolidated" if: (i) UPMC Mercy no longer routinely admits patients to that service (or, in the case of the Trauma Center, no longer accepts EMS transports) and (ii) the same service continues to be provided at another UPMC Hospital. In such case, the Transferee Hospital shall be deemed to be UPMC Presbyterian-Shadyside, UPMC Magee or Children's Hospital of Pittsburgh, or if the service is not available at any of those hospitals, the UPMC Hospital most geographically proximate to UPMC Mercy at which the discontinued MHP Specialty Service is provided.
- B. Notwithstanding any of the foregoing: (i) UPMC shall not be deemed to have relocated or consolidated an MHP Specialty Service in the event that UPMC's election to discontinue the relevant Service follows changes in federal or state law or implementing regulations that render the continuation of the MHP Specialty Service economically unfeasible; and (ii) UPMC shall have no obligation to a Health Plan under this Paragraph 21.4 if, pursuant to an offer by UPMC, the Health Plan declines to amend its contract to substitute the UPMC Hospital to which the MHP Specialty Service has been

transferred, or conditions such amendment on the UPMC Hospital's agreement to additional terms or conditions not present in the existing agreement and not reasonably related to making provision for payment for the relocated MHP Specialty Service at the Transferee Hospital.

21.5. Any Health Plan licensed by the Pennsylvania Insurance Department to serve Allegheny County, Pennsylvania, and which has at least 50,000 covered lives nationwide, or any Health Plan which has a contract with PMHS or MHP in effect on the date that this Final Order is entered seeking a contract for MHP Specialty Services, may at its option, agree to participate in the two-step contract resolution provisions of this Final Order contained in Paragraphs 21.5 to 21.16, by opting in, as set forth in Paragraph 21.6.

- A. **First Step** - period of good faith negotiations. If no contract is reached during the period;
- B. **Second Step** - the Health Plan may request binding arbitration as outlined in Paragraphs 21.5 to 21.16.

21.6. A Health Plan must give written notice to UPMC Mercy of its agreement to opt in and utilize the contract resolution provisions of this Final Order at least ninety (90) days prior to the expiration of its existing contract with UPMC Mercy. If a Health Plan does not have an existing contract with UPMC Mercy, the Health Plan must give such notice within thirty (30) days after it has notified UPMC Mercy, in writing, of its interest in a contract for services at UPMC Mercy. A failure to opt in to this contract resolution provision is deemed an opt-out.

21.7. As the First Step, a Health Plan shall negotiate in good faith toward a contract for UPMC Mercy's inpatient and outpatient hospital services for at least ninety (90) days. At the conclusion of the ninety (90) day negotiation period, the Health Plan may trigger binding arbitration before an independent body and must do so within thirty (30) days after the conclusion of good faith negotiations; provided, however, that if requested to do so by UPMC, the Health Plan must agree to segregate (subject to the conditions and limitation of this Final Order) the negotiation of a UPMC Mercy contract from the negotiation of a contract for the services of any other UPMC Health Care Provider, such that this Final Order will not require UPMC to arbitrate an agreement for any other UPMC Health Care Provider.

21.8. A Health Plan must make a written request to UPMC in order to trigger binding arbitration.

- A. The arbitration panel will be an independent body made up of five representatives. A representative or his or her employer shall have none of the following relationships, currently or within the past five years, with UPMC, the Health Plan or Highmark, Inc.: employment, board membership, staff privileges, consultant or advisor. The Sisters of Mercy shall appoint one member; the Pittsburgh Chamber of Commerce shall appoint one member from an employer with less than 100 employees; the Pittsburgh Business Group on Health shall appoint one member from an employer with more than 100 employees; UPMC shall appoint one member and the Health Plan shall appoint one member.

- B. The Health Plan and UPMC shall each submit to the independent body its last contract offer and a statement of contract issues outlining those which have been agreed to and those which remain in dispute.
- C. The independent body may reject a request for arbitration if the disputed contract issues and terms exceed the agreed upon contract issues and terms and order the parties to engage in another sixty (60) days of negotiation.
- D. The independent body may retain such experts or consultants, none of whom have any of the following relationships, currently or within the past five years, with either UPMC, Highmark, Inc. or the Health Plan: Employment, board membership, staff privileges, consultant or advisor, to aid it in its deliberations. The cost of such experts or consultants shall be divided equally between the Health Plan on the one hand and UPMC on the other hand.

21.9. If, during the course of the negotiation process outlined above, UPMC or the Health Plan has failed to propose material contract terms prior to arbitration, the arbitration panel shall impose the proposed terms of the party which did make a proposal. If both sides submit proposed contracts, the independent body shall inform UPMC and the Health Plan of information the independent body believes would be helpful in making a decision. The independent body shall not prohibit the presentation to it for consideration of information by UPMC or the Health Plan but must consider the following:

- A. The existing contract, if any between the Health Plan and MHP or UPMC Mercy.
- B. Prices paid by the Health Plan for comparable services at Western Pennsylvania Hospital, Allegheny General Hospital, the Hospital of the University of Pennsylvania, Temple University Hospital, and Thomas Jefferson University Hospital.
- C. The weighted average rates of the hospitals identified in Paragraph 21.9B. above for all payors, separately for each product line (commercial, Medicare managed care and/or Medicaid managed care) for which the Health Plan is seeking an agreement with UPMC Mercy.
- D. The costs incurred in providing services to UPMC Mercy's patients.
- E. The rate of increase or decrease in the median family income for Allegheny County as measured by the United States Department of Labor, Bureau of Labor Statistics.
- F. The rate of inflation as measured by the Inflation Index, and (i) the extent to which any price increases under the existing contract between the Health Plan and MHP (or UPMC Mercy, as applicable) were commensurate with the rate of inflation and (ii) the extent to which the Health Plan's premium increases, if any, were commensurate with the rate of inflation.

- G. The rate of increase, if any, in appropriations for Managed Care Organizations participating in Pennsylvania's Medical Assistance program for the Department of Public Welfare, in the case of a Medicaid Managed Care Organization participant in this arbitration process.
- H. The actuarial impact of a proposed contract or rates paid by the Health Plan and a comparison of these rates in Pennsylvania with health plan rates in other parts of the country.
- I. The expected patient volume which likely will result from the contract.
- J. The independent body shall not consider the extent to which a Health Plan is or is not purchasing other hospital or physician services from UPMC.

21.10. Once the arbitration process has been invoked, the independent body shall set rules for confidentiality, exchange and verification of information and procedures to ensure the fairness for all involved and the confidentiality of the process and outcome. In general, the Health Plan and UPMC may submit confidential, competitively-sensitive information. Therefore, the independent body should ensure that it and any consultants it retains do not disclose this information to other Health Plans or to other hospitals.

21.11. The independent body may select either the Health Plan's contract terms or the contract terms of UPMC, whichever is applicable, or in the event the independent body does not believe either terms are reasonable, it may impose contract terms

it believes are reasonable; provided that such terms shall not be less than the terms proposed by the Health Plan nor greater than the terms proposed by UPMC. The parties are bound by the decision of the independent body.

21.12. Because of the important interests affected, the independent body shall commence the arbitration process within twenty (20) days after it is triggered by written request from a Health Plan. It shall hold an arbitration hearing, not to exceed three (3) days, within sixty (60) days of the commencement of the arbitration process. The independent body shall render its determination within seven (7) days after the conclusion of the hearing. The parties, by agreement, or the independent body, because of the complexity of the issues involved, may extend any of the time periods in this section, but the arbitration process shall take no more than ninety (90) days from its commencement.

21.13. UPMC and the Health Plan shall each bear the cost of their respective presentations to the independent body and shall each bear one-half of any other costs associated with the independent review.

21.14. During the above arbitration process, if a Health Plan has a contract for UPMC Mercy's services, including services provided pursuant to a contract originally executed by MHP, it will continue to pay the reimbursement rates set forth in that contract. This amount will be adjusted retroactively to reflect the actual pricing determined by the independent body.

21.15. If a Health Plan has no contract for UPMC Mercy's services, the Health Plan shall pay for all services by UPMC Mercy, for which payment has not been

made, an amount equal to rates proposed in its contract. This amount will be adjusted retroactively to reflect the actual pricing determined by the independent body.

21.16. If the amounts paid pursuant to Paragraphs 21.14 and 21.15 are less than the amounts owed under the contract awarded as the result of arbitration, the Health Plan shall pay interest on the difference. If the amounts paid pursuant to Paragraphs 21.14 and 21.15 are greater than the amounts owed under the contract awarded as the result of arbitration, UPMC Mercy shall pay interest on the difference. For purposes of calculating interest due under this paragraph, the interest rate shall be the U.S. prime lending rate offered by PNC Bank or its successor as of the date of the independent body's decision on arbitration.

22. **Nondiscriminatory Access to UPMC Mercy: Charity Care**

22.1. UPMC Mercy and (to the extent within the control of UPMC Mercy) the physicians who practice full-time at UPMC Mercy shall remain accessible to persons in the Geographic Market. UPMC Mercy will continue to provide health care services to the poor, underinsured and uninsured at the MHP campus in such amounts that are not less than those historically provided at MHP and such amounts of charity care shall not be less than three percent of total actual hospital operating expenses valued using the methodology for valuing charity care established by the Catholic Health Association of the United States.

22.2. UPMC Mercy shall not discriminate in the provision of services or in the release of medical records or information about patients on the basis of the identity or affiliation of a patient's primary care or specialty physician, the patient's Health Plan or the patient's utilization of non-UPMC Health Care Providers; provided, however, that this provision shall not be understood to (a) require UPMC to provide privileges or credentials to

any physician who otherwise does not qualify for privileges and credentials in accordance with Paragraph 23 or (b) require UPMC to contract with any Health Plan except as otherwise specifically required by this Final Order.

22.3. If persons who reside in the Geographic Market and obtain MHP Specialty Services from UPMC Mercy are covered by a Health Plan in which UPMC Mercy does not participate, UPMC Mercy shall not balance bill such patients for the difference between the charges for such Specialty Services and the payment made by the patient's Health Plan, except for any cost-sharing amounts that the patient would have paid if UPMC Mercy were a participating provider in the patient's Health Plan. This paragraph shall not apply to payments to be made to physicians practicing at UPMC Mercy unless they are employed by UPMC Mercy.

22.4. Whenever a conflict arises over the meaning of this Final Order, it shall be interpreted to mean that UPMC Mercy will continue to be accessible, in the same manner and to the same extent it historically has been accessible to persons residing in the Geographic Area for medically necessary health services.

23. **Staff Privileges**

23.1. UPMC Mercy shall maintain an open medical staff for all qualified physicians in the Geographic Market as set forth in the current MHP medical staff bylaws and credentialing standards, and consistent with practices and contractual obligations at MHP prior to the Closing. Specifically, UPMC Mercy may continue exclusive contracting relationships, as it may deem necessary or desirable, for physician services at UPMC Mercy in the specialties of radiology, pathology, anesthesiology and emergency medicine.

23.2. Employment by UPMC or participation in the UPMC Health Plan shall not be criteria for granting staff privileges at UPMC Mercy, except with respect to the contractual obligations set forth in Paragraph 23.1 above.

23.3. UPMC shall not condition of staff privileges at any UPMC Hospital in the Allegheny County on a physician's agreement not to practice at other hospitals in Allegheny County, except with respect to the contractual obligations set forth in Paragraph 23.1 above. UPMC shall not grant or deny staff privileges at any UPMC Hospital in Allegheny County on the basis of the amount of business or patients a physician brings or may bring to UPMC Mercy unless related to quality of care requirements: provided that this sentence shall not apply with respect to any physician who is employed by an entity that owns, is owned by, or is owned in common with a hospital (including a UPMC Hospital) located in the Geographic Market. Further, this paragraph shall not be construed to limit or change requirements for faculty appointment at any UPMC teaching hospital. .

24. **Operating Room Scheduling** - UPMC shall ensure that physicians and physician practices historically associated with MHP have access to operating room time at UPMC Mercy on a nondiscriminatory basis, taking into account the physician's or group practice's historic and current level of utilization of MHP's operating rooms.

25. **Referrals and Transfers**

25.1. UPMC shall not require its employed physicians to refer patients to a UPMC Hospital in situations where the patient is covered by a Health Plan that does not participate with such UPMC Hospital or otherwise expresses a preference to be referred to a non-UPMC Hospital.

25.2. UPMC Mercy shall not refuse to transfer a patient, whether for diagnosis or treatment, to a non-UPMC Hospital or Health-Care Provider if such transfer is requested by the patient, the patient's representative when such representative is authorized to make care decisions for a patient, or the patient's physician; provided that the patient is stable and that the transfer is medically appropriate and legally permissible.

25.3. In the event a patient in need of transfer is covered by a Health Plan with which the proposed destination UPMC Hospital does not contract, UPMC Mercy shall transfer the patient to a participating non-UPMC facility in preference to the non-participating UPMC Hospital (provided that the patient is stable and that the transfer is medically appropriate and legally permissible) unless (i) the patient or the patient's representative expresses a contrary preference after having been informed of the financial consequences of such a decision or (ii) otherwise approved by the patient's Health Plan.

25.4. Nothing in this Paragraph 25 shall require any UPMC Hospital to make any inquiry concerning health insurance coverage in a manner that would violate the federal Emergency Medical Treatment and Active Labor Act ("EMTALA").

26. **Health Plan Contracting**

26.1. UPMC shall not enter into any Health Plan contract that expressly limits a UPMC Health Care Provider's ability to contract with another Health Plan or that expressly limits the Health Plan's ability to contract with non-UPMC Health Care Providers. Without limitation, UPMC shall not condition a contract for the services of UPMC Mercy on the Health Plan's agreement not to contract with certain hospitals, health systems or other providers.

26.2. UPMC may not prohibit physicians who are members of any UPMC-affiliated physician-hospital network from participating in any other physician-hospital networks, Health Plans or integrated delivery systems; provided, however, that this limitation shall not apply to physicians who are employees of UPMC.

26.3. UPMC shall not require a Health Plan to have a contract with UPMC for the services of all or certain UPMC Health Care Providers as a condition of having a contract for the services of UPMC Mercy.

26.4. UPMC shall not require a hospital, health system or other provider to have a contract with the UPMC Health Plan in order for that hospital, health system or other provider to be able to refer patients to UPMC Mercy.

26.5. UPMC shall not require that a hospital, health system or other provider agree not to contract with certain Health Plans in order for the hospital, health system or other provider to be able to refer patients to UPMC.

26.6. UPMC shall not enter into any agreement with any Health Plan (including UPMC Health Plan) that includes a MFN to the benefit of UPMC or its UPMC Hospitals or any Health Plan. UPMC may not renew or extend any agreement without abandoning any term or provision which constitutes an MFN. UPMC shall inform the Attorney General of the presence of a MFN in any existing agreement of UPMC, by providing a list of such agreements to the Attorney General not more than sixty (60) days from entry of this Final Order.

27. **UPMC Health Plan** – UPMC shall cause UPMC Health Plan to extend the term of the agreement between UPMC Health Plan and MHP, as that agreement existed on April 1,

2007, to April 30, 2012, and MHP shall accept such extension. During that period, there shall be no change in the rates payable to MHP (UPMC Mercy), except that if such contract does not contain a methodology for adjusting rates over time, the rates of payment under such Contract will be increased by the annual increase in the Inflation Index.

27.1. With respect to UPMC Health Plan, UPMC will participate in this plan only on nonexclusive terms. Further, UPMC will not cross-subsidize UPMC Health Plan through the operating revenues of UPMC in a manner that would facilitate predatory pricing or other anticompetitive conduct. UPMC shall disclose, as part of its annual report pursuant to Paragraph 33, all funds that were provided by UPMC to UPMC Health Plan during the preceding fiscal year.

28. **Ancillary Services** – UPMC shall not require any health care purchaser or patient to purchase durable medical equipment, nonemergency transportation or home health care services from a Health-Care Provider affiliated with UPMC.

29. **Certain PMHS Assets** – CHE, PHMS, MHP, and UPMC hereby affirm that neither the ownership of Mercy Life Center Corporation d/b/a Mercy Behavioral Health (“Mercy Behavioral Health”), a subsidiary of PMHS, nor any of the business of Mercy Behavioral Health will be transferred to UPMC in connection with the transactions described in this Final Order, and no such transfer shall occur during the term of this Final Order without the prior approval of the Attorney General.

30. **Release of MHP Physicians**

30.1. For a period of ninety (90) days from the Closing, UPMC shall permit any Physician employed by an Acquired Party (a) to terminate his or her employment or (b) to request a renegotiation of his or her employment agreement.

30.2. With respect to each Physician who elects to terminate employment, whether initially or in consequence of unsuccessful renegotiation, UPMC shall permit such termination to occur without financial or other penalty and without restrictions on such Physician's future practice location or employer, and UPMC shall waive any inconsistent covenants in such Physician's existing employment agreement. However, UPMC may require the Physician to observe any provision of his or her employment contract concerning notice of termination (but not exceeding 60 days notice) and the confidentiality of proprietary information.

31. Mercy Behavioral Health

31.1 In any contract for any service with Mercy Behavioral Health, UPMC shall not require Mercy Behavioral Health to use any UPMC facility for inpatient Behavioral Health care. In the event Mercy Behavioral Health has a contract with any other non-UPMC hospital for inpatient Behavioral Health care, UPMC shall not refuse to provide services or terminate any contract with Mercy Behavioral Health or increase prices for any service it provides Mercy Behavioral Health.

32. Future Sales and Acquisitions in the Geographic Market

32.1. UPMC shall not, directly or indirectly, acquire any hospital in the Geographic Market, or permit any hospital in the Geographic Market to acquire a UPMC Member Hospital, without providing written notice to the Attorney General at least ninety (90) days prior to the date of closing consistent with the Commonwealth of Pennsylvania, Office of Attorney General Review Protocol for Fundamental Change Transactions Affecting Health Care Nonprofits.

32.2. UPMC agrees, in regard to Paragraph 32.1 above, to waive the confidentiality protections under the Hart-Scott-Rodino Act, 15 U.S.C. § 18a (h), the Antitrust Civil Process Act, 15 U.S.C. §§ 1311 et seq and any other applicable confidentiality provisions in effect as of the date of this Final Order, for the purpose of allowing the United States Department of Justice or the Federal Trade Commission and the Pennsylvania Office of Attorney General to share documents, information and analyses.

33. **Annual Report** – Within 120 days of the closing of each fiscal year, UPMC shall submit to the Attorney General an Annual Report on compliance with all of the provisions of this Final Order. This Annual Report shall be public provided that UPMC proprietary information shall be redacted from the public version. UPMC shall not redact any part of this report that pertains to charity care.

34. **Binding on Successors and Assigns** - The terms of this Final Order are binding on UPMC, its directors, officers, managers, employees (in their respective capacities as such), and to its successors and assigns, including, but not limited to, any person or entity to whom UPMC may be sold, leased or otherwise transferred, during the term of the Final Order. UPMC shall not permit any substantial part of UPMC to be acquired by any other entity unless that entity agrees in writing to be bound by the provisions of this Final Order.

35. **Transfer of MHP's Functions to Another UPMC Facility** – If any of the MHP Specialty Services are transferred to or consolidated at one or more UPMC Hospitals, the terms of this Final Order shall apply to those Specialty Services at the UPMC Hospitals where such Specialty Services are transferred or consolidated.

36. **Complaint Procedure** - Any person, Health-Care Provider, Health Plan or consumer of medical services who wishes to report a possible violation of this Final Order shall send a written

description of the alleged violation to the Chief Deputy Attorney General, Antitrust Section, Office of Attorney General, 14th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120. The Office of Attorney General shall transmit the complaint, keeping confidential the name of the complainant, if necessary, to UPMC. UPMC shall respond in writing to the complainant and to the Attorney General within thirty (30) days from the receipt of any complaint. If the complaint is still unresolved, the Attorney General will attempt to negotiate a satisfactory resolution. If UPMC believes a complaint to be frivolous, they may so advise the Attorney General and their obligations under this paragraph will be satisfied unless they are otherwise advised by the Attorney General to respond more fully to the complaint. UPMC will cooperate with the Attorney General to attempt to resolve the complaint.

37. **Compliance** - To determine or secure compliance with this Final Order or if the Attorney General receives a complaint pursuant to Paragraph 36 of this Final Order, upon reasonable notice during normal business hours, any duly authorized representative of the Attorney General shall be permitted:

- A. access to all non-privileged books, ledgers, accounts, correspondence, memoranda, other records and documents, in the possession or under the control of UPMC, relating to any matters contained in this Final Order; and
- B. to interview officers, managers or employees of UPMC regarding any matters contained in this Final Order.

38. **Reimbursement of Expenses** - Upon entry of this Final Order, PMHS, MHP and UPMC shall pay a total of \$175,000.00 to reimburse the Attorney General's costs incurred to

conduct its investigation, which payment shall be used for future Public Protection Division purposes. The parties shall determine their proportionate shares of the payment.

39. Enforcement

39.1. If the Attorney General believes that there has been a violation of this Final Order, UPMC shall be promptly notified thereof. The Attorney General shall thereafter give UPMC a reasonable opportunity to cure any alleged violation without instituting legal action. If the alleged violation is not substantially cured by UPMC within sixty (60) days of the notification, the Attorney General may thereafter seek to undertake any remedial action deemed appropriate. This time period shall be extended in circumstances where the sixty (60) day period is not sufficient time to cure the alleged violation.

39.2. If the Attorney General prevails in any action or proceeding it brings to enforce this Final Order or otherwise arising out of or relating hereto, the Court shall award costs and expenses, including a reasonable sum for attorney's fees.

40. Limited Release - This Final Order releases UPMC, CHE, PMHS and MHP only for any claims the Attorney General may have in connection with UPMC's acquisition of MHP. All remedies, should other violations of the federal and state antitrust laws be found shall be available to the Attorney General and may include the seizure and divestiture of UPMC Mercy. Nothing in this Final Order shall prevent the Attorney General from investigating and prosecuting UPMC for any other alleged violations of Federal and State antitrust laws. Nothing in this Final Judgment shall authorize UPMC, its employees or subsidiaries or any physician employed by UPMC to engage in other conduct that would violate sections 1 or 2 of the Sherman Act. 15 U.S.C. §§ 1 or 2, or Pennsylvania common law doctrine against monopolies and unfair restraints of trade.

41. **Children's Hospital of Pittsburgh of UPMC** – No part of this Final Order shall affect or alter any provision in the Consent Decree between the Attorney General and UPMC filed in the Court of Common Pleas of Allegheny County, Pennsylvania, Orphan's Court Division, No. 6425 of 2001.

42. **Legal Exposure** - No provision of this Final Order shall be interpreted or construed to require UPMC to take any action or to prohibit UPMC from taking any action if that requirement or prohibition would expose UPMC to liability for negligence (including negligent credentialing or negligence in making referrals) or malpractice. Further, this Final Order or any reports required hereunder shall not be introduced as evidence and cannot be used for any purpose or in any proceeding by a third party.

43. **Notices** - All notices required by this Final Order shall be sent by certified or registered mail, return receipt requested, postage prepaid or by hand delivery to:

If to the Attorney General:

Chief Deputy Attorney General
Antitrust Section
Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120

If to UPMC:

Chief Executive Officer
University of Pittsburgh Medical Center
200 Lothrop Street
Pittsburgh, PA 15213

Copies to:

Honorable Robert Cindrich, Chief Legal Officer & General Counsel
University of Pittsburgh Medical Center
200 Lothrop Street
Pittsburgh, PA 15213

Robert W. McCann
Drinker Biddle & Reath, LLP
1301 K Street N.W.
Suite 900, East Tower
Washington, DC 20005

If to CHE or PMHS:

Chief Executive Officer
Catholic Health East
14 Campus Boulevard, Suite 300
Newtown Square, PA 19073-3277

Copies to:

Michael C. Hemsley
Vice President Legal Services
and General Counsel
Catholic Health System
14 Campus Boulevard, Suite 300
Newtown Square, PA 19073-3277

Wendelynn J. Newton, Esq.
Buchanan Ingersoll & Rooney PC
One Oxford Centre, 20th Floor
301 Grant Street
Pittsburgh, PA 15219-1410

44. **Averment of Truth** – CHE, PMHS, MHP and UPMC aver that, to the best of their knowledge, the information they have provided to the Attorney General in connection with this Final Order is true.

45. **Termination** - This Final Order shall expire on the eighth anniversary of its date of entry if it has not terminated prior to that time as provided in Paragraph 46.

46. **Modification** - If either the Attorney General or UPMC believes that modification of this Final Order would be in the public interest, that party shall give notice to the other and the parties shall attempt to agree on a modification. If the parties agree on a modification, they shall

jointly petition the Court to modify the Final Order. If the parties cannot agree on a modification, the party seeking modification may petition the Court for modification and shall bear the burden of persuasion that the requested modification is in the public interest.

47. **Retention of Jurisdiction** - Unless this Final Order is terminated early pursuant to Paragraph 46, jurisdiction is retained by the United States District Court for the Western District of Pennsylvania for eight (8) years to enable any party to apply to this Court for such further orders and directions as may be necessary and appropriate for the interpretation, modification and enforcement of this Final Order.

48. **No Admission of Liability** – CHE, PMHS, MHP and UPMC, desiring to resolve the Attorney General’s concerns without trial or adjudication of any issue of fact or law, have consented to entry of this Final Order, which is not an admission of liability by CHE, PMHS MHP and UPMC as to any issue of fact or law and may not be offered or received into evidence in any action as an admission of liability, whether arising before or after the transaction referenced herein.

49. **Condition Precedent** - This Final Order shall become null and void if the Acquired Parties are not acquired by UPMC pursuant to the Transfer Agreement being negotiated between CHE, PMHS, MHP and UPMC, or if the Transfer Agreement is terminated, enjoined or otherwise not performed.

50. **CHE, PMHS and MHP Obligations** – CHE, PMHS and MHP are agreeing to this Final Order solely to the extent that it dismisses this action and with respect to specific obligations of CHE, PMHS and MHP that are identified in this Final Order.

51. **Counterparts** – This Final Order may be executed in counterparts.

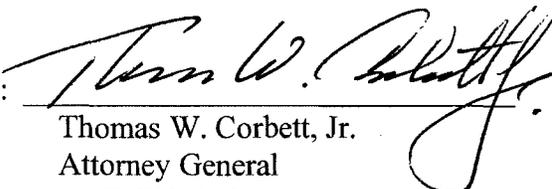
IV. PUBLIC INTEREST DETERMINATION

52. The Court, upon averment of the Commonwealth of Pennsylvania, finds that entry of this Final Judgment is in the public interest.

Dated this ____ day of May, 2007.

**COMMONWEALTH OF
PENNSYLVANIA**

UPMC HEALTH SYSTEM

By:  By:
Thomas W. Corbett, Jr.
Attorney General
(717) 787-3391

Honorable Robert Cindrich
Chief Legal Officer and General
Counsel
University of Pittsburgh Medical
Center
200 Lothrop Street
Pittsburgh, PA 15213

Alexis L. Barbieri
Executive Deputy Attorney General
Public Protection Division

James A. Donahue, III
Chief Deputy Attorney General
Antitrust Section
(717) 787-4530

Attest:

Jennifer A. Thomson
Deputy Attorney General
Antitrust Section

By:

Michele P. Jegasothy
Corporate Secretary

Attorneys for the Commonwealth
of Pennsylvania
Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120

By:

Robert W. McCann
Drinker Biddle & Reath
1301 K Street N.W.
Suite 900, East Tower
Washington, DC 20005
Counsel for UPMC

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Dated this ____ day of May, 2007.

**COMMONWEALTH OF
PENNSYLVANIA**

By: _____

Thomas W. Corbett, Jr.
Attorney General
(717) 787-3391

Alexis L. Barbieri
Executive Deputy Attorney General
Public Protection Division

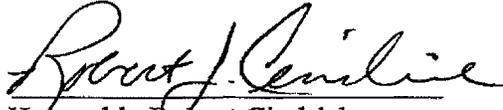
James A. Donahue, III
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Jennifer A. Thomson
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Attorneys for the Commonwealth
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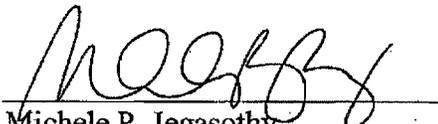
UPMC HEALTH SYSTEM

By: _____


Honorable Robert Cindrich
Chief Legal Officer and General
Counsel
University of Pittsburgh Medical
Center
200 Lothrop Street
Pittsburgh, PA 15213

Attest:

By: _____


Michele P. Jegasothy
Corporate Secretary

By: _____

Robert W. McCann
Drinker Biddle & Reath
1301 K Street N.W.
Suite 900, East Tower
Washington, DC 20005
Counsel for UPMC

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Dated this ____ day of May, 2007.

COMMONWEALTH OF PENNSYLVANIA

UPMC HEALTH SYSTEM

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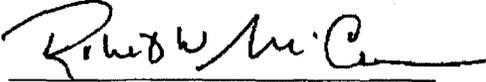
By: _____

Honorable Robert Cindrich
Chief Legal Officer and General
Counsel
University of Pittsburgh Medical
Center
200 Lothrop Street
Pittsburgh, PA 15213

Attest:

By: _____

Michele P. Jegasothy
Corporate Secretary

By: 

Robert W. McCann
Drinker Biddle & Reath
1301 K Street N.W.
Suite 900, East Tower
Washington, DC 20005
Counsel for UPMC

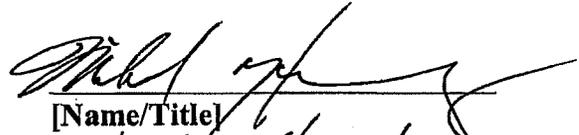
CATHOLIC HEALTH EAST



By:

Robert V. Stanek, President & CEO
Catholic Health East
14 Campus Boulevard, Suite 300
Newtown Square, PA 19073-3277

Attest:



[Name/Title]
Michael C. Hemsley
V.P. General Counsel &
Cap Secretary

**PITTSBURGH MERCY HEALTH SYSTEM,
INC**

By:

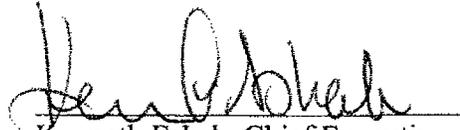
John R. McGinley, Jr.
Chairman of the Board
Pittsburgh Mercy Health System,
Inc.
1400 Locust Street
Pittsburgh, PA 15219

Attest:

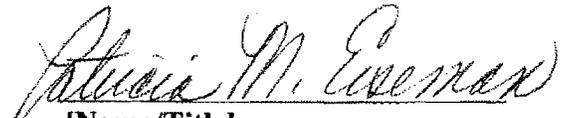
[Name/Title]

THE MERCY HOSPITAL OF PITTSBURGH

By:


Kenneth Eshak, Chief Executive
Officer
The Mercy Hospital of Pittsburgh
1400 Locust Street
Pittsburgh, PA 15219

Attest:


[Name/Title]
President, Secretary
Board of Trustees

By:

Wendelynn J. Newton, Esquire
Buchanan Ingersoll & Rooney PC
One Oxford Centre, 20th Floor
301 Grant Street
Pittsburgh, PA 15219-1410
(412) 562-8932

Counsel for CHE, PMHS and MHP

So Ordered:

Judge U.S.D.J.

THE MERCY HOSPITAL OF PITTSBURGH

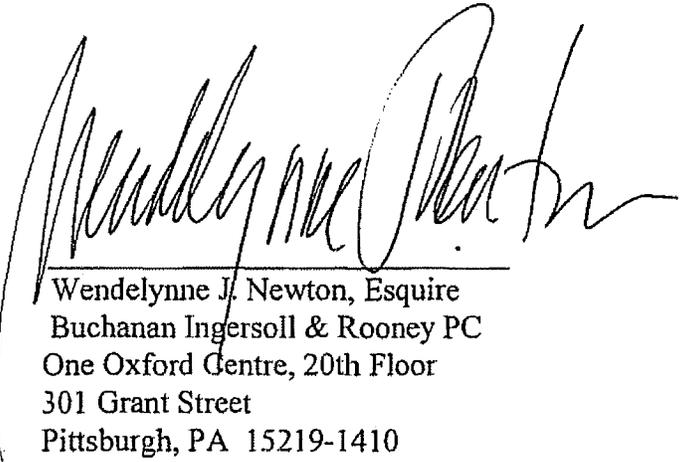
By:

Kenneth Eshak, Chief Executive
Officer
The Mercy Hospital of Pittsburgh
1400 Locust Street
Pittsburgh, PA 15219

Attest:

[Name/Title]

By:



Wendelynne J. Newton, Esquire
Buchanan Ingersoll & Rooney PC
One Oxford Centre, 20th Floor
301 Grant Street
Pittsburgh, PA 15219-1410
(412) 562-8932

Counsel for CHE, PMHS and MHP

So Ordered:

Judge U.S.D.J.

OAG052307-01 FINALORDER1024

CATHOLIC HEALTH EAST

By:

Robert V. Stanek, President & CEO
Catholic Health East
14 Campus Boulevard, Suite 300
Newtown Square, PA 19073-3277

Attest:

[Name/Title]

**PITTSBURGH MERCY HEALTH SYSTEM,
INC**

By:

John R. McGinley, Jr.
Chairman of the Board
Pittsburgh Mercy Health System,
Inc.
1400 Locust Street
Pittsburgh, PA 15219

Attest:

[Name/Title]

THE MERCY HOSPITAL OF PITTSBURGH

By:

Kenneth Eshak, Chief Executive
Officer
The Mercy Hospital of Pittsburgh
1400 Locust Street
Pittsburgh, PA 15219

Attest:

[Name/Title]

By:

Wendelynn J. Newton, Esquire
Buchanan Ingersoll & Rooney PC
One Oxford Centre, 20th Floor
301 Grant Street
Pittsburgh, PA 15219-1410
(412) 562-8932

Counsel for CHE, PMHS and MHP

So Ordered:

Judge U.S.D.J.

