

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :

Plaintiff, :

v. :

GEISINGER MEDICAL CENTER :
and SHAMOKIN AREA COMMUNITY HOSPITAL :

Defendants. :

344 MD 2011
No.:

FINAL ORDER

I. Introduction

Plaintiff, the Commonwealth of Pennsylvania, filed its Complaint on July 26, 2011, under the common law of the Commonwealth of Pennsylvania alleging that the proposed merger of Defendant, Shamokin Area Community Hospital ("SACH") into Defendant Geisinger Medical Center ("GMC"), a Pennsylvania non-profit hospital of which the Geisinger Health System Foundation, a Pennsylvania non-profit corporation, serves as sole corporate member, may substantially lessen competition in one or more relevant health care services markets. Defendants contest the allegations of the Complaint and wish to assure the Commonwealth and the communities they serve that such merger, if permitted to proceed, will occur in accordance with their respective missions and a commitment to the provision of high quality, affordable health care services to the community.

Plaintiff and Defendants, by their respective attorneys, have consented to the entry of this Final Order without trial or adjudication of any issue of fact or law, and without this Final Order

constituting any evidence against, or any admission by, any party regarding any such issue of fact or law. The essence of this Final Order is to enjoin Defendant GMC from certain practices subsequent to the merger of SACH into GMC 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 Defendants under the Common Law of Pennsylvania. This Court has jurisdiction over the claims pursuant to 42 PA. CONS. STAT. ANN. § 761.

III. Definitions

As used in this Final Order:

2. "Acute-Care 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.

3. "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.

4. "Acquired Party" or "Acquired Parties" means Defendant SACH.
5. "Closing" means the satisfaction of all conditions and occurrence of all events necessary to transfer control of the Acquired Parties to GMC.
6. "GC" means Geisinger Clinic, a multi-specialty group practice which is a non-profit corporation organized under the laws of the Commonwealth of Pennsylvania with its principal address at 100 North Academy Avenue, Danville, PA.
7. "GMC" means the Geisinger Medical Center, a non-profit hospital, organized under the laws of the Commonwealth of Pennsylvania, having its principal address at 100 North Academy Avenue, Danville, PA.
8. "Geisinger Health Plan" means the Geisinger Health Plan which is licensed by the Pennsylvania Department of Insurance and of which the sole corporate member is the Geisinger Health System Foundation, a non-profit corporation, organized under the laws of the Commonwealth of Pennsylvania with its principal address at 100 North Academy Avenue, Danville, PA.
9. "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 Northumberland County.
10. "Health-Care Provider" means hospitals, laboratories, physicians, physician networks and other health care professionals.
11. "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.

12. "Inflation Index" means the unadjusted FY 2010-based Medicare Inpatient Hospital PPS and Outpatient Hospital PPS Market Basket Updates published annually by the Centers for Medicaid and Medicare Services.

13. "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.

14. "SACH" means the Shamokin Area Community Hospital, a non-profit hospital, organized under the laws of the Commonwealth of Pennsylvania, having its principal address at 4200 Hospital Road, Coal Township, PA. SACH shall refer to this entity both pre and post-merger by GMC.

15. "SACH Medicare Advantage Contract" means a Medicare Advantage Plan contract between SACH and a Health Plan or the portion of a Health Plan's contract which relates to the Health Plan's Medicare Advantage members for the furnishing of inpatient and/or outpatient health care services at SACH to Health Plan Medicare Advantage members, and that is currently in effect.

IV. Terms

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

16. SACH's Medicare Advantage Contracts

16.1. GMC shall negotiate in good faith with Health Plans concerning Medicare Advantage contracts for inpatient and outpatient hospital services at SACH.

16.2. GMC shall offer to each Health Plan that is currently a party to a SACH Medicare Advantage Contract the opportunity to extend such Contract to a date that is three (3) years from the date of Closing, 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 GMC's offer. GMC shall extend such SACH contract if its offer is accepted.

17. Staff Privileges

17.1. GMC shall continue the medical staff privileges for all qualified physicians who currently have staff privileges at SACH, subject to such physicians complying with the Basic Qualifications for Membership, Article III, Section 3.2 and Affiliate Staff Qualifications, Article IV, Sections 4.3 and 4.4 of the Professional Bylaws of the Medical Staff of GMC ("GMC Medical Staff Bylaws") other than employment, which were voted on by the GMC medical staff on January 24, 2011, along with any subsequent amendments. These medical staff privileges given to qualified physicians who currently have staff privileges at SACH are full staff privileges comparable to those held by employed GC physicians on staff at GMC.

17.2. All such physicians, known in the revised GMC Medical Staff Bylaws as "SACH Affiliate Medical Staff," "Affiliate Medical Staff" or "Affiliate Staff" may add or employ additional physicians in their practices who shall also have the right to apply for privileges at SACH in accordance with the provisions of Article IV, Section 4.3-1 of the GMC Medical Staff Bylaws. The fact that a member of the current SACH medical staff or

prospective member of a practice with privileges at SACH is not employed by GC shall not be a reason for denying privileges so long as said physician meets the Basic Qualifications for Membership referred to above.

17.3. At the end of the initial two year term for appointment of Affiliate Staff, GMC shall not condition renewal of privileges on employment by GC.

17.4. In the event that the SACH campus is converted from an Acute-Care Hospital, it will either continue as a remote provider-based location where all physicians practicing there will have privileges at GMC's Danville campus; or if SACH does not continue as a remote provider-based location, GMC will agree to use its reasonable best efforts to facilitate a change to the medical staff by-laws to allow those physicians to continue their privileges at GMC's Danville campus.

17.5. GMC shall not condition SACH Affiliate Medical Staff privileges on a physician's agreement not to practice at other hospitals in Northumberland County.

18. Referrals and Transfers

18.1. GMC shall not require SACH Affiliate Medical Staff to refer patients to GMC in situations where the patient is covered by a Health Plan that does not participate with GMC or otherwise expresses a preference to be referred to a hospital other than GMC.

18.2. SACH shall not refuse to transfer a patient, whether for diagnosis or treatment, to a hospital other than GMC 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.

18.3. In the event a patient in need of transfer is covered by a Health Plan with which GMC does not contract, SACH shall transfer the patient to a participating hospital other than GMC (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.

18.4. Nothing in this Paragraph 18 shall require GMC to make any inquiry concerning health insurance coverage in a manner that would violate the federal Emergency Medical Treatment and Active Labor Act ("EMTALA").

19. Health Plan Contracting

19.1. GMC shall not condition a contract for the services of SACH on a Health Plan's agreement not to contract with certain hospitals, health systems or other providers.

19.2. GMC may not prohibit GMC Affiliate Medical Staff who are members of any GMC-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 GC.

19.3. GMC shall not require a Health Plan to have a contract with GMC for the services of all or certain GMC Health Care Providers as a condition of having a contract for the services of SACH.

19.4. GMC shall not require a hospital, health system or other provider to have a contract with the Geisinger Health Plan in order for that hospital, health system or other provider to be able to refer patients to SACH.

19.5. GMC 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 SACH.

19.6. GMC shall not enter into any agreement for SACH with a Health Plan (including a Geisinger Health Plan) that includes a MFN to the benefit of SACH or any Health Plan. GMC may not renew or extend any agreement for SACH without abandoning any term or provision which constitutes an MFN. GMC shall inform the Attorney General of the presence of a MFN in any existing agreement of SACH, by providing a list of such agreements to the Attorney General not more than sixty (60) days from the date of Closing.

20. Binding on Successors and Assigns - The terms of this Final Order are binding on GMC, 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 GMC may be sold, leased or otherwise transferred, during the term of the Final Order. GMC shall not permit any substantial part of GMC to be acquired by any other entity unless that entity agrees in writing to be bound by the provisions of this Final Order.

21. 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 GMC. GMC 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 GMC 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. GMC will cooperate with the Attorney General to attempt to resolve the complaint.

22. **Compliance** - To determine or secure compliance with this Final Order or if the Attorney General receives a complaint pursuant to Paragraph 21 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 GMC, relating to any matters contained in this Final Order; and
- B. to interview officers, managers or employees of GMC regarding any matters contained in this Final Order.

23. **Reimbursement of Expenses** - Upon entry of this Final Order, GMC and SACH shall pay a total of \$50,000.00 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.

24. **Enforcement**

24.1. If the Attorney General believes that there has been a violation of this Final Order, GMC shall be promptly notified thereof. The Attorney General shall thereafter give GMC a reasonable opportunity to cure any alleged violation without instituting legal action. If the alleged violation is not substantially cured by GMC 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.

24.2. 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.

25. **Limited Release** - This Final Order releases GMC and SACH only for any claims the Attorney General may have in connection with GMC's merger of SACH. 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 SACH. Nothing in this Final Order shall prevent the Attorney General from investigating and prosecuting GMC or SACH for any other alleged violations of Federal and State antitrust laws. Nothing in this Final Judgment shall authorize GMC or SACH, its employees or subsidiaries or any physician employed by GC or SACH to engage in other conduct that would violate sections 1 or 2 of the Sherman Act, 15 U.S.C. §§ 1 or 2, or the Pennsylvania common law doctrine against monopolies and unfair restraints of trade.

26. **Legal Exposure** - No provision of this Final Order shall be interpreted or construed to require GMC to take any action or to prohibit GMC from taking any action if that requirement or

prohibition would expose GMC to liability for negligence (including negligent credentialing or negligence in making referrals) or malpractice.

27. **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 GMC:

David J. Felicio, Esq.
Chief Legal Officer
Geisinger System Services
100 N. Academy Avenue
Danville, PA 17822-4031

Copies to:

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

If to SACH:

Daniel M. Mulholland, III, Esquire
Horty, Springer & Mattern, P.C.
4614 Fifth Avenue
Pittsburgh, PA 15213

28. **Averment of Truth** – GMC and SACH 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.

29. **Termination** - This Final Order shall expire on the fifth anniversary of the date of Closing if it has not terminated prior to that time as provided in Paragraph 30.

30. **Modification** - If either the Attorney General or GMC 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.

31. **Retention of Jurisdiction** - Unless this Final Order is terminated early pursuant to Paragraph 30, jurisdiction is retained by the Commonwealth Court of Pennsylvania for five (5) years from the date of Closing 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.

32. **No Admission of Liability** – GMC and SACH 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 GMC and SACH 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.

33. **Condition Precedent** - This Final Order shall become null and void if the Acquired Party is not acquired by GMC pursuant to the Agreement negotiated between GMC and SACH dated November 23, 2010.

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

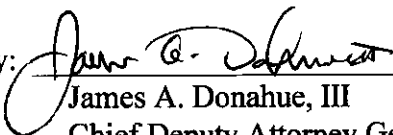
IV. Public Interest Determination

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

Dated this 26th day of July, 2011.

COMMONWEALTH OF PENNSYLVANIA GEISINGER MEDICAL CENTER
Linda L. Kelly
Attorney General

Alexis L. Barbieri
Executive Deputy Attorney General
Public Protection Division

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

Tracy W. Wertz
Deputy Attorney General
Antitrust Section

Jennifer A. Thomson
Deputy Attorney General
Antitrust Section

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

By: _____
David J. Felicio, Corporate Secretary
Geisinger Medical Center
100 North Academy Avenue
Danville, PA 17822

**SHAMOKIN AREA COMMUNITY
HOSPITAL**

By: _____
Thomas R. Harlow, President and CEO
4200 Hospital Road
Coal Township, PA 17866

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Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120

GEISINGER MEDICAL CENTER

By: David Felicio
David J. Felicio, Corporate Secretary
Geisinger Medical Center
100 North Academy Avenue
Danville, PA 17822

**SHAMOKIN AREA COMMUNITY
HOSPITAL**

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

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David J. Felicio, Corporate Secretary
Geisinger Medical Center
100 North Academy Avenue
Danville, PA 17822

**SHAMOKIN AREA COMMUNITY
HOSPITAL**

By:  _____

Thomas R. Harlow, President and CEO
4200 Hospital Road
Coal Township, PA 17866

So Ordered:

JADIII/dmh/Geisinger-Shamokin -FinalOrder-05-26-11

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

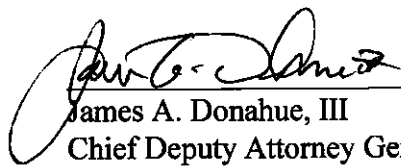
COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
Plaintiff,	:	
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	:	
GEISINGER MEDICAL CENTER and	:	
SHAMOKIN AREA COMMUNITY HOSPITAL,	:	
	:	
Defendants.	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Final Order was served upon the following by First Class Mail this 26th day of July, 2011.

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

Daniel M. Mulholland, III, Esquire
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4614 Fifth Avenue
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James A. Donahue, III
Chief Deputy Attorney General.