

CIVIL CASE INFORMATION STATEMENT

CIVIL CASES

(Other than Domestic Relations)

In the Circuit Court, CABELL

FILED  
2015 OCT 21 AM 8:59  
**COPY**

County, West Virginia

CIRCUIT CLERK  
CABELL CO. WV

I. CASE STYLE:

Plaintiff(s)

Case #

15-C-542

/s/ CHRISTOPHER D. CHILES

Judge: \_\_\_\_\_

In the Matter of: CABELL HUNTINGTON

HOSPITAL INC.'s AQUISITION OF ST.

MARY'S MEDICAL CENTER, Huntington, WV

vs.

Defendant(s)

Days to Answer

Type of Service

\_\_\_\_\_  
Street

\_\_\_\_\_  
City, State, Zip

Original and \_\_\_\_\_ copies of complaint enclosed/attached.

PLAINTIFF: DEFENDANT:	CASE NUMBER:
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II. TYPE OF CASE:

- |  |   |
|--|---|
| <input type="checkbox"/> General Civil<br><br><input type="checkbox"/> Mass Litigation<br>(As defined in T.C.R. Rule XIX (c)) <ul style="list-style-type: none"> <li><input type="checkbox"/> Asbestos</li> <li><input type="checkbox"/> Carpal Tunnel Syndrome</li> <li><input type="checkbox"/> Diet Drugs</li> <li><input type="checkbox"/> Environmental</li> <li><input type="checkbox"/> Industrial Hearing Loss</li> <li><input type="checkbox"/> Silicone Implants</li> <li><input type="checkbox"/> Other: _____</li> </ul><br><input type="checkbox"/> Habeas Corpus/Other Extraordinary Writ<br><br><input type="checkbox"/> Other: _____ | <input type="checkbox"/> Adoption<br><br><input type="checkbox"/> Administrative Agency Appeal<br><br><input type="checkbox"/> Civil Appeal from Magistrate Court<br><input checked="" type="checkbox"/> Miscellaneous Civil Petition<br><br><input type="checkbox"/> Mental Hygiene<br><br><input type="checkbox"/> Guardianship<br><br><input type="checkbox"/> Medical Malpractice |
|--|---|

III. JURY DEMAND:  Yes  No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): \_\_\_\_\_ / \_\_\_\_\_

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY?  YES  NO

IF YES, PLEASE SPECIFY:

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: \_\_\_\_\_

Attorney Name: J. Robert Leslie  
 Firm: WV Office of the Attorney General  
 Address: State Capitol, Building 1 rm E-26, Charleston, WV 25305  
 Telephone: 304-558-2021  
 Dated: July 30, 2015

Representing:

- Plaintiff     Defendant  
 Cross-Complainant     Cross-Defendant

  
 \_\_\_\_\_  
 Signature

Proceeding Without an Attorney

**FILED**  
**IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA**

2015 APR 21 AM 8:59

**COPY**

J.E. HOOD  
CIRCUIT CLERK  
CABELL CO. W.VA.

**IN THE MATTER OF:**

**CABELL HUNTINGTON HOSPITAL, INC.'S  
ACQUISITION OF ST. MARY'S  
MEDICAL CENTER,  
Huntington, West Virginia**

Misc. No. **15-C-542**  
**/s/ CHRISTOPHER D. CHILES**

**ASSURANCE OF VOLUNTARY COMPLIANCE**

The Attorney General of West Virginia ("Attorney General") has been investigating certain acts and practices of Cabell Huntington Hospital, Inc. ("CHH"), in connection with its proposed acquisition of St. Mary's Medical Center ("SMMC"). In accordance with the West Virginia Antitrust Act, W. Va. Code §§ 47-18-22 and, federal antitrust laws, 15 U.S.C. § 1 *et seq.*, CHH, without in any way admitting that any of its prior practices were in violation of the West Virginia Antitrust Act, or other applicable state and federal laws, has consented to observe the following terms, conditions, and agreements in the future conduct of its business from and after the date of this ASSURANCE OF VOLUNTARY COMPLIANCE.

CHH and SMMC in a good faith effort to demonstrate their willingness to cooperate with the Attorney General and in the interest of establishing and promoting appropriate standards of conduct within the health care industry, voluntarily and without in any way admitting that any of their prior practices were or the acquisition of SMMC by CHH is in violation of any state and federal laws, agree to undertake the following activity from and after the date of this Assurance of Voluntary Compliance.

## BACKGROUND

1. CHH is a not for profit West Virginia corporation which operates a 303 bed tertiary care hospital in Huntington, West Virginia.

2. SMMC is a not for profit West Virginia corporation which operates a 393 bed hospital in Huntington, West Virginia.

3. In 2014, Pallottine Health Systems, Inc., ("PHS") the sole member of SMMC, determined it was necessary to withdraw as a member of SMMC and circulated a request for proposals for the purchase of St. Mary's Medical Center to a number of corporations and organizations located within and without the State of West Virginia.

4. CHH received SMMC's request for proposal and submitted a response thereto and, following a period of negotiations, entered into an agreement dated November 7, 2014 with Pallottine Health Systems, Inc. and SMMC providing for the transfer of PHS' membership in SMMC to CHH (the "Transaction").

5. Pursuant to the provisions of West Virginia Code Section 47-18-1, *et seq.*, and the federal antitrust laws, 15 U.S.C. § 1 *et seq.*, the Attorney General is vested with the authority and charged with the responsibility of enforcing antitrust laws of the State of West Virginia as well as federal antitrust laws and is specifically authorized to pursue injunctive relief to prevent and restrain violations of Article 18 of Chapter 47 of the West Virginia Code and Chapter 15 of the United States Code.

6. Pursuant to such authority and in the exercise of such responsibility, the Attorney General has conducted a thorough review and investigation of the Transaction and has determined that with the agreements and commitments by CHH and SMMC set forth below, the benefits of the transaction to citizens of West Virginia and the greater Huntington region

(Huntington, Ashland, Kentucky and Ironton, Ohio), the Transaction is in the best interests of the State.

### AGREEMENT

1. In order to facilitate continued and robust competition with respect to service lines provided by the two hospitals, CHH and SMMC agree that for a period of seven (7) years following consummation of the Transaction:

(a) Neither CHH nor SMMC will oppose the award of a certificate of need by the West Virginia Health Care Authority to any healthcare provider seeking to provide services similar to or competitive with services provided by either or both hospitals in the geographic area identified by CHH and SMMC as being their 90% market service area in this investigation, provided the Applicant for the Certificate of Need accepts inpatient Medicaid and uninsured patients.

(b) Each hospital will release any physician or healthcare provider employed by it from any covenant, agreement or obligation not to compete with such hospital in any service line or lines upon termination of their employment;

(c) Except for hospital based specialty groups which have historically operated under exclusive agreements, such as radiologists, anesthesiologists, pathologists and emergency department physicians, CHH and SMMC will maintain open staffs granting privileges to all qualified physicians, and will not terminate privileges to those who start offering health care services in competition with CHH and SMMC.

(d) non-employed physicians with privileges at either CHH or SMMC may obtain privileges at other hospitals or providers and join competing PHO's, networks and delivery systems and not jeopardize their privileges with CHH and SMMC.

(e) Each hospital will release any non-physician employee, whether or not providing direct health care services, employed by it from any covenant, agreement or obligation not to compete with such hospital in any service line or lines upon termination of their employment.

2. In order to assure that the Transaction does not result in noncompetitive rate or price increases, CHH and SMMC agree that for a period of seven (7) years following consummation of the Transaction:

(a) Neither CHH nor SMMC will increase hospital rates beyond benchmark rates established by the West Virginia Health Care Authority. In the event the West Virginia Health Care Authority should cease to establish benchmark rates, the methodology previously utilized by the Health Care Authority will be utilized to establish a cap for rate increases.

(b) If the combined operating margins of CHH and SMMC exceed an average of 4% during any three (3) year period, rates at the hospitals will be reduced by the amount of such excess during the following three (3) years.

(c) Existing contracts with third party payors negotiated prior to the Transaction which are subject to automatic renewal absent notice of termination by either party will not be terminated by either CHH or SMMC.

(d) Neither CHH nor SMMC will bargain for or insist on a "Most Favored Nations" clause in contracts with third party payors or any vendors.

(e) Neither CHH nor SMMC will bargain for or insist upon anti-tiering or anti-steering clauses in contracts with third party payors.

(f) Neither CHH nor SMMC will bargain for or insist upon restrictions on their vendors preventing or impairing the vendors from doing business with entities competing with CHH and SMMC, nor requiring "Most Favored Nations" clauses.

3. To enhance quality and improve access to healthcare, CHH and SMMC agree that following the closing of the Transaction:

(a) The hospitals shall develop quality and population health goals including Centers of Excellence with quantitative benchmarks and a proposed timeline which shall be provided to the Attorney General within six (6) months following the closing of the Transaction.

(b) The two hospitals will implement community wellness programs reaching out to medically under-served areas, the details of which will be communicated to the Attorney General annually.

(c) In the manner set forth in the Business Plan of Operational Efficiencies submitted to the Attorney General, CHH and SMMC will establish a fully integrated and interactive medical record system at both hospitals so that patient encounters at both hospitals will be readily available to treating physicians at either hospital.

(d) CHH and SMMC will provide to the Attorney General ninety (90) days written notice of any proposed addition or deletion of any service line.

(e) CHH and SMMC will continue to accept Medicaid patients residing in Ohio and Kentucky at payment rates established by such states for in-state providers.

4. CHH agrees that St. Mary's Medical Center will be maintained as a free standing general acute care hospital operated as a faith based organization for a minimum period of (7) years following consummation of the Transaction.

5. In consideration of the commitments and agreement of CHH and SMMC above set forth, the Attorney General hereby agrees that the Office of Attorney General will not commence, undertake or pursue any action to restrain or enjoin the consummation of the Transaction and will communicate to the FTC the support of his Office for the consummation thereof.

6. The agreements and the obligations and undertakings of the parties above set forth may be enforced by the Attorney General in the Circuit Court of Kanawha County or any other court of general jurisdiction in the State of West Virginia.

7. CHH and SMMC, their employees, agents and servants do hereby promise and voluntarily assure the Attorney General that they will comply with the provisions of the Antitrust Act, W. Va. Code § 47-18-1 *et seq.*, the Sherman Act, 15 U.S.C. § 1 *et seq.* and other applicable state and federal laws in their business practices.

8. CHH and SMMC agree to fully and promptly cooperate with the Attorney General with regard to other health care industry investigations or litigation and related proceedings and actions, of any other person, corporation or entity.

9. CHH and SMMC shall comply fully with the terms of this ASSURANCE. If CHH and SMMC violate the terms of this ASSURANCE in any material respect, as determined solely by the Attorney General, the Attorney General may, after first having consulted with CHH and SMMC and allowing them a reasonable period of not more than thirty (30) days to cure any perceived violation, may pursue a civil action against any entity for any violation it has committed.

10. This ASSURANCE is not intended to disqualify CHH or SMMC, or any current employees of CHH and SMMC, from engaging in any business in West Virginia or in any other jurisdiction. Nothing in this ASSURANCE shall relieve CHH's and SMMC's obligations imposed by any applicable federal or state health care laws or regulations or other applicable law.

11. If compliance with any aspect of this ASSURANCE proves impracticable, CHH and SMMC reserve the right to request that the parties modify the ASSURANCE accordingly.

12. This ASSURANCE shall be governed by the laws of the State of West Virginia without regard to conflict of laws principles.

13. This ASSURANCE may be executed in counterparts.

14. Following closing of the Transaction CHH and SMMC shall distribute executed copies of this ASSURANCE to all of their management employees who are engaged, directly or indirectly, in the operation of CHH's and SMMC's business.

15. CHH and SMMC further promise not to represent directly or indirectly, or in any manner whatsoever, that the Attorney General has sanctioned, condoned or approved, in any manner whatsoever, any part or aspect of their business operations, unless written authorization is obtained from the Attorney General, and then only to the extent of said written authorization.

16. It is agreed and understood that the contents of this ASSURANCE are and shall be public information, and shall be filed with the Circuit Court of Cabell County pursuant to W. Va. Code § 47-18-22.

17. It is further agreed and understood that the parties to this ASSURANCE presently intend to cooperate in securing and obtaining compliance with the terms of this ASSURANCE.

18. The investigation of CHH's acquisition of SMMC commenced by the Attorney General is resolved by the execution of this ASSURANCE. The Attorney General may reopen the investigation of the Transaction for the purpose of enforcing the specific terms of this ASSURANCE, when and if he determines that it is in the public interest to do so.. W. Va. Code § 47-18-22. Before re-opening any of the matters covered in this ASSURANCE, the Attorney General shall contact CHH and SMMC in writing and inform CHH and SMMC of the reasons that support the decision to reopen. Upon receipt of this notice, CHH and SMMC shall have a reasonable opportunity to respond within thirty (30) days.

19. No part of this ASSURANCE constitutes or shall constitute evidence or liability against CHH or SMMC in any action brought by any person(s) or entity or other party of any violation of any federal or state statute or regulation or the common law except in an action brought to enforce the terms of this ASSURANCE.

20. In the event the Attorney General brings an action to enforce the terms of this ASSURANCE, CHH and SMMC agree not to challenge jurisdiction of any court of competent jurisdiction in West Virginia. In the event the Attorney General prevails in such an enforcement proceeding, CHH and SMMC recognize they could be subject to injunctive relief, and an award of damages, civil penalties, and reasonable costs and attorneys' fees to the extent permitted by law.

21. This ASSURANCE memorializes the entire agreement by and between CHH, SMMC and the Attorney General regarding the scope of the respective rights and obligations of CHH and the Attorney General.

22. The agreements above contained and the obligations of the parties therein set forth are expressly conditioned upon and applicable only in the event the Transaction provided for in the Agreement of November 7, 2014 is consummated.

23. The parties hereto recognize that, upon closing of the Transaction, Pallottine Health Services, Inc., the sole member of SMMC, will be replaced by CHH which will become the sole member of SMMC. Therefore, it is understood and agreed that Pallottine Health Services, Inc. and its officers, directors and employees shall have no responsibility for the promises, undertakings and obligations of SMMC set forth above to be performed following closing of the Transaction".

IN WITNESS WHEREOF, CHH has caused this ASSURANCE to be executed.

CABELL HUNTINGTON HOSPITAL, INC.

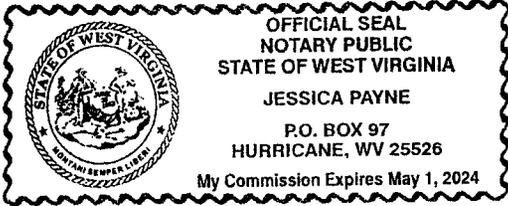
BY [Signature]

ITS \_\_\_\_\_  
Chief Executive Officer

DATED: 7/30/15, 2015

Taken, subscribed and sworn before the undersigned authority this 30<sup>th</sup> day of July, 2015

My commission expires May 1, 2024.



[Signature]  
Notary Public

IN WITNESS WHEREOF, SMMC has caused this ASSURANCE to be executed.

ST. MARY'S MEDICAL CENTER

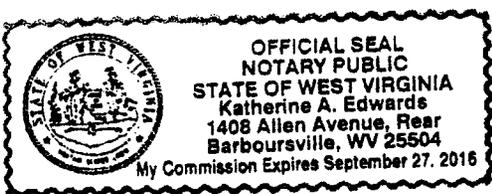
BY [Signature]

ITS \_\_\_\_\_  
President

DATED: 7-30, 2015

Taken, subscribed and sworn before the undersigned authority this 30 day of July, 2015

My commission expires September 27 2016.



[Signature]  
Notary Public

APPROVED BY:

PATRICK MORRISEY  
ATTORNEY GENERAL

BY



DOUGLAS L. DAVIS  
ASSISTANT ATTORNEY GENERAL  
Consumer Protection/Antitrust Division

DATED: July 27, 2015

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, TO WIT

Taken, subscribed, and sworn to before me in the County and State aforesaid this 27<sup>th</sup>  
day of July, 2015

My commission expires

April 13, 2020

Peggy S. Means  
NOTARY PUBLIC

