

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

07 05 2017  
587350

In the Matter of

Sanford Health,  
a corporation;

Sanford Bismarck,  
a corporation;

and

Mid Dakota Clinic, P.C.,  
a corporation.

Docket No. 9376

ORIGINAL

**RESPONDENT MID DAKOTA CLINIC, P.C.'S**  
**ANSWER TO COMPLAINT**

Pursuant to 16 C.F.R. § 3.12, Respondent Mid Dakota Clinic, P.C. (“Mid Dakota” or “MDC”), by and through its undersigned counsel, answers the Complaint Counsel’s Complaint (the “Complaint”) in the above-captioned proceeding”).

The Complaint reflects a fundamental misunderstanding of the past, present and future delivery of, and payment for, health care in central and western North Dakota. It elevates theory over facts and conjures purported anticompetitive effects from the challenged transaction that cannot be reconciled with market realities in North Dakota. It ignores, among other things, the history of Sanford and Mid Dakota in expanding access to health care in North Dakota, the myriad benefits that this combination will deliver to the community, the bargaining leverage and business policies and practices of the dominant commercial payer, Blue Cross/Blue Shield, and the adverse effects on the local patient population if Mid Dakota is impeded from choosing the course that will best preserve its ability to deliver quality care.

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Unless specifically admitted, Mid Dakota denies each of the allegations of the Complaint Counsel's Complaint.

1. In response to the allegations contained in paragraph 1 of the Complaint, MDC admits the first sentence and states that the second sentence contains vague and ambiguous characterizations such as "by far the largest" to which no response is required. To the extent a response is required, MDC denies the second sentence.

2. In response to the allegations contained in paragraph 2 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations and legal conclusions, such as "substantially lessen" and "significant harm," to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 2.

3. In response to the allegations contained in paragraph 3 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as "closest competitor", "major competitor" "significant competitor," and "directly respond to one another by," to which no response is required. MDC avers that Paragraph 3's selective quotation of unidentified written material or communications, offered without context, is misleading as framed. MDC and Sanford compete with a large number and variety of health care providers in North Dakota. To the extent a response is required, MDC denies the allegations in paragraph 3, except admits that MDC and Sanford have purchased new equipment, updated technology, expanded services, recruited high quality physicians, and provided patients with convenient and accessible health care services in North Dakota.

4. In response to the allegations contained in paragraph 4 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations and legal conclusions to which no response is required such as "will substantially lessen competition" and "relevant





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15. In response to the allegations contained in paragraph 15 of the Complaint, MDC admits the first sentence of that paragraph and denies the second sentence.

16. In response to the allegations contained in paragraph 16 of the Complaint, MDC admits the allegations in paragraph 16.

17. In response to the allegations contained in paragraph 17 of the Complaint, MDC admits the first through fourth sentences. MDC denies the fifth sentence, except MDC admits that Respondents have entered into a Stock Purchase Agreement for the purchase of MDC stock and certain associated assets for the first figure specified in the fifth sentence and a Real Estate and Asset Purchase Agreement for the sale of the Mid Dakota Medical Building Partnership Assets for the amount specified in the fifth sentence. MDC admits the sixth sentence, except that MDC denies the words, “as well as the establishment of” which should be replaced with “coupled with” to make the assertion accurate. MDC admits the seventh sentence.

18. In response to the allegations contained in paragraph 18 of the Complaint, MDC states that the first sentence contains vague, speculative, and ambiguous characterizations and legal conclusions, such as the terms “threatens,” “substantial harm to competition,” “hypothetical monopolist,” and “small but significant and non-transitory increase in price,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 18.

19. In response to the allegations contained in paragraph 19 of the Complaint, MDC states that the first sentence contains legal conclusions and vague and ambiguous characterizations, such as the terms “threatens,” “substantial” and “competitive harm,” to which no response is required. To the extent a response is required, MDC denies the first sentence.

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The second sentence is a legal conclusion to which no response is required. To the extent a response is required, MDC denies the second sentence and admits the third sentence.

20. In response to the allegations contained in paragraph 20 of the Complaint, MDC states that the allegations in this paragraph are legal conclusions, and contain vague, speculative, and ambiguous characterizations, including “A payer would accept a SSNIP rather than market a network,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 20.

21. In response to the allegations contained in paragraph 21 of the Complaint, MDC states that the allegations are legal conclusions that contain vague, speculative, and ambiguous characterizations, such as “threatens,” “substantial competitive harm,” “generally,” and “A payer would accept a SSNIP rather than market a network,” to which no response is required. To the extent a response is required, MDC admits that pediatricians receive additional training to treat medical conditions affecting pediatric patients and denies the remaining allegations in paragraph 21.

22. In response to the allegations contained in paragraph 22 of the Complaint, MDC states that the paragraph contains legal conclusions and vague, speculative, and ambiguous characterizations, such as “threatens substantial competitive harm,” and “A payer would accept a

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omits general surgery physician services,” to which no response is required. To the extent a response is required, MDC admits that general surgeons perform basic surgical procedures including abdominal surgeries, hernia repair surgeries, gallbladder surgeries, and appendectomies, and denies the remaining allegations in paragraph 23.

24. In response to the allegations contained in paragraph 24 of the Complaint, MDC states that the first sentence is a legal conclusion to which no response is required. To the extent a response is required, MDC denies the first sentence and admits the second sentence.

25. In response to the allegations contained in paragraph 25 of the Complaint, MDC states that the allegations in paragraph 25 are legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 25.

26. In response to the allegations contained in paragraph 26 of the Complaint, MDC states that the paragraph contains vague and ambiguous characterizations to which no response is required including “strongly prefer,” “very difficult,” and “controlled.” The third and fourth sentences also are legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 26.

27. In response to the allegations contained in paragraph 27 of the Complaint, MDC states that the first sentence is a vague legal conclusion to which no response is required. To the extent a response is required, MDC denies the first sentence, except that MDC admits that it competes with a large number and variety of health care providers in North Dakota. In response to the second sentence, MDC admits that a number of its patients reside in the Bismark/Mandan area. The third sentence contains vague characterizations to which no response is required. To the extent a response is required, MDC lacks knowledge sufficient to form a belief as to the truth of the third sentence. The fourth sentence is a vague and speculative characterization and legal

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32. In response to the allegations contained in paragraph 32 of the complaint, MDC states that the allegations contained in paragraph 32 of the complaint contain vague and ambiguous characterizations, such as “first stage of provider competition,” “providers compete to be included,” “central component,” and “based on,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 32. MDC also states (with respect to paragraph 32 and, more generally, elsewhere in the complaint where payer-provider relationships are discussed) that any analysis of the impact of the Sanford-Mid Dakota Clinic transaction must account for the policies and practices of, and the leverage exerted by commercial payers in North Dakota and the actual dynamics of provider-commercial payer business relationships.

33. In response to the allegations contained in paragraph 33 of the Complaint, MDC states that the allegations contain vague, speculative, and ambiguous characterizations, such as “a provider,” “preferential access,” “typically,” “all else being equal,” “dynamic,” and “attract more patients,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 33.

34. In response to the allegation contained in paragraph 34 of the Complaint, MDC states that the allegation contains vague and ambiguous characterizations, such as “the payers’ perspective,” “attractive,” and “typically,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 34.

35. In response to the allegations contained in paragraph 35 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as “a provider,” “the provider,” “typically,” “Under a full risk-based payment model,” and “plays a key role,” to which no response is required. To the extent a response is required, MDC admits that bargaining

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leverage of payers plays a key role in negotiations between payers and providers and otherwise denies the remaining allegations of that paragraph.

36. In response to the allegations contained in paragraph 36 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as “critical determinant,” “comparable,” “alternatives,” “leverage,” “more favorable,” “constrain,” and “constraints,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 36.

37. In response to the allegations contained in paragraph 37 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as “between providers that are close substitutes,” “therefore tends to increase the merged entity’s bargaining leverage,” “more attractive,” “leads to higher reimbursement rates,” and “available alternative,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 37. MDC further avers that there is no legal or economic basis for the assertion that the preexisting leverage of a payer cannot eliminate a concern about the alleged bargaining leverage of the merged entity.

38. In response to the allegations contained in paragraph 38 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as “a provider and a commercial payer,” “significantly impact,” and “may bear some portion of the cost,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 38.

39. In response to the allegations contained in paragraph 39 of the Complaint, MDC

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the merged entity's incentive to compete," to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 39.

40. In response to the allegations contained in paragraph 40 of the Complaint, MDC states that the allegations contain vague, argumentative, and ambiguous characterizations, such as "closest competitor for each of the relevant services," "Sanford's ordinary course documents



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45. In response to the allegations contained in paragraph 45 of the Complaint, MDC states that paragraph 45 contains vague, ambiguous and speculative characterizations, such as “interest,” “increase bargaining leverage in negotiations with commercial payers,” “enhance their ability to negotiate,” and “more favorable,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 45.

46. In response to the allegations contained in paragraph 46 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as “commercial

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truth of the remaining allegations in that sentence. The third sentence is a vague and ambiguous

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which no response is required. To the extent a response is required, MDC denies these sentences. The ninth sentence is a vague and ambiguous characterization to which no response is required as to the introductory phrase “To attract patients and gain a competitive edge over Sanford, MDC also offers services and amenities not available at Sanford.” To the extent a response is required, MDC denies the ninth sentence. MDC further avers that the paragraph’s selective quotation of unidentified written material or communications, offered without context, is misleading as

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conclusions, such as “unlikely to expand sufficiently,” “makes it difficult,” “timely,” “it would be challenging,” “substantial,” “establish a presence,” and “anticompetitive effects of the Transaction” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 52.

53. In response to the allegations contained in paragraph 53 of the Complaint, MDC states that the allegations contain vague, ambiguous and speculative characterizations, such as “significant,” “establishing,” “often have,” “challenging,” “substantial,” “likely would take,” and “meaningful,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 53.

54. In response to the allegations contained in paragraph 54 of the Complaint, MDC states that the allegations contain vague, ambiguous and speculative characterizations and legal conclusions, such as “offset the Transaction’s competitive harm,” “timely,” “sufficient,” “practical,” “would likely lower,” and “reasonable,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 54.

55. In response to the allegations contained in paragraph 55 of the Complaint, MDC states that the allegations contain vague, ambiguous and speculative characterizations, such as “timely,” “sufficient,” “offset any competitive harm,” “unlikely,” and “difficult,” to which no

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57. In response to the allegations contained in the first sentence paragraph 57 of the Complaint, MDC admits that the Respondents have projected several categories of cost savings that will result from the Transaction, but denies the remaining allegations of that sentence. MDC further states that the second and third sentences contain vague and ambiguous characterizations, such as “many,” “suitable and interested alternative partner far less harmful to competition” to which no response is required. To the extent a response is required, MDC denies the second and third sentences. The allegation contained in the last sentence of paragraph 57 contains a vague legal conclusion to which no response is required. To the extent a response is required, MDC denies the fourth sentence.

58. In response to the allegations contained in paragraph 58 of the Complaint, MDC states that allegations contain vague and ambiguous characterizations, such as “other efficiency claims,” “speculative and unsubstantiated,” “could be accomplished absent the Transaction,” “high-quality,” and “these purported quality improvements,” to which no response is required.

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**COUNT II**

61. MDC incorporates its response to paragraphs 1 through 60 by reference as though fully set forth herein.

62. In response to the allegations contained in paragraph 62 of the Complaint, MDC states that the allegations contain legal conclusions to which no response is required. To the

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### FIFTH DEFENSE

The merger between MDC and Sanford will result in substantial merger-specific efficiencies that far outweigh any alleged anticompetitive effects and, as a result of will benefit consumers.

### SIXTH DEFENSE

The alleged market definitions fail as a matter of law.

### SEVENTH DEFENSE

New entry and expansion by competitors can be timely, likely, and sufficient, such that it will ensure that there will be no harm to competition, or consumer welfare.

### EIGHTH DEFENSE

The dominant commercial payer is a “powerful buyer” and has the ability to ensure that it is not compelled to accept reimbursement rates and policies that could be anticompetitive.

WHEREFORE, MDC prays for judgment as follows:

1. That Commission takes nothing by way of its Complaint;
2. That the Complaint, and each and every purported claim for relief therein, be dismissed with prejudice.
3. That MDC be awarded its costs of suit incurred herein, including attorneys’ fees and expenses; and
4. For such other and further relief as the Commission deems just and proper.

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Dated: July 5, 2017

**GRAY PLANT MOOTY  
MOOTY & BENNETT, P.A.**

/s/ G r e g o r y M e r z - -

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 5, 2017, I electronically filed the foregoing **RESPONDENT MID DAKOTA CLINIC, P.C.'S ANSWER TO COMPLAINT** using the Commission's electronic filing system, which will automatically send e-mail notification of such filing to all attorneys of record in this action.

/s/ Gregory Merz

GP:4833-4598-4075 v2

Notice of Electronic Service

**I hereby certify that on July 06, 2017, I filed an electronic copy of the foregoing Respondent Mid Dakota Clinic P.C.'s Answer to Complaint, with:**

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

Donald Clark  
600 Pennsylvania Ave., NW  
Suite 172  
Washington, DC, 20580

**I hereby certify that on July 06, 2017, I served via E-Service an electronic copy of the foregoing Respondent Mid Dakota Clinic P.C.'s Answer to Complaint, upon:**

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