

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

**In the Matter of**

**Hackensack Meridian Health, Inc.,**

**and**

**Englewood Healthcare Foundation.**

**Docket No. 9399**

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

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

**GENERAL RESPONSE TO THE COMMI**

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

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

**I.**

**NATURE OF THE CASE<sup>1</sup>**

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

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

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

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

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

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







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

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

**V.**

**RELEVANT GEOGRAPHIC MARKET**

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

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

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

33. HMH lacks sufficient knowledge or information to affirm or deny the allegations in the first sentence of Paragraph 33 of the Complaint, and these allegations t a response

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

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

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

## **VI.**

### **MARKET STRUCTURE AND THE PROPOSED ILLEGALITY**

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

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





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

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

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

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

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

**B.**

**The Proposed Transaction Would Eliminate Close Competition between HMH and Englewood**

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

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

**C.**

**The Proposed Transaction Will Eliminate Non-Price Competition**

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

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

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

**VIII.**

**LACK OF COUNTERVAILING FACTORS**

**A.**

**Entry Barriers**

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

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

**B.**

**Efficiencies**

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

**IX.**

**VIOLATION**

**COUNT I ILLEGAL AGREEMENT**

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

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

**COUNT II ILLEGAL ACQUISITION**

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

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

**AFFIRMATIVE DEFENSES**

HMH asserts the following defenses, without assuming the burden of proof on such defenses that would otherwise rest with the Commission:

1. The Complaint fails to state a claim on which relief can be granted.
2. Granting the relief sought in the Complaint is contrary to the public interest.





Dated: December 17, 2020

Respectfully submitted,

*/s/ Paul H. Saint-Antoine*

Paul H. Saint-Antoine

John S. Yi

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**CERTIFICATE OF SERVICE**

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

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

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

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

Jonathan Lasken  
Emily Bowne