

1710019

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

2. The proposed Transaction will substantially lessen competition and cause significant harm to consumers. If Respondents consummate the Transaction, healthcare costs will rise, and the incentive to increase service offerings and improve the quality of healthcare will diminish.
3. Sanford and MDC are each other's closest competitor in the Bismarck-Mandan area. Sanford describes MDC as its "major competitor for primary care" and "main clinical competitor" in the Bismarck-Mandan area. MDC views Sanford as a significant competitor that threatens its market share in the Bismarck-Mandan area, describing it as "a demon to deal with competitively" and observing that "combining with them/TT1 1 Tfas -ompehriTC

8. Entry or expansion by other providers into the relevant services will not likely be timely or sufficient to offset the competitive harm that will likely result from the Transaction. It will take _____ for CHI St. Alexius Health (“CHI St. Alexius”)—a vertically integrated healthcare provider in Bismarck and Mandan with only minimal service line overlap with MDC—to enter or reposition sufficient to offset the potential competitive harm from the Transaction. Smaller, independent physician groups cannot recruit and

Bismarck-Mandan area and plans to recruit an additional [REDACTED] physicians over the next [REDACTED] years, including [REDACTED] new units and facility locations in Bismarck and Mandan. Sanford Health, its Sanford Bismarck subsidiary, and other subsidiaries generated [REDACTED] in revenue for the fiscal year ending on June 30, 2016.

13. Sanford Health's new [REDACTED] name Sanford Health Plan. Sanford Health Plan has approved [REDACTED] in North Dakota.
14. Respondent MDC is a for-profit, physician-owned professional corporation organized under North Dakota law that is headquartered at 401 N. 9th Street, Bismarck, North Dakota 58501. MDC is a multi-specialty medical group that provides primary care and specialty services, including PCPs, 6 pediatricians, 6 OB/GYNs, and 9 general surgeons. MDC currently employs 19 APPs. Additionally, MDC operates a surgical center ("ASC") in Bismarck, North Dakota. For the fiscal year ending on December 31, 2015, MDC generated [REDACTED] in revenue.
15. MDC's 53 physician shareholders control Mid Dakota Medical Building Partnership, a partnership under North Dakota law that owns and operates medical office buildings and a warehouse located in Bismarck, North Dakota. On December 31, 2015, MDC generated [REDACTED] in income for its physician shareholders.
16. MDC holds a non-transferable 25% interest in PrimeCare Health Group ("PrimeCare"), a physician hospital organization that contracts with commercial payers on behalf of Mid Dakota Medical Building Partnership. CHI St. Alexis holds the remaining 75% interest in PrimeCare.

The Transaction

17. In early 2015, MDC initiated discussions with CHI St. Alexis regarding a potential affiliation. MDC also discussed a potential affiliation with CHI St. Alexis in 2015 and early 2016. In spring 2016, MDC's affiliation discussions with CHI St. Alexis terminated, and Respondents' affiliation discussions became exclusively with CHI St. Alexis. Respondents signed a referral agreement to which Sanford will purchase MDC's practice assets, including its clinical records, and a Real Estate and Asset Purchase Agreement for the sale of the Mid Dakota Medical Building Partnership assets at [REDACTED].

The transaction value includes [REDACTED]

III.

THE RELEVANT SERVICE MARKETS

18. The Transaction threatens substantial harm to competitive conditions in the relevant markets: (1) adult PCP services, (2) pediatric services, (3) OB/GYN services, and (4) general surgery physician services. The appropriate product market in which to analyze the Transaction is the set of services for which a reasonable number of payers would accept a SSNIP. This group of services constitutes an appropriate market for payers would accept a SSNIP that omitted the services of the hypothetical monopolist.

A.

Adult PCP Services Market

19. The Transaction threatens substantial competitive harm in the market for adult PCP services sold and provided to commercially insured patients age 18 and over by physicians in a general practice. Adult PCP services typically include routine physical services in a general practice or office setting, management of common illnesses and injuries, and long-term management of chronic conditions such as diabetes and hypertension.
20. The adult PCP services market excludes obstetricians because for many adult patients, including all pregnant patients, obstetricians are the only available substitutes for adult PCP services. The market also excludes services provided by pediatricians, geriatricians, and other specialists that treat patients under age 18, and thus do not compete with PCPs that treat adults. A payer would accept a SSNIP that excluded a network that omits adult PCP services if that network also includes OB/GYN services and pediatric services.

B.

Pediatric Services Market

21. The Transaction threatens substantial competitive harm in the market for pediatric physician services sold and provided to commercial payers and non-insured members. This market includes primary care services provided to patients under the age of 18. Pediatricians receive additional training to treat medical conditions affecting pediatric patients, and physicians trained for other specialties do not have this required expertise and thus do not compete with pediatricians. A payer would accept a SSNIP that excluded a network that omits pediatricians.

include PCPs, pediatricians, OB/GYNs, or general surgeons located within the Bismarck-Mandan area. A hypothetical monopolist that controlled all providers of any relevant service in the Bismarck-Mandan area could profitably impose a SSNIP on payers. The Bismarck-Mandan area is therefore a properly defined geographic market.

27. The Bismarck-Mandan area is the main area of competition between Sanford and MDC in each relevant service market. It also comprises the population center from where Respondents draw a significant portion of their patients. Approximately 95% of patients living in the Bismarck-Mandan area stay within the Bismarck-Mandan area for the relevant services. Quantitative and qualitative evidence, including Respondents' own executives and ordinary course documents, confirm that the Bismarck-Mandan area is the relevant geographic market in which to analyze the effects of the Transaction.

V.

MARKET STRUCTURE AND THE TRANSACTION'S PRESUMPTIVE ILLEGALITY

28. Sanford and MDC are the two largest providers of each of the relevant services in the Bismarck-Mandan area.
29. Under relevant case law and the Horizontal Merger Guidelines, the Transaction is presumptively unlawful in all four relevant service markets. Based on physician headcount in the Bismarck-Mandan area, post-Transaction, Respondents will control 77% of the adult PCP services market, 83% of the pediatric services market, 88% of the OB/GYN services market, and 100% of the general surgery physician services market.
30. The courts and antitrust agencies commonly use the Herfindahl-Hirschman Index ("HHI") to measure market concentration. The HHI is calculated by totaling the squares of the market shares of every firm in the relevant market. Under the Merger Guidelines, a market with an HHI that exceeds 2,500 points is considered highly concentrated. A merger or acquisition is presumed likely to create or enhance market power—and is presumptively illegal—when the post-acquisition HHI exceeds 2,500 points and the merger or acquisition increases the HHI by more than 200 points. Here, the market concentration levels far exceed these thresholds. As measured by physician headcount in the Bismarck-Mandan area, each of the relevant service markets is already highly concentrated today, and the Transaction further concentrates these markets. The following tables summarize the market shares and HHI figures for each relevant service market.

ADULT PCP SERVICES			
Preliminary Market Shares by Physician Headcount for Providers Within Bismarck-Mandan Area			
Provider	Adult PCP Headcount	Market Share	
		Pre-Transaction	Post-Transaction
Sanford Bismarck	36	47%	77%
Mid Dakota Clinic	23	30%	
CHI St. Alexius Health	6	8%	8%
UND Center for Family Medicine	6	8%	8%
Independent Doctors, P.C.	3	4%	4%
Baker Family Medicine	1	1%	1%
Glen Ullin Family Clinic	1	1%	1%
Jeffrey Smith, MD	1	1%	1%
HHI		3,220	6,013
Change in HHI		2,793	

OB/GYN SERVICES				
Preliminary Market Shares by Physician Headcount for Providers Within Bismarck-Mandan Area				
Provider	OB/GYN Headcount		Market Share	
	Pre-Transaction	Post-Transaction	Pre-Transaction	Post-Transaction
Sanford Bismarck	8	15	47%	88%
Mid Dakota Clinic	8		47%	
UND Center for Family Medicine	1	1	6%	6%
CHI St. Alexius Health*	0	1	0%	6%
HHI			4,464	7,855
Change in HHI			3,391	

41. Similarly, MDC considers Sanford to be a significant competitor and a threat to its market share in the relevant service markets. MDC expressed concern that Sanford “put a large target on [MDC’s] finances and market share” and emphasized a need to “work on retaining the market share” in the face of Sanford “making some inroads into OB.” Additionally, the results of a 2015 MDC strategy assessment conducted by MDC’s marketing consulting focused on Sanford as MDC’s closest clinical competitor in the Bismarck-Mandan area. MDC’s Chief Financial Officer observed that “Sanford is going to be a demon to deal with competitively. . . . Combining with them would put us in the dominant health care system for quite a while.”
42. Respondents track and respond to each other’s marketing campaigns and advertising spending, which neither Respondent does with respect to other providers. Sanford and MDC are also each other’s closest competitor to recruit adult PCPs, pediatricians, OB/GYNs, and general surgeons, and are the two practices in the Bismarck-Mandan area that graduating residents and physicians in these service lines relocating to the Bismarck-Mandan area look to for employment. Because Sanford and MDC are close substitutes for each of the relevant services, the Transaction would eliminate significant head-to-head competition between the Respondents.
43. Diversion analysis, a standard economic tool that uses data on where patients receive healthcare services to determine the extent to which providers are substitutes, confirms that Sanford and MDC are close competitors. Preliminary diversion analysis shows that if all Sanford physicians providing adult PCP services were not available to Bismarck-Mandan area patients, approximately 77% of their patients would seek care at MDC. Correspondingly, if all MDC physicians providing adult PCP services were not available to Bismarck-Mandan area patients, approximately 82% of their patients would seek care at Sanford. In other words, each is by far the next-best alternative for patients of the other. Diversions for adult PCP services and other relevant services are shown in the table below:

Service	Diversion from Sanford to MDC	Diversion from MDC to Sanford
Adult PCP	77%	82%
Pediatric	90%	94%
OB/GYN		

(“NDPERS”), Sanford Health Plan

Commercial payers and employers do not view other providers in the Bismarck-Mandan area as adequate substitutes for Sanford or MDC. Consistent with that view, Bismarck-Mandan area residents strongly prefer that their health plan networks include at least one of the Respondents.

45. By combining the two largest providers of the relevant services in the Bismarck-Mandan area, the Transaction would increase Respondents’ bargaining leverage in contract negotiations with commercial payers because employers in the Bismarck-Mandan area would have little, if any, interest in a health plan network that excluded the combined system. Defendants’ increased bargaining leverage would enhance their ability to negotiate higher reimbursement rates and more favorable reimbursement terms in payer contracts. Commercial payers would have little choice but to accept the reimbursement terms demanded by the merged system or exclude the merged system and risk having their network fail.
46. Today, when constructing provider networks for Bismarck-Mandan area employers, commercial payers treat Sanford and MDC (as part of PrimeCare) as substitutes—some

and competitive. And I think that monopoly in health care is not a good thing.

VII.

ENTRY BARRIERS

51. Entry by new market participants into the relevant service markets in the Bismarck-Mandan area is unlikely to occur in a timely or sufficient manner to deter or counteract the likely anticompetitive effects of the Transaction. Repositioning or expansion by current market participants is also unlikely to offset fully the Transaction's likely harm to competition for the relevant services in the Bismarck-Mandan area.

A.

Adult PCP and Pediatric Services Entry Will Not Be Timely or Sufficient

52. Existing adult PCP and pediatric practices in the Bismarck-Mandan area are unlikely to expand sufficiently and in a timely manner to offset the anticompetitive effects of the Transaction. The Bismarck-Mandan area's geographic location, including its cold climate and distance from larger metropolitan areas, makes it difficult for an existing competitor to attract and retain physicians, including adult PCPs and pediatricians, from outside of the area. Even if an existing competitor successfully recruited adult PCPs and pediatricians, it would be challenging for it to attract the substantial number of patients in the Bismarck-Mandan area needed to be a financially viable competitor. It would take [REDACTED] for CHI St. Alexius, the only remaining market participant positioned to enter or reposition in the Bismarck-Mandan area, to hire enough physicians, open adequate clinic space, and establish a presence in the area sufficient to replace the adult PCP and pediatric services offered by MDC. The other existing adult PCP and pediatric practices in the Bismarck-Mandan area lack the resources or ability to expand to the magnitude where they could counteract or constrain the anticompetitive effects of the Transaction.
53. New entry by independent physicians into the adult PCP or pediatric services markets in the Bismarck-Mandan area is also unlikely because of the significant financial challenges and risk involved in establishing an independent adult PCP or pediatric practice in the Bismarck-Mandan area, including renting or buying office space, renting or purchasing medical and office equipment, hiring administrative staff, investing in an electronic medical records system, and purchasing malpractice insurance. A local labor shortage in the Bismarck-Mandan area makes starting an independent adult PCP or pediatric practice even more challenging. Moreover, new physicians finishing their residency programs often have substantial debt and lack the financial resources and experience to open an independent practice. After opening an office, it likely would take each adult PCP or pediatrician new to the Bismarck-Mandan area two years or longer to establish a patient base, and substantial time and money for a practice to become self-sustaining and a meaningful competitor, posing additional hurdles to new entrants.

B.

OB/GYN Services Entry Will Not Be Timely or Sufficient

54. New entry or expansion into the OB/GYN services market in the Bismarck-Mandan area will not be timely or sufficient to offset the Transaction's competitive harm. In addition to the financial and practical challenges that adult PCPs and pediatricians face in starting an independent practice, OB/GYNs need access to a hospital in order to provide the full scope of OB/GYN services, and must participate in or provide for call coverage for their patients in the hospital. A solo OB/GYN would have to be on call all the time, which, if even feasible, would likely lower the quality of care. To have a reasonable call rotation, a practice needs a minimum of four to five OB/GYNs. It would take [REDACTED] for CHI St. Alexius, the only remaining market participant positioned to enter or reposition in the Bismarck-Mandan area, to recruit five OB/GYNs to a new practice and open an OB/GYN clinic in the Bismarck-Mandan area, and up to another two years for each new OB/GYN to build a patient base.

C.

General Surgery Physician Services Entry Will Not Be Timely or Sufficient

55. Entry or expansion into the general surgery physician services market in the Bismarck-Mandan area is unlikely to be timely and sufficient to offset any competitive harm that results from the Transaction. Sanford and MDC employ the only general surgeons in the Bismarck-Mandan area. In addition to the challenges that adult PCPs, pediatricians, and OB/GYNs face starting a practice in the Bismarck-Mandan area, general surgeons need a source of patient referrals. An independent general surgeon in the Bismarck-Mandan area would be unlikely to receive referrals because PCPs and other physicians are likely to refer patients to affiliated general surgeons. As with OB/GYNs, call requirements for general surgeons make it unlikely that a general surgeon would operate a solo practice and difficult for a hospital or physician group to recruit a single general surgeon to start a general surgery group. A general surgery physician practice needs a minimum of four to five general surgeons to provide call coverage, and it would take [REDACTED] for CHI St. Alexius, the only remaining market participant positioned to enter or reposition in the Bismarck-Mandan area, to recruit a practice of five general surgeons.

VIII.

EFFICIENCIES

56. Respondents' claimed efficiencies do not outweigh the Transaction's likely harm to competition. The purported benefits would not enhance competition for the relevant services and fall far short of the cognizable efficiencies needed to outweigh the Transaction's likely significant harm to competition in the Bismarck-Mandan area.
57. Respondents have projected several categories of cost savings that will result from the Transaction, but many of these estimated cost savings are unsubstantiated and reflect speculative assumptions. Even if the claimed efficiencies were substantiated and

amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. If the Transaction is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant service and geographic markets, with the ability to offer such products and services as Sanford and MDC were offering and planning to offer prior to the Transaction.
2. A prohibition against any transaction between Sanford and MDC that combines their businesses in the relevant markets, except as may be approved by the Commission.
3. A requirement that, for a period of time, Sanford and MDC provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant markets with any other company operating in the relevant markets.
4. A requirement to file periodic compliance reports with the Commission.
5. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to restore MDC as a viable, independent competitor in the relevant service and geographic markets.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this twenty-first day of June, 2017.

By the Commission.

Donald S. Clark
Secretary

SEAL: