

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

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

In the Matter of

ProMedica Health System, Inc.

Docket No. 9346

FINAL ORDER

The Commission has heard this matter upon the appeals of Respondent and Complaint Counsel from the Initial Decision, and upon briefs and oral argument in support thereof and in opposition thereto. For the reasons stated in the accompanying Opinion of the Commission, the Commission has determined to sustain the Initial Decision, with certain modifications:

IT IS ORDERED that the Initial Decision of the administrative law judge be, and it hereby is, adopted as the Findings of Fact and Conclusions of Law of the Commission, to the extent not inconsistent with the findings of fact and conclusions contained in the accompanying Opinion.

Other findings of fact and conclusions of law of the Commission are contained in the accompanying Opinion.

IT IS FURTHER ORDERED that the following Order to cease and desist be, and it hereby is, entered:

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “ProMedica” means ProMedica Health System, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries (including, but not limited to, ProMedica Health Insurance Corporation), divisions, groups, and affiliates controlled by ProMedica Health System, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “St. Luke’s Hospital” means the Acute-Care Hospital operated at 5901 Monclova Road, Maumee, Ohio 43537.
- C. “Commission” means the Federal Trade Commission.
- D. “Acquirer” means the Person that acquires, with the prior approval of the Commission, the St. Luke’s Hospital Assets from ProMedica pursuant to Paragraph II, or from the Trustee pursuant to Paragraph VII of this Order.
- E. “Acquirer Hospital Business” means all activities relating to general Acute-Care Hospital services and other related health-care services to be conducted by the Acquirer in connection with the St. Luke’s Hospital Assets.
- F. “Acute-Care Hospital” means a health-care facility licensed as a hospital, other than a federally-owned facility, 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 having as a primary function the provision of General Acute-Care Inpatient Hospital Services.
- G. “Direct Cost” means the cost of direct material and direct labor used to provide the relevant assistance or service.
- H. “Divestiture Agreement” means any agreement, including all exhibits, attachments, agreements, schedules and amendments thereto, that has been approved by the Commission pursuant to which the St. Luke’s Hospital Assets are divested by ProMedica pursuant to Paragraph II, or by the Divestiture Trustee pursuant to Paragraph VII of this Order.
- I. “Divestiture Trustee” means the Person appointed pursuant to Paragraph VII of this Order to divest the St. Luke’s Hospital Assets.

- J. “Effective Date of Divestiture” means the date on which the divestiture of the St. Luke’s Hospital Assets to an Acquirer pursuant to Paragraph II or Paragraph VII of this Order is completed.
- K. “General Acute-Care Inpatient Hospital Services” means a broad cluster of basic medical and surgical diagnostic and treatment services for the medical diagnosis, treatment, and care of physically injured or sick persons with short term or episodic health problems or infirmities, that includes an overnight stay in the hospital by the patient. General Acute-Care Inpatient Hospital Services include what are commonly classified in the industry as primary, secondary, and tertiary services, but exclude: (i) services at hospitals that serve solely military and veterans; (ii) services at outpatient facilities that provide same-day service only; (iii) those services known in the industry as specialized tertiary services and quaternary services; and (iv) psychiatric, substance abuse, and rehabilitation services.
- L. “Hospital Provider Contract” means a contract between a Payor and any hospital to provide General Acute-Care Inpatient Hospital Services and related health-care services to enrollees of health plans.
- M. “Intangible Property” means intangible property relating to the Operation of St. Luke’s Hospital including, but not limited to, Intellectual Property, the St. Luke’s Hospital Name and Marks, logos, and the modifications or improvements to such intangible property.
- N. “Intellectual Property” means, without limitation: (i) all patents, patent applications, inventions, and discoveries that may be patentable; (ii) all know-how, trade secrets, software, technical information, data, registrations, applications for governmental approvals, inventions, processes, best practices (including clinical pathways), formulae, protocols, standards, methods, techniques, designs, quality-control practices and information, research and test procedures and information, and safety, environmental and health practices and information; (iii) all confidential or proprietary information, commercial information, management systems, business processes and practices, patient lists, patient information, patient records and files, patient communications, procurement practices and information, supplier qualification and approval practices and information, training materials, sales and marketing materials, patient support materials, advertising and promotional materials; and (iv) all rights in any jurisdiction to limit the use or disclosure of any of the foregoing, and rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation, or breach of any of the foregoing.
- O. “Joinder” means the Operation of St. Luke’s Hospital by ProMedica pursuant to the Joinder Agreement.

- P. “Joinder Agreement” means the agreement by and among ProMedica Health System, Inc., OhioCare Health System, Inc., St. Luke’s Hospital, and St. Luke’s Hospital Foundation, Inc., dated May 25, 2010, and all subsequent amendments thereto, including, but not limited to the First and Second Amendments, each dated August 18, 2010, the Third Amendment, dated August 31, 2010, and the Side Agreement, dated September 1, 2010.
- Q. “Licensed Intangible Property” means Intangible Property licensed to ProMedica or to St. Luke’s Hospital from a third party relating to the Operation of St. Luke’s Hospital including, but not limited to, Intellectual Property, software, computer programs, patents, know-how, goodwill, technology, trade secrets, technical information, marketing information, protocols, quality-control information, trademarks, trade names, service marks, logos, and the modifications or improvements to such intangible property that are licensed to ProMedica or to St. Luke’s Hospital (“Licensed Intangible Property” does not mean modifications and improvements to intangible property that are not licensed to ProMedica).
- R. “Monitor” means the Person appointed pursuant to Paragraph VI of the Order and with the prior approval of the Commission.
- S. “Monitor Agreement” means the agreement ProMedica enters into with the Monitor and with the prior approval of the Commission.
- T. “Operation of St. Luke’s Hospital” means all activities relating to the business of St. Luke’s Hospital, operating as an Acute-Care Hospital, including, but not limited to, the activities and services provided at outpatient facilities.
- U. “Ordinary Course of Business” means actions taken by any Person in the ordinary course of the normal day-to-day Operation of St. Luke’s Hospital that is consistent with past practices of such Person in the Operation of St. Luke’s Hospital, including, but not limited to, past practice with respect to amount, timing, and frequency.
- V. “Payor” means any Person that purchases, reimburses for, or otherwise pays for medical goods or services for themselves or for any other person, including, but not limited to: health insurance companies; preferred provider organizations; point-of-service organizations; prepaid hospital, medical, or other health-service plans; health maintenance organizations; government health-benefits programs; employers or other persons providing or administering self-insured health-benefits programs; and patients who purchase medical goods or services for themselves.
- W. “Person” means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, or other business or legal entity.

- X. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- Y. “ProMedica Medical Protocols” means medical protocols promulgated by ProMedica, whether in hard copy or embedded in software, that have been in effect at any ProMedica Hospital, excluding St. Luke’s Hospital, at any time since Joinder; provided, however, that “ProMedica’s Medical Protocols” does not mean medical protocols adopted or promulgated, at any time, by any Physician or by any Acquirer, even if such medical protocols are identical, in whole or in part, to medical protocols promulgated by ProMedica.
- Z. “Post-Joinder Hospital Business” means all activities relating to the provision of General Acute-Care Inpatient Hospital Services and other related health-care services conducted by ProMedica after Joinder including, but not limited to, all health-care services, including outpatient services, offered in connection with the St. Luke’s Hospital Business.
- AA. “Pre-Joinder St. Luke’s Hospital Business” means all activities relating to the provision of General Acute-Care Inpatient Hospital Services and other related health-care services that St. Luke’s Hospital was offering as an Acute-Care Hospital prior to Joinder.
- BB. “Real Property of St. Luke’s Hospital” means all real property interests (including fee simple interests and real property leasehold interests including all rights, easements and appurtenances, together with all buildings, structures, and facilities) that ProMedica acquired pursuant to the Joinder Agreement, whether or not located at St. Luke’s Hospital or whether or not related to the Operation of St. Luke’s Hospital. Real Property of St. Luke’s Hospital includes, but is not limited to, the assets which are identified and listed on Appendix 1 to this Order.
- CC. “St. Luke’s Hospital Assets” means all of ProMedica’s right, title, and interest in and to St. Luke’s Hospital and all related health-care and other assets, tangible or intangible, business, and properties, including any improvements or additions thereto made subsequent to Joinder, relating to the operation of the Post-Joinder Hospital Business, including, but not limited to:
1. All Real Property of St. Luke’s Hospital;
 2. All Tangible Personal Property, including Tangible Personal Property related to the Operation of St. Luke’s Hospital, whether or not located at St. Luke’s Hospital, and Tangible Personal Property located at the Real Property of St. Luke’s Hospital;
 3. All consumable or disposable inventory, including but not limited to, janitorial, office, and medical supplies, and at least thirty (30) treatment days of pharmaceuticals;

4. All rights under any contracts and agreements (*e.g.*, leases, service agreements such as dietary and housekeeping services, supply agreements, and procurement contracts), including, but not limited to, all rights to contributions, funds, and other provisions for the benefit of St. Luke's Hospital pursuant to the Joinder Agreement;
5. All rights and title in and to use of the St. Luke's Hospital Name and Marks on a permanent and exclusive basis;
6. St. Luke's Medicare and Medicaid provider numbers, to the extent transferable;
7. All Intellectual Property; provided, however, that St. Luke's Hospital Medical Protocols do not include ProMedica Medical Protocols;
8. All governmental approvals, consents, licenses, permits, waivers, or other authorizations to the extent transferable;
9. All rights under warranties and guarantees, express or implied;
10. All items of prepaid expense; and
11. Books, records, files, correspondence, manuals, computer printouts, databases, and other documents relating to the Operation of St. Luke's Hospital, electronic and hard copy, located on the premises of St. Luke's Hospital or in the possession of the ProMedica Employee responsible for the Operation of St. Luke's Hospital (or copies thereof where ProMedica has a legal obligation to maintain the original document), including, but not limited to:
 - a. documents containing information relating to patients (to the extent transferable under applicable law), including, but not limited to, medical records, including, but not limited to, any electronic medical records system,
 - b. financial records,
 - c. personnel files,
 - d. St. Luke's Hospital Physician Contracts, Physician lists, and other records of St. Luke's Hospital dealings with Physicians,
 - e. maintenance records,
 - f. documents relating to policies and procedures,

- g. documents relating to quality control,
 - h. documents relating to Payors,
 - i. documents relating to Suppliers, and
 - j. copies of Hospital Provider Contracts and contracts with Suppliers, unless such contracts cannot, according to their terms, be disclosed to third parties even with the permission of ProMedica to make such disclosure.
- DD. “St. Luke’s Hospital Contractor” means any Person that provides Physician or other health-care services pursuant to a contract with St. Luke’s Hospital or ProMedica (including, but not limited to, the provision of emergency room, anesthesiology, pathology, or radiology services) in connection with the Operation of St. Luke’s Hospital.
- EE. “St. Luke’s Hospital Physician Contracts” means all agreements to provide the services of a Physician in connection with the Operation of St. Luke’s Hospital, regardless of whether any of the agreements are with a Physician or with a medical group, including, but not limited to, agreements for the services of a medical director for St. Luke’s Hospital and joiner agreements with Physicians in the same medical practice as a medical director of St. Luke’s Hospital.
- FF. “St. Luke’s Hospital Employee” means any individual who was employed by St. Luke’s Hospital prior to Joinder or was employed by ProMedica after Joinder in connection with the Operation of St. Luke’s Hospital, and who has worked part-time or full-time on the premises of St. Luke’s Hospital at any time since Joinder, regardless of whether that individual has also worked on the premises of ProMedica.
- GG. “St. Luke’s Hospital License” means: (i) a worldwide, royalty-free, paid-up, perpetual, irrevocable, transferable, sublicensable, exclusive license under all Intellectual Property owned by or licensed to St. Luke’s Hospital relating to operation of the Post-Joinder Hospital Business at St. Luke’s Hospital (that is not included in the St. Luke’s Hospital Assets) and (ii) such tangible embodiments of the licensed rights (including, but not limited to, physical and electronic copies) as may be necessary or appropriate to enable the Acquirer to utilize the rights.
- HH. “St. Luke’s Hospital Medical Protocols” means medical protocols promulgated by St. Luke’s Hospital, whether in hard copy or embedded in software, that were in effect at any time prior to Joinder with ProMedica.
- II. “St. Luke’s Hospital Medical Staff Member” means any Physician or other health-care professional who: (1) is not a St. Luke’s Hospital Employee and (2)

is a member of the St. Luke's Hospital medical staff, including, but not limited to, any St. Luke's Hospital Contractor.

- JJ. "St. Luke's Hospital Name and Marks" means the name "St. Luke's Hospital" and any variation of that name, in connection with the St. Luke's Hospital Assets, and all other associated trade names, business names, proprietary names, registered and unregistered trademarks, service marks and applications, domain names, trade dress, copyrights, copyright registrations and applications, in both published works and unpublished works, relating to the St. Luke's Hospital Assets.
- KK. "Software" means executable computer code and the documentation for such computer code, but does not mean data processed by such computer code.
- LL. "Supplier" means any Person that has sold to ProMedica any goods or services, other than Physician services, for use in connection with the Operation of St. Luke's Hospital; provided, however, that "Supplier" does not mean an employee of ProMedica.
- MM. "Tangible Personal Property" means all machinery, equipment, spare parts, tools, and tooling (whether customer specific or otherwise); furniture, office equipment, computer hardware, supplies and materials; vehicles and rolling stock; and other items of tangible personal property of every kind whether owned or leased, together with any express or implied warranty by the manufacturers, sellers or lessors of any item or component part thereof, and all maintenance records and other documents relating thereto.
- NN. "Transitional Administrative Services" means administrative assistance with respect to the operation of an Acute-Care Hospital and related health-care services, including but not limited to assistance relating to billing, accounting, governmental regulation, human resources management, information systems, managed care contracting, and purchasing.
- OO. "Transitional Clinical Services" means clinical assistance and support services with respect to operation of an Acute-Care Hospital and related health-care services, including but not limited to cardiac surgery, oncology services, and laboratory and pathology services.
- PP. "Transitional Services" means Transitional Administrative Services and Transitional Clinical Services.

II.

IT IS FURTHER ORDERED that:

- A. ProMedica shall:
1. No later than one hundred and eighty (180) days from the date this Order becomes final and effective, divest absolutely and in good faith, and at no minimum price, the St. Luke's Hospital Assets to an Acquirer that receives the prior approval of the Commission and in a manner, including pursuant to a Divestiture Agreement, that receives the prior approval of the Commission;
 2. Comply with all terms of the Divestiture Agreement approved by the Commission pursuant to this Order, which agreement shall be deemed incorporated by reference into this Order; and any failure by ProMedica to comply with any term of the Divestiture Agreement shall constitute a failure to comply with this Order. The Divestiture Agreement shall not reduce, limit or contradict, or be construed to reduce, limit or contradict, the terms of this Order; provided, however, that nothing in this Order shall be construed to reduce any rights or benefits of any Acquirer or to reduce any obligations of ProMedica under such agreement; provided further, that if any term of the Divestiture Agreement varies from the terms of this Order ("Order Term"), then to the extent that ProMedica cannot fully comply with both terms, the Order Term shall determine ProMedica's obligations under this Order. Notwithstanding any paragraph, section, or other provision of the Divestiture Agreement, any failure to meet any condition precedent to closing (whether waived or not) or any modification of the Divestiture Agreement, without the prior approval of the Commission, shall constitute a failure to comply with this Order.
- B. Prior to the Effective Date of Divestiture, ProMedica shall not rescind the Joinder Agreement or any term of the Joinder Agreement necessary to comply with any Paragraph of this Order.
- C. Prior to the Effective Date of Divestiture, ProMedica shall restore to St. Luke's Hospital any assets of St. Luke's Hospital as of the date of Joinder that were removed from St. Luke's Hospital at any time from the date of Joinder through the Effective Date of Divestiture, other than Inventories consumed in the Ordinary Course of Business. To the extent that:
1. The St. Luke's Hospital Assets as of the Effective Date of Divestiture do not include (i) assets that ProMedica acquired on the date of Joinder, (ii) assets that replaced those acquired on the date of Joinder, or (iii) any other assets that ProMedica acquired and has used in or that are related to the Post-Joinder Hospital Business, then ProMedica shall add to the St. Luke's Hospital Assets additional assets (of a quality that meets generally acceptable

standards of performance) to replace the assets that no longer exist or are no longer controlled by ProMedica;

2. After the date of Joinder and prior to the Effective Date of Divestiture, if ProMedica terminated any clinical service, clinical program, support function, or management function (i) performed by the Pre-Joinder St. Luke's Hospital Business, or (ii) performed by the Post-Joinder Hospital Business, then ProMedica shall restore such service, program, or function (to a quality level that meets generally acceptable standards of care or performance), no later than the Effective Date of Divestiture of the St. Luke's Hospital Assets or any other date that receives the prior approval of the Commission.

Provided, however, that ProMedica shall not be required to replace any asset or to restore any service, program, or function described by Paragraphs II.C.1. or II.C.2. of this Order if and only if in each instance ProMedica demonstrates to the Commission's satisfaction: (i) that such asset, service, program, or function is not necessary to achieve the purpose of this Order; and (ii) that the Acquirer does not need such asset, service, program, or function to effectively operate the Acquirer Hospital Business in a manner consistent with the purpose of this Order, and if and only if the Commission approves the divestiture without the replacement or restoration of such asset, service, program, or function.

- D. No later than the Effective Date of Divestiture, ProMedica shall grant to the Acquirer a St. Luke's Hospital License for any use in the Acquirer Hospital Business, and shall take all actions necessary to facilitate the unrestricted use of the St. Luke's Hospital License.
- E. ProMedica shall take all actions and shall effect all arrangements in connection with the divestiture of the St. Luke's Hospital Assets necessary to ensure that the Acquirer can conduct the Acquirer Hospital Business in substantially the same manner as St. Luke's Hospital has operated as the Post-Joinder Hospital Business, and in full compliance with the March 29, 2011, order issued by Judge Katz in *Federal Trade Commission, et al. v. ProMedica Health System*, Civil No. 3:11 CV 47, at St. Luke's Hospital, with an independent full-service medical staff capable of providing General Acute-Care Inpatient Hospital Services, and an independent full-service hospital staff and management, including, but not limited to, providing:
 1. Assistance necessary to transfer to the Acquirer all governmental approvals needed to operate the St. Luke's Hospital Assets as an Acute-Care Hospital;
 2. Transitional Services;
 3. The opportunity to recruit and employ St. Luke's Hospital Employees; and

4. The opportunity to recruit, contract with, and extend medical staff privileges to any St. Luke's Hospital Medical Staff Member, including as provided in Paragraphs II.I, II.J, and II.K of this Order.
- F. ProMedica shall convey as of the Effective Date of Divestiture to the Acquirer the right to use any Licensed Intangible Property (to the extent permitted by the third-party licensor), if such right is needed for the Operation of St. Luke's Hospital by the Acquirer and if the Acquirer is unable, using commercially-reasonable efforts, to obtain equivalent rights from other third parties on commercially-reasonable terms and conditions.
- G. ProMedica shall:
1. Place no restrictions on the use by the Acquirer of the St. Luke's Hospital Assets;
 2. On or before the Effective Date of Divestiture, provide to the Acquirer contact information about Payors and Suppliers for the St. Luke's Hospital Assets;
 3. Not object to the sharing of Payor and Supplier contract terms relating to the St. Luke's Hospital Assets: (i) if the Payor or Supplier consents in writing to such disclosure upon a request by the Acquirer, and (ii) if the Acquirer enters into a confidentiality agreement with ProMedica not to disclose the information to any third party; and
 4. With respect to contracts with St. Luke's Hospital Suppliers, at the Acquirer's option and as of the Effective Date of Divestiture:
 - a. if such contract can be assigned without third-party approval, assign its rights under the contract to the Acquirer; and
 - b. if such contract can be assigned to the Acquirer only with third-party approval, assist and cooperate with the Acquirer in obtaining:
 - (1) such third-party approval and in assigning the contract to the Acquirer; or
 - (2) a new contract.

- H. At the request of the Acquirer, for a period not to exceed twelve (12) months from the Effective Date of Divestiture, except as otherwise approved by the Commission, and in a manner (including pursuant to an agreement) that receives the prior approval of the Commission:
1. ProMedica shall provide Transitional Services to the Acquirer sufficient to enable the Acquirer to conduct the Acquirer Hospital Business in substantially the same manner that ProMedica has conducted the Post-Joinder Hospital Business at St. Luke's Hospital; and
 2. ProMedica shall provide the Transitional Services required by this Paragraph II.H. at substantially the same level and quality as such services are provided by ProMedica in connection with its operation of the Post-Joinder Hospital Business.

Provided, however, that ProMedica shall not (i) require the Acquirer to pay compensation for Transitional Services that exceeds the Direct Cost of providing such goods and services, (ii) terminate its obligation to provide Transitional Services because of a material breach by the Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction, or (iii) include a term in any agreement to provide Transitional Services that limits the type of damages (such as indirect, special, and consequential damages) that the Acquirer would be entitled to seek in the event of ProMedica's breach of such agreement.

- I. ProMedica shall allow the Acquirer an opportunity to recruit and employ any St. Luke's Hospital Employee in connection with the divestiture of the St. Luke's Hospital Assets so as to enable the Acquirer to establish an independent, full-service medical staff, hospital staff and management, including as follows:
1. No later than five (5) days after execution of a divestiture agreement, ProMedica shall (i) identify each St. Luke's Hospital Employee, (ii) allow the Acquirer an opportunity to interview any St. Luke's Hospital Employee, and (iii) allow the Acquirer to inspect the personnel files and other documentation relating to any St. Luke's Hospital Employee, to the extent permissible under applicable laws.
 2. ProMedica shall (i) not offer any incentive to any St. Luke's Hospital Employee to decline employment with the Acquirer, (ii) remove any contractual impediments that may deter any St. Luke's Hospital Employee from accepting employment with the Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with ProMedica that would affect the ability of the St. Luke's Hospital Employee to be employed by the Acquirer, and (iii) not otherwise interfere with the recruitment of any St. Luke's Hospital Employee by the

Acquirer, including, but not limited to, by refusing or threatening to refuse to extend medical staff privileges at any ProMedica Acute-Care Hospital.

3. ProMedica shall (i) vest all current and accrued pension benefits as of the date of transition of employment with the Acquirer for any St. Luke's Hospital Employee who accepts an offer of employment from the Acquirer no later than thirty (30) days from the Effective Date of Divestiture and (ii) if the Acquirer has made a written offer of employment to any key personnel, as identified and listed on confidential Appendix 2 to this Order, provide such key personnel with reasonable financial incentives to accept a position with the Acquirer at the time of the Effective Date of Divestiture, including, but not limited to (and subject to Commission approval), payment of an incentive equal to up to three (3) months of such key personnel's base salary to be paid only upon such key personnel's completion of one (1) year of employment with the Acquirer.
 4. For a period ending two (2) years after the Effective Date of Divestiture, ProMedica shall not, directly or indirectly, solicit, hire, or enter into any arrangement for the services of any St. Luke's Hospital Employee employed by the Acquirer, unless such St. Luke's Hospital Employee's employment has been terminated by the Acquirer; provided, however, this Paragraph II.I.4 shall not prohibit ProMedica from: (i) advertising for employees in newspapers, trade publications, or other media not targeted specifically at the St. Luke's Hospital Employees, (ii) hiring employees who apply for employment with ProMedica, as long as such employees were not solicited by ProMedica in violation of this Paragraph II.I.4, or (iii) offering employment to a St. Luke's Hospital Employee who is employed by the Acquirer in only a part-time capacity, if the employment offered by ProMedica would not, in any way, interfere with that employee's ability to fulfill his or her employment responsibilities to the Acquirer.
- J. ProMedica shall allow the Acquirer an unimpeded opportunity to recruit, contract with, and otherwise extend medical staff privileges to any St. Luke's Hospital Medical Staff Member in connection with the divestiture of the St. Luke's Hospital Assets so as to enable the Acquirer to establish an independent, complete, full-service medical staff, including as follows:
1. No later than the date of execution of a divestiture agreement, ProMedica shall (i) identify each St. Luke's Hospital Medical Staff Member, (ii) allow the Acquirer an opportunity to interview any St. Luke's Hospital Medical Staff Member, and (iii) allow the Acquirer to inspect the files and other documentation relating to any St. Luke's Hospital Medical Staff Member, to the extent permissible under applicable laws.
 2. ProMedica shall (i) not offer any incentive to any St. Luke's Hospital Medical Staff Member to decline to join the Acquirer's medical staff; (ii)

remove any contractual impediments that may deter any St. Luke's Hospital Medical Staff Member from joining the Acquirer's medical staff, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with ProMedica that would affect the ability of the St. Luke's Hospital Medical Staff Members to be recruited by the Acquirer; and (iii) not otherwise interfere with the recruitment of any St. Luke's Hospital Medical Staff Member by the Acquirer, including, but not limited to, by refusing or threatening to refuse to extend medical staff privileges at any ProMedica Acute-Care Hospital.

- K. With respect to each Physician who has provided services to St. Luke's Hospital pursuant to any St. Luke's Hospital Physician Contract in effect at any time preceding the Effective Date of Divestiture ("Contract Physician"), ProMedica shall not offer any incentive to the Contract Physician, the Contract Physician's practice group, or other members of the Contract Physician's practice group to decline to provide services to St. Luke's Hospital, and shall eliminate any confidentiality restrictions that would prevent the Contract Physician, the Contract Physician's practice group, or other members of the Contract Physician's practice group from using or transferring to the Acquirer of the St. Luke's Hospital Assets any information relating to the Operation of St. Luke's Hospital.
- L. Except in the course of performing its obligations under this Order, ProMedica shall:
1. not provide, disclose, or otherwise make available any trade secrets or any sensitive or proprietary commercial or financial information relating to the Acquirer or the Acquirer Hospital Business to any Person other than the Acquirer, and shall not use such information for any reason or purpose;
 2. disclose trade secrets or any sensitive or proprietary commercial or financial information relating to the Acquirer or the Acquirer Hospital Business to any Person other than the Acquirer (i) only in the manner and to the extent necessary to satisfy ProMedica's obligations under this Order and (ii) only to Persons who agree in writing to maintain the confidentiality of such information; and
 3. enforce the terms of this Paragraph II.L as to any Person and take such action as is necessary, including training, to cause each such Person to comply with the terms of this Paragraph II.L., including any actions that ProMedica would take to protect its own trade secrets or sensitive or proprietary commercial or financial information.
- M. No later than the Effective Date of Divestiture, ProMedica shall assign to the Acquirer any Hospital Provider Contract for the provision of services in connection with the Operation of St. Luke's Hospital that is in effect as of the

date the divestiture provisions of this Order become final and effective; provided, however, that nothing in this Paragraph II.M. shall preclude ProMedica from completing any post-termination obligations relating to any Hospital Provider Contract.

- N. The purpose of the divestiture of the St. Luke's Hospital Assets is to ensure the continued Operation of St. Luke's Hospital by the Acquirer, independent of ProMedica, and to remedy the lessening of competition resulting from ProMedica's acquisition of St. Luke's Hospital.

III.

IT IS FURTHER ORDERED that:

- A. From the date this Order becomes final and effective (without regard to the finality of the divestiture requirements herein) until the Effective Date of Divestiture, ProMedica shall not:
1. Sell or transfer any St. Luke's Hospital Assets, other than in the Ordinary Course of Business;
 2. Eliminate, transfer, or consolidate any clinical service offered in connection with the Post-Joinder Hospital Business;
 3. Fail to maintain the employment of all St. Luke's Hospital Employees or otherwise fail to keep the Post-Joinder Hospital Business staffed with sufficient employees; provided, however, that ProMedica may terminate employees for cause consistent with the Operation of St. Luke's Hospital on the day before Joinder (in which event ProMedica shall replace such employees);
 4. Modify, change, or cancel any Physician privileges in connection with the Post-Joinder Hospital Business; provided, however, that ProMedica may revoke the privileges of any individual Physician consistent with the practices and procedures in place in connection with the Operation of St. Luke's Hospital on the day before Joinder; or
 5. Terminate, or cause or allow termination of any contract between any Payor and St. Luke's Hospital. For any contract between a Payor and St. Luke's Hospital that expires during the term of this Order, ProMedica shall offer to extend such contract at rates for services in connection with the Post-Joinder Hospital Business that shall be increased no more than the highest year-over-year escalator percentage as provided in such contract.

IV.

IT IS FURTHER ORDERED that:

- A. From the date this Order becomes final and effective (without regard to the finality of the divestiture requirements herein) until the Effective Date of Divestiture, ProMedica shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the St. Luke's Hospital Assets and the Post-Joinder Hospital Business relating to the St. Luke's Hospital Assets. Among other things that may be necessary, ProMedica shall:
1. Maintain the operations of the Post-Joinder Hospital Business relating to the St. Luke's Hospital Assets in the Ordinary Course of Business and in accordance with past practice (including regular repair and maintenance of the St. Luke's Hospital Assets).
 2. Use best efforts to maintain and increase revenues of the Post-Joinder Hospital Business relating to the St. Luke's Hospital Assets, and to maintain at budgeted levels for the year 2010 or the current year, whichever are higher, all administrative, technical, and marketing support for the Post-Joinder Hospital Business relating to the St. Luke's Hospital Assets.
 3. Use best efforts to maintain the current workforce and to retain the services of employees and agents in connection with the Post-Joinder Hospital Business relating to the St. Luke's Hospital Assets, including payment of bonuses as necessary, and maintain the relations and goodwill with patients, Physicians, Suppliers, vendors, employees, landlords, creditors, agents, and others having business relationships with the Post-Joinder Hospital Business relating to the St. Luke's Hospital Assets.
 4. Assure that ProMedica's employees with primary responsibility for managing and operating the Post-Joinder Hospital Business relating to the St. Luke's Hospital Assets are not transferred or reassigned to other areas within ProMedica's organization, except for transfer bids initiated by employees pursuant to ProMedica's regular, established job-posting policy (in which event ProMedica shall replace such employees).
 5. Provide sufficient working capital to maintain the Post-Joinder Hospital Business relating to the St. Luke's Hospital Assets as an economically viable and competitive ongoing business and shall not, except as part of a divestiture approved by the Commission pursuant to this Order, remove, sell, lease, assign, transfer, license, pledge for collateral, or otherwise dispose of the St. Luke's Hospital Assets.

- B. No later than thirty (30) days from the date this Order becomes final and effective (without regard to the finality of the divestiture requirements herein), ProMedica shall file a verified written report to the Commission that identifies (i) all assets included in the St. Luke's Hospital Assets, (ii) all assets originally acquired or that replace assets originally acquired by ProMedica as a result of Joinder, (iii) all assets relating to the Post-Joinder Hospital Business that are not included in the St. Luke's Hospital Assets, and (iv) all clinical services, support functions, and management functions that ProMedica discontinued at St. Luke's Hospital after Joinder (hereafter "Accounting").

V.

IT IS FURTHER ORDERED that no later than five (5) days from the date this Order becomes final and effective (without regard to the finality of the divestiture requirements herein), ProMedica shall provide a copy of this Order and Complaint to each of ProMedica's officers, employees, or agents having managerial responsibility for any of ProMedica's obligations under Paragraphs II, III, and IV of this Order.

VI.

IT IS FURTHER ORDERED that:

- A. At any time after this Order becomes final and effective (without regard to the finality of the divestiture requirements herein), the Commission may appoint a Person ("Monitor") to monitor ProMedica's compliance with its obligations under this Order, consult with Commission staff, and report to the Commission regarding ProMedica's compliance with its obligations under this Order.
- B. If a Monitor is appointed pursuant to Paragraph VI.A of this Order, ProMedica shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor ProMedica's compliance with the terms of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor pursuant to the terms of this Order and in a manner consistent with the purposes of this Order and in consultation with the Commission or its staff.
 2. Within ten (10) days after appointment of the Monitor, ProMedica shall execute an agreement that, subject to the approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor ProMedica's compliance with the terms of this Order in a manner consistent with the purposes of this Order. If requested by ProMedica, the Monitor shall sign a confidentiality agreement prohibiting the use or disclosure to anyone other than the Commission (or any Person retained by the Monitor pursuant to Paragraph VI.B.5. of this Order), of any

competitively-sensitive or proprietary information gained as a result of his or her role as Monitor, for any purpose other than performance of the Monitor's duties under this Order.

3. The Monitor's power and duties under this Paragraph VI shall terminate three (3) business days after the Monitor has completed his or her final report pursuant to Paragraph VI.B.8. of this Order or at such other time as directed by the Commission.
4. ProMedica shall cooperate with any Monitor appointed by the Commission in the performance of his or her duties, and shall provide the Monitor with full and complete access to ProMedica's books, records, documents, personnel, facilities, and technical information relating to compliance with this Order, or to any other relevant information, as the Monitor may reasonably request. ProMedica shall cooperate with any reasonable request of the Monitor. ProMedica shall take no action to interfere with or impede the Monitor's ability to monitor ProMedica's compliance with this Order.
5. The Monitor shall serve, without bond or other security, at the expense of ProMedica, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of ProMedica, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
6. ProMedica shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct. For purposes of this Paragraph VI.B.6., the term "Monitor" shall include all Persons retained by the Monitor pursuant to Paragraph VI.B.5. of this Order.
7. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute to serve as Monitor in the same manner as provided by this Order.
8. The Monitor shall report in writing to the Commission (i) every sixty (60) days from the date this Order becomes final and effective (without regard to the finality of the divestiture requirements herein), (ii) no later than thirty (30) days from the date ProMedica completes its obligations under this

Order, and (iii) at any other time as requested by the staff of the Commission, concerning ProMedica's compliance with this Order.

- C. ProMedica shall submit the following reports to the Monitor: (i) no later than twenty (20) days after the date the Monitor is appointed by the Commission pursuant to Paragraph VI.A. of this Order, a copy of the Accounting required by Paragraph IV.B. of this Order; and (ii) copies of all compliance reports filed with the Commission.
- D. ProMedica shall provide the Monitor with: (i) prompt notification of significant meetings, including date, time and venue, scheduled after the execution of the Monitor Agreement, relating to the regulatory approvals, marketing, sale and divestiture of the St. Luke's Hospital Assets, and such meetings may be attended by the Monitor or his representative, at the Monitor's option or at the request of the Commission or staff of the Commission; and (ii) the minutes, if any, of the above-referenced meetings as soon as practicable and, in any event, not later than those minutes are available to any employee of ProMedica.
- E. The Commission may, on its own initiative or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
- F. The Monitor appointed pursuant to this Order may be the same Person appointed as Divestiture Trustee pursuant to Paragraph II of this Order.

VII.

IT IS FURTHER ORDERED that:

- A. If ProMedica has not divested, absolutely and in good faith, the St. Luke's Hospital Assets pursuant to the requirements of Paragraph II of this Order, within the time and manner required by Paragraph II of this Order, the Commission may at any time appoint one or more Persons as Divestiture Trustee to divest the St. Luke's Hospital Assets, at no minimum price, and pursuant to the requirements of Paragraph II of this Order, in a manner that satisfies the requirements of this Order.
- B. In the event that the Commission or the Attorney General of the United States brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, ProMedica shall consent to the appointment of a Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VII shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including appointment of a court-appointed Divestiture Trustee, pursuant to

§ 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by ProMedica to comply with this Order.

- C. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VII, ProMedica shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effect the divestiture pursuant to the requirements of Paragraph II of this Order and in a manner consistent with the purposes of this Order.
 2. Within ten (10) days after appointment of the Divestiture Trustee, ProMedica shall execute an agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed Divestiture Trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture and perform the requirements of Paragraph II of this Order for which he or she has been appointed.
 3. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the agreement described in Paragraph VII.C.2. of this Order to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period the Divestiture Trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court appointed Divestiture Trustee, by the court.
 4. ProMedica shall provide the Divestiture Trustee with full and complete access to the personnel, books, records, and facilities related to the assets to be divested, or to any other relevant information, as the Divestiture Trustee may request. ProMedica shall develop such financial or other information as the Divestiture Trustee may reasonably request and shall cooperate with the Divestiture Trustee. ProMedica shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by ProMedica shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
 5. The Divestiture Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, but shall divest expeditiously at no minimum price. The divestiture shall be made only to an Acquirer that receives the prior approval

of the Commission, and the divestiture shall be accomplished only in a manner that receives the prior approval of the Commission; provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity or entities selected by ProMedica from among those approved by the Commission; provided, further, that ProMedica shall select such entity within ten (10) business days of receiving written notification of the Commission's approval.

6. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of ProMedica, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of ProMedica, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of ProMedica, and the Divestiture Trustee's power shall be terminated. The Divestiture Trustee's compensation may be based in part on a commission arrangement contingent on the Divestiture Trustee's divesting the assets.
7. ProMedica shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph VII.C.7., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph VII.C.6. of this Order.
8. If the Divestiture Trustee ceases to act or fails to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VII for appointment of the initial Divestiture Trustee.
9. The Divestiture Trustee shall have no obligation or authority to operate or maintain the assets to be divested.

10. The Divestiture Trustee shall report in writing to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
- D. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
- E. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as the Monitor pursuant to Paragraph VI of this Order.

VIII.

IT IS FURTHER ORDERED that:

- A. ProMedica shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order (i) no later than thirty (30) days from the date this Order becomes final and effective (without regard to the finality of the divestiture requirements herein), and every thirty (30) days thereafter until the divestiture of the St. Luke's Hospital Assets is accomplished, and (ii) thereafter, every sixty (60) days (measured from the Effective Date of Divestiture) until the date ProMedica completes its obligations under this Order; provided, however, that ProMedica shall also file the report required by this Paragraph VIII at any other time as the Commission may require.
- B. ProMedica shall include in its compliance reports, among other things required by the Commission, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, a description (when applicable) of all substantive contacts or negotiations relating to the divestiture required by Paragraph II of this Order, the identity of all parties contacted, copies of all written communications to and from such parties, internal documents and communications, and all reports and recommendations concerning the divestiture, the date of divestiture, and a statement that the divestiture has been accomplished in the manner approved by the Commission.

IX.

IT IS FURTHER ORDERED that ProMedica shall notify the Commission at least thirty (30) days prior to (1) any proposed dissolution of ProMedica, (2) any proposed acquisition, merger, or consolidation of ProMedica, or (3) any other change in ProMedica that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in ProMedica.

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice, ProMedica shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of ProMedica, and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession, or under the control, of ProMedica relating to compliance with this Order, which copying services shall be provided by ProMedica at its expense; and
- B. To interview officers, directors, or employees of ProMedica, who may have counsel present, regarding such matters.

By the Commission.

Donald S. Clark
Secretary

ISSUED: March 22, 2012

Final Order Appendix 1



Final Order Confidential Appendix 2

