

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF
PENNSYLVANIA,
By JOSHUA D. SHAPIRO,
Attorney General; PENNSYLVANIA
DEPARTMENT OF INSURANCE,
By JESSICA ALTMAN, Insurance
Commissioner, and PENNSYLVANIA
DEPARTMENT OF HEALTH,
By DR. RACHEL LEVINE, Secretary of
Health;

Petitioners,

v.

UPMC, A Nonprofit Corp., et al.;

Respondents.

No. 334 M.D. 2014

**RESPONSE IN OPPOSITION TO THE PA AGENCIES’
APPLICATION TO QUASH AND FOR A PROTECTIVE ORDER**

This case was filed on June 27, 2014, for the purpose of seeking Court approval of a signed Consent Decree between the Commonwealth and UPMC. The Pennsylvania Insurance Department (“PID”) and Department of Health (“DOH”) helped to negotiate that Consent Decree and executed the agreement. Those agencies filed this lawsuit as Petitioners, along with the Office of the Attorney General (“OAG”). Neither PID nor DOH have ever withdrawn from the case, they continue to be represented by counsel in this proceeding, and they are still identified in the caption as Petitioners. From the beginning, they have been intimately involved in overseeing implementation of the 2014 Consent Decree.

The present dispute concerns a request to modify the parties' 2014 Consent Decree.¹ PID and DOH, along with the Governor's Office (together with PID and DOH, the "PA Agencies"), are critical witnesses to this proceeding and possess unique information that is directly relevant to the questions this Court may need to decide at the upcoming trial. And yet, those agencies are refusing to participate in *any* discovery related to the current dispute, either as parties or through third-party subpoenas. UPMC tried to negotiate a compromise, offering to accept a narrow set of stipulations and production of documents in response to a single limited document request as full satisfaction of its subpoena *duces tecum*. Each agency refused, however, on the grounds that they are nonparties and the Court somehow precluded third-party discovery.

There is simply no credible basis for the PA Agencies' refusal to produce any discovery in this matter. As detailed below, there can be *no question* that they have unique documents and information that bear directly on key issues before the Court. OAG's Petition asserts that the proposed modifications are in the "public

¹ The Court bifurcated the remaining counts in OAG's Petition to Modify and dismissed a significant portion of the prayer for relief alleged in Count I in the Memorandum Opinion of April 3, 2019. On April 4, UPMC spoke with OAG about the Court's Opinion and understands that OAG is still evaluating the decision. UPMC submits this Response pursuant to the deadline set forth in the Court's April 1, 2019 Rule to Show Cause, but reserves the right to propose amendments to the Court's current Scheduling Orders or seek other relief at the appropriate time following further discussions with OAG.

interest.” PID and DOH are the agencies that oversee the insurance and healthcare industries. They negotiated and signed UPMC’s 2014 Consent Decree. They applied that agreement for five years—including in ways that are contrary to what the OAG now proposes. They investigated Highmark’s deceptive advertising under its Consent Decree. They implemented a transition plan to ensure that when the 2014 Consent Decree ends, consumers will be protected. They negotiated a UPMC-Highmark agreement that provides for continued contracting for the next five years for specific areas and services. All of this information is a critical part of the factual record needed to fully evaluate the scope and propriety of OAG’s requested modifications.

The PA Agencies cite no court rule or precedent that would somehow immunize them from discovery in this case. Even in a civil case in the Court of Common Pleas between two private parties, the agencies would be subject at least to third-party discovery. The civil rules presumptively entitle UPMC to subpoena non-parties for relevant information. UPMC informed all parties and the Court that it intended to pursue third-party discovery, and the Court’s subsequent Scheduling Order II did *not* displace UPMC’s right under the rules to proceed with that discovery. As a matter of Pennsylvania procedure, UPMC’s subpoenas to the PA Agencies were proper and should be enforced.

Moreover, if the Court is going to decide whether OAG’s proposals—iterations of which the General Assembly has consistently rejected—are in the “public interest,” it makes no sense to shield the PA Agencies from this proceeding. Healthcare is exceedingly complex. It is highly regulated; it involves significant questions of finance; nonprofits in particular face little economic margin for operational error; there is a patchwork of federal laws that preempt state action. All of these many pieces fit together in a way that impacts how millions of individual citizens access healthcare. OAG is asking the Court to rearrange those pieces. The Court should not decide whether to do so blind to input from the regulators who oversee healthcare in Pennsylvania.

Nor do the litany of excuses that dominate the PA Agencies’ brief—undue burden, various privileges, confidentiality—provide any basis to evade UPMC’s discovery requests in their entirety. These are common objections to any discovery request. They provide no basis to refuse the vast majority of UPMC’s requests; in fact, the PA Agencies do not object to most of the requests. In any event, objections to burden are resolved through a meet-and-confer process, including through selection of reasonable search parameters (*e.g.*, search terms, custodians, time period). Privilege and confidentiality determinations are made on a document-by-document basis. Documents are logged or access is limited through a protective order, as necessary.

There is no time to waste on motion practice. OAG unnecessarily delayed filing its Petition. That has forced the Court to expedite proceedings and imposed incredible burden and expense on all concerned. While it is unfortunate that the PA Agencies should share in that burden, it is one that OAG created and is no reason to impede UPMC's ability to defend its claims and, ultimately, the Court's ability to make factual findings on an appropriately complete record. The Application to Quash should be denied.

BACKGROUND

This Court approved UPMC's Consent Decree on July 1, 2014. The agreement requires UPMC to give in-network access to certain members of Highmark insurance plans. Pursuant to a termination provision to which PID, DOH, and OAG all agreed, the 2014 Consent Decree ends on June 30, 2019, a date that all parties have known about for the last five years and that both the Supreme Court and now this Court have expressly upheld.

In late 2017, OAG asked this Court to interpret the 2014 Consent Decree in a way that would have forced UPMC to continue certain Medicare Advantage contracts with Highmark into 2020. Like the present Petition to Modify, PID and DOH did not join OAG in that request, and the Court proceeded solely on the basis of OAG's position. In July 2018, a unanimous Supreme Court rejected OAG's request as an improper interpretation of the 2014 Consent Decree.

In February 2019—nearly five years after agreeing to an end-date of June 30, 2019—OAG filed the instant Petition to Modify. Simultaneous with filing that Petition, OAG also asked for expedited proceedings. OAG had known about the June 30 end-date for years, and the Supreme Court’s 2018 opinion left no doubt that all obligations would end on that date. There was no need for OAG’s delay. Indeed, OAG alleges in its Petition to Modify that it had been discussing modification with UPMC “for the past two years.” Petition to Modify at 3. It could have sought modification long ago instead of waiting. But given the timing, the Court opened discovery on February 25, 2019, and ordered that it be completed by May 1, with up to forty-five depositions to be conducted in that time. *See* Scheduling Order I ¶ 3; Scheduling Order II ¶ 6. Trial on whether to modify UPMC’s Consent Decree through June 30 is set for May 29. Scheduling Order II ¶ 9.

In March, UPMC asked PID and DOH to confirm whether they would accept first-party discovery, and neither agency responded. *See* Exhibit 1. Thereafter—and with no limitation on third-party discovery in either of the Court’s Scheduling Orders—UPMC served on the PA Agencies the three subpoenas now at issue. Outside counsel for the PA Agencies objected, arguing that the agencies were not subject to any discovery and that the subpoenas were overly broad in any event. *See* Exhibit 2.

In an effort to reach a compromise, UPMC then proposed a single, limited document request to each agency, as well as a handful of factual stipulations and document authentications. *See* Exhibit 3. In response to even this limited proposal, the agencies reiterated their position that *any* discovery against them was improper, and conveyed that further discussions on the matter would be fruitless. Their Application to Quash followed.

STATEMENT OF MATERIAL DISPUTES

Discovery on the PA Agencies would encompass several material issues that relate directly to the allegations in OAG’s Petition to Modify, the “public interest” in what healthcare model should govern Pennsylvania, and UPMC’s defenses to Count I of OAG’s Petition. In addition, the PA Agencies have asserted in general fashion certain privilege and confidentiality objections. These are detailed below.

1. The 2017 UPMC-Highmark Agreement. OAG has brought its Petition to Modify because of what OAG calls “UPMC’s refusal to contract with Highmark.” OAG’s March 11, 2019 Opp’n to the Motion to Dismiss at 24. But any suggestion that UPMC blanketly refuses to contract with Highmark is false. In fact, many UPMC hospitals have ongoing contracts with Highmark for Medicare Advantage. With respect to Highmark’s commercial—*e.g.*, non-Medicare—members, UPMC agreed in late 2017 to continue in-network access to several UPMC hospitals and service lines. That agreement was brokered by PID and the

Governor's Office, which—purporting to act in the public interest—identified in writing the specific hospitals and services for which UPMC and Highmark should have an ongoing contractual relationship. *See* Exhibit 4 (image of hand-out from PID). UPMC agreed to continue providing in-network access to each facility and service line that PID identified. Highmark's commercial members thus now have an additional five years of in-network access to those hospitals and services—except for two service lines that Highmark asked *not* to be included in the agreement, thus excluding its members from in-network access to UPMC for those services.

The choices that PID and the Governor's Office made in selecting those hospitals and services are different than what OAG now says the public interest requires in this case. Neither PID nor the Governor's Office (nor Highmark, for that matter) asked that *all* UPMC hospitals and services be in-network for Highmark's members—which is what OAG's requested relief on Count I would enable. Rather, PID and the Governor's Office curated a specific list of services and hospitals to be negotiated. UPMC should be permitted discovery into why PID and the Governor's Office chose those specific hospitals and services—and ruled out others—as part of its effort to disprove OAG's claim that the public interest requires more.

2. Investigations of Highmark. OAG has dismissed as “speculative” any suggestion that Highmark will use forced contracting with UPMC as a way to deceive consumers and steer patients away from UPMC hospitals and into Highmark’s own provider system. *See, e.g.,* Exhibit 5 at Interrogatory 24. But UPMC expects to show at trial a long-history of misconduct, malign intent, and illegal business strategies on the part of Highmark to show in part why OAG’s proposed modifications are not in the public interest. Some of Highmark’s past deceptions have caused the Commonwealth, through PID, to investigate marketing and claims-processing tactics *by Highmark* that denied its members in-network access to UPMC. Such evidence goes directly to rebutting claims that OAG’s proposed modifications are in the public interest.

3. Judge Pellegrini’s Direction that the Commonwealth Should Have Sought Modification in 2018. In a January 2018 *in camera* discussion prior to a hearing on separate petition that would have extended UPMC’s obligations under its Consent Decree, Judge Pellegrini directed the Commonwealth to proceed at that time on any request to modify the end-date because they could not come back later on for a second bite at extending the agreement. The Commonwealth declined, choosing instead to wait over a year until February 2019 to file its Petition to Modify. UPMC seeks to develop a factual record of that conference. After OAG refused to agree on a stipulation and applied to quash a deposition notice, the Court

granted that application—but did so without prejudice to UPMC seeking the deposition again upon proof “that the information sought is not available from other sources.”

PID and DOH are the only entities that claim not to be party to the current Petition but were in attendance at the January conference. Their testimony as to what occurred is thus particularly important and the only possible neutral source from which UPMC can obtain discovery on this point. UPMC cannot be blocked from both deposing OAG on this subject and from seeking discovery from the only purported third parties in attendance that day.

4. Reasons for and Implementation of the Approving Order. This Court is being asked to interpret and apply the modification provision of UPMC’s 2014 Consent Decree. By the terms of the agreement, that provision must “be interpreted consistently with the Insurance Department’s UPE Order in the Highmark/West Penn Allegheny Health System matter, *In Re Application of UPE*, No. ID-RC-13-06 (Pa. Insur. Dept. 2013),” also known as the Approving Order. In the Approving Order, PID (a) approved Highmark’s acquisition of the former West Penn Allegheny Hospital System (“WPAHS”), now known as Allegheny Health Network (“AHN”); (b) did so predicated on financial projections that assumed there would not be the kind of UPMC-Highmark contract that OAG would compel; and (c) required that Highmark submit new financial analyses in the event it did

near agreement with UPMC on a new contract, since any new UPMC-Highmark contract could be financially ruinous for WPAHS. *See* Exhibit 6 at 3 and ¶ 22 (Approving Order).

OAG has not yet identified why it thinks its proposed modifications are in the public interest or how it will rebut contrary arguments. But because the Court must interpret UPMC's 2014 Consent Decree consistent with the Approving Order, matters relating to that order will necessarily be at issue in any trial on Count I and could cover, for instance:

- Why does OAG claim in 2019 that forced contracting between UPMC and Highmark going forward is in the public interest, when PID in 2013 only approved the WPAHS transaction on the assumption there would be no UPMC-Highmark contract going forward?
- What is PID's independent assessment of AHN's financial stability?
- What will be the impact of OAG's proposed modified consent decree on AHN's financial stability? It cannot be in the public interest to impose a new model of healthcare that will destabilize AHN's ongoing financial recovery.
- What submissions regarding OAG's proposed modification of UPMC's 2014 Consent Decree were made to PID pursuant to the Approving Order, if any?
- How are the circumstances in 2019 different from what PID faced in 2013?

The parties cannot meaningfully dispute, and the Court cannot thoroughly address, any of these or similar issues under the Approving Order if PID is completely exempt from discovery.

5. Regulatory Analysis. PID and DOH have numerous regulatory responsibilities that relate directly to what types of healthcare policies may or may not be in the public interest. DOH, for instance, analyzes the adequacy of provider markets for individual insurance plans and has approved many plans that exclude all UPMC providers from their network. PID approves healthcare rates, reviews proposed insurance transactions, and has overseen substantial analyses of Pennsylvania healthcare markets, including with respect to competition and its impact on premiums. That kind of evidence from the Commonwealth's own regulators should not be hidden from view as the Court embarks on a wide-ranging investigation of what healthcare models serve the public interest.

In particular, UPMC is entitled to learn—and this Court should understand—why the PA Agencies did not join the Attorney General's Petition to Modify. One or more of the PA Agencies met with OAG at least five times regarding either OAG's proposed modifications or termination of in-network access to UPMC for Highmark members. *See* Exhibit 5 at Interrogatory 3. Yet none of those agencies signed the Petition to Modify. It would be particularly prejudicial to prohibit UPMC from seeking discovery from Commonwealth entities who decided *not* to join the instant Petition.

6. Communications Other Than With the Parties. There is no basis to assume—and the PA Agencies do not contend—that PID, DOH, and the

Governor's Office have communicated exclusively with UPMC, Highmark, or OAG about the 2014 Consent Decree, the Petition to Modify, or the UPMC-Highmark relationship more broadly. Given their distinct regulatory roles and involvement in matters like the 2017 agreement discussed above, the PA Agencies are certainly in possession of non-privileged, non-confidential communications that are relevant to the public interest and/or the claims and defenses in Count I, and that are not available through any other means. UPMC should not be preemptively denied the ability to obtain that discovery.

7. Authenticating Government Records. A subpoena *duces tecum* on the PA Agencies would permit UPMC to obtain with the greatest efficiency under the circumstances properly authenticated copies of government records that can be admitted at the trial in this matter. That authentication—which the agencies have refused to make voluntarily—can only be provided “by the officer having the legal custody of the record, or by that officer’s deputy.” *See* 42 Pa. C.S. § 6103.

8. The Availability of Third-Party Discovery. The PA Agencies argue that they are non-parties to this litigation and not subject to even third-party discovery. The rules of procedure and this Court’s Orders demonstrate otherwise. Whether or not the agencies are non-parties, UPMC is presumptively entitled to take third-party discovery and has been clear in its intent to do so. Nothing in the

Court's Scheduling Orders prevents such discovery going forward. *See infra* Argument Section I.

9. Burden. The PA Agencies argue that UPMC's subpoenas and the expedited nature of this proceeding create undue burden. UPMC disputes this. As further set forth below, the expedited nature of this litigation is a problem of *OAG's* making and not a basis for depriving UPMC of discovery. In any event, UPMC is willing to meet-and-confer with the PA Agencies on any specific burden concern. *See infra* Argument Section II.

10. Privileges and Confidentiality. The PA Agencies note that UPMC's subpoenas may encompass documents shielded by the deliberative process or executive privileges. As a matter of law, that is not a proper basis to quash the subpoenas entirely at the threshold. Nor is there any record at this point that allows the Court to assess whether those privileges apply. Similarly, the Court should not quash UPMC's subpoenas just because *some* of the responsive documents may be confidential. There is again no record to substantiate any assertion of confidentiality. And, even if certain documents are confidential, the Protective Order Governing Confidential Material to which PID and DOH already agreed provides adequate protection for discovery purposes against any public disclosure. *See infra* Argument Sections III-IV.

ARGUMENT

I. Discovery On the PA Agencies Is Proper.

A. Whether The PA Agencies Are Parties, They Are Subject To Discovery.

The rules governing this Application are to be found in the Pennsylvania Rules of Civil Procedure. *See* Pa. R.A.P. 106 (incorporating the civil rules for matters in the Court’s original jurisdiction). The civil rules establish a presumption that “a deposition may be taken without leave of court.” Pa. R.C.P. 4007.2. The rules also provide for third-party discovery in the form of deposition subpoenas. *See* Pa. R.C.P. 4007.1(d) and (e). UPMC is expressly authorized to, “in the notice and in a subpoena, if issued, name as the deponent a ... governmental agency.” Pa. R.C.P. 4007.1(e). Moreover, “[i]f the person to be examined is not a party, and is to be served with a subpoena *duces tecum* to produce designated materials, the ... materials shall be produced at the deposition and not earlier, except upon the consent of all parties to the action.” Pa. R.C.P. 4007.1(d)(2). And, “methods of discovery may be used in any sequence.” Pa. R.C.P. 4007.3. Document requests do not require first exhausting other discovery efforts, even if the requests are directed at nonparties.

UPMC has simply availed itself of this procedure. The Court’s February 25, 2019 Scheduling Order I opened discovery. The only limit to discovery set forth in Scheduling Order I concerns when leave of Court is required pursuant to Pa.

R.C.P. 4007.2, which is inapplicable here. UPMC then expressly raised its intent to move forward with third-party depositions during the March 12 status conference. *See* Exhibit 7 at 22:9 – 23:6. The Court’s subsequent Scheduling Order II set additional deadlines and parameters for discovery—but again did not limit UPMC’s right to take third-party discovery. The presumptions set forth in the rules therefore apply, and nothing exempts the PA Agencies from discovery.

Allowing UPMC’s discovery also prevents improper gamesmanship. There are no elements to OAG’s “public interest” claim, which is inherently vague. Indeed, “[o]ne would be hard pressed to find a standard more nebulous than whether something serves the public interest.” *Kahn v. Elwood*, 232 F. Supp. 2d 344, 352 (M.D. Pa. 2002). What lies ahead is an open-ended proceeding in which the Court is being asked to decide quintessential public policy questions about how to run healthcare, even if for only a short time. And, as set forth above, OAG unnecessarily waited until February 2019—the eve of termination—to file its Petition to Modify. OAG is trying to force through complex, highly consequential, and amorphous litigation on a schedule that appears designed to prevent full factual development.

Moreover, OAG, PID, and DOH are taking contradictory positions that further obstruct UPMC’s ability to develop a record. In responding to UPMC’s interrogatories, OAG has made clear that it “*is not considering other*

Commonwealth agencies as third parties.” Exhibit 5 at 16 (emphasis added). But for purposes of its responses to UPMC’s document requests, OAG is refusing to produce any “documents specifically in the possession of any other state agency.” *Id.* at 9. PID and DOH, in turn, are refusing to respond to subpoenas on the grounds that—despite negotiating and signing the 2014 Consent Decree and filing this case—they are not parties to this litigation.

The combined effect is clear: No discovery regarding PID and DOH unless OAG first approves it. That is wrong. OAG should not be permitted to pick and choose when it speaks on behalf of “the Commonwealth” and when it speaks on behalf of OAG alone. Only by compelling the PA Agencies to respond to discovery can the Court begin to assure itself the “development of a factual record [that] is necessary to fully evaluate the scope and propriety of the requested modifications.” Apr. 3, 2019 Mem. Opinion at 38.

B. There Is No Reason To Preclude Discovery On The PA Agencies.

The PA Agencies advance three arguments why the Court should quash any discovery on them as improper. Each is unavailing.

First, the agencies argue that UPMC’s subpoenas are improper because none of the discovery sought is relevant to the claims and defenses at issue in Count I. App. ¶¶ 16-19. There is no basis for this claim. OAG’s “public interest” claim is not a legal cause of action with elements that help define relevance. Moreover,

UPMC has not yet filed an Answer with its defenses. Regardless, the standard for relevancy is to be liberally applied, including with respect to non-parties. *Rohm & Haas Co. v. Lin*, 992 A.2d 132, 143, 145 (Pa. Super. Ct. 2010). For the reasons set forth above, documents sought from the PA Agencies easily clear that low hurdle. *See supra* pp. 8-15.

Second, the PA Agencies argue that neither of the Court’s Scheduling Orders “contemplated non-party discovery.” App. ¶ 20. That is a red-herring. What matters is that the civil rules *presumptively allow* third-party discovery, and that neither of the Court’s Scheduling Orders prohibited third-party discovery—even after UPMC specifically expressed at the March 12 status conference an intent to take third-party depositions.²

Third, the PA Agencies note that if the Court grants UPMC’s pending motion to dismiss, there will be no need for discovery on Count I. That is now moot. The Court’s April 3, 2019, Memorandum Opinion permits OAG to go forward with Count I insofar as it seeks modification through June 30, 2019. The parties now have less than a month to complete discovery on that claim.

Finally, the PA Agencies accuse UPMC of trying to “end run” the Court’s discovery deadlines and trying to “circumvent” the notice requirement of Rule

² OAG has also indicated it may serve subpoenas. *See* Exhibit 8. Clearly it does not read the Court’s Scheduling Orders as precluding third-party discovery.

4009.21. App. ¶¶ 22, 102-10. This assertion is baseless. UPMC asked whether PID and DOH would accept first-party discovery, and they did not respond. With respect to subpoenas, the rules provide for two methods of compelling documents—a subpoena for documents, or a deposition subpoena *duces tecum* with production in lieu of a deposition where all parties consent. See Pa. R.C.P. 4007.1(d)(2). That UPMC opted for one of two procedures expressly set forth in the Pennsylvania rules is not “gamesmanship.”³ UPMC also told the PA Agencies that it was “willing to accept production of the documents in lieu of a deposition,” Application Exs. A-C, and has at all times made clear its interest in working cooperatively with the agencies to reach mutually agreeable terms for the discovery sought.

The issue here is that the PA Agencies believe the Court has exempted them from having to participate in any discovery at all. That is a misreading of both the Pennsylvania rules and the Court’s Orders, and a fundamentally flawed approach to any case that places at issue the “public interest” for healthcare. The Court should clarify that the agencies must respond to UPMC’s subpoenas.

³ OAG—as well as Highmark—has consented to production in lieu of depositions. See Exhibit 8. The PA Agencies’ reliance on *Tollari v. Gen. Motors Corp.*, 40 Pa. D. & C. 4th 339, 342 (Pa. Ct. Com. Pl. 1998), is misplaced. App. ¶ 109. That case concerned a violation of Pa. R.C.P. No. 4003.6 regarding discovery from a treating physician, which is inapplicable here. Here, UPMC utilized a method of discovery expressly authorized by the rules and reasonable under the circumstances of this case.

II. There Is No Burden That Warrants Exempting The PA Agencies From Discovery.

A. OAG's Delays In Filing The Petition Are Not Grounds To Quash UPMC's Subpoenas.

The PA Agencies also ask the Court to quash all three subpoenas in their entirety on general grounds of burdensomeness. App. ¶¶ 25-52. The agencies—which are represented by outside counsel—complain about a lack of “resources to slog through” expedited discovery. *Id.* ¶ 33. But the expedited schedule here is not of UPMC’s making. OAG could have filed this case months, if not years, ago. It did not do so and is now forcing the Court, UPMC, and all other interested parties and non-parties to work on an accelerated timetable. *OAG’s* knowing delay in filing its Petition is not grounds to limit *UPMC’s* discovery.

In any event, as the record reflects, UPMC has been and remains willing to meet-and-confer with the PA Agencies over any burden claim. UPMC proposed a single document request that was substantially narrowed by custodians, time frame, and topic. *See* Exhibit 3. The PA Agencies rejected even that limited request. Whatever their complaints about the subpoenas that UPMC served, the PA Agencies have taken the position that *any* discovery is too much. The parties cannot have a meaningful meet-and-confer until the Court overrules that position.

Any question about scope or time limits can then be reasonably discussed.⁴ That is how the discovery process is supposed to work.

The PA Agencies also object that responsive documents may be available “through less intrusive means” and suggest that UPMC first complete discovery against OAG and Highmark. App. ¶¶ 34, 40. But the rules allow UPMC to proceed in parallel with both first- and third-party discovery. *See* Pa. R.C.P. 4007.3. And as a practical matter, it is not possible to phase discovery on Count I between first-party and third-party requests. As of this filing, there are twenty-five days left to the close of discovery. Absent agreement or a Court order modifying the schedule in light of the April 3, 2019 Order, UPMC, Highmark, and OAG will likely exchange hundreds of thousands of pages of documents in the next three weeks. It is not feasible to sift through that data to ascertain what might be uniquely in the possession of the PA Agencies and *then* start third-party discovery. To the extent discovery in this case may involve any supposed duplication of effort, that is attributable to OAG and not reason to preclude UPMC from discovery against the PA Agencies.⁵

⁴ This obviates the PA Agencies’ complaint that UPMC’s subpoenas request documents that are already in UPMC’s control. App. ¶ 41-52. The agencies cite no authority for the proposition that an entire subpoena should be quashed merely because some responsive documents might already be available to the requesting party.

⁵ The PA Agencies note that UPMC served duplicative *requests* on OAG. App. ¶ 36. Merely because *requests* are duplicative does not mean that the *responsive*

B. The PA Agencies Do Not Object To Most Of The Subpoenas And Do Not Substantiate Any Objection.

The Court should also deny the Application to Quash because the PA Agencies have no specific objection to most of what those subpoenas request. Each of the subpoenas includes seven separate document requests. The agencies offer no objection to five of them. At a minimum, the Court should order the PA Agencies to go forward with respect to Request Nos. 1, 4, 5, 6, and 7.

And, where the PA Agencies do object, they fail to meet their burden. The burden in seeking protection from discovery is on the moving party, and courts do not preclude discovery on the basis of conclusory and unsubstantiated arguments. “What is burdensome or unreasonably oppressive depends on the facts of a particular case; *however, there must be evidence on the record of the effect of the discovery on the deponent, before the court can make a finding of unreasonableness.*” 12 Standard Pennsylvania Practice 2d § 72:205 (emphasis added). Thus, “an unsubstantiated allegation that compliance would prove oppressive and burdensome is not sufficient to warrant a protective order.” *Id.*; *see also* 9A Goodrich Amram 2d § 4011(b):1 (“[A] general claim of unreasonable annoyance, embarrassment, oppression, burden, or expense, without substantiating

documents are duplicative. The PA Agencies undoubtedly have in their possession unique communications, analyses, and other documents not available to OAG or Highmark. There is no basis to quash the subpoena with respect to that material.

evidence in the record, will not support an order barring discovery. Rather, only where the facts disclose that discovery will impose an unreasonable burden will discovery be denied.” (collecting Pennsylvania cases)).

Here, the PA Agencies object to certain aspects of Request Nos. 2 and 3. App. ¶ 31. But they offer no proof about the volume of responsive documents that will need to be reviewed, the number of custodians implicated, or any other metric that would actually demonstrate undue prejudice.⁶ That compels requiring a response to Requests Nos. 2 and 3 as well. *See Weber v. Campbell Soup Co.*, 41 Pa. D. & C.3d 229, 233 (Pa. Com. Pl. 1985) (“Merely showing that the production will occasion some investigative effort and expense, without some evidence that the burden so imposed would be unreasonable, is not sufficient to prevail under Rule 4011.”). The PA Agencies should make a reasonable effort to respond to the subpoenas, and if they have concerns about what is required to do so, UPMC will be reasonable in trying to find a mutually agreeable compromise.

⁶ The PA Agencies provide no basis whatsoever for their claim that they will have to “sift through millions of pages of documents in the possession of hundreds of employees, including high level executive staff.” App. ¶ 32. Given their refusal to engage in any meaningful meet-and-confer, the PA Agencies presumably have not even begun the process of selecting custodians (UPMC certainly does not expect the files of “hundreds of employees” to be searched) or testing search terms to assure a reasonable volume is collected for review.

III. Threshold Claims Of Privilege Do Not Warrant Blocking Discovery.

The Agencies next argue that the Court should quash the subpoenas because the requested documents could contain information protected by a variety of privileges, including the attorney-client, work-product, deliberative process, and executive privileges. *See* App. ¶¶ 56–75. As a matter of law, this is not a sufficient reason to quash a subpoena.

The PA Agencies’ own authority demonstrates this point. In *Van Hine v. Department of State*, the Office of Inspector General (“OIG”) moved to quash a non-party subpoena *duces tecum* on the grounds that the subpoena requested documents protected by a variety of privileges, including the executive and deliberative process privileges. 856 A.2d 204, 205, 208 (Pa. Commw. Ct. 2004). This Court denied the motion to quash and ordered the OIG to produce relevant, non-privileged information, while allowing the agency to redact information it believed was privileged. *Id.* at 211.

This Court should follow that same process. Virtually all subpoenas *duces tecum* seek documents by category and leave it to the recipient to determine which responsive documents may be privileged. That is not grounds for quashing. When a subpoena seeks responsive privileged and non-privileged documents, the responding party must produce all responsive, non-privileged documents and identify where it has withheld documents on privilege grounds. *See Van Hine*, 856

A.2d at 205, 208; *see also Ignelzi v. Ogg, Cordes, Murphy and Ignelzi, LLP*, 160 A.3d 805, 814 (Pa. Super. Ct. 2017) (“[W]here the [document] requests encompass more than one document, it was up to Appellants to create a privilege log to permit the trial court to rule on discoverability in the first instance.”); *Pa. Dep’t of Educ. v. Bagwell*, 131 A.3d 638, 648 (Pa. Commw. Ct. 2015) (“Our courts also attempt to preserve attorney privilege material through various methods, including *in camera* review and privilege logs.”).⁷

There is also no record on which the Court can make any privilege determination at this stage. The PA Agencies have the burden to establish that any given document is subject to a privilege.⁸ But they have provided none of the documents at issue for *in camera* review or otherwise set forth any detail about why a specific document is supposedly privileged. Moreover, many of the asserted privileges have exceptions depending on the facts of the case and the documents being withheld. *See Koken v. One Beacon Ins. Co.*, 911 A.2d 1021, 1027 (Pa.

⁷ To confirm, UPMC’s subpoenas did not purport to *require* that the PA Agencies produce privileged documents, but asked only that the agencies provide a privilege log for documents they withheld on privilege grounds. *See, e.g.*, App. Ex. A, Addendum A, Section I ¶ 2.

⁸ *See Ignelzi*, 160 A.3d at 813-14 (attorney-client privilege); *League of Women Voters v. Commonwealth*, 177 A.3d 1010, 1017 (Pa. Commw. Ct. 2017) (executive privilege); *T.M. v. Elwyn, Inc.*, 950 A.2d 1050, 1063 (Pa. Super. Ct. 2008) (work-product doctrine); *Joe v. Prison Health Servs., Inc.*, 782 A.2d 24, 33 (Pa. Commw. Ct. 2001) (deliberative process privilege).

Commw. Ct. 2006) (describing when the deliberative process privilege can be overcome); *League of Women Voters*, 177 A.3d at 1017 (setting forth a balancing test for the executive privilege). Privilege assertions cannot be resolved in a complete vacuum of information. The proper course is for the Court to deny the Application to Quash and order the production of responsive information, including a privilege log.⁹

IV. PID’s Confidentiality Concerns Are Not Grounds For Precluding All Discovery Against That Agency.

PID also seeks to quash its subpoena on confidentiality grounds. App. ¶¶ 76-101. These arguments are specific to *PID*—they address documents “held by PID,” “received by PID,” and “furnished to PID.” *Id.* ¶¶ 85, 97, 99. None of these arguments warrant quashing UPMC’s subpoenas to DOH and the Governor’s Office. Even as to PID, this is not grounds to quash. As with its privilege claims, PID is asking the Court to make confidentiality determinations in a vacuum. It should not.

First, this is relevant information that the Court should consider. The discovery that PID would suppress as confidential is highly relevant to the claims

⁹ This assumes that the privileges can even apply. “[T]here is very limited authority for the” executive privilege in particular. 1 WEST’S PA. PRAC., EVIDENCE § 533 (4th ed.). In 2017, this Court analyzed both the executive and the deliberative process privilege only “[t]o the extent that these privileges exist in Pennsylvania.” *League of Women Voters*, 177 A.3d at 1013-14.

and defenses at issue in Count I. These documents relate to, *inter alia*, PID's financial analyses of the Western Pennsylvania market for healthcare providers and the overall condition of UPMC, Highmark, and AHN. App. ¶¶ 81-93. OAG's proposed modifications could have significant financial impact on the healthcare and health insurance markets. Having PID's independent financial analyses and the information PID considered will be highly probative as to whether those modifications contravene the public interest by imperiling the viability of any provider or insurer. The Court should not enter any relief without fully understanding the likely consequences to the financial stability of the institutions it is binding.

Similarly, PID admits it has conducted investigations of Highmark's claims processing relating to in-network access to UPMC pursuant to certain provisions of UPMC's 2014 Consent Decree. App. ¶ 78. How the Commonwealth—acting in the public interest through PID—interpreted and analyzed the adequacy of performance under the 2014 Consent Decree is probative of OAG's current claim that the public interest now requires something different from UPMC. PID's investigation of Highmark's misconduct is also probative of UPMC's defenses that forced contracting is contrary to the public interest insofar as it interferes with the ability of any nonprofit hospital to responsibly manage its operations and select its contracting partners.

Second, none of the statutes on which PID relies should even apply to this litigation. They state, for instance, that certain documents are not “subject to subpoena,” “may not be made public by” PID, or are not “subject to discovery or admissible as evidence in a private civil action.” 40 P.S. §§ 991.1407(a), (c)(2); *see also, e.g.*, 40 P.S. §§ 991.2608(a), (c)(3). This is not a “private civil action.” It is litigation *that PID filed*. The only reason UPMC used a subpoena is because PID did not respond when UPMC inquired about first-party discovery. PID may want to claim it is not a party to this case, but the caption says otherwise. The Court’s April 3, 2019 Memorandum Opinion and accompanying Order both specifically identify the “Pennsylvania Department of Insurance, By Jessica K. Altman, Insurance Commissioner” as one of the “Petitioners.”

Third, mere *discovery* of this information will not make it public. PID agreed to a Protective Order in this case. *See* Exhibit 9. It allows for significant protection for “information that: (i) is not in the public domain (meaning that it is not generally known or reasonably ascertainable by proper means) or is information relating to the requesting party’s competitors; and (ii) contains a non-public trade secret, or other confidential research, development or commercial information.” *Id.* at 2-3. Where appropriate, disclosure of such information can even be protected from disclosure to Respondent’s executives and other employees. *Id.* at 7 ¶ 7b.

Finally, at a minimum, PID should respond to the subpoena and provide a log of any documents it withholds on the basis of statutory confidentiality. Even if these statutes do apply, the Court is currently in no position to assess their applicability to any specific document. The point of a log is to provide some transparency in discovery and prevent a party from making unilateral determinations on factually and legally sensitive grounds that are for the Court to decide. *See Joe*, 782 A.2d at 33-34 (holding that it is the court that has “the power to determine the availability of the privilege”).

The PA Agencies’ main complaint appears to be that it is too burdensome to actually review the documents to determine what it wants to withhold. But as set forth above, the expedited nature of this case was not of UPMC’s making. All parties are making extraordinary effort—and incurring extraordinary expense—because OAG delayed seeking to modify a termination date it has known about for years. That is not a basis to quash UPMC’s subpoenas.

CONCLUSION

For the foregoing reasons, the Court should deny the Application to Quash.

Dated: April 5, 2019

Respectfully submitted,

JONES DAY

/s/ Leon F. DeJulius

Leon F. DeJulius, Jr. (Pa. 90383)
Rebekah B. Kcehowski (Pa. 90219)
Anderson T. Bailey (Pa. 206485)
500 Grant Street, Suite 4500
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Tel.: (412) 391-3939

COZEN O'CONNOR

Stephen A. Cozen (Pa. 03492)
Stephen A. Miller (Pa. 308590)
Jared D. Bayer (Pa. 201211)
Andrew D. Linz (Pa. 324808)
1650 Market Street, Suite 2800
Philadelphia, PA 19103
Tel.: (215) 665-2000
Attorneys for Respondent UPMC

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Leon F. DeJulius

Leon F. DeJulius

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2019, I caused a true and correct copy of this document to be served on all counsel of record via PACFile.

/s/ Leon F. DeJulius
Leon F. DeJulius

EXHIBIT 1

Bailey, Anderson T.

From: Bailey, Anderson T.
Sent: Tuesday, March 12, 2019 5:36 PM
To: 'adaubert@pa.gov'; 'ykostelac@pa.gov'
Cc: DeJulius, Jr., Leon F.; Bayer, Jared D.
Subject: Commonwealth v. UPMC, 334 M.D. 2014

Counselors,

Your respective agencies have not signed the Petition to Modify or opposed UPMC's Motion to Dismiss in the above-referenced matter, and the Attorney General's office has asserted that its request for modification of the Consent Decree can go forward without the consent of the Department of Health or Department of Insurance. In light of that, we are assuming you do not consider your agencies to be party to proceedings on the Petition to Modify and do not believe you are subject to first-party discovery from Respondent UPMC.

If I am incorrect, could you please let me know by 3:00 pm on Wednesday, March 13? Otherwise, we will separately be in contact with your office with third-party discovery requests.

Many thanks,

Anderson T. Bailey
Partner
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atbailey@jonesday.com

EXHIBIT 2

BLANKROME

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501 Grant Street | Suite 850 | Pittsburgh, PA 15219
blankrome.com

Phone: (412) 932-2802
Fax: (412) 291-3472
Email: acoles@blankrome.com

March 20, 2019

VIA ELECTRONIC MAIL

Anderson T. Bailey, Esquire
Jones Day
500 Grant Street, Suite 4500
Pittsburgh, Pennsylvania 15219

Re: *Commonwealth of Pennsylvania, By Joshua Shapiro, Attorney General, et al v. UPMC, et al.*, No. 334 M.D. 2014 (Pa. Cmwltth.)

Dear Mr. Bailey:

This firm represents the Governor's Office, the Pennsylvania Department of Health ("DOH") and the Pennsylvania Insurance Department ("PID") (collectively, the "PA Agencies") in connection with the non-party subpoenas *duces tecum* that you served on the PA Agencies on March 13, 2019 (the "Subpoenas"). Attached please find copies of our entries of appearance that were filed in the above-referenced action today. Please direct any future communications to this firm.

We have reviewed UPMC's Subpoenas and they are objectionable on multiple levels. As an initial matter, they are procedurally improper under the Commonwealth Court's March 12, 2019 Scheduling Order ("Scheduling Order II"). The Court has ordered the scope of permissible discovery relating to Count I of the Attorney General's Petition. Scheduling Order II contains no provision for obtaining document productions through non-party subpoenas. UPMC's attempt to issue subpoenas outside of the Order's parameters violates the Court's express power to regulate discovery.

Putting that aside, the Subpoenas are far overbroad and irrelevant to the allegations contained in Count I, which is the only count subject to the current expedited litigation.¹ The issue in Count I is limited to issues relating to whether UPMC is fully and faithfully meeting its mission

¹ The PA Agencies reserve their rights to advance all appropriate objections and arguments on an ongoing basis.

BLANKROME

March 20, 2019

Page 2

and fulfilling its charitable responsibilities. And the defenses raised in UPMC's motion to dismiss are also limited. But the requested documents attached to the Subpoenas – such as the duplicative request to all three PA Agencies which seeks *inter alia* “[a]ll communications and documents exchanged with the OAG concerning” UPMC or Highmark **since 2011** – is not narrowly tailored to obtain discovery relevant to whether UPMC is acting in a manner consistent with its purported mission and charitable responsibilities. As drafted, the Subpoenas seek such overwhelmingly broad categories that each of the non-party PA Agencies would be forced to review hundreds of thousands of pages of information collected from hundreds of employees over an eight-year period as a first step to determine **potential** responsiveness to the Subpoenas.

In addition to being overbroad and irrelevant, the categories of documents sought through the Subpoenas are also duplicative of the document requests and other voluminous discovery requests issued to the Attorney General – a party to the Petition. Thus, any potentially relevant information sought is, at a minimum, equally available to the parties to the Count I litigation and those avenues of discovery must be exhausted prior to trying to foist the production burden onto non-parties.

The documents sought from the PA Agencies also are subject to multiple privileges that shield them from production, including but not limited to, attorney-client and work product privileges, the deliberative process privilege, executive privilege and various statutory privileges that explicitly provide that documents are not subject to subpoena (*e.g.*, 40 P.S. § 323.5(f), 40 P.S. § 991.1407, and 40 P.S. § 991.2608). This list is not intended to be exhaustive and the PA Agencies reserve the right to supplement at any time.

Lastly, UPMC's attempt to obtain wide-ranging document production through its Subpoenas is an obvious attempt to circumvent Rule 4009.21's twenty-day notice requirement. Your March 13, 2019 cover letters to the three subpoenaed entities demonstrate that the true purpose behind the scheduled depositions (at thirty-minute intervals) is simply to obtain the documents by harassing non-parties – instead of following the protocol and deadlines already established by the Court in Scheduling Order II. Indeed, in your letters you admit that “UPMC is willing to accept production of the documents requested in lieu of a deposition.” That gamesmanship provides yet another ground for objection.

Considering the Subpoenas' numerous fatal defects, we demand that UPMC agree to withdraw the Subpoenas. **Please notify me no later than noon on Friday, March 22, 2019, to advise whether UPMC will agree to withdraw all three Subpoenas.** If UPMC does not withdraw the Subpoenas, then the Governor's Office, DOH and PID will be forced to file motions to quash and seek any and all additional relief available to them.

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March 20, 2019

Page 3

Please call me if you would like to discuss further.

Very truly yours,

A handwritten signature in black ink that reads "Amy Joseph Coles". The signature is written in a cursive, flowing style.

Amy Joseph Coles

cc: Kevin M. Eddy
James A. Donahue, III
Mark A. Pacella
Tracy Wright Wertz
Joseph Betsko
Michael T. Foerster
Heather Vance-Rittman
Jonathan Goldman
Keli Neary
Douglas E. Cameron
Daniel E. Booker
Kim M. Watterson
Jeffrey M. Weimer

EXHIBIT 3

Bailey, Anderson T.

From: Bailey, Anderson T.
Sent: Tuesday, March 26, 2019 5:10 PM
To: 'Coles, Amy J.'
Cc: 'Eddy, Kevin M.'
Subject: RE: Commonwealth v. UPMC et al., 334 MD 2014
Attachments: Draft Proposed RFP & Stips.docx

Amy,

Further to our recent conversations, please see the attached. This is for discussion purposes and does not limit the subpoenas that remain in effect.

I would like to talk over a couple things to add some context here when you get a chance. Let me know what time would work for you; I'm in the office until about 6:00, or can speak after 8:00 or tomorrow morning.

Thanks,

Anderson T. Bailey
Partner
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500 Grant Street, Suite 4500
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Office +1.412.391.3939
Direct +1.412.394.7250
atbailey@jonesday.com

From: Bailey, Anderson T.
Sent: Friday, March 22, 2019 9:23 AM
To: 'Coles, Amy J.' <AColes@BlankRome.com>
Cc: Eddy, Kevin M. <KEddy@BlankRome.com>
Subject: RE: Commonwealth v. UPMC et al., 334 MD 2014

Thanks. I'll call you then.

Anderson T. Bailey
Partner
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Pittsburgh, PA 15219-2514
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Direct +1.412.394.7250
atbailey@jonesday.com

From: Coles, Amy J. <AColes@BlankRome.com>
Sent: Friday, March 22, 2019 9:21 AM
To: Bailey, Anderson T. <atbailey@JonesDay.com>
Cc: Eddy, Kevin M. <KEddy@BlankRome.com>
Subject: Re: Commonwealth v. UPMC et al., 334 MD 2014

How about 10 am? My office line is below. Thanks.

Amy Joseph Coles
Blank Rome LLP
412-932-2802

On Mar 22, 2019, at 9:18 AM, Bailey, Anderson T. <atbailey@JonesDay.com> wrote:

Amy,

Is there a time this morning that works for a quick call? I am free until 11:00.

Thanks,

Anderson T. Bailey
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Proposed Requests and Stipulations to PA Agencies

PID

Document Request

1. From the three custodians within the Pennsylvania Insurance Department (“PID”) whom you determine in good faith are most likely to have documents responsive to this request, all communications on or after January 1, 2016, that meet each of the following criteria: (1) at least one sender or recipient (including by copy) of the communication was a person or entity outside of the PID; (2) the Office of Attorney General (“OAG”) was not a sender or recipient (including by copy) of the communication; and (3) the communication concerns either (a) one or both of the Consent Decrees entered in this action on or about July 1, 2014, (b) what UPMC facilities/services or types of patients should or will remain In-Network for Highmark subscribers, or (c) the agreement referred to as the “Second Mediated Agreement” in Paragraph 20 of the Attorney General’s February 7, 2019 Petition to Modify (including to the extent there has been any agreement with respect to access to UPMC Horizon for Highmark members).

Stipulations

1. On August 18, 2017, representatives of the Pennsylvania Insurance Department (“PID”) met with representatives of Highmark Health, a/k/a UPE (“Highmark”) and UPMC. At this meeting, PID provided Highmark and UPMC with the one-page document attached hereto as Exhibit __, which identified the UPMC facilities and services that PID believed should remain in-network for Highmark members after June 30, 2019.
2. UPMC agreed to each of the identified facilities and services (though Highmark stated that it did not desire an in-network contract with UPMC for Autism and Lupus). Neither PID nor Highmark identified UPMC cancer facilities, UPMC cancer services, or Medicare Advantage as locations or services that should remain in-network for Highmark members after expiration of the 2014 Consent Decrees.
3. On January 17, 2018, Judge Pellegrini of the Commonwealth Court of Pennsylvania held an in-camera conference in the above-captioned matter. Among those in attendance were James Donahue and Mark Pacella for the Office of Attorney General (“OAG”), a representative of PID, representatives of Respondent UPMC, and representatives of Respondent Highmark. Judge Pellegrini stated that the OAG should produce any witnesses it had in support of modification at that time, commenting to the effect that the OAG could not “come back later” to seek extension of the Consent Decree separate from the OAG’s then-pending November 20, 2017 Petition to Enforce.

4. OAG presented PID with a draft of the February 7, 2019 Petition to Modify in advance of filing that document and invited PID to join the request for modification. PID declined to join.
5. The last time Highmark submitted any financial data to PID pursuant to Paragraph 22 of the Approving Order was September 1, 2014. Since then, neither Highmark nor OAG has submitted to PID any of the information required under Paragraph 22 of PID’s April 29, 2013 Approving Determination And Order (“Approving Order”) in anticipation of a possible “New UPMC Contract.”
6. PID was involved in the negotiation of the Consent Decrees entered in this matter on or about July 1, 2014. During those negotiations, UPMC proposed a provision that would limit the term of the UPMC Consent Decree. The parties then negotiated the length of the term before agreeing to the language in the final agreement. At no point did either representatives of UPMC or representatives of the Commonwealth propose to their counterparts extending the duration of the Consent Decree beyond the agreed-upon end date.
7. PID regulates health insurance companies operating in Pennsylvania and health insurance plans sold in Pennsylvania, and PID must approve rates for certain health insurance plans offered in Pennsylvania. The Medicare Advantage program, however, is a federal program that falls under the exclusive purview of the federal Centers for Medicare & Medicaid Services (“CMS”). PID does not and cannot review or approve rate information or other aspects of any Medicare Advantage insurance products.
8. The undersigned representative of PID hereby attests pursuant to 42 Pa. C.S. § 6103 that I have legal custody of the following records and that the copies attached hereto are true, accurate, and authentic copies of these records:
 - a. All publicly available draft and final versions of the report titled “Report on Highmark Inc.’s Proposed Change of Control and Affiliation with West Penn Allegheny Health System, Inc.” by Blackstone Advisory Partners L.P., dated April 8, 2013;
 - b. All publicly available draft and final versions of the report titled “Economic Analysis of Highmark’s Affiliation with WPAHS and Implementation of an Integrated Healthcare Delivery System” by Margaret E. Guerin-Calvert of Compass Lexecon, dated April 8, 2013;
 - c. PID’s Approving Determination and Order dated April 29, 2013 (“Approving Order”);
 - d. UPMC Contract Transition Plan submitted to PID on or about July 31, 2014, and any revisions thereto;
 - e. The Non-Confidential Preliminary AHN Corrective Action Plan submitted to PID on behalf Highmark Health on or about July 15, 2015;

- f. PID’s January 14, 2016 response to the Final AHN Corrective Action Plan;
 - g. The Request for Modification of Certain Conditions of the Approving Order submitted to PID by Highmark Health on or about March 27, 2017;
 - h. The Allegheny Health Network Strategic and Financial Plan, 2017-2020, submitted to PID on or about March 27, 2017;
 - i. All publicly available draft and final versions of the report titled “Assessment of Healthcare Competition Following Highmark Inc.’s Affiliation with West Penn Allegheny Health System, Inc. and other Healthcare Providers” by Compass Lexecon, dated July 2017;
 - j. July 28, 2017 Correspondence from T. Miller to J. Stover modifying certain conditions of PID’s Approving Order;
 - k. Any other documents submitted to PID in conjunction with the Approving Order, as modified, and PID’s responses thereto, including but not necessarily limited to the documents available at <https://www.insurance.pa.gov/Companies/IndustryActivity/CorporateTransactionsOfPublicInterest/HighmarkWestPennAlleghenyHealthSystem/Page/Order-Implementation-and-Public-Filings.aspx>;
 - l. The document publicly disseminated over PID’s website under the heading “FAQs for End of Consent Decree Between Highmark and UPMC”; and
 - m. The document circulated by PID at a meeting on August 18, 2017, with the headers “Access Issues” and “Balance Billing Issues.”
9. PID maintains on its publicly available website a document titled “FAQs for End of Consent Decree Between Highmark and UPMC,” a copy of which is attached hereto as Exhibit ___. *See also* <https://www.insurance.pa.gov/Companies/Documents/FAQ%20for%20End%20of%20Consent%20Decree%20Final.pdf>. PID prepared this document with input from both Highmark and UPMC, believes that the information contained in the document is accurate, has not changed the document since it was first posted, and does not intend to or have reason to change the information set forth in the document.
10. Solely for purposes of the admissibility of these Stipulations, PID acknowledges that it is a Petitioner in the above-captioned matter and that these Stipulations constitute party admissions.

Department of Health

Document Request

1. From the three custodians within the Pennsylvania Department of Health (“DOH”) whom you determine in good faith are most likely to have documents responsive to this request, all communications on or after January 1, 2016, that meet each of the following criteria: (1) at least one sender or recipient (including by copy) of the communication was a person or entity outside of the DOH; (2) the Office of Attorney General (“OAG”) was not a sender or recipient (including by copy) of the communication; and (3) the communication concerns either (a) one or both of the Consent Decrees entered in this action on or about July 1, 2014, (b) what UPMC facilities/services or types of patients should or will remain In-Network for Highmark subscribers, or (c) the agreement referred to as the “Second Mediated Agreement” in Paragraph 20 of the Attorney General’s February 7, 2019 Petition to Modify (including to the extent there has been any agreement with respect to access to UPMC Horizon for Highmark members).

Stipulations

1. On January 17, 2018, Judge Pellegrini of the Commonwealth Court of Pennsylvania held an in-camera conference in the above-captioned matter. Among those in attendance were James Donahue and Mark Pacella for the Office of Attorney General (“OAG”), a representative of the Pennsylvania Department of Health (“DOH”), representatives of Respondent UPMC, and representatives of Respondent Highmark Health a/k/a UPE (“Highmark”). Judge Pellegrini stated that the OAG should produce any witnesses it had in support of modification at that time, commenting to the effect that the OAG could not “come back later” to seek extension of the Consent Decree separate from the OAG’s then-pending November 20, 2017 Petition to Enforce.
2. OAG presented DOH with a draft of the February 7, 2019 Petition to Modify in advance of filing that document and invited DOH to join the request for modification. DOH declined to join.
3. DOH was involved in the negotiation of the Consent Decrees entered in this matter on or about July 1, 2014. During those negotiations, UPMC proposed a provision that would limit the term of the UPMC Consent Decree. The parties then negotiated the length of the term before agreeing to the language in the final agreement. At no point did either representatives of UPMC or representatives of the Commonwealth propose to their counterparts extending the duration of the Consent Decree beyond the agreed-upon end date.
4. Provider-based billing model, also known as hospital-based billing or hospital outpatient billing, is a model for delivering and billing for healthcare services often used in conjunction with hospital-based outpatient clinics. This model has

been used in healthcare since at least 2000 and is particularly common within certain specialties, including oncology.

5. DOH hospital licensure is required before a hospital-based outpatient clinic can adopt this model. Over the years, DOH has received—and granted—many requests for hospital licensure of outpatient clinics, including from providers affiliated with West Penn Allegheny Health System, UPMC, and Allegheny Health Network, as well as from dozens of other outpatient clinics throughout Pennsylvania not affiliated with any of those three systems.
6. DOH also reviews for adequacy the provider networks for commercial health insurance plans offered by insurers within Pennsylvania. DOH has approved the adequacy of provider networks for commercial insurance plans sold within Allegheny County, Pennsylvania notwithstanding that there were no UPMC-affiliated hospitals, physician practices, or other providers within those networks to which subscribers of those commercial insurance plans would have in-network access.
7. DOH does not, however, review the adequacy of provider networks for Medicare Advantage insurance products. The adequacy of those networks is within the exclusive purview of the federal Centers for Medicare & Medicaid Services (“CMS”).
8. Solely for purposes of the admissibility of these Stipulations, DOH acknowledges that it is a Petitioner in the above-captioned matter and that these Stipulations constitute party admissions.

Governor’s Office

Document Request

1. From the three custodians within the Office of the Governor whom you determine in good faith are most likely to have documents responsive to this request, all communications on or after January 1, 2016, that meet each of the following criteria: (1) at least one sender or recipient (including by copy) of the communication was a person or entity outside of the Office of the Governor; (2) the Office of Attorney General (“OAG”) was not a sender or recipient (including by copy) of the communication; and (3) the communication concerns either (a) one or both of the Consent Decrees entered in this action on or about July 1, 2014, (b) what UPMC facilities/services or types of patients should or will remain In-Network for Highmark subscribers, or (c) the agreement referred to as the “Second Mediated Agreement” in Paragraph 20 of the Attorney General’s February 7, 2019 Petition to Modify (including to the extent there has been any agreement with respect to access to UPMC Horizon for Highmark members).

Stipulation

1. The undersigned representative of the Officer of the Governor hereby attests pursuant to 42 Pa. C.S. § 6103 that I have legal custody of the following record and that the copy attached hereto is a true, accurate, and authentic copy of this record:
 - a. The June 27, 2014 document labeled “News for Immediate Release” and titled “Governor Corbett, Attorney General Kane Announce Highmark and UPMC Agreement to Key Conditions Protecting Patients and Consumers.”

EXHIBIT 4

Handout

Access Issues

1. UPMC facilities identified by reason of geographic location:
 - a. Bedford
 - b. Northwest
 - c. Altoona
 - d. Kane
 - e. Jameson
 - f. *Pinnacle and future Pinnacle facilities, including Harrisburg and Carlisle Regional (for discussion)*
 - ~~g. Charles Cole Memorial (for discussion)~~
 - h. *Susquehanna facilities, including Divine Providence, Williamsport Regional, and Soldiers & Sailors (for discussion)*
 - i. Others?

2. UPMC facilities identified by reason of unique/exception lines of services:
 - a. Western Psychiatric Institute
 - b. Children's Hospital
 - c. Others?

3. UPMC lines of services preliminarily identified as unique or exceptional:
 - ~~a.~~ Certain transplants (live donor liver, heart-lung, small bowel, and lung)
 - ~~b.~~ Cystic fibrosis
 - c. Gamma knife services
 - d. Center for Assistive Technology
 - e. Autism
 - ~~f.~~ Lupus
 - g. Others?

Balance Billing Issues

4. Emergency and trauma services delivered by all UPMC and AHN hospitals

EXHIBIT 5

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
By JOSH SHAPIRO,	:	
Attorney General, et al.;	:	
	:	
Petitioners,	:	
v.	:	No. 334 M.D. 2014
	:	
UPMC, A Nonprofit Corp., et al.;	:	
	:	
Respondents.	:	

**THE COMMONWEALTH’S OBJECTIONS AND RESPONSES TO
UPMC’S FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS DIRECTED TO THE ATTORNEY
GENERAL**

Pursuant to the Pennsylvania Rules of Court, the Commonwealth, by and through its Attorney General Josh Shapiro, acting in its capacity as *parens patriae* (the Commonwealth), hereby serves its objections and responses to UPMC’s First Set of Interrogatories and Requests for Production Directed to the Attorney General as follows:

PRELIMINARY STATEMENT

1. The Commonwealth’s investigation and development of all facts and circumstances relating to this action is ongoing. These responses and objections are made without prejudice to, and are not a waiver of, the Commonwealth’s right to rely on other facts or documents at trial.

2. By responding to these Requests for Production of Documents and Interrogatories, the Commonwealth does not waive or intend to waive: (a) any objections as to the competency, relevancy, materiality, privilege, status or admissibility as evidence, for any purpose, of any information or document provided or produced in response to these Requests for Production of Documents and Interrogatories; (b) the right to object on any grounds to the use of any information or documents provided or produced in response to these Requests for Production of Documents and Interrogatories at any deposition, hearing, trial or other proceeding, or to their use in any pleading or submission; (c) the right to object on any grounds at any time to a demand for further answers to these Requests for Production of Documents and Interrogatories; or (d) the right at any time to revise, correct, add to, supplement or clarify any of the answers to these Requests for Production of Documents and Interrogatories contained herein. The Commonwealth further reserves the right to raise any additional objections that it may have in the future.

3. By responding to a particular Request for Production of Documents or Interrogatory that the Commonwealth will provide information or documents, or will perform an investigation for any information or documents, or that its investigation and discovery is on-going, or that it will make information or documents available in conjunction with its on-going investigation and with on-going discovery, the Commonwealth does not assert that it has or is aware of responsive information or

documents. Rather, the Commonwealth is asserting only that it is conducting a reasonable investigation and is providing relevant, responsive, non-privileged information or documents to the extent they exist and to the extent that the Commonwealth knows of their existence and to the extent they are in the control of and are accessible by Commonwealth.

4. The objections and responses made herein are based on the Commonwealth's investigation to date of those sources within its control where it reasonably believes responsive information or documents may exist. The Commonwealth reserves the right to amend or supplement these Requests for Production of Documents and Interrogatories in accordance with the applicable rules and Court orders.

5. Neither an objection made herein, nor the lack of an objection, shall be deemed an admission by the Commonwealth as to the existence or non-existence of any information or documents.

6. Any providing of information or documents in response to a Request for Production of Documents or Interrogatory to which the Commonwealth has objected is not intended to and does not waive those or any other objections.

7. The information and documents supplied herein or herewith, or otherwise made in conjunction herewith, are for use in this litigation and for no other purpose.

8. Subject to the above statements, and the general and specific objections set forth herein, the Commonwealth will produce responsive, non-privileged documents should any be identified following a meet and confer process in accordance with any schedule set forth by the Court or as agreed among the parties and pursuant to a reasonable search protocol, protective order, and agreement on production of electronically stored information.

9. The Commonwealth expressly incorporates each of the foregoing statements contained in this Preliminary Statement into each specific answer set forth below as if set forth in full therein. The answer to a Request for Production of Documents or Interrogatory shall not operate as a waiver of any such statement applicable to an answer.

GENERAL OBJECTIONS

10. The Commonwealth objects to any term that is defined in the Requests for Production of Documents and Interrogatories or any term that is otherwise employed by Respondent in the Requests for Production of Documents and Interrogatories in a manner that conflicts, changes or does not comport with the Commonwealth's understanding or use of the term. To the extent that the Commonwealth provides a response to a Request for Production of Documents or Interrogatory in which Respondent defines or employs such a term, the

Commonwealth does not admit that it agrees with the definition of the term or the manner in which Respondent has used or employed the term.

11. The Commonwealth objects to any Request for Production of Documents or Interrogatory, or any Definition or Instruction contained in the Requests for Production of Documents and Interrogatories, that would create any duties or obligations to answer in a manner counter to, beyond, more expansively or broadly than required by, or in any other manner that is inconsistent and does not comport with, the Pennsylvania Rules of Civil Procedure.

12. The Commonwealth objects to the Requests as overly broad and unduly burdensome to the extent that they seek documents (including, but not limited to, electronically stored information) not related to the issues raised in the Commonwealth's Petition and documents that are not reasonably accessible given the limited time for production under the March 12, 2019 scheduling order. In particular, and without limitation, the Commonwealth objects to Requests that purport to require production of "all" communications regarding a particular topic. The Commonwealth further objects to the Requests to the extent that the burden and expense of accessing, reviewing, and disclosing certain information requested by Respondent outweighs any possible relevance or the likelihood that it may lead to the discovery of admissible evidence. Except where noted below, the Commonwealth's production of documents will be limited to those documents that

are reasonably accessible in the limited time for production under the March 12, 2019 scheduling order.

13. The Commonwealth objects to the Requests as overly broad and unduly burdensome for the time period allotted for responses. Given the time period covered by the Respondent's Requests, the predominating lack of nexus between the Requests and a claim or defense relevant to the Commonwealth's Petition and the number of circumstances, people, and other facts at issue, the Commonwealth is unable, within the time period allotted for responding to these Requests, to identify each and every responsive fact, person, and circumstance. The Commonwealth, accordingly, has made a good faith attempt to collect and provide reasonably available responsive information within the time period allowed for its responses. If the Respondent would like additional information responsive to particular Requests, the Commonwealth is willing to discuss reasonable steps to collect and provide more information when requested by the Respondent.

14. The Commonwealth objects to these Requests for Production of Documents and Interrogatories to the extent that they demand information or any documents covered by the attorney-client privilege, work product immunity, law enforcement investigatory or any other applicable privilege or immunity, including the executive, deliberative process privilege. In the event any privileged or immune

information or document is produced by the Commonwealth, its production is inadvertent and does not constitute waiver of any privilege or immunity. The Commonwealth will provide a log of documents protected by the aforesaid privileges in conjunction with providing complete responses to these Requests for Production of Documents and Interrogatories and will thereafter provide updates as appropriate.

15. The Commonwealth objects to these Requests for Production of Documents and Interrogatories to the extent that they demand information or any documents to support a claim of selective prosecution without Respondent having first met its evidentiary burden. To obtain discovery in support of a claim of selective prosecution, evidence tending to show the existence of the essential elements of the defense, “discriminatory effect and discriminatory intent,” must be produced. *United States v. Armstrong*, 517 U.S. 456, 468 (1996).

16. The Commonwealth objects to these Requests for Production of Documents and Interrogatories to the extent that they call upon the Commonwealth to reveal legal conclusions to Respondent. The Commonwealth’s responses shall not be deemed to constitute admissions (a) that any information or particular document or thing exists, is relevant or admissible in evidence or (b) that any statement or characterization in any Request for Production of Documents or Interrogatory is accurate or complete. The Commonwealth objects to any

implications and to any explicit or implicit characterization of the facts, events, circumstances or issues in the Requests for Production of Documents and Interrogatories. Any response by the Commonwealth is not intended to indicate that the Commonwealth agrees with any such implications or characterizations or that such implications or characterizations are relevant to this litigation.

17. The Commonwealth objects to these Requests for Production of Documents and Interrogatories to the extent that they call for information or documents not relevant to the issues in this action or that is not reasonably calculated to lead to the discovery of admissible evidence.

18. The Commonwealth objects to identifying, providing or producing information or documents that are already in the possession, custody or control of the Respondent or that have already been made available to the Respondent.

19. The Commonwealth objects to providing, producing, searching for or making available any information or documents that exist in the possession or control or knowledge of others over which the Commonwealth has no control and/or access.

20. The Commonwealth objects to these Requests for Production of Documents and Interrogatories to the extent that they call upon the Commonwealth to produce any information or documents not in the Commonwealth's control, care

or custody, including those documents specifically in the possession of any other state agency.

21. The Commonwealth expressly incorporates by reference each of the foregoing objections contained in these General Objections into each specific answer set forth below as if set forth in full therein. The response to a Request for Production of Documents or Interrogatory shall not operate as a waiver of any such objection contained in these General Objections.

CONFIDENTIALITY DESIGNATION

Documents produced by the Commonwealth in response to the Respondent's Requests contain information that is highly sensitive, confidential, and proprietary and may include current and past business plans and strategies that would have a substantial likelihood of compromising or jeopardizing business interests of another entity if disclosed. In addition, some of the documents that the Commonwealth may produce contain protected health information subject to HIPAA. The Commonwealth, accordingly, designates certain of its produced documents as Confidential or Highly Confidential pursuant to the Agreed Stipulated Protective Order filed on May 15, 2015.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

1. Identify each and every individual who may have knowledge of the allegations or any fact or information relating to any allegation in the Petition

and/or the subject matter of this Lawsuit, and for each individual so identified, state the subject matter of his/her knowledge.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims.

By way of further response, the Commonwealth has disclosed all individuals “who may have knowledge of the allegations or any fact or information relating to any allegation in the Petition and/or the subject matter of this Lawsuit” in response

to Interrogatory No. 4. The Commonwealth does not know what knowledge is possessed by persons it has not identified, contacted or consulted with, and attempting to do so would be overly burdensome. The Commonwealth may provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

2. State whether You communicated with any legislator or representatives of any legislator concerning any of the Proposed Modifications, the expiration of the Consent Decree, and/or the termination or continuation of UPMC/Highmark provider contracts, either generally or specifically, before filing the Petition, and if so, identify the person(s) with whom You communicated, the substance of the communication with each, and identify any documents memorializing, constituting, or concerning each such communication(s).

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after

the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth has received communications from legislators, often forwarding constituent communications about UPMC or Highmark. The Proposed Modified Consent Decree was not shared with any legislator or representative of a legislator prior to the filing of the petition.

The Commonwealth expects to provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

3. State whether You communicated with the Governor or any other department of the Commonwealth government, including but not limited to DOH or PID, concerning the Proposed Modifications, the expiration of the Consent Decree, and/or the termination or continuation of UPMC/Highmark provider contracts, either generally or specifically, before filing the Petition, and if so, identify the person(s) with whom You communicated, the substance of the communication with each, and identify any documents memorializing, constituting, or concerning each such communication(s).

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal

information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth met with representatives of the Governor and Departments on April 7, 2017, May 12, 2017, June 9, 2017, August 14, 2017 and October 16, 2019. Those meetings included Kenneth Joel, Office of General Counsel; Victoria Madden, Office of General Counsel; Amy Daubert, General Counsel, Department of Insurance; Allison Taylor, General Counsel, Department of Health; and Gregory Schwab, Office of General Counsel, Theresa Miller, Secretary of the Department of Human Services and Karen Murphy, Secretary of the Department of Health. Not all of these representatives attended all of these meetings

The Commonwealth may provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

4. Identify all OAG personnel with knowledge or information regarding the allegations contained in the Petition.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims.

By way of further response, the following list answers this Interrogatory:

James A. Donahue, III
Tracy W. Wertz
Mark A. Pacella
Jennifer A. Thomson

Patrick Greene
Heather Vance-Rittman
Michael Foerster
Joseph S. Betsko
Nina Correale
Christina Hingston
Jeremy Robb
Rebecca Zehring
Sharon Maitland
Brett Mausser
David Wade
Michelle Henry
Josh Shapiro

The Commonwealth may provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

5. Identify each and every third party with whom You communicated concerning the Proposed Modifications, the expiration of the Consent Decree, and/or the termination or continuation of UPMC/Highmark provider contracts, and for each third party so identified, identify the substance of the communication with each, and identify any documents memorializing, constituting, or concerning each such communication(s).

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution,

law enforcement investigatory, executive, and/or deliberative process privileges.

The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth objects to the definition of “third party” being undefined. By way of further response, the only third parties which were provided copies of the Proposed Modified Consent Decree prior to its filing on February 7th were representatives of UPMC and Highmark. In answering this interrogatory, the Commonwealth is not considering other Commonwealth agencies as third parties. The Commonwealth expects to produce communications with individuals and other third parties.

The Commonwealth may provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

6. Identify each and every economist, antitrust/competition policy expert, insurance or healthcare consultant, or other expert or consultant with whom You communicated about the Proposed Modifications, the impact of the Proposed Modifications, the expiration of the Consent Decree, and/or the termination or continuation of UPMC/Highmark provider contracts, and for each person so

identified, identify the substance of the communication with each, and identify any documents memorializing, constituting, or concerning each such communication(s).

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. By way of further answer, the Commonwealth objects to the extent this Interrogatory calls for impermissible discovery of a non-testifying consultant or expert and, as a consequence, the Commonwealth will neither identify any such consultant or expert nor the substance of any communications, inclusive of

documents, involving any such consultant or expert. The Commonwealth expects to provide a supplemental answer to this Interrogatory, limited to what is permissible under Pa. R.C.P. 4003.5 (a)(1), prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

7. Identify all OAG personnel involved in the preparation for the testimony of Executive Deputy Attorney General James A. Donahue, III before the Democratic Policy Committee of the Pennsylvania House of Representatives on or around October 10, 2014.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth objects to the use of word “involved” as vague. By way of further answer, James A. Donahue, III drafted the testimony he delivered on October 10, 2014. The Commonwealth may provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

8. Identify each misrepresentation or deceptive or confusing statement You contend was made by UPMC and upon which the claims alleged in the Petition are based, and for each such misrepresentation or statement, identify the speaker and to whom the misrepresentation or statement was made, state the date(s) the misrepresentation or statement was made, state whether the misrepresentation or statement was written or oral, and if written, identify the writing containing the misrepresentation or statement.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it

seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. By way of further answer, the Commonwealth lists the following:

October 11, 2018 Allegheny County Apprise Meeting

The Commonwealth expects to provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

9. Identify any assessment, study, examination, evaluation, or analysis made or relied upon by You to determine the impact on the community, the healthcare industry, or the public in general related in any way to the Proposed Modifications or the expiration of the Consent Decree, including the individual(s) involved and methodology employed.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution,

law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. By way of further answer, the Commonwealth objects to the extent this Interrogatory calls for impermissible discovery of a non-testifying consultant or expert and, as a consequence, the Commonwealth will neither identify any such consultant or expert nor the substance of any communications, inclusive of documents, involving any such consultant or expert. The Commonwealth expects to provide a supplemental answer to this Interrogatory, limited to what is permissible under Pa. R.C.P. 4003.5 (a)(1), prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

10. Identify any and all alternative proposals to the Proposed Modifications considered by You and/or sent to or received from third parties, including all terms and parties included in such alternative proposals.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. The Commonwealth objects to this Interrogatory on the grounds that it seeks information relating to confidential settlement negotiations and is therefore inadmissible under Pennsylvania Rule of Evidence 408. Subject to and without waiving these objections, the Commonwealth did not share the Proposed Modifications with third parties prior to the filing of this Petition as noted in

response to Interrogatory No. 5.

The Commonwealth may provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

11. State the complete factual basis for Your allegation in the Petition (at 2) that there is "widespread confusion" caused by "UPMC's actions."

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 ("contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place."); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth

responds that the Petition states a sufficient basis for the Commonwealth's claims. By way of further response, the Commonwealth refers Respondent to its response to Respondent's Request for Production Numbers 7, 19 and 22. The Commonwealth may provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

12. State the complete factual basis for Your allegation in the Petition (at 2) that "UPMC's actions" are causing "personal hardships for many individual UPMC patients."

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 ("contention interrogatories ordinarily are more appropriate after

the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. By way of further response, the Commonwealth refers Respondent to its response to Respondent’s Request for Production Numbers 7, 19 and 22. The Commonwealth may provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

13. Identify and provide contact information for each patient referenced or discussed in the Petition, any patient or individual who spoke at or attended the Attorney General’s press conference announcing the filing of the Petition, and any patient or individual whose experience or situation You otherwise rely upon in seeking the relief sought in this Lawsuit.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims.

By way of further response, the Commonwealth lists the following:

Laura DiPasqua-Grappy
115 Mechanic St, Girard, PA 16417
814-882-3464

Brittany Eckert
624 Bailies Run Rd, Creighton, PA 15030
724-980-1357

Joann Miller
393 Mitchell Hill Rd, Butler, PA 16002
724-496-3399

Judith Hays
1012 Reynard Dr, Crescent Township, PA 15046
724-457-8860

Carol Griffiths
4057 South Shore Dr, Erie, PA 16505
724-859-0894

Christina Smith

smthfam4@comcast.net

412-716-3795

Debbie Shook Varrati

dvarrati@aol.com

412-609-9800

Jean Diesch

diesch@consolidated.net

724-449-1173

Kristy Myers

724-840-4144

Nicholos Theis

651-367-4230

Theresa Brown

412-445-5193

John Eriksen

412-215-0198

Norina Daubner

412-343-7727

Suzanne Thomas

412-973-2754

Cheryl Sorek

724-612-4736

By way of further response, the Commonwealth refers Respondent to its response to Respondent's Request for Production Numbers 7, 19 and 22. The Commonwealth may provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth's discovery has been

concluded.

14. Identify each nonprofit healthcare provider or payer that will be subject to the Proposed Modifications, or any similar requirements, conditions, or restrictions, and for each provider or payer so identified, state all steps You have taken and/or intend to take to enforce compliance against such entities.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. By way of further answer, the Commonwealth objects to this Interrogatory as

speculative, hypothetical and unanswerable insofar as it asks for a response as to what “would be” in relation to “each nonprofit healthcare provider or payer that will be subject to the Proposed Modifications.” The Commonwealth further objects on the grounds that the Interrogatory calls for speculation because it seeks information that is contingent upon, among other things, the Commonwealth’s Petition to Modify the Consent Decree, in which it has asked the Commonwealth Court to adopt the Proposed Modified Consent Decree. The Petition is currently pending before the Court.

15. Identify all instances in which You took enforcement action, including any plans or threats to do so, against any nonprofit corporation or charity for any alleged violation of its charitable purpose, mission, or responsibilities.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it

seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth objects to this Interrogatory to the extent it demands information or documents in support of a claim of selective prosecution without the Respondent first having met its evidentiary burden and, as a consequence, no responsive information or documents will be produced. By way of further response, the Commonwealth objects to the word “threats” in connection to the work of the Office of Attorney General. The Office of Attorney General is a law enforcement agency and it is not in the business of threatening anyone. Subject to and without waiving these objections, The Commonwealth directs Respondent to Exhibit 1 which lists actions that were taken against charities for violations of their charitable purposes, missions or responsibilities.

16. Identify all instances in which You did not take enforcement action against a nonprofit corporation or charity for violation of its charitable purpose, mission, or responsibilities based on a failure to contract with another company or entity.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. By way of further answer, the Commonwealth objects to this Interrogatory to the extent it demands information or documents in support of a claim of selective prosecution without the Respondent first having met its evidentiary burden and, as a consequence, no responsive information or documents will be produced. By way of further response, the Commonwealth objects to the word “threats” in connection to the work of the Office of Attorney General. The Office of Attorney General is a

law enforcement agency and it is not in the business of threatening anyone.

17. Identify all instances in which You took enforcement action, including any plans or threats to do so, against any nonprofit or charitable healthcare institution or health insurer for alleged violation of its charitable purpose, mission, or responsibilities based on a failure to contract with any insurer or provider.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. By way of further answer, the Commonwealth objects to this Interrogatory to the

extent it demands information or documents in support of a claim of selective prosecution without the Respondent first having met its evidentiary burden and, as a consequence, no responsive information or documents will be produced. By way of further response, the Commonwealth objects to the word “threats” in connection to the work of the Office of Attorney General. The Office of Attorney General is a law enforcement agency and it is not in the business of threatening anyone. Subject to and without waiving these objections, the Commonwealth directs Respondent to Exhibit 1.

18. Identify all instances in which You did not take enforcement action against a nonprofit or charitable healthcare institution or health insurer for violation of its charitable purpose, mission, or responsibilities based on a failure to contract with any insurer or provider.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal

conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. By way of further answer, the Commonwealth objects to this Interrogatory to the extent it demands information or documents in support of a claim of selective prosecution without the Respondent first having met its evidentiary burden and, as a consequence, no responsive information or documents will be produced.

19. Identify, by location and type of insurance, those patient You contend require protection through the Proposed Modifications, and explain why, by location and type of insurance, the Proposed Modifications are necessary in relation to those patients.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution,

law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, The Commonwealth objects to this Interrogatory as vague, burdensome and overbroad to the extent that it calls for the identification of each patient that may be impacted by Respondent’s conduct. Highmark announced on March 27 that it has 2.4 million subscribers alone in Pennsylvania and it is not reasonable for the Commonwealth to identify the location of each patient, nor the location of the UPMC facility where those patients may require care. Moreover, that 2.4 million number only accounts for Highmark insureds not the insured of other health plans like Aetna, United and CIGNA, which UPMC has refused to contract with in the past.

By way of further answer, the Commonwealth otherwise refers Respondents to Paragraphs 37 through 55 of the Petition. The Commonwealth may provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

20. Identify, by location and type of insurance, those patients who, upon expiration of Consent Decree, You contend will not have the independent ability to maintain in-network access to a UPMC provider at the same or lower cost.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth objects to this interrogatory as vague, burdensome and unclear. Specifically, the phrase “independent ability to maintain in-network access to a UPMC provider” is unclear. First, as a practical matter, many patients cannot anticipate their health

care needs. They do not know for example that they will receive a cancer diagnosis in the future. Second, while some persons work for employers that offer multiple health plans, some with in-network access to UPMC and some without, employees typically only have an ability to choose a health plan once a year during open enrollment period. Third, many persons work for employers that only offer a single health plan and have no ability to maintain or not maintain in-network access to any hospital. By way of further answer, the Commonwealth objects to this Interrogatory as speculative, hypothetical and unanswerable insofar as it asks for a response as to what “would be” in relation to “those patients who, upon expiration of Consent Decree, You contend will not have the independent ability to maintain in-network access to a UPMC provider at the same or lower cost.” The Commonwealth further objects on the grounds that the Interrogatory calls for speculation because it seeks information that is contingent upon, among other things, the Commonwealth’s Petition to Modify the Consent Decree, in which it has asked the Commonwealth Court to adopt the Proposed Modified Consent Decree. The Petition is currently pending before the Court. By way of further answer, the Commonwealth objects to the Interrogatory as overly broad, vague and ambiguous and otherwise refers Respondents to Paragraphs 37 through 55 of the Petition. The Commonwealth may provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth’s

discovery has been concluded.

21. Identify the approximate number of patients implicated by Your allegation in ¶ 44 of the Petition that a Medicare participating patient desiring to switch to a new health care insurer to retain in-network access to a UPMC physician “risk[s] being medically underwritten and the possibility of higher insurance premiums should they have a pre-existing condition” and provide the factual basis for Your approximation.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims.

By way of further answer, the Commonwealth objects to this Interrogatory as speculative, hypothetical and unanswerable insofar as it asks for a response as to what “would be” in relation to the “number of patients implicated by Your allegation in ¶ 44 of the Petition that a Medicare participating patient desiring to switch to a new health care insurer to retain in-network access to a UPMC physician ‘risk[s] being medically underwritten and the possibility of higher insurance premiums should they have a pre-existing condition.’” The Commonwealth further objects on the grounds that the Interrogatory calls for speculation because it seeks information that is contingent upon, among other things, the Commonwealth’s Petition to Modify the Consent Decree, in which it has asked the Commonwealth Court to adopt the Proposed Modified Consent Decree. The Petition is currently pending before the Court.

By way of further response, the Commonwealth objects to this Interrogatory as speculative, hypothetical and unanswerable insofar as it asks for a response as to what “would be” the reasons for leaving and Medicare Advantage and returning in the future (with rates, deductibles and copays unknowable until later). As a general rule, once a senior enrolls in Medicare Advantage, a senior can switch from one advantage plan to another during the annual open enrollment period without being medically underwritten. But if a senior drops Medicare Advantage after the initial enrollment period for original Medicare and a Medicare

Supplement plan, which can be more expensive than a Medicare Advantage plan depending on a variety of factors including changes in a senior's health, the senior will in most instances be medically underwritten. 42 U.S.C. § 1395ss (s)(2),

22. Explain why You now contend, in contrast to the agreement reached through the Consent Decree, that every UPMC provider, including those in Allegheny and Erie counties, must enter into contracts with Highmark or any healthcare insurer seeking a services contract to fulfill their charitable missions.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth

responds that the Petition states a sufficient basis for the Commonwealth's claims.

23. Explain how and why You selected the proposed arbitration panel and associated standards and procedures set out in Exhibit G to the Petition §§ 4.1-4.3.8, including the identification of all individuals and third parties involved in developing the composition of the panel and the standards and procedures.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. The Commonwealth objects to this Interrogatory on the grounds that it seeks

information relating to confidential settlement negotiations and is therefore inadmissible under Pennsylvania Rule of Evidence 408. Subject to and without waiving these objections, the Commonwealth used similar panels in the “Children’s”¹ and “Mercy”² consent decrees and no party actually invoked the arbitration provisions. In the consent decrees in this case, UPMC and Highmark have used arbitration rather than come to agreements between themselves.

24. Explain how You intend to ensure that UPMC providers are treated fairly in connection with tiering and steering practices of Highmark and other payers, including how You will ensure that Highmark and other healthcare insurers do not employ arbitrary or biased determinations of cost and quality in the tiering of UPMC providers.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

¹ In re Children’s Hospital of Pittsburgh, No. 6425 (Court of Common Pleas, Allegheny County, PA, Orphans’ Court Division 2001).

² Comw. v. Catholic Health East, et al., No. 2:07-cv-0708 (W.D. Pa. June 13, 2007).

The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Proposed Modified Consent Decree vests this court with jurisdiction over the decree for such further orders and any party may apply to the Court for such further orders. See Proposed Modified Consent Decree ¶13. Moreover, any party to the decree may apply for modification. Underlying this interrogatory is the apparent belief that a health plan engage in a bait and switch whereby consumers would be led to believe they had access to UPMC, but were steered to another provider on grounds that were misleading, i.e., saying that UPMC was more expensive when that was not the case. This belief is entirely speculative and at this time, the Commonwealth does not have information to believe that such deceptive conduct will occur.

25. Identify all aspects of the “misleading marketing campaign which caused widespread confusion and uncertainty,” as alleged in Petition ¶ 17.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is

overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. The Commonwealth expects to provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

26. Identify all “past assurances from UPMC that seniors would never be impacted by their contractual disputes,” as alleged in the Petition ¶¶ 22 and 28.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is

overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. The Commonwealth expects to provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

27. State the basis for the assertion in the Petition ¶ 23 that UPMC will “eventual[ly] refus[e] to contract with other health insurers.”

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is

overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. By way of further response, the Commonwealth notes that over the past 20 years, UPMC has refused to contract with Aetna, CIGNA, Health America, and United Healthcare before 2011. Since 2011, it has refused to contract with Highmark at most of its Southwestern Pennsylvania facilities. In 2017, UPMC has refused to contract with INDECS in Lycoming County. The Commonwealth asserts that UPMC’s past conduct has involved it not contracting with nearly all of the health plans serving one geographic area or another and this past conduct is indicative of

how UPMC will behave in the future. The Commonwealth may provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

28. State how UPMC "thwarted" patients from using Highmark's "Out-of-Network policy riders ... under which Highmark would pay the 60% of Out-of-Network charges, less the usual co-payments and co-insurance," as alleged in the Petition ¶ 24.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 ("contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place."); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth

responds that the Petition states a sufficient basis for the Commonwealth's claims.

By way of further response, the Commonwealth notes that UPMC began demanding that any person exercising Highmark's policy riders must pay the expected charges due to UPMC prior to the provision of services. Because incidents where this has occurred involve information that is "Highly Confidential" under the Protective Order in this case, the names of the persons who were impacted by UPMC's actions regarding this policy will be provided in a separate document.

29. Identify each and every alleged practice that forms the basis of Your allegation that "UPMC also employs practices that increase its revenue without apparent regard for the increase on the costs of the region's health care."

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it

seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. The Commonwealth expects to provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

30. Identify, as to each allegation of impropriety directed at UPMC in the Petition, whether such alleged conduct or failure to act occurred in 2012, 2013, 2014, 2015, 2016, 2017, or 2018, and specify each such instance.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal

conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. The Commonwealth expects to provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

31. State the name(s) and address(es) of any economist or industry expert You contacted in connection with developing the Proposed Modifications or any other potential response to the expiration of the Consent Decree.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. See Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); see also *Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. By way of further answer, the Commonwealth objects to the extent this Interrogatory calls for impermissible discovery of a non-testifying consultant or expert and, as a consequence, the Commonwealth will neither identify any such consultant or expert nor the substance of any communications, inclusive of documents, involving any such consultant or expert. The Commonwealth expects to provide a supplemental answer to this Interrogatory, limited to what is permissible under Pa. R.C.P. 4003.5 (a)(1), prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

32. State the names and addresses of each and every expert witness whom You may call to testify at the trial or hearing in this matter, followed by a description of the content of his or her qualifications, the materials he or she reviewed relative to this case, his or her opinions regarding this case, the basis for those opinions, and the content of his or her expected testimony.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is beyond the scope of discovery provided in Pa. R.C.P. No. 4003.5. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. The Commonwealth expects to provide a supplemental answer to this Interrogatory on or before May 1, 2019 in accord with the Court’s Scheduling Order II.

33. Identify all witnesses You may call at the trial or any hearing in this matter, and for each individual so identified, also state the subject matter of his/her expected testimony.

ANSWER:

The Commonwealth objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Interrogatory requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. The Commonwealth further objects to the extent the Interrogatory calls for a legal conclusion. Also, the Commonwealth objects to this request on the grounds that it seeks premature contention discovery. *See* Pa. R.C.P. 4003.1, Explanatory Comment – 2008 (“contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”); *see also Fischer and Porter Company v. Jay H. Tolson, et al.*, 143 F.R.D. 93, 96 (E.D. Pa. 1992).

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. By way of further response, the Commonwealth has not as yet identified any specific fact witnesses to testify at trial, but at this time the Commonwealth would direct the Respondent to its response to Respondent’s Interrogatory No. 1 for possible fact witnesses. The Commonwealth expects to provide a supplemental answer to this Interrogatory prior to or within a reasonable time after the

Commonwealth's discovery has been concluded.

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENTS AND THINGS REQUESTED

1. All documents identified in your responses to UPMC's First Set of Interrogatories, and all documents the identity of which is sought in those Interrogatories.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to provide a supplemental response to this Request for Production of Documents prior to and within a reasonable time after

the Commonwealth's discovery has been concluded.

2. All documents referenced, consulted, or relied upon in responding to UPMC's First Set of Interrogatories.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the non-privileged responsive documents will be produced. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

3. All communications and documents exchanged with any of the following individuals/entities—

(a) Highmark;

(b) UPMC;

(c) the legislature, any legislative committee or caucus, or any legislator;

(d) Service Employees International Union (SEIU) including any subsidiary or affiliate thereof;

(e) Chelsa Wagner;

(f) PID;

(g) DOH;

(h) any federal agency, including the Federal Trade Commission and the Centers for Medicare and Medicaid Services (CMS);

(i) any state/local/national elected or appointed government official or legislator, including but not limited to Dan Frankel;

(j) any healthcare provider or payer;

(k) any employer;

(l) any regional chamber of commerce;

(m) Pennsylvania Health Access Network (PHAN), APPRISE, and/or any other consumer/patient group;

(n) Pittsburgh Business Group on Health;

(o) INDECS;

(p) PMF Industries;

(q) other Commonwealth departments;

(r) the national insurers, including Aetna, CIGNA, and United;

(s) Western Pennsylvania community hospitals that are unaffiliated with UPMC, Highmark, or Allegheny Health Network (“AHN”); or

(t) other third parties

—concerning any of the following subject matters—

(1) UPMC;

(2) Highmark;

(3) UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;

(4) consumer complaints about UPMC;

(5) consumer complaints about Highmark;

(6) consumer complaints about UPMC/Highmark provider contracting;

(7) the Consent Decree and/or expiration of the Consent Decree;

(8) the Proposed Modifications and/or the Petition;

(9) AHN and its predecessors including their financial condition;

(10) the Mediated Agreement or the “Second Mediated Agreement” (Petition ¶ 20);

(11) the UPE Approving Order;

(12) the Petition for Review that was resolved by way of the Consent Decree;

(13) UPMC’s charitable mission, tax exemptions, compensation and benefits, office space, or alleged diversion of charitable assets;

(14) alleged confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark

provider contracts;

(15) tiering and steering;

(16) assessment or evaluation of whether/how the Proposed Modifications further the public interest;

(17) UPMC Health Plan;

(18) insurance competition in western Pennsylvania; or

(19) provider competition in western Pennsylvania.

—during the relevant time period.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth objects to this Interrogatory to the extent it seeks the disclosure of proprietary trade secrets within the administrative subpoena trade secret confidentiality provision under 71 P.S. § 307-3 (b), the scope of the existing Protective Order dated May 19, 2015 or

requiring the modification of that Protective Order and, as a consequence, the Commonwealth will meet and confer with Respondent. By way of further response, this Request for Production of Documents is unduly burdensome as it is repetitively duplicative of each and every other Request for Production of Documents and, as a consequence, the Commonwealth further directs Respondent to its responses to Request for Production numbers 1 through 2 and 4 through 52. The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to and within a reasonable time after the Commonwealth's discovery has been concluded.

4. All communications or correspondence with Highmark or UPMC concerning the Proposed Modifications, AHN's financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

By way of further response, the Commonwealth objects to this Request on the grounds that it seeks information relating to confidential settlement negotiations and is therefore inadmissible under Pennsylvania Rule of Evidence 408. The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to and within a reasonable time after the Commonwealth's discovery has been concluded.

5. All notes, memoranda, or other documents concerning meetings, conversations, or communications with Highmark or UPMC concerning the Proposed Modifications, AHN's financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents

requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth objects to this Request on the grounds that it seeks information relating to confidential settlement negotiations and is therefore inadmissible under Pennsylvania Rule of Evidence 408. Further, to the extent UPMC is seeking the Commonwealth's notes of its meetings with UPMC, UPMC has access to the contents of those meetings since it was a participant. By way of further answer, the Commonwealth objects to this Interrogatory to the extent it seeks the disclosure of proprietary trade secrets within the administrative subpoena trade secret confidentiality provision under 71 P.S. § 307-3 (b), the scope of the existing Protective Order dated May 19, 2015 or requiring the modification of that Protective Order and, as a consequence, the Commonwealth will meet and confer with Respondent. This Request specifically implicates the attorney work product privilege and, as a consequence, no responsive privileged documents will be produced.

6. All evaluations of the Proposed Modifications by any economist, insurance consultant, healthcare consultant, or other subject matter expert.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth objects to the extent this Request calls for impermissible discovery of a non-testifying consultant or expert and, as a consequence, the Commonwealth will neither identify any such consultant or expert nor the substance of any communications, inclusive of documents, involving any such consultant or expert. The Commonwealth may provide a supplemental answer to this Request, limited to what is permissible under Pa. R.C.P. 4003.5 (a)(1), prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

7. All consumer complaints about UPMC or Highmark during the Consent Decree, all communications with or concerning each such complaint/complainant, and Your investigation files for each such complaint.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information

that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

By way of further response, this Request specifically implicates the attorney work product privilege and, as a consequence, no responsive privileged documents will be produced. By way of further response, the Commonwealth refers Respondent to the documents produced with these responses. The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to and within a reasonable time after the Commonwealth's discovery has been concluded.

8. All documents reflecting expenditures and/or actions by the OAG soliciting complaints concerning UPMC, Highmark, UPMC/Highmark provider contracting, the termination of the UPMC/Highmark provider contracts, or the expiration of the Consent Decree.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to provide a supplemental response to this Request for Production of Documents prior to and within a reasonable time after the Commonwealth's discovery has been concluded.

9. All evaluations of the impact of the Proposed Modifications on insurance competition in western Pennsylvania, including any antitrust evaluations.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, this Request specifically implicates the attorney work product privilege and, as a consequence, no responsive privileged documents will be produced. Furthermore, the Commonwealth objects to the extent this Request calls for impermissible discovery of a non-testifying consultant or expert and, as a consequence, the Commonwealth will neither identify any such consultant or expert nor the substance of any communications, inclusive of documents, involving any such consultant or expert. The Commonwealth may provide a supplemental response to this Request for Production of Documents, limited to what is permissible under Pa. R.C.P. 4003.5(a)(1), prior to and within a reasonable time after the Commonwealth's discovery has been concluded.

10. All documents related to any OAG investigation of UPMC from 2011 to the present including, but not limited to, the investigation reflected in the November 18, 2011 letter from James A. Donahue, III to W. Thomas McGough,

Jr.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, this Request specifically implicates the law enforcement investigative privilege and, as a consequence, no responsive privileged documents will be produced. By way of further answer, the Commonwealth objects to this Interrogatory to the extent it seeks the disclosure of proprietary trade secrets within the administrative subpoena trade secret confidentiality provision under 71 P.S. § 307-3 (b), the scope of the existing Protective Order dated May 19, 2015 or requiring the modification of that Protective Order and, as a consequence, the Commonwealth will meet and confer with Respondent. The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to and within a reasonable time after the Commonwealth's discovery has been concluded.

11. All documents related to any OAG investigation of Highmark from 2011 to the present.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

This Request specifically implicates the law enforcement investigative privilege and, as a consequence, no responsive privileged documents will be produced. By way of further answer, the Commonwealth objects to this Interrogatory to the extent it seeks the disclosure of proprietary trade secrets within the administrative subpoena trade secret confidentiality provision under 71 P.S. §

307-3 (b), the scope of the existing Protective Order dated May 19, 2015 or requiring the modification of that Protective Order and, as a consequence, the Commonwealth will meet and confer with Respondent. The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to and within a reasonable time after the Commonwealth's discovery has been concluded.

12. Your complete investigation/evaluation/review files for each hospital/health system acquisition transaction alleged in the Petition ¶¶ 64-65.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

By way of further answer, the Commonwealth objects to this Request to the extent it demands information or documents in support of a claim of selective prosecution without the Respondent first having met its evidentiary burden and, as a consequence, no responsive information or documents will be produced.

Further, this Request specifically implicates the law enforcement investigative privilege and, as a consequence, no responsive privileged documents will be produced. By way of further answer, the Commonwealth objects to this Interrogatory to the extent it seeks the disclosure of proprietary trade secrets within the administrative subpoena trade secret confidentiality provision under 71 P.S. § 307-3 (b), the scope of the existing Protective Order dated May 19, 2015 or requiring the modification of that Protective Order and, as a consequence, the Commonwealth will meet and confer with Respondent. The Commonwealth expects to produce any non-privileged and public documents from such investigations. The Commonwealth expects to provide a supplemental response to this Request for Production of Documents prior to and within a reasonable time after the Commonwealth's discovery has been concluded.

13. All testimony, statements to legislative bodies/committees, or public statements by the OAG concerning the Highmark/UPMC contracting status, the Mediated Agreement, the Consent Decree, expiration of the Consent Decree, and/or the Proposed Modifications, or insurance competition or provider competition in western Pennsylvania.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

This Request seeks information which is in the public record. The Respondent is free to undertake the burden itself by requesting these publicly available documents if it so chooses.

14. All documents or other evidence that refer or relate to the impact of the Proposed Modifications on the public interest.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information

that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to provide a supplemental response to this Request for Production of Documents prior to and within a reasonable time after the Commonwealth's discovery has been concluded.

15. All social media posts and messaging by or with the OAG, both public and private, concerning the Highmark/UPMC contracting status, the Mediated Agreement, the Consent Decree, expiration of the Consent Decree, and/or the Proposed Modifications.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information

that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth objects the term “private” in connection with social media posts and messaging. By definition, social media is not private. To the extent, however, this Request refers to an internal communication within the Office of Attorney General, the Commonwealth objects to producing any such communications on the grounds that such communications are privileged under the attorney work Product, attorney client, joint prosecution,law enforcement investigatory, executive, or deliberative process privileges and, as a consequence, the Commonwealth expects to produce non-privileged responsive documents.

The Commonwealth expects to provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

16. All documents supporting, refuting, or otherwise concerning your allegations that UPMC has engaged in deceptive or misleading advertising or made

deceptive or misleading statements that are a basis for the OAG's Petition.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to produce documents showing deceptive and misleading content. The Commonwealth expects to provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

17. All documents concerning the Second Mediated Agreement as alleged in the Petition ¶¶ 20-23.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

This Request specifically implicates the mediation documents privilege under Pa. R.C.P. 4011 (d) and 42 Pa. C.S. § 5949 and, as a consequence, no responsive privileged documents will be produced. The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to and within a reasonable time after the Commonwealth's discovery has been concluded.

18. All documents supporting, refuting, or otherwise concerning Your

allegation that UPMC “thwarted” patients from using Highmark’s “Out-of-Network policy riders ... under which Highmark would pay the 60% of Out-of-Network charges, less the usual co-payments and co-insurance” as alleged in the Petition ¶ 24.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth’s claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

19. All documents supporting, refuting, or otherwise concerning the patients identified as examples of financial hardships, treatment denials, and/or

treatment delays for out- of-network patients in the Petition ¶ 25, and all documents concerning any other patient You contend is similarly situated, including but not limited to documents sufficient to identify the names and contact information of all such patients.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

By way of further response, the Commonwealth refers Respondent to the documents produced with these responses, but notes that information regarding patient names and diagnoses will be designated "Highly Confidential" under the protective order in this matter. Some patient documents may implicate statutory confidentiality protections under the Federal Substance Abuse Record

Confidentiality Law and the regulations promulgated thereunder, the Pennsylvania Drug and Alcohol Abuse Control Act and the regulations promulgated thereunder, the Pennsylvania Mental Health Procedures Act and the Pennsylvania Confidentiality of HIV-Related Information Act and, as a consequence, such documents may not be produced.

The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

20. All documents supporting, refuting, or otherwise concerning Your allegations that UPMC has refused to contract and/or engaged in practices to increase revenues, as alleged in the Petition ¶¶ 27-31.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims.

Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

21. All documents supporting, refuting, or otherwise concerning Your allegations that UPMC has engaged in unfair and misleading marketing, as alleged in the Petition ¶¶ 32-36.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn

through ongoing discovery. By way of further response, the Commonwealth objects to this Request for Production on the grounds that it is duplicative of Request for Production no. 16. The Commonwealth refers the Respondent to documents produced in response to Request for Production no. 16.

22. All documents concerning the patients identified as examples of access and treatment denials in the Petition ¶ 37, and all documents concerning any other patients you contend are similarly situated, including but not limited to documents sufficient to identify the names and contact information of all such patients.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in

the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

By way of further response, the Commonwealth refers Respondent to the documents produced with these responses, but notes that information regarding patient names and diagnoses will be designated “Highly Confidential” under the protective order in this matter. Some patient documents may implicate statutory confidentiality protections under the Federal Substance Abuse Record Confidentiality Law and the regulations promulgated thereunder, the Pennsylvania Drug and Alcohol Abuse Control Act and the regulations promulgated thereunder, the Pennsylvania Mental Health Procedures Act and the Pennsylvania Confidentiality of HIV-Related Information Act and, as a consequence, such documents may not be produced.

The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

23. All documents supporting, refuting, or otherwise concerning Your allegations about UPMC Susquehanna, PMF Industries, and its alleged “insurer,” as alleged in the Petition ¶ 38.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to provide a supplemental answer to this Request for Production of Documents prior to and within a reasonable time after the Commonwealth's discovery has been concluded.

24. All documents supporting, refuting, or otherwise concerning Your allegations that "UPMC rejects efforts by employers to use reference based prices or other cost comparison tools," as alleged in the Petition ¶ 41.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to provide a supplemental answer to this Request for Production of Documents prior to and within a reasonable time after the Commonwealth's discovery has been concluded.

25. All documents supporting, refuting, or otherwise concerning Your allegations that UPMC refuses to contract with out-of-area Blue Cross Blue Shield companies, as alleged in the Petition ¶ 42.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to provide a supplemental answer to this Request for Production of Documents prior to and within a reasonable time after the Commonwealth's discovery has been concluded.

26. All documents supporting, refuting, or otherwise concerning Your allegations that "UPMC's decision to not participate in certain Highmark or other Blue Cross Blue Shield Medicare Advantage plans imposes special costs and hardships on seniors," as alleged in the Petition ¶¶ 43-44.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

27. All documents supporting, refuting, or otherwise concerning Your allegations that out-of-network patients treated for emergency care in UPMC hospitals will pay significantly higher prices, which will also impose higher costs on employers, and increase healthcare costs, as alleged in the Petition ¶¶ 45-51.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

28. All documents supporting, refuting, or otherwise concerning Your allegations that all out-of-network patients receiving non-emergency healthcare at UPMC hospitals after June 30, 2019 will be required to pay expected charges for treatment before services are provided, and the alleged unjust impact thereof, as alleged in the Petition ¶¶ 52-55.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

29. All documents supporting, refuting, or otherwise concerning Your allegations in the Petition §§ 56-63 regarding UPMC's financial position, spending and compensation practices, and alleged wasteful expenditures of charitable resources.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

30. A full, unredacted version of the Penn State Hershey Medical Center / PinnacleHealth System merger litigation file, including all briefs, hearing transcripts, depositions, discovery, and other filings.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges. In addition, a protective order was entered in the Penn State Hershey Medical Center / PinnacleHealth System litigation which remains in place so that much of the documentation that UPMC seeks to have produced is barred from production by the protective order in that case. A copy of the protective order is attached as Exhibit 2.

Subject to and without waiving these objections, any cases filed by the Commonwealth are a matter of public record which is available to the Respondent from the Courts where the cases were filed. Compilation of “briefs, hearing transcripts ... and other filings” would constitute a significant burden on the Commonwealth. Other actions filed by the Commonwealth are by their very nature, irrelevant to the instant litigation. The Respondent is free to undertake the burden itself by requesting these publicly available documents if it so chooses. Moreover, this Request specifically implicates the law enforcement investigative privilege and, as a consequence, no responsive privileged documents will be

produced. By way of further answer, the Commonwealth objects to this Request to the extent it seeks the disclosure of proprietary trade secrets within the administrative subpoena trade secret confidentiality provision under 71 P.S. § 307-3 (b), the scope of the existing Protective Order dated May 19, 2015 or requiring the modification of that Protective Order and, as a consequence, the Commonwealth will meet and confer with Respondent. The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

31. All documents concerning, or generated or reviewed in connection with, the testimony of Executive Deputy Attorney General James A. Donahue, III before the Democratic Policy Committee of the Pennsylvania House of Representatives on or around October 10, 2014 and/or the conclusions contained in his testimony, including but not limited to that the OAG has no legal basis to compel UPMC and Highmark to contract.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-

client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, this Request specifically implicates the attorney work product and deliberative process privileges and, as a consequence, no responsive privileged documents will be produced. The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to and within a reasonable time after the Commonwealth's discovery has been concluded.

32. All documents relating to provider-based/hospital-based billing in Pennsylvania, including all complaints, documents indicating which providers are so billing, and what the OAG has done in response.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

By way of further answer, the Commonwealth objects to this Request to the extent it seeks the disclosure of proprietary trade secrets within the administrative subpoena trade secret confidentiality provision under 71 P.S. § 307-3 (b), the scope of the existing Protective Order dated May 19, 2015 or requiring the modification of that Protective Order. By way of further answer, the Commonwealth objects to this Request to the extent it demands information or documents in support of a claim of selective prosecution without the Respondent first having met its evidentiary burden and, as a consequence, no responsive information or documents will be produced.

33. All documents concerning how the arbitration panel and associated standards and procedures set out in Exhibit G to the Petition §§ 4.1-4.3.8 were developed.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The

Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

This Request specifically implicates the attorney work product and deliberative process privileges and, as a consequence, no responsive privileged documents will be produced. By way of further answer, the Commonwealth directs Respondent to its responses for Interrogatory no. 23. The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to and within a reasonable time after the Commonwealth's discovery has been concluded.

34. All communications and/or documents exchanged with any individual about serving as an arbitrator on an arbitration panel, as contemplated in Exhibit G to the Petition §§ 4.1-4.3.8.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

By way of further answer, the Commonwealth objects to this Request as speculative, hypothetical and unanswerable insofar as it asks for a response as to what "would be" in relation to "any individual [] serving as an arbitrator on an arbitration panel." The Commonwealth further objects on the grounds that the Interrogatory calls for speculation because it seeks information that is contingent upon, among other things, the Commonwealth's Petition to Modify the Consent Decree, in which it has asked the Commonwealth Court to adopt the Proposed Modified Consent Decree. The Petition is currently pending before the Court. The

Commonwealth may provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

35. All documents concerning the qualifications and selection of the arbitrators as contemplated in Exhibit G to the Petition §§ 4.1-4.3.8.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

By way of further answer, the Commonwealth objects to this Interrogatory as speculative, hypothetical and unanswerable insofar as it asks for a response as to

what “would be” in relation to “the qualifications and selection of the arbitrators as contemplated in Exhibit G to the Petition.” The Commonwealth further objects on the grounds that the Interrogatory calls for speculation because it seeks information that is contingent upon, among other things, the Commonwealth’s Petition to Modify the Consent Decree, in which it has asked the Commonwealth Court to adopt the Proposed Modified Consent Decree. The Petition is currently pending before the Court. The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

36. All documents evaluating, addressing, or concerning the OAG’s authority to impose the Proposed Modifications.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

This Request specifically implicates the attorney work product, executive, and deliberative process privileges and, as a consequence, no responsive privileged documents will be produced. The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

37. All documents evaluating, addressing, or concerning whether the Proposed Modifications are consistent with federal law.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

This Request specifically implicates the attorney work product and deliberative process privileges and, as a consequence, no responsive privileged documents will be produced. The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

38. All documents relating to any effort to impose any willing payer or any willing insurer system by legislation or regulation, including but not limited to Pennsylvania General Assembly House Bill 345, Regular Session 2017-2018, February 3, 2017, and House Bill 1621, Regular Session 2017-2018, June 26, 2017.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

By way of further answer, the Commonwealth disclaims any prayer for relief that it seeks to “impose any willing payer or any willing insurer system by legislation or regulation” and any representation to the contrary by another would be deemed by the Commonwealth to be in bad faith. The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

39. Any and all literature the OAG has reviewed regarding the impact of any willing provider laws raising healthcare costs.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-

client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

By way of further answer, the Commonwealth disclaims any prayer for relief that it seeks to “impose any willing payer or any willing insurer system by legislation or regulation” and any representation to the contrary by another would be deemed by the Commonwealth to be in bad faith. The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

40. All documents concerning public support for or opposition to an any willing payer or any willing insurer regime by the OAG, Pennsylvania legislatures, and/or any trade, industry, business, consumer, or other lobbying groups.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The

Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

By way of further answer, the Commonwealth disclaims any prayer for relief that it seeks to “impose any willing payer or any willing insurer regime” and any representation to the contrary by another would be deemed by the Commonwealth to be in bad faith. The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth’s discovery has been concluded.

41. All documents relating to the impact and purpose of the Consent Decree.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The

Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

42. All documents relating to the 2017 UPMC/Highmark contracts.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-

client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

43. All documents relating to any nonprofit healthcare provider or payer who has declined to enter into a contract with a willing provider/payer, including but not limited to Penn State Hershey Medical Center's refusal to contract with UPMC Health Plan.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-

client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

By way of further answer, the Commonwealth objects to this Request to the extent it demands information or documents in support of a claim of selective prosecution without the Respondent first having met its evidentiary burden and, as a consequence, no responsive information or documents will be produced.

Further, this Request specifically implicates the law enforcement investigative files privilege and, as a consequence, no responsive privileged documents will be produced. By way of further answer, the Commonwealth objects to this Interrogatory to the extent it seeks the disclosure of proprietary trade secrets within the administrative subpoena trade secret confidentiality provision under 71 P.S. § 307-3 (b), the scope of the existing Protective Order dated May 19, 2015 or requiring the modification of that Protective Order and, as a consequence, the Commonwealth will meet and confer with Respondent. The Commonwealth may provide a supplemental response to this Request for Production of Documents

prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

44. All documents concerning ¶ 22 of the UPE Approving Order, including but not limited to, all documents that relate to Highmark's compliance or noncompliance with ¶ 22.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

Further, this Request specifically implicates the law enforcement investigative files privilege and, as a consequence, no responsive privileged

documents will be produced. By way of further answer, the Commonwealth objects to this Interrogatory to the extent it seeks the disclosure of proprietary trade secrets within the administrative subpoena trade secret confidentiality provision under 71 P.S. § 307-3 (b), the scope of the existing Protective Order dated May 19, 2015 or requiring the modification of that Protective Order and, as a consequence, the Commonwealth will meet and confer with Respondent. The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

45. All notes, memoranda, or other documents used in preparation for meetings between the OAG and UPMC in 2013, 2014, 2015, 2016, 2017, or 2018.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

By way of further answer, the Commonwealth objects to this Interrogatory to the extent it seeks the disclosure of proprietary trade secrets within the administrative subpoena trade secret confidentiality provision under 71 P.S. § 307-3 (b), the scope of the existing Protective Order dated May 19, 2015 or requiring the modification of that Protective Order and, as a consequence, the Commonwealth will meet and confer with Respondent. The Commonwealth objects to this Interrogatory on the grounds that it seeks information relating to confidential settlement negotiations and is therefore inadmissible under Pennsylvania Rule of Evidence 408. Furthermore, this Request specifically implicates the attorney work product and deliberative process privileges and, as a consequence, no responsive privileged documents will be produced.

46. All documents concerning or containing any information relating, in any way, to the subject matter of this Lawsuit and/or that are relevant to the claims and defenses at issue in this Lawsuit and/or, the facts underlying the allegations set forth in the Petition.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

This Request specifically implicates the attorney work product and deliberative process privileges and, as a consequence, no responsive privileged documents will be produced. The Commonwealth may provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

47. All documents related to or containing any information relating, in any way, to this Lawsuit received from any party, whether in response to a subpoena,

demand for documents, or otherwise.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth objects to this Interrogatory to the extent it seeks the disclosure of proprietary trade secrets within the administrative subpoena trade secret confidentiality provision under 71 P.S. § 307-3 (b), the scope of the existing Protective Order dated May 19, 2015 or requiring the modification of that Protective Order and, as a consequence, the Commonwealth will meet and confer with Respondent. This Request specifically implicates the administrative subpoena confidentiality provision under 71 P.S. § 307-3 (b) and, as a consequence, no responsive documents, if any, produced under such subpoena will be produced.

48. All statements and/or admissions concerning the claims and defenses at issue in this Lawsuit.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to provide a supplemental answer to this Request for Production of Documents prior to and within a reasonable time after the Commonwealth's discovery has been concluded.

49. Curricula vitae for each expert consulted and/or anticipated to be called as a witness in connection with this matter.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. By way of further answer, the Commonwealth objects to the extent this Request calls for impermissible discovery of a non-testifying consultant or expert and, as a consequence, the Commonwealth will neither identify any such consultant or expert nor the substance of any communications, inclusive of documents, involving any such consultant or expert. The Commonwealth expects to provide a supplemental answer to this Request, limited to what is permissible under Pa. R.C.P. 4003.5 (a)(1), prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

50. All documents generated or reviewed by, or upon which each and every expert witness you may call to testify at the time of trial will rely in testifying in the Lawsuit.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. By way of further answer, the Commonwealth objects to the extent this Request calls for impermissible discovery of a non-testifying consultant or expert and, as a consequence, the Commonwealth will neither identify any such consultant or expert nor the substance of any communications, inclusive of documents, involving any such consultant or expert. The Commonwealth expects to provide a supplemental answer to this Request, limited to what is permissible under Pa. R.C.P. 4003.5 (a)(1), prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

51. All documents you intend to introduce as exhibits at trial or any hearing on this matter.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

52. All statements by any individual who is or may be a witness at the trial or any hearing in this Lawsuit.

RESPONSE:

The Commonwealth objects to this Request for Production of Documents on the grounds that it is overly broad, unduly burdensome and calls for information that is irrelevant and unlikely to lead to the discovery of admissible evidence. The Commonwealth objects to the extent this Request for Production of Documents requires the Commonwealth to reveal information that is subject to the attorney-client, work-product, joint-prosecution, law enforcement investigatory, executive, and/or deliberative process privileges.

Subject to and without waiving these objections, the Commonwealth responds that the Petition states a sufficient basis for the Commonwealth's claims. Much of the information sought by this Request for Production of Documents is in the possession of the Respondent which the Commonwealth is attempting to learn through ongoing discovery.

The Commonwealth expects to provide a supplemental response to this Request for Production of Documents prior to or within a reasonable time after the Commonwealth's discovery has been concluded.

Date: April 1, 2019

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA

JOSH SHAPIRO
Attorney General

By: /s/James A. Donahue, III

James A. Donahue, III
Executive Deputy Attorney General
Public Protection Division

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(717) 787-9617

CERTIFICATE OF SERVICE

I hereby certify that I am, this 1st day of April, 2019, serving a true and correct copy of the foregoing *The Commonwealth's Objections and Responses to UPMC's First Set of Interrogatories and Requests for Production of Documents Directed to the Attorney General* was served on all parties via electronic mail as indicated below:

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Date: April 1, 2019

/s/ Tracy W. Wertz
Tracy W. Wertz
Chief Deputy Attorney General
Antitrust Section

14th Floor Strawberry Square
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EXHIBIT 6

BEFORE THE INSURANCE DEPARTMENT
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:

Application of UPE for Approval	:	Pursuant to Sections 1401, 1402 and 1403
of the Request by UPE to Acquire	:	of the Insurance Holding Companies Act,
Control of Highmark Inc.; First Priority	:	Article XIV of the Insurance Company
Life Insurance Company, Inc.; Gateway	:	Law of 1921, Act of May 17, 1921, P.L.
Health Plan, Inc.; Highmark Casualty	:	682, <u>as amended</u> , 40 P.S. §§ 991.1401 -
Insurance Company; Highmark Senior	:	991.1403; 40 Pa.C.S. Chapter 61 (relating
Resources Inc.; HM Casualty Insurance	:	to hospital plan corporations); 40 Pa.C.S.
Company; HM Health Insurance Company,	:	Chapter 63 (relating to professional health
d/b/a Highmark Health Insurance Company;	:	services plan corporations); and Chapter 25
HM Life Insurance Company; HMO of	:	of Title 31 of The Pennsylvania Code,
Northeastern Pennsylvania, Inc., d/b/a First	:	31 Pa. Code §§ 25.1-25.23
Priority Health; Inter-County Health Plan, Inc.;	:	
Inter-County Hospitalization Plan, Inc.;	:	Order No. ID-RC-13-06
Keystone Health Plan West, Inc.; United	:	
Concordia Companies, Inc.; United	:	
Concordia Dental Plans of Pennsylvania,	:	
Inc.; and United Concordia Life and Health	:	
Insurance Company	:	

APPROVING DETERMINATION AND ORDER

Upon consideration of the information, presentations, reports, documents and comments received, as well as other inquiries, investigations, materials, and studies permitted by law,¹ the application (the “Application”) of UPE (the “Applicant”) to acquire control (the “Change of Control”) of Highmark Inc.; First Priority Life Insurance Company, Inc.; Gateway Health Plan, Inc.; Highmark Casualty Insurance Company; Highmark Senior Resources Inc.; HM Casualty Insurance Company; HM Health Insurance Company, d/b/a Highmark Health Insurance Company; HM Life Insurance Company; HMO of Northeastern Pennsylvania, Inc., d/b/a First

¹ These materials include, but are not limited to, information submitted to the Department by UPE and members of the public, and the reports prepared for the Department by The Blackstone Group, L.P. (the “Blackstone Report”) and Margaret E. Guerin-Calvert, Senior Consultant, Compass Lexecon (the “Guerin-Calvert Report”). All of the publicly available materials submitted to the Department are available on the Department’s website at: http://www.portal.state.pa.us/portal/server.pt/community/industry_activity/9276/highmark_west_penn_alleghey_alth_system/982185

Priority Health; Inter-County Health Plan, Inc.; Inter-County Hospitalization Plan, Inc.; Keystone Health Plan West, Inc.; United Concordia Companies, Inc.; United Concordia Dental Plans of Pennsylvania, Inc.; and United Concordia Life and Health Insurance Company (the "Highmark Insurance Companies") and all other transactions included in the Form A which are subject to the Department's jurisdiction and require approval of the Department are hereby approved, subject to the conditions set forth below (collectively the "Conditions").

Section 1402 of the Insurance Holding Companies Act requires the Department to approve an application for a change in control unless the Department has found that:

(i) After the Change of Control, the Highmark Insurance Companies would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which they are presently licensed;

(ii) The effect of the Change of Control would be to substantially lessen competition in insurance in this Commonwealth or tend to create a monopoly therein;

(iii) The financial condition of the Applicant is such as might jeopardize the financial stability of a one or more of the Highmark Insurance Companies or prejudice the interests of any policyholders;

(iv) The Change of Control, including but not limited to any material change in the business or corporate structure or management of the Applicant or the Highmark Insurance Companies as described in the Application is unfair and unreasonable to policyholders of the Highmark Insurance Companies and not in the public interest;

(v) The competence, experience and integrity of those Persons who would control the operation of any of the Highmark Insurance Companies are such that it would not be in the interest of the policyholders of the Highmark Insurance Companies and the public to permit the Change of Control;

(vi) The Change of Control is likely to be hazardous or prejudicial to the insurance buying public; and

(vii) The Change of Control is not in compliance with laws of the Commonwealth.

The burden is on the Department to show a violation of the standards. The standards are phrased in the negative and the Department is required to approve a transaction unless it finds that any of the standards are met.

The Department finds that, with the imposition of the Conditions set forth below to preserve and promote competition in insurance in the Commonwealth of Pennsylvania, to protect the public interest, and to protect the financial stability of the Highmark Insurance Companies, the Change of Control (and all other transactions included in the Application which are subject to the Department's jurisdiction and require approval of the Department) do not violate Section 1402 of the Insurance Holding Companies Act.

The form of the Second Amended and Restated Bylaws of Highmark Inc., as submitted to the Department in connection with the Application, meet the statutory standards of 40 Pa.C.S. § 6328(b).

This Approving Determination and Order shall be subject to the following Conditions, all of which must be complied with in order for the approval of the Application to be valid. This Approving Determination and Order is effective immediately.² The Department will issue further full written findings and conclusions on or before May 31, 2013 that substantially reflect the factual conclusions reached in the Blackstone Report and the Guerin-Calvert Report.

Competitive Conditions

Preamble: Both the WPAHS Entities and the Domestic Insurers engage in confidential and competitively sensitive contract negotiations with each other's rivals that involve price and non-price terms and product design. Common ownership of the Domestic Insurers and the WPAHS Entities provides the opportunity for each to obtain and make use of Competitively Sensitive Information from rivals that could be used to the potential detriment of consumers and competition. The ability of rival insurers in the Western Pennsylvania area to develop and obtain the benefits of innovative products and pricing depend on their ability to contract with UPE-affiliated providers without risk of disclosure to the Domestic Insurers. A risk to competition exists if a Domestic Insurer can adversely affect any rival's price and non-price contract terms or deter innovation or access or limit gains to innovation by obtaining and acting upon any rival's Competitively Sensitive Information. A risk to competition also exists if Health Care Insurers or Health Care Providers enter into contractual arrangements, including but not limited to arrangements (known as "most-favored nation" arrangements) that guarantee receipt of the best payment rate and/or terms

² The captions, headings and preambles in this Approving Determination and Order are for convenience and general reference only and shall not be construed to describe, define or limit the scope, intent or meaning of any of the terms or conditions of this Approving Determination and Order.

offered to any other Health Care Insurer or Health Care Provider. The following Competitive Conditions are designed to mitigate potential adverse competitive effects on competition and on rivals contracting with the Domestic Insurers and/or the WPAHS Entities when under common ownership and to maximize market-based access opportunities of unrelated providers and community hospitals to the IDN and insurers to UPE Health Care Providers.

Prohibition On Exclusive Contracting

1. No Domestic Insurer shall enter into a contract or arrangement with any UPE Health Care Provider which contract or arrangement requires the UPE Health Care Provider to exclusively contract with one or more Health Care Insurers with respect to any Health Care Service.
2. No UPE Entity shall, directly or indirectly, prohibit or limit the authority of any other UPE Entity that is a Health Care Provider from entering into any contract or arrangement with any Health Care Insurer. Exclusive contracts with specialized providers, such as anesthesiologists or emergency room physicians, may be entered into by a UPE Entity that is a Health Care Insurer with at least thirty (30) days' prior written notice to the Department, so long as the Department does not advise the requesting Health Care Insurer that the Department either disapproves the request for approval or requests any further information or explanation regarding the request for approval within such thirty (30) day period.

Provider/Insurer Payment Contract Length Limitation

3. No Domestic Insurer shall enter into any contract or arrangement with any Health Care Provider where the length of the contract (including but not limited to the initial term and all renewal terms) is in excess of five (5) years, without the prior Approval of the Department. No UPE Entity that is a Health Care Insurer domiciled in Pennsylvania shall enter into any contract or arrangement with any Health Care Provider where the length of the contract (including but not limited to the initial term together with all renewal terms) is in excess of five (5) years, without the Approval of the Department.

Termination Of Current Health Care Insurer Contracts Other Than For Cause

4. Until December 31, 2015, no UPE Entity that is a Health Care Provider shall terminate a Health Care Service reimbursement contract with any Health Care Insurer for a reason other than for cause.

Prohibition On Most Favored Nation Contracts Or Arrangements

5. No Domestic Insurer shall enter into any contract or arrangement with any Health Care Provider on terms which include a "most favored nation" or similar clause that guarantees or provides that a Domestic Insurer will receive the best payment rate and/or terms that such Health Care Provider gives any other purchaser or payor of the same or substantially the same product or service.

6. No UPE Entity that is a Health Care Provider shall enter into any contract or arrangement with any Health Care Insurer which includes a “most favored nation” or similar clause that guarantees or provides that the Health Care Insurer will receive the best payment rate and/or terms that such UPE Entity gives any other purchaser or payor of the same or substantially the same product or service.

Firewall Policy

7. UPE shall develop, implement, monitor the operation of and enforce strict compliance with a Firewall Policy for UPE, UPE Provider Sub, and each UPE Entity that is a Health Care Provider or a Health Care Insurer (and for such other UPE Entities as the Department may require). The Firewall Policy shall be in a form and substance acceptable to the Department. Within thirty (30) days after the issuance of this Approving Determination and Order, UPE shall file with the Department, for the review and Approval of the Department, a comprehensive Firewall Policy that includes but is not limited to the elements set forth in Appendix 2 (Firewall Policy), which is attached hereto and is incorporated herein by reference. Different Firewall Policies may be submitted for separate UPE Entities or types of UPE Entities, provided that each such separate policy shall substantially include all of the elements set forth in Appendix 2 (Firewall Policy) and be accompanied by an explanation that describes the need for a separate policy. Once Approved by the Department, each Firewall Policy (“Approved Firewall Policy”) shall be made publicly available in accordance with the requirements of the Department. After Approval of the Department of the Approved Firewall Policy, UPE shall cause each applicable UPE Entity to maintain in full force the applicable Approved Firewall Policy. No UPE Entity may make any material amendment, waive enforcement of or terminate any material provision of its Approved Firewall Policy without the Approval of the Department. Each UPE Entity required to have and to maintain an Approved Firewall Policy shall give prompt notice to the Department of any other amendment, waiver or termination of its Approved Firewall Policy.
8. On or before May 1 of each year, UPE shall file with the Department a report executed by UPE’s President and its Chief Privacy Officer. The report shall be a public record, shall be in a form and substance satisfactory to the Department and shall include the following certification to the best of the President’s and Chief Privacy Officer’s information, knowledge and belief: (i) at all times during the immediately preceding calendar year, each UPE Entity subject to Condition 7 was governed by and operated in accordance with a Department Approved Firewall Policy; (ii) at all times in the prior calendar year each Approved Firewall Policy was fully implemented, monitored and enforced in accordance with its terms, except as fully described in subsection (vi) below; (iii) mandatory training of employees with access to any Competitively Sensitive Information (including both current employees and all new hires) has occurred in accordance with the terms of the applicable Approved Firewall Policy; (iv) each UPE Entity that is subject to Condition 7 has obtained recertification biannually of each of its employees with access to any Competitively Sensitive Information stating that the employee has received a copy of the Approved Firewall Policy, understands the Approved Firewall Policy and agrees to abide by the Firewall Policy; (v) no individual with management oversight over all or part of both UPE’s provider and insurer business

segments has used Competitively Sensitive Information obtained as part of his or her oversight function to competitively disadvantage a rival Health Care Provider or Health Care Insurer; (vi) each UPE Entity that is subject to Condition 7 has undertaken an annual good faith review of the UPE Entity's Approved Firewall Policy compliance for the prior calendar year and that either (a) there were no violations or other breaches of the applicable Approved Firewall Policy other than those for which the UPE Entity had previously provided notice to the Department in accordance with the Approved Firewall Policy, or (b) the Department has been provided with the non-reported breaches report and corrective action plan required in Condition 9; and (vii) such other information as the Department shall require.

9. UPE, UPE Provider Sub, and each UPE Entity that is a Health Care Provider or a Health Care Insurer shall provide the Department with such information regarding its Approved Firewall Policy and its implementation and enforcement as the Department shall from time to time request. In addition to other information to be provided to the Department, a report of non-reported breaches of the applicable Approved Firewall Policy, which shall not be a public record, shall accompany the annual certification along with a corrective action plan (which shall be satisfactory in form and substance to the Department) to assure the Department of future, timely compliance with the Approved Firewall Policy and to provide an explanation as to why prior notice of such breach had not been provided to the Department. Approved Firewall Policy implementation and enforcement shall be subject to review and/or examination by the Department, or consultants retained by the Department at the expense of the UPE Entity, to the extent that the Department believes that such review and/or examination is in the public interest.

Financial Conditions

Preamble: The following financial conditions are intended to:
(i) limit the amount of policyholder funds that may be transferred to any Domestic Insurer's new parent entity or other Affiliates of the parent; (ii) establish an enhanced standard of review and assessment that is required to be undertaken prior to any Domestic Insurer entering into additional material financial commitments; (iii) implement ongoing reporting and monitoring requirements related to a Domestic Insurer's investments into the WPAHS Entities; (iv) establish criteria for a plan of corrective action to be prepared by UPE if the turnaround of WPAHS falls short of certain targets; and (v) enhance the level of transparency and accountability with respect to Highmark's stated goal of deriving tangible policyholder benefits, in the form of relative premium and cost of care savings, related to financial commitments made in connection with the Transaction.

Limitations On Donations

10. Without the Approval of the Department, no Domestic Insurer shall make, or agree to make, directly or indirectly, any Donation, which together with all other Donations made or agreed to be made by that Domestic Insurer within the twelve (12) consecutive months immediately preceding such Donation equals or exceeds the lesser of: (i) 3% of the Domestic Insurer's surplus as regards policyholders, as shown on its latest annual statement on file with the Department; or (ii) 25% of the Domestic Insurer's net income as shown on its latest annual statement; provided, however, if UPE has filed pursuant to Condition 15 a WPAHS Corrective Action Plan, any Donation made or agreed to be made by any Domestic Insurer to any UPE Entity shall be restricted solely for use in connection with implementing the Financial Commitments under and to the extent provided in the WPAHS Corrective Action Plan, until such time as all Financial Commitments related to the WPAHS Corrective Action Plan are satisfied. A Domestic Insurer may not make or agree to make a Donation which is part of a plan or series of like Donations and/or other transactions with other UPE Entities, the purpose, design or intent of which is, or could reasonably be construed to be, to evade the threshold amount set forth in this Condition and thus avoid the review that would occur otherwise. Notwithstanding the foregoing, and in addition to the requirements of (i) and (ii) of this Condition 10, in no event shall Highmark have any right, directly or indirectly, to make any Donation under this Condition if the RBC Rating of Highmark is, or as a result of the Donation is likely to be, 525% or below. This Condition 10 shall not apply to a Donation made from a Domestic Insurer that is a direct or indirect subsidiary of Highmark to Highmark or any subsidiary of Highmark. No Approval of the Department shall be required under this Condition if Department approval for the Financial Commitment has been obtained under 40 P.S. § 991.1405.

Financial Commitment Limitations

11. Any Financial Commitment made or agreed to be made to or for any Person by any of the UPE Entities designated in this Condition, directly or indirectly, shall satisfy the following requirements:
 - A. **Due Diligence Standard.** For all Financial Commitments: (i) the UPE Entity making or agreeing to make any Financial Commitment shall conduct a Commercially Reasonable Process to evaluate and assess the benefits and risks to policyholders, subscribers or other stakeholders, as applicable, and whether the Financial Commitment furthers and is consistent with the UPE Entity's nonprofit mission, if the UPE Entity is exempt from Federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code); and (ii) the terms of any Financial Commitment shall satisfy the provisions of 40 P.S. § 991.1405, as if the Financial Commitment transaction were made or agreed to be made between or among members of the holding company system.
 - B. **Transactions Requiring Only Notice.** If the amount of any Financial Commitment made or agreed to be made by one or more of the Domestic Insurers equals or exceeds \$100,000,000 in the aggregate (or if such Financial

Commitment, together with all other Financial Commitments made by one or more of the Domestic Insurers, directly or indirectly, within twelve (12) consecutive months immediately preceding the making of the Financial Commitment causes the total to exceed \$100,000,000), the Domestic Insurer(s) making or agreeing to make such Financial Commitment shall deliver to the Department written notice 30 days in advance of making or agreeing to make such Financial Commitment (the "Financial Commitment Notice"). The Financial Commitment Notice shall describe such Financial Commitment, and provide such information as is required by 31 Pa. Code § 27.3 relating to material transactions, together with such other information as the Department shall request. No notice is required under this Condition if notice of the Financial Commitment is provided to the Department pursuant to 40 P.S. § 991.1405.

- C. **Transactions Requiring Department Approval.** Without the Approval of the Department, no Domestic Insurer shall make or agree, directly or indirectly, to make any Financial Commitment if: (i) the amount thereof, together with all other Financial Commitments made or agreed to be made directly or indirectly by all of the Domestic Insurers within the immediately preceding consecutive twelve (12) months, equals or exceeds \$250,000,000; (ii) the amount thereof is made in connection with a Financial Commitment made or agreed to be made to a Person (including but not limited to any Affiliates), together with all other Financial Commitments between or among one or more of the UPE Entities, on the one hand, and such Person (including but not limited to any Affiliates), on the other hand, aggregate \$250,000,000 or more; or (iii) the RBC Rating of Highmark is, or as a result of the Financial Commitment is likely to be, 525% or below.
- D. **No Circumvention Mechanism.** No Domestic Insurer may undertake any action to delay any Financial Commitment or perform or agree to perform any Financial Commitment in stages or steps, or take any other action with respect to any Financial Commitment, the purpose, design or intent of which is, or could reasonably be construed to be, to evade any of the foregoing requirements.

Disclosure Of Financial Commitments And Financial And Operational Information

12. On or before May 1 of each year, UPE shall file with the Department a report setting forth: (i) all Financial Commitments made or agreed to be made by any UPE Entity within the immediately preceding calendar year; and (ii) specifying the section of this Condition pursuant to which such Financial Commitments were permitted to be made or agreed to be made. UPE shall promptly and fully respond to questions or requests of the Department for information in connection with such report.
13. Each year, no later than the date on which the financial statements are required to be filed for the holding company system under Form B or otherwise filed pursuant to 40 P.S. § 991.1404 (a), UPE shall file with the Department, as a public record, audited financial statements (including but not limited to all footnotes) of UPE prepared in accordance with GAAP, for the immediately preceding calendar year. In addition, UPE shall file with

the Department any letters from auditor(s) to management and any other information requested by the Department.

14. UPE shall file with the Department a report setting forth the below listed financial and operational information for the WPAHS Entities (the "Required WPAHS Financial and Operational Information"). The Required WPAHS Financial and Operational Information shall be filed quarterly for each quarter through the period ended June 30, 2015 (within 30 days after the end of the quarter) and thereafter annually on July 1 of each year.
 - A. The Required WPAHS Financial and Operational Information shall be presented on the same basis as the information was presented for the immediately preceding three (3) month period through the quarter ended June 30, 2015, or for each annual report on the same basis the information was presented for the preceding four (4) quarters of each year for which the annual report is required to be delivered. For each quarterly report, the information shall be compared to the WPAHS budget or forecast for such quarter and for each annual report, the information shall be compared to the WPAHS budget or forecast for such year and the Base Case financial projections. UPE shall make members of its management team available to the Department on a timely basis for purposes of reviewing the Required WPAHS Financial and Operational Information with the Department and any consultants retained by the Department.
 - B. The Required WPAHS Financial and Operational Information shall include for the WPAHS Entities:
 - (1) An income statement displaying a level of detail consistent with the Base Case Financial Projections for the WPAHS Entities as submitted by UPE to the Department as part of UPE's Form A filings (the "Base Case Financial Projections"). To the extent that the income statement submitted to the Department pursuant to this Condition differs from GAAP, a reconciliation shall be submitted as well.
 - (2) A cash flow statement displaying a level of detail consistent with the Base Case Financial Projections for the WPAHS Entities submitted by UPE to the Department as part of UPE's Form A. To the extent that the income statement and cash flow statements submitted to the Department pursuant to this Condition differ from GAAP, a reconciliation shall be submitted as well.
 - (3) A calculation of the WPAHS Entities' Days Cash on Hand as defined in the Master Trust Indenture (the "DCOH"), which shall present a level of detail sufficient to reconcile the components of the calculation to the income statement and balance sheets submitted as part of this Condition.
 - (4) A calculation of WPAHS Entities' Debt Service Coverage Ratio, as defined in the Master Trust Indenture, which shall present a level of detail

sufficient to reconcile the components of the calculation to the income statement and balance sheets submitted as part of this Condition.

- (5) A schedule of capital expenditures for all WPAHS Entities, and for each WPAHS Entity for which information is requested by the Department, during the applicable calendar quarter in question and grouped by significant project categories.
- (6) A schedule of inpatient and outpatient discharge volume for the WPAHS Entities in total and for each primary WPAHS Entity facility.
- (7) A schedule of occupancy rates for the WPAHS Entities in total and for each primary WPAHS facility.
- (8) A schedule of salaried and non-salaried employees, including but not limited to physicians, on an FTE basis for the WPAHS Entities in total and for each primary WPAHS Entity operating segment (hospitals, physician organization, etc.).
- (9) A schedule of occupied beds by each primary WPAHS Entity facility.
- (10) A schedule of FTEs per occupied bed by each primary WPAHS Entity facility.
- (11) Audited financial statements (including but not limited to all footnotes) of WPAHS and WPAHS Affiliates specified by the Department prepared in accordance with GAAP, for the immediately preceding calendar year along with any letters from auditors to management.
- (12) If WPAHS files consolidated financial statements with any UPE Entity other than WPAHS Affiliates specified by the Department, then UPE shall deliver WPAHS' consolidating financial statements showing its financial position, results of operations, changes in cash flow and related footnotes thereto of WPAHS and such specified WPAHS Affiliates on a standalone basis.
- (13) Such other financial and operational information related to WPAHS and the IDN Strategy as may be requested, from time to time, by the Department.

WPAHS Corrective Action Plan

15. UPE shall prepare and produce to the Department a plan of financial and operational corrective action for WPAHS (the "WPAHS Corrective Action Plan") if either:
 - A. (i) From the date hereof through June 30, 2015, the aggregate amount of Financial Commitments made or agreed to be made directly or indirectly by all UPE Entities to the WPAHS Entities equals or exceeds \$100,000,000 and (ii) the

WPAHS Entities have issuer ratings from two (2) of the Credit Rating Agencies of less than investment grade; or

- B. As of the quarter ended June 30, 2015, either (i) the WPAHS Entities' net income, as determined in accordance with GAAP ("Net Income"), has not been greater than \$0.00 after adjusting for any material non-recurring or unusual income, including but not limited to all payments received from any UPE Entity outside of the normal course of business and any Financial Commitments to the extent included in such Net Income, for two (2) out of the previous four (4) consecutive quarters; or (ii) DCOH, after adjusting for any material non-recurring or unusual cash receipts and Financial Commitments, including but not limited to all payments received from any UPE Entity outside of the normal course of business, has not been equal to or greater than a value of sixty-five (65) days for two (2) of the previous four (4) consecutive quarters.
16. If a WPAHS Corrective Action Plan is required to be prepared and produced to the Department pursuant to Condition 15A or 15B, it shall be produced promptly upon request or order of the Department to UPE and all such information when produced shall be treated as confidential pursuant to an examination process or proceeding under 40 PS § 991.1406.
17. The WPAHS Corrective Action Plan shall specify, in reasonable detail, UPE's intended actions to be taken over the subsequent twelve to twenty-four (12–24) months that are designed and anticipated to: (i) facilitate repayment or refinancing of the bond obligations of the WPAHS Entities payable to Highmark (or any UPE Entity) and on terms that would not require any Credit Enhancement Device from Highmark or other UPE Entities; (ii) generate DCOH of at least sixty-five (65) days within eighteen (18) months and for the foreseeable future thereafter; and (iii) generate net income of no less than \$0 within eighteen (18) months and for the foreseeable future thereafter.
- A. In addition, the WPAHS Corrective Action Plan shall specify the intended corrective actions that are proposed to be implemented, including but not limited to the following potential actions that were referenced in UPE's Form A filing: (i) efficiency improvements and revenue opportunities; (ii) changes in employment, including but not limited to in the number of employed physicians; (iii) modifications to capital expenditure plans; (iv) reductions in unfunded research; (v) non-core asset sales; (vi) restructuring of compensation and benefits; and (vii) outsourcing.
- B. The WPAHS Corrective Action Plan shall include but not be limited to: (i) an estimate of total cost to adopt, implement and consummate the WPAHS Corrective Action Plan—including but not limited to write-downs, one-time or ongoing restructuring costs, anticipated litigation, consulting, legal and other advisory fees and any future capital commitments—specifying UPE's estimated value for any WPAHS Entity-related investments held by Highmark or any other UPE Entity, including but not limited to loans or bonds receivable, at the time of the WPAHS Corrective Action Plan's implementation and without consideration

of potential contingency actions; and (ii) the amount of any funding needed by the WPAHS Entities to fully pay for and carry out the WPAHS Corrective Action Plan (the "WPAHS Required Funding") and an acknowledgement that any Donations made pursuant to Condition 10 will be restricted for use in paying the WPAHS Required Funding to the extent of the amount of the WPAHS Required Funding.

- C. Prior to submission, UPE shall have the WPAHS Corrective Action Plan reviewed at its sole expense by an external financial expert, who shall conclude as to the reasonableness of the plan and the sufficiency of the WPAHS Required Funding and UPE's stated actions for the purposes of limiting future WPAHS, Highmark and/or UPE losses and/or the need for additional Financial Commitments. The financial expert also shall assess the specific level of benefits and costs to be borne by Highmark's policyholders, as distinct from any franchise benefits accruing to Highmark in the form of higher enrollment, revenue and market share, and shall conclude as to the reasonableness of the value assigned by UPE to Highmark's investments in WPAHS.

Executive Compensation

18. UPE and Highmark shall ensure and maintain in effect a policy that any senior executives of any UPE Entity who have been responsible for designing, recommending and/or implementing the IDN Strategy have a meaningful portion of their long-term compensation tied to the achievement of quantifiable and tangible benefits to policyholders, if any, or to the charitable nonprofit entity, if the UPE Entity is exempt from Federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (the "IDN Compensation Policy"). Within ninety (90) days after the date hereof, UPE shall deliver to the Department a copy of the IDN Compensation Policy which satisfies the foregoing requirements in a form and substance acceptable to the Department. Any amendments to the IDN Compensation Policy shall be submitted to the Department accompanied by a certification by the President of UPE that, to the best of his or her information, knowledge and belief, the amendment to the IDN Compensation Policy satisfies the requirements of this Condition. UPE shall report annually by May 1 of each year the amount of the compensation paid to such senior executives and describe the manner in which such compensation is consistent with the IDN Compensation Policy.

Meeting IDN Savings Benchmarks

19. On or before May 1 of each year, UPE shall file with the Department a report describing in detail whether each Benchmark contained in Appendix 3 (Benchmarks), which Appendix 3 is attached hereto and incorporated herein by reference, has been met or what progress has been made toward meeting each Benchmark. The report shall include but not be limited to a statement of savings achieved through implementation of the IDN Strategy (the "IDN Savings") during (i) the preceding calendar year; and (ii) in total since consummation of the Affiliation Agreement. Each annual report shall quantify: (i) the total savings realized by policyholders across all products and consumers compared to the estimate of the cost of care that would have been incurred by policyholders if the

Affiliation Agreement had not been consummated (the “Total IDN Savings”); (ii) the relative savings realized by consumers on a per-member-per-month claims basis (the “PMPM IDN Savings”); (iii) a comparison of the Total IDN Savings and PMPM IDN Savings to the relevant projections provided in the Form A filing and shall provide a detailed description of variances between the projections and actual savings achieved; (iv) the annual and cumulative savings actually achieved by policyholders in the eight categories for which projected savings were provided to the Department in the Form A, which categories are set forth in Attachment 4 (Total IDN Savings Categories) or such other categories as the Department may approve. UPE shall have the quantification of savings and related explanations of variances reviewed by an external actuarial consulting firm, which shall conclude as to the reasonableness of the methodologies used for quantifying the savings. Within ninety (90) days of closing of the Affiliation Agreement, UPE shall submit to the Department a detailed plan for the measurement and reporting methodologies to be followed for compliance with this Condition. If the Benchmark has not been met or if satisfactory progress has not been made toward achievement of the Benchmark, the report shall specify what corrective actions will be taken in order to assure that the Benchmark is met in a timely fashion. Specifically, if, as of December 31, 2016, either the Total IDN Savings or the PMPM IDN Savings are less than the amounts projected as part of the Form A filing, then, by April 1, 2017, UPE shall file with the Department a detailed corrective action plan to maximize IDN Savings in the future or otherwise generate tangible policyholder benefits in amounts sufficient to justify the continued investment of policyholder funds in the IDN Strategy.

Public Interest/Policyholder Protection Conditions

Consumer Choice Initiatives

Preamble: Consumer choice and other member cost-sharing initiatives, including but not limited to tiered network products based upon transparent, objective criteria that include quality and cost, are procompetitive. These initiatives are consistent with efforts to provide consumers with informed healthcare choices and to incentivize consumers to consider the costs of healthcare and quality of outcomes in choosing providers. The following consumer choice initiative Condition is designed to prohibit provider and insurer contracts that would prohibit or limit the ability of Health Care Insurers to implement such consumer choice initiatives.

20. After the issuance of this Approving Determination and Order, no Domestic Insurer shall enter into a contract or arrangement with a Health Care Provider that prohibits and/or limits the ability of any Domestic Insurer to implement Consumer Choice Initiatives, without the prior Approval of the Department. After the issuance of this Approving Determination and Order, no UPE Entity that is a Health Care Provider shall enter into a contract or arrangement with a Health Care Insurer that prohibits and/or limits the ability of the UPE Entity to implement Consumer Choice Initiatives, without the prior Approval of the Department. This Condition does not prohibit a Domestic Insurer or a UPE Entity that is a Health Care Provider from entering into a contract that provides volume

discounts, provided that such volume discounts are not conditioned upon or related to commitments not to implement Consumer Choice Initiatives.

Affiliation And IDN Impact On Community Hospitals

Preamble: UPE indicates in its filings that vibrant and financially healthy community hospitals are a key component of the IDN Strategy. Community hospitals are viewed as high quality, lower cost alternatives for healthcare delivery; and, thus, are projected to be key partners. UPE acknowledges that its efforts to reinvigorate the WPAHS Entities may result in some draw of inpatients away from community hospitals to the WPAHS Entities, but states that the IDN Strategy and UPE's "Accountable Care Alliance" strategy overall will increase inpatient admissions at community hospitals, thereby resulting in a net increase in community hospital inpatient admissions. To address concerns that the Affiliation Agreement will adversely impact inpatient admissions at community hospitals and risk the financial viability of these community assets, the Department imposes Conditions that require the monitoring and reporting of Affiliation Agreement and IDN Strategy implementation impacts on community hospital discharges, and Conditions requiring UPE to report any financial commitments and other efforts to deliver more cost-effective healthcare at community hospitals to further healthcare choices in the Western Pennsylvania area.

21. On or before May 1 of each year, UPE shall submit a document (the "IDN-Community Hospital Report"), which IDN-Community Hospital Report shall describe in detail for the immediately preceding calendar year: (a) the number of discharges for each Domestic Insurer at each hospital in the WPA service area, as such area is defined in connection with the Form A (the "WPA Service Area"); (b) the number of discharges for each Domestic Insurer at each hospital in its WPA Service Area for calendar year ended 2012 ("Base Year Discharge Data"); (c) a comparison of the discharge information in the current IDN Certification against: (i) the discharge information provided by UPE under the IDN Certification for the immediately preceding year, if any was required to be provided; and (ii) the Base Year Discharge Data; (d) an analysis of whether and to what extent Highmark's affiliation with WPAHS and the implementation of the IDN Strategy resulted in a net decrease in the Domestic Insurers' discharges at its WPA Service Area community hospitals; and (e) the amount and nature of any Financial Commitments by any and all UPE Entities in community-based facilities and service in community hospitals that any such UPE Entities have undertaken with each hospital (excluding any hospitals of WPAHS and UPMC or their respective subsidiaries), including but not limited to efforts to identify opportunities to deliver more cost-effective healthcare to ensure a robust and vibrant network with meaningful choice in key service lines.
 - A. Within sixty (60) days after the date of an IDN-Community Hospital Report, the Domestic Insurers shall submit to the Department a plan of operational corrective action ("IDN Corrective Action Plan") if the analysis set forth in the IDN-Community Hospital Report for the year in question reflects a net decrease of

10% or more in all of the Domestic Insurers' discharges at their WPA Service Area community hospitals with which they have a contract or arrangement. The IDN Corrective Action Plan shall specify, in reasonable detail, the Domestic Insurers' intended commercially reasonable actions to be taken over the subsequent twelve (12) months that are designed and anticipated to address the reasons for the decrease in discharges relating to the Affiliation Agreement and the IDN Strategy. The IDN Corrective Action Plan shall include but not be limited to an estimate of total cost to adopt, implement and consummate the IDN Corrective Action Plan.

- B. The Domestic Insurers shall use commercially reasonable efforts to implement the IDN Strategy in a manner that utilizes and enhances the role of community hospitals in their respective WPA Service Areas to provide continued services to the communities they serve.

Transition Plan Regarding UPMC Contract

Preamble: The Department recognizes that Highmark's contract with UPMC is scheduled to terminate on December 31, 2014, and new or extended provider contracts may or may not be entered into between the parties. The Department also recognizes that the Applicant's Base Case is premised on a non-continuation of the UPMC Contract and that continuation of such contract may, based on the Applicant's projections, delay WPAHS' financial recovery. The potential termination of these provider contracts may be disruptive to the Domestic Insurers' enrollees and consumers of UPMC healthcare services as that termination date is reached. In the event of a contract termination and to minimize any adverse impact on healthcare consumers and protect the public interest, the Department imposes a transition plan condition on all Domestic Insurers that have contract(s) with UPMC. The Condition focuses on issues such as continuation of care and access options available to the Domestic Insurers' enrollees; adequacy of the Domestic Insurers' remaining provider networks; and appropriate communications, as necessary, to inform healthcare consumers of any issues with continued access to certain UPMC facilities and practice areas.

- 22. With respect to the possibility of a contract between or among one or more of the Domestic Insurers and UPMC after December 31, 2014, the following shall apply:
 - A. If a Domestic Insurer secures UPMC's assent to a new contract, combination, affiliation, or arrangement (or an extension of the current contract that expires on December 31, 2014) ("New UPMC Contract"), UPE shall notify the Department in advance of the execution of the New UPMC Contract and provide the Department with updated information, based on reasonable assumptions and credible projections, on the impact of the terms of any New UPMC Contract on the financial performance of WPAHS, as well as an independent analysis of an expert on the impact of the New UPMC Contract on both the insurance and

provider markets in the region including but not limited to any effects on competition.

- B. If, however, one or more of the Domestic Insurers and UPMC do not enter into a New UPMC Contract by July 1, 2014, then UPE shall file with the Department and with the Pennsylvania Department of Health: (i) an update of the status of negotiations between UPMC and such Domestic Insurer(s), including but not limited to reasons that the parties have been unable to enter into a New UPMC Contract; and (ii) a formal transition plan (the "UPMC Contract Transition Plan") no later than July 31, 2014 that sets forth such information as shall be required by the Department and the Department of Health and which addresses such issues as continuation of care; options available to subscribers to access Health Care Providers; appropriate communication, as necessary, to subscribers, providers and others regarding adequacy and changes in cost or scope of coverage. The UPE Entities shall fully cooperate with the Department and the Department of Health in coordinating with UPMC for the further development and, if necessary, implementation of the UPMC Contract Transition Plan with the goal of minimizing any disruption to consumers and the marketplace and ensuring that such consumers continue to have access to quality healthcare in a competitive marketplace.

Community Health Reinvestment

Preamble: Preamble: This Condition requires Highmark to continue its commitment to non-profit activities directed to the betterment of overall community healthcare by fixing and expressly making permanent a percentage of Highmark's direct written premiums that will be dedicated to Community Health Reinvestment endeavors.

23. Commencing with calendar year 2014, Highmark shall annually dedicate to and pay for Community Health Reinvestment Activities ("CHR") an amount equal to 1.25% of all of Highmark's aggregate direct written premiums, as reported in the annual statement filed by Highmark pursuant to Condition 23B (the "Annual CHR Payment Obligation") for the immediately preceding year.
- A. The Annual CHR Payment Obligation shall be calculated on a calendar year basis. Notwithstanding the foregoing, (i) Highmark's minimum Annual CHR Payment Obligation (the "Minimum Annual CHR Payment Obligation") shall be equal to 1.25% of all of Highmark's aggregate direct written premiums for the 2013 calendar year; and (ii) Highmark shall not be required to fund or commit to fund Community Health Reinvestment Activities for 2014 in an amount in excess of 105% of the Minimum Annual CHR Payment Obligation, and thereafter in an amount in excess of 105% of the actual CHR Payment made (but in no event less than the Minimum Annual CHR Payment Obligation) for the immediately preceding calendar year. Highmark shall not be required to fund or commit to fund any Community Health Reinvestment Activities to the extent that, at the time of such funding or commitment, or after giving effect thereto, its RBC

Rating level is, or is reasonably expected to be, less than 525%. If Highmark fails to meet its Annual CHR Payment Obligation in any calendar year, the deficiency in such payment obligation shall be paid by Highmark by May 1 of the following calendar year into the Insurance Restructuring Restricted Receipt Account.

- B. On or before March 31 of each calendar year, Highmark shall provide to the Department a report, in form and substance acceptable to the Department, of Highmark's Community Health Reinvestment Activities for the prior calendar year.
- C. The provisions of this Condition supersede and replace in their entirety any obligation by Highmark pursuant to Condition 4 of the Department's Decision and Order dated November 27, 1996 (Docket No. MS96-04-098) (the "1996 Department Order").

Miscellaneous Conditions

Modification Of Prior Orders

- 24. Except as expressly provided in this Approving Determination and Order, nothing in this Approving Determination and Order shall be construed to modify or repeal any term or condition of any prior order or approval of the Department, including, but not limited to, the 1996 Department Order.
- 25. The Department shall determine whether and to what extent any conflict or inconsistency exists between or among this Approving Determination and Order and any term or condition in any prior order(s) or approval(s) of the Department, and the Department shall have the authority to determine what term or condition controls.

Department Costs And Expenses

- 26. The Department may retain at the reasonable expense of the UPE Entities, as determined by the Department, any attorneys, actuaries, accountants and other experts not otherwise part of the Department's staff as, in the judgment of the Department, may be necessary to assist the Department, regardless whether retained before, on or after the date of this Approving Determination and Order, in or with respect to: (i) evaluation and assessment of any certifications, reports submissions, or notices given or required to be given in connection with this Approving Determination and Order; (ii) compliance by any of the UPE Entities with this Approving Determination and Order; (iii) the enforcement, or any challenge or contest to enforcement or validity, of the Conditions or otherwise of this Approving Determination and Order, including, but not limited to, reviewing and analyzing any certifications, reports, submissions or notices by or for any UPE Entity or auditing and reviewing any books and records of any UPE Entity to determine compliance with any of the Conditions; (iv) litigation, threatened litigation or inquiries or investigations regarding, arising from or related to the Form A filing, the process surrounding the approval of the Form A filing and/or this Approving Determination and Order; and/or (v) the defense of any request or action to require public disclosure of

information that UPE or the Department deems confidential. The obligations of the UPE Entities to the Department for all such costs and expenses shall be joint and several obligations.

Modification Of Approving Determination And Order

27. Upon written request by a UPE Entity setting forth: (a) the specific Condition(s) for which such UPE Entity seeks relief; (b) the reason for which such relief is necessary and (c) an undertaking by such UPE Entity to provide all such further information as the Department shall require to evaluate the request, the Department may evaluate and, after evaluation of the request, the Commissioner, in the Commissioner's sole discretion, may grant relief, in whole or in part, from one or more of the Conditions as the Commissioner may be deem appropriate.
28. The Commissioner reserves the right to impose additional conditions upon the approval of the Transaction or modify the Conditions in this Approving Determination and Order if, in his reasonable judgment (i) the consolidated financial position or results of operation of the WPAHS Entities suffer or incur, or are reasonably likely to suffer or incur, a material deterioration or material adverse change and the Commissioner finds that such material deterioration or material adverse change might jeopardize the financial stability of a Domestic Insurer or prejudice the interest of the policyholders of a Domestic Insurer; (ii) the Commissioner finds that actions taken or proposed to be taken by any UPE Entity might jeopardize the financial stability of a Domestic Insurer or prejudice the interest of policyholders of a Domestic Insurer; and/or (iii) the Commissioner finds that actions taken or proposed to be taken by any UPE Entity would substantially lessen competition in insurance in this Commonwealth or tend to create a monopoly therein.

Settlement Of Litigation

29. Without the prior approval of the Commissioner, UPE and each UPE Entity agrees that it will not settle, enter into a settlement agreement or otherwise consent to terminate litigation where the result of such settlement or termination of litigation will be to affect or impair in any way the objective or purpose sought by the Department in imposing or establishing any Condition in this Approving Determination and Order.

Modification Of Affiliation Agreement

30. No UPE Entity which is a party to the Affiliation Agreement may amend, waive enforcement of, modify, or enter into any other agreement or arrangement having the effect of terminating, waiving or modifying, in any material respect, the terms or conditions of the Affiliation Agreement, without the prior approval by the Commissioner.

Sunset Of Conditions

31. The Conditions contained in this Approving Determination and Order shall expire as follows:

- A. The following Conditions shall not expire: Conditions 1 and 2 (Prohibition on Exclusive Contracting); 3 (Provider/Insurer Contract Length); 5 and 6 (Prohibition on Most Favored Nation Contracts or Arrangements); 7, 8, and 9 (Firewall Policy); 10 (Donations); 11 (Financial Commitment Limitations); 13 (one of the Public Disclosure of Financial Commitments and Financial and Operational Information Conditions); 20 (Consumer Choice Initiatives); 23 (Community Health Reinvestment); 26 (Department Cost and Expenses); 27 and 28 (Modification of Approving Determination and Order); 29 (Settlement of Litigation); 32 (Required Record Retention); 33, 34, and 35 (Enforcement); and 36 (Post Closing Obligations).
- B. Unless a Condition is listed in Condition 31A or contains a specific expiration date, the Condition shall expire on December 31, 2018, provided that the Department may extend any of these Conditions for up to an additional five (5) years if, in the judgment of the Department, such an extension is in the public interest, and further provided that any expiration of any Condition shall not affect or limit the obligations arising under such Condition prior to its expiration.

Required Record Retention

32. The books, accounts and records of each UPE Entity shall be so maintained and be accessible to the Department as to clearly and accurately disclose the precise nature and details of the transactions between and/or among any UPE Entity and/or other Person, and to permit the Department to establish compliance with the Conditions or otherwise of this Approving Determination and Order, including, but not limited to, such accounting information as is necessary to support the reasonableness of any charges or fees to a Person.

Enforcement

33. Each of the UPE Entities shall be subject to the jurisdiction of the Department for the purpose of enforcing the terms or the Conditions or otherwise of this Approving Determination and Order. Nothing in this Approving Determination and Order is intended to create or enlarge the right of any Person to enforce, seek enforcement of, and/or seek compliance by the UPE Entities with the terms and conditions of this Approving Determination and Order.
34. To the maximum extent provided by law, a violation of any Condition shall constitute a violation of 40 Pa.C.S. § 6105 (relating to penalties), which provides that any person who violates a Department order made pursuant to 40 Pa.C.S. Chapter 61 (relating to hospital plan corporations) or hinders or prevents the Department in the discharge of its duties under that statute shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than \$ 3,000 or to be imprisoned for not more than six months, or both, in the discretion of the court. This statute also provides that any act or default by any corporation, association, or common law trust who violates a Department order made pursuant to 40 Pa.C.S. Chapter 61 (relating to hospital plan corporations)

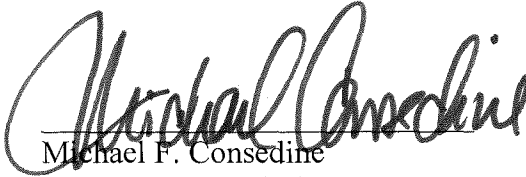
shall be deemed to be the act or default of the officers or directors who participated in authorizing or effecting such act or default or who knowingly permitted it.

35. In addition to its powers otherwise available under applicable law, the Department may apply to the Commonwealth Court for an order enjoining any UPE Entity or any director, officer, employee or agent thereof from violating or continuing to violate any term or condition of this Approving Determination and Order and for such other equitable relief as the nature of the case and the interest of any Domestic Insurer's policyholders, creditors, shareholders, members or the public may require.

Post Closing Obligations Of UPE

36. If UPE proceeds with closing the Transaction and implements the Change of Control as contemplated by Form A, UPE shall have been deemed to have agreed expressly to fully and promptly comply with each Condition set forth in this Approving Determination and Order. UPE shall have the obligation and responsibility to cause all UPE Entities to comply with their respective obligations under this Approving Determination and Order, including but not limited to the Conditions.
37. Highmark shall provide to the Department a list of closing documents for the Affiliation Agreement and the JRMC Affiliation Agreement within five (5) days after consummation of the Transaction and shall maintain the listed documents and make them available to the Department for a period of not less than five (5) years from the date of this Approval Determination and Order.

This Approving Determination and Order is effective immediately. The Department will issue further full written findings and conclusions on or before May 31, 2013 that substantially reflect the factual conclusions reached in the Blackstone Report and the Guerin-Calvert Report.


Michael F. Consedine
Insurance Commissioner
Commonwealth of Pennsylvania

Date: April 29, 2013



Appendix 1 (Definitions)

In addition to the words or terms otherwise defined in the Approving Determination and Order, as used in this Approving Determination and Order and the appendices thereto, the following terms have the following meanings:

“1996 Department Order” shall have the meaning set forth in Condition 23C.

“Addendum 1” means Addendum No. 1 to Amendment No. 1 to Form A dated August 24, 2012.

“Affiliate” means any present Person or any Future Person that, directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under Common Control with any other UPE Entity and their successors and assigns. “Affiliate” includes but is not limited to all Persons in which any UPE Entity, directly or indirectly, has a membership interest.

“Affiliation Agreement” means the contract entered into between UPE, UPE Provider Sub, Highmark, WPAHS and certain subsidiaries of WPAHS as specified therein dated October 31, 2011, as amended by that certain Amendment No. 1 to Affiliation Agreement entered into as of January 22, 2013, relating to the affiliation between or among the parties thereto.

“Annual CHR Payment Obligation” shall have the meaning set forth in Condition 23A.

“Approval of the Department” or “Approved by the Department” means, except as otherwise provided in this definition: either (1) the Department expressly grants its written approval to a written request by the applicable requesting party for Department approval; or (2) within thirty (30) days after the receipt by the Department of the written request for approval, the Department does not advise the requesting party that the Department either disapproves the request for approval or requests any further information or explanation regarding the request for approval. With respect to Condition 3 (Provider/Insurer Payment Contract Length Limitation), Condition 7 (Firewall Policy) and Condition 21 (Consumer Choice Initiatives), “Approval of the Department” means when the Department expressly grants its written approval to a written request by the applicable requesting party for Department approval.

“Approved Firewall Policy” shall have the meaning set forth in Condition 7.

“Base Case Financial Projections” means the WPAHS financial projections for fiscal years 2013–2017 as prepared by Highmark, dated January 16, 2013 and submitted by UPE to the Department as Exhibit K to Amendment No. 2 to Form A.

“Base Year Discharge Data” shall have the meaning set forth in Condition 21.

“Benchmark” shall have the meaning set forth in Appendix 3 (Benchmarks).

“Commercially Reasonable Process” means such due diligence and evaluative process that would be customarily performed by parties to an arm’s length transaction in the geographic

area in which the Financial Commitment is to be made in order to assess the merits and risks of a Financial Commitment and the financial, operational and policy effects to the involved UPE Entity. This includes but is not limited to obtaining, where commercially appropriate and reasonable or to the extent required by law, of a third party fairness opinion or fair market value analysis of such Financial Commitment or other financial analysis and/or stakeholder cost-benefit assessment as may be customarily or reasonably expected to be performed in connection with such a transaction.

“Competitively Sensitive Information” means any information that is not available publicly that could potentially affect competitive innovation and/or pricing between or among one or more UPE Entities and the rivals of such UPE Entities at the provider and/or insurer levels. At a minimum, “Competitively Sensitive Information” includes but is not limited to: (i) present and future reimbursement rates by payor; (ii) payor-provider reimbursement contracts; (iii) terms and conditions included in agreements or arrangements between payors and providers, including but not limited to discounts in reimbursements in agreements; (iv) reimbursement methodologies including but not limited to provisions relating to performance, pay for performance, pay for value, tiering of providers; and (v) specific cost and member information, and revenue or discharge information specific to the payor.

“Community Health Reinvestment Activity” means community health services and projects that improve health care or make health care more accessible. The term includes funding, subsidization or provision of the following: (i) health care coverage for persons who are determined by recognized standards as determined by the Department to be unable to pay for coverage; (ii) health care services for persons who are determined by recognized standards to be uninsured and unable to pay for services; (iii) programs for the prevention and treatment of disease or injury, including but not limited to mental retardation, mental disorders, mental health counseling or the promotion of health or wellness; and (iv) such other services or programs as the Department may approve, including but not limited to health or mental health services for veterans, and the prevention of other conditions, behaviors or activities that are adverse to good health as well as donations to or for the benefit of health care providers in furtherance of any of the foregoing purposes. “Community Health Reinvestment Activity” does not include expenditures for advertising, public relations, sponsorships, bad debt, administrative costs associated with any Domestic Insurer, programs provided as an employee benefit, use of facilities for meetings held by community groups, or expenses for in-service training, continuing education, orientation or mentoring of employees.

“Consumer Choice Initiatives” mean tools and methods that assist consumers in making informed healthcare decisions that reflect differences in the price, cost and quality of care provided. These initiatives may include but are not limited to tools that enable consumers to compare quality and cost-efficiency of medical treatments, healthcare goods and services and providers, and incentives such as tiered network health plan benefit designs that reward patients who choose to use healthcare resources more efficiently. The term “Consumer Choice Initiatives” specifically includes but is not limited to products that include Tiering and Steering as part of their product design.

“Control,” “Controlling,” “Controlled by” or “under Common Control with” have the meaning given to those terms in 40 P.S. § 991.1401.

“Credit Enhancement Device” means any letter of credit, guaranty, line of credit, insurance or any other device, arrangement or method, financial or otherwise, given or provided as security or assurance for the payment of the principal of, premium, if any, or interest on, the applicable debt.

“Department” means the Insurance Department of the Commonwealth of Pennsylvania.

“Domestic Insurers” means the following Pennsylvania domestic insurers to which the Form A applies: Highmark Inc.; Highmark Casualty Insurance Company, a Pennsylvania stock insurance company; Highmark Senior Resources Inc., a Pennsylvania stock insurance company; HM Casualty Insurance Company, a Pennsylvania stock insurance company; HM Health Insurance Company, d/b/a Highmark Health Insurance Company, a Pennsylvania stock insurance company; HM Life Insurance Company, a Pennsylvania stock insurance company; Keystone Health Plan West, Inc., a Pennsylvania business corporation and licensed health maintenance organization; United Concordia Companies, Inc., a Pennsylvania stock insurance company; United Concordia Dental Plans of Pennsylvania, Inc., a Pennsylvania business corporation and licensed risk-assuming PPO; and United Concordia Life And Health Insurance Company, a Pennsylvania stock insurance company. “Domestic Insurers” also includes but is not limited to any Health Care Insurer hereafter formed, acquired or organized directly or indirectly by or for any of the foregoing or by any other UPE Entity. The term “Domestic Insurers” shall not include First Priority Life Insurance Company, Inc.; Gateway Health Plan, Inc.; HMO of Northeastern Pennsylvania, Inc., d/b/a First Priority Health; Inter-County Health Plan, Inc.; or Inter-County Hospitalization Plan, Inc. to the extent that those entities are not used, directly or indirectly, to circumvent, affect or impair the purpose or intent of any Condition.

“Domestic Insurer Competitively Sensitive Information” means Competitively Sensitive Information originated by, received and/or held, directly or indirectly, in any form by or for any Domestic Insurer.

“Donation” means any contribution, grant, donation, distributions under 40 P.S. § 991.1405 or other transfer or payment of funds, property or services (or a commitment to make a Donation), whether made directly or indirectly, in cash or in kind, by any UPE Entity to any other UPE Entity or to any other Person; provided, however, that “Donation” shall not include any transfer or payment made in exchange for the fair value of goods or services received by the transferring or paying Person. An expenditure made for a Community Health Reinvestment Activity is not a “Donation”, so long as the expenditures are for the direct provision of community health services and direct funding of projects that improve health care or make health care more accessible. Donations that are in furtherance of the Affiliation Agreement, the JRMC Affiliation Agreement and any affiliation agreement with SVHS; and/or are capital expenditures related to the IDN or the IDN Strategy are not to be considered as Community Health Reinvestment Activity for the purposes of this definition of “Donation.”

“Financial Commitment” means any direct or indirect payment or transfer of any cash or other property, any Donation, provision of services, encumbrance upon or granting of any security interest in or to any assets or properties, or the direct or indirect guaranty or incurrence of any contractual obligation or liability. The term “Financial Commitment” includes, but is not limited to, the acquisition of any assets or properties of or interests in, the merger, consolidation or affiliation with, or the entering into of any financial or contractual relationship with, any Person, except for: (i) any Financial Commitment made in the ordinary and usual course of the UPE Entity’s business; or (ii) any amounts expressly required to be paid without any further consent of any Person and pursuant to the current provisions of the Affiliation Agreement, JRMC Affiliation Agreement and/or any affiliation agreement between Highmark and SVHS acceptable to the Department. Without limiting the generality of the foregoing, (i) until June 30, 2017, a Financial Commitment shall include but is not limited to (A) any advance payment by a Domestic Insurer to a WPAHS Entity pursuant to or in connection with a contract or arrangement for the payment or reimbursement for Health Care Services; or (B) an increase in contractual rates pursuant to or in connection with a contract or arrangement for the payment or reimbursement for Health Care Services between or among any Domestic Insurer and any WPAHS Entity in excess of the level of increase set forth in the Base Case Financial Projections; and (ii) in no event shall any Financial Commitment relating to the acquisition of any assets or properties of or interests in, the merger, consolidation or affiliation with, or any Donation to or investment in, any Person in connection with the IDN Strategy, as it may be renamed, modified or replaced, be considered to be in the ordinary course of business.

“Financial Commitment Notice” shall have the meaning set forth in Condition 11B.

“Firewall Policy” means a written course of action that governs the use, disclosure, release, dissemination or sharing of Competitively Sensitive Information between and/or among each UPE Entity and the employees, contractors, officers, directors, managers or other personnel of other UPE Entities. Without limiting the scope of any Firewall Policy, a Firewall Policy shall restrict each Domestic Insurer’s and its directors’, officers’, employees’ and agents’ knowledge and ability to influence, directly or indirectly, the negotiations of other UPE Entities with rival insurers, and, conversely, shall restrict other UPE Entities’ and their directors’, officers’, employees’ and agents’ knowledge and ability to influence, directly or indirectly, any Domestic Insurer’s negotiations with rival Health Care Providers.

“Form A” means the Form A filed by UPE, as applicant, with the Department on November 7, 2011, as amended and supplemented by filings made by UPE with the Department.

“GAAP” means generally accepted accounting principles, consistently applied.

“Health Care Insurer” means the Highmark Insurance Companies or any other related or unrelated insurance company, health plan corporation, professional health services plan corporation, health maintenance organization, preferred provider organization or other Person in the business of insurance that finances or pays for health care goods and/or services.

“Health Care Provider” means a Person licensed, certified or otherwise authorized or permitted by the laws of the Commonwealth of Pennsylvania or any other state to provide or

perform a Health Care Service in the ordinary course of business or practice of a profession and any other Person who furnishes, bills, or is paid for health care in the normal course of business, including but not limited to a physician, dentist, hospital, nursing home, assisted living provider, home health agency or any other Person that would constitute a “health care provider” pursuant to Federal HIPAA privacy laws (45 C.F.R. § 160.103).

“Health Care Service” means any medical or health care service including but not limited to the treatment or care of an individual or administration of any medical service or medical goods or supplies or dispensing of any medical goods or supplies.

“Highmark” means Highmark Inc., a Pennsylvania nonprofit corporation licensed to operate a hospital plan and a professional health services plan and its successors and assigns.

“Highmark Affiliates” means all Affiliates of Highmark. The term includes but is not limited to all of the Domestic Insurers (other than Highmark).

“Highmark Entities” or “Highmark Entity” means, individually and/or collectively, Highmark and Highmark Affiliates.

“Highmark Insurance Companies” shall have the meaning as set forth in the first paragraph of this Approving Determination and Order.

“IDN” means all aspects of and all Persons involved or to be involved with the integrated delivery network proposed by UPE referred to in Addendum 1 and which is referenced on page 1 of Addendum 1 (wherein UPE states that “. . . UPE proposed the change in control as part of a strategy to implement an integrated delivery network (IDN)”). The IDN is further described throughout the Form A and elsewhere in documents filed by UPE. The IDN includes but it’s not limited to the Affiliation Agreement, the JRMC Affiliation Agreement, and proposed affiliation agreement with SVHS, the expansion of the provider network (physicians, community hospitals and medical malls), infrastructure development (including but not limited to the acquisition, expansion, development, improvement or construction of Health Care Services, Health Care Providers, facilities, physician practice management companies and group purchasing organizations), other relationships with individuals or Persons included in the Provider Group and any other activity that has been, is being or is expected to be included in the IDN when the IDN is fully implemented.

“IDN Compensation Policy” shall have the meaning set forth in Condition 18.

“IDN Savings” shall have the meaning set forth in Condition 19.

“IDN Strategy” refers to UPE’s strategy to implement the IDN.

“Insurance Restructuring Restricted Receipt Account” means the restricted receipt account in the Pennsylvania State Treasury established by Section 7 of Act 62, 40 P.S. § 991.1403b.

“JRMC” means Jefferson Regional Medical Center, its successors and assigns.

“JRMC Affiliates” means all Affiliates of JRMC.

“JRMC Affiliation Agreement” means that certain affiliation agreement by, between and among UPE, UPE Provider Sub, Highmark, JRMC, the subsidiaries of JRMC and Jefferson Regional Medical Center Foundation dated as of August 13, 2012.

“Master Trust Indenture” shall have the meaning set forth in the Affiliation Agreement.

“Minimum Annual CHR Payments Obligation” shall have the meaning set forth in Condition 23A.

“Net Income” shall have the meaning set forth in Condition 15B.

“New UPMC Contract” shall have the meaning set forth in Condition 22A.

“Person” means any individual, corporation, partnership, limited liability company, trust, association, employee pension plan or stock trust or other entity or organization, including but not limited to any governmental or political subdivision or any agency or instrumentality thereof.

“PMPM IDN Savings” shall have the meaning set forth in Condition 19.

“Provider Group” refers to the Persons included or to be included in the “Provider Group” shown on the Proposed Corporate Structure after Tab N to Addendum 1.

“RBC Rating” means the risk-based capital level of a Health Care Insurer determined in accordance with the insurance laws and requirements of the Commonwealth of Pennsylvania as amended from time to time and in a manner acceptable to the Department.

“Required WPAHS Financial and Operational Information” shall have the meaning set forth in Condition 14.

“Steering” means any practice, process or arrangement the effect of which is directly or indirectly to encourage, direct or maneuver a Person into a course of action, e.g., choice of healthcare, by offering structured economic incentives that vary by their value to the consumer or other Person.

“SVHS” means Saint Vincent Health System, a Pennsylvania nonprofit corporation, its successors and assigns.

“SVHS Affiliates” means all Affiliates of SVHS.

“SVHS Entities” or “SVHS Entity” means SVHS and all SVHS Affiliates, collectively and individually.

“Tiering” means a method or design of a health care plan in which a Health Care Providers are assigned to different benefit tiers based on the Health Care Insurer’s application of criteria to Health Care Providers’ relative costs and/or quality, and in which enrollees pay the cost-sharing (co-payment, co-insurance or deductible) associated with a Health Care Provider’s assigned benefit tier(s).

“Total IDN Savings” shall have the meaning set forth in Condition 19.

“Transaction” means the proposed Change of Control relating to the Highmark Insurance Companies as reflected in the Form A, together with all other related transactions and all aspects of the IDN Strategy, including but not limited to the Affiliation Agreement, the JRMC Affiliation Agreement, the expansion of the provider network (physicians, community hospitals and medical malls), the development of infrastructure (physician practice management companies and group purchasing organizations), formation of other relationships with individuals or entities included in the Provider Group, and any other activity that has been, is being or is expected to be included in the IDN when the IDN Strategy is fully implemented.

“UPE” means the Pennsylvania nonprofit corporation of that name formed on October 20, 2011, being the ultimate parent entity, and its successors and assigns.

“UPE Entity” or “UPE Entities” means individually and/or collectively UPE and Affiliates of UPE, including, but not limited to, UPE Provider Sub, Highmark, all Highmark Affiliates, WPAHS, and all WPAHS Affiliates, JRMC, and all of JRMC Affiliates, SVHS and all SVHS Affiliates, any entity Controlled by any of the foregoing, and their respective successors and assigns.

“UPE Health Care Provider Competitively Sensitive Information” means Competitively Sensitive Information originated by and/or held in any form by each business unit, e.g., each hospital (including, but not limited to, WPAHS and JRMC), each physician group, and other UPE Entities on the IDN side of UPE’s business.

“UPE Provider Sub” means the Pennsylvania nonprofit corporation of that name formed on October 20, 2011 as referenced on page 7 of the Form A, its successors and assigns.

“UPMC” means University of Pittsburgh Medical Center and/or any and/or all of its Affiliates, its successors and assigns.

“UPMC Contract Transition Plan” shall have the meaning set forth in Condition 22B.

“WPA Service Area” shall have the meaning set forth in Condition 21.

“WPAHS” means West Penn Allegheny Health System, Inc., a Pennsylvania nonprofit corporation, its successors and assigns.

“WPAHS Affiliates” means all Affiliates of WPAHS.

“WPAHS Corrective Action Plan” shall have the meaning set forth in Condition 15.

“WPAHS Due Diligence Information” shall have the meaning set forth in the Affiliation Agreement.

“WPAHS Entities” or “WPAHS Entity” means, individually and/or collectively, WPAHS and all WPAHS Affiliates.

“WPAHS Tax-Exempt Bonds” shall have the meaning set forth in the Affiliation Agreement.

Appendix 2 (Firewall Policy)

Firewalls are a class of provisions that govern both the dissemination and/or sharing of Competitively Sensitive Information between and/or among the formerly independent operations of each UPE Entity and the personnel from each such entity that can be involved in decision-making and engaged with its rivals (who are suppliers or customers) at other UPE Entities. The purpose of developing and implementing a firewall policy is to avoid the inadvertent or intentional disclosure of Competitively Sensitive Information that could potentially reduce substantially competitive innovation or pricing between and/or among the vertically integrated entities and their rivals at the provider and insurer levels.

With respect to each UPE Entity, it is also imperative from a competitive perspective to establish firewalls that prevent persons with influence over managed care contracts and related reimbursements on the health plan side from obtaining information on rival managed contracts and related reimbursements on the provider side.

With this Condition, each UPE Entity shall develop and submit a firewall policy to the Department for approval. Different Firewall Policies may be submitted for separate UPE Entities or types of UPE Entities.

At a minimum, the Firewall Policy shall incorporate each of the following factors:

- UPE, UPE Provider Sub, Highmark, WPAHS, JRMC, and SVHS senior management involvement and support;
- Corporate firewall compliance policies and procedures;
- Mandatory training and education of current and new employees;
- Monitoring, auditing and reporting mechanisms;
- Consistent disciplinary procedures for violation of the Firewall Policy and incentives to ensure compliance; and
- A recusal policy to reduce the risk of senior management's involvement in the review and approval of contracts or arrangements containing Competitively Sensitive Information to which they should otherwise not have access.

From a competitive perspective, the following principles shall guide the development and implementation of an effective Firewall Policy among the UPE Entities' vertically integrated hospitals/providers and its insurers relating to personnel and decision-making:

- Separate managed care contracting information and activity of the hospital and of the insurer segments, including but not limited to the personnel who engage in decision-making and contracting with suppliers (customers);

- Firewall mechanisms that prevent sharing of Competitively Sensitive Information among persons at the hospital and insurer entities, with clear definition of what constitutes Competitively Sensitive Information; and
- Clear confidentiality policies, procedures and protocols that describe the specific persons and positions that can have access to Competitively Sensitive Information with clear policies and procedures for monitoring or auditing compliance with established firewalls, reporting of violations, and remedial actions taken in the event of a violation of the firewall.

Firewalls to prevent the dissemination of competitively sensitive information are common among vertically integrated firms, particularly integrated hospitals and insurance entities. At a minimum, each UPE Entity's Firewall Policy shall prohibit the exchange of Competitively Sensitive Information, including but not limited to:

- Present and future reimbursement rates by payor;
- Payor-provider reimbursement contracts;
- Terms and conditions included in agreements or contracts between payors and providers including but not limited to discounts in reimbursements in agreements;
- Reimbursement methodologies including but not limited to provisions relating to performance, pay for performance, pay for value, tiering of providers; and
- Specific cost and member information and revenue or discharge information specific to the payor.

Each UPE Entity's Firewall Policy shall incorporate monitoring, auditing and reporting mechanisms and provide consistent disciplinary procedures for violation of the Firewall Policy and incentives to ensure compliance, including but not limited to acknowledgement and certification by each employee or independent contractor with access to Competitively Sensitive Information of the employee's or independent contractor's responsibility to report actual or potential violations with the understanding that such reporting will not result in retribution. Employees also shall be required to affirmatively acknowledge that failure to report such information may subject the employee to disciplinary action and independent contractors shall be required to acknowledge that failure to report such information shall constitute cause for termination of such independent contractor's contract.

UPE's Firewall Policy shall include but not be limited to a whistleblower protection/anti-retaliation policy acceptable to the Department that specifically includes but is not limited to reports of Firewall Policy violations. The Firewall Policy may reference a whistleblower protection/anti-retaliation policy of UPE or another UPE Entity so long as that whistleblower/anti-retaliation policy is acceptable to the Department.

Appendix 3 (Benchmarks)

The following are the benchmarks (the “Benchmarks”) referred to in Condition 19:

- \$3,000 lower yearly premiums for a family of four by Fiscal Year 2016 relative to a “no transaction scenario” as described in the Form A.
- 10% cost savings on inpatient spend on enrollees that remain with the Domestic Insurers that are Health Care Insurers.
- 10% cost savings on outpatient spend on enrollees that remain with the Domestic Insurers that are Health Care Insurers.
- Achieve estimated IDN cost savings relative to a “no transaction scenario” as described in the Form A in the following amounts:

Period	With UPMC at Non-Par after 12/31/2014			With UPMC at Par after 12/31/2014		
	TOTAL	Utilization Shift	IDN Implementation	TOTAL	Utilization Shift	IDN Implementation
*CY14	\$12M	\$80M	(\$68M)	(\$91M)	\$33M	(\$215M)
*CY15	(\$233M)	\$4M	(\$238M)	(\$298M)	(\$15M)	(\$283M)
*CY16	(\$261M)	\$14M	(\$275M)	(\$447M)	(\$15M)	(\$432M)

* “CY” means calendar year

Attachment 4 (Total IDN Savings Categories)

- 1) Oncology Shift
- 2) Utilization Shift
- 3) Reimbursement
- 4) Healthier Population
- 5) Right Setting
- 6) Right Treatment
- 7) Cost/Quality
- 8) Other

EXHIBIT 7

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania,	:	
By Josh Shapiro, Attorney General;	:	
Pennsylvania Department of Insurance,	:	
By Jessica K. Altman, Insurance	:	
Commissioner and Pennsylvania	:	
Department of Health, By Rachel	:	
Levine, Secretary of Health,	:	
Petitioners	:	
v.	:	No. 334 MD 2014
UPMC, A Nonprofit Corp.;	:	
UPE, a/k/a Highmark Health,	:	
A Nonprofit Corp., and	:	
Highmark, Inc., A Nonprofit Corp.,	:	
Respondents	:	

TRANSCRIPT OF PROCEEDINGS

Before: THE HONORABLE ROBERT SIMPSON, Judge

Date: March 7, 2019, 12:57 p.m.

Place: Commonwealth Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue
James S. Bowman En Banc Courtroom
Harrisburg, Pennsylvania

APPEARANCES:

James A. Donahue, III, Esquire
Mark A. Pacella, Esquire
Jonathan S. Goldman, Esquire
For - Commonwealth of Pennsylvania, by
Josh Shapiro, Attorney General, Petitioner

Kenneth L. Joel, Esquire
For - Pennsylvania Department of Insurance and
Pennsylvania Department of Health, Petitioners

Stephen A. Cozen, Esquire
Jared D. Bayer, Esquire
Anderson T. Bailey, Esquire
For - UPMC, Respondent

1 APPEARANCES (cont'd):

2 Douglas E. Cameron, Esquire
3 For - UPE, a/k/a Highmark Health, and Highmark,
4 Inc., Respondents

5 ALSO PRESENT:

6 Robert B. Sklaroff, M.D., Pro Se
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1 THE COURT CRIER: All rise. Commonwealth Court is
2 now in session. The Honorable Robert E. Simpson presiding.

3 THE COURT: Good afternoon.

4 ALL COUNSEL: Good afternoon, Your Honor.

5 THE COURT CRIER: You may be seated.

6 THE COURT: This is the Commonwealth of
7 Pennsylvania by Josh Shapiro versus UPMC. It's 1:00 on
8 March 7th.

9 I'm Robert Simpson. I drew the short straw.

10 We're here for a status conference to try -- in an
11 effort to try and figure out where we're going with this.
12 I'm going to hear from everybody. Everybody will get a
13 chance to speak.

14 Immediately after this hearing, there's a hearing
15 on Dr. Sklaroff's motion to intervene. Is he here? Is
16 Dr. Sklaroff here?

17 I don't see an affirmative response anywhere.
18 So -- but in any event, my, my, my, you folks have been busy.
19 You've given me -- you've given me lots to read and not much
20 time to read it.

21 So we have this four count petition that's in front
22 of me. One count has been around for a while I guess in one
23 form or another since about 2014 -- at least that's what our
24 docket number -- our docket year says -- and three counts
25 that I think started in early February as far as I can tell.

1 They seem to be new.

2 So that creates a problem for me because -- this is
3 a matter of significant importance to the people of
4 Pennsylvania and obviously to the Attorney General and the
5 Commonwealth. But I have a number of counts that are
6 disparate in the sense of how far they have progressed and
7 what's going to be ready to be completed and -- and prepared
8 for the Supreme Court's ultimate review of this.

9 So that's the primary thing I want to discuss with
10 you. And once we get through that, I will give everybody,
11 all the parties, an opportunity to tell me what's on their
12 mind as well. I'll deal with this motion for protective
13 order, and then I'll see if there's anybody here who wants to
14 be heard on the intervention motion.

15 My -- my secretary in Nazareth, which is where I
16 started the day, wants you to know that her son and her
17 daughter-in-law work for UPMC Pinnacle I think in the
18 Harrisburg Hospital, what -- what I know as the Harrisburg
19 Hospital. They're both pharmacists. I've never met either
20 one of them. But I would love to have a motion for recusal.

21 (Laughter.)

22 THE COURT: So it will probably be granted if
23 anybody wants to make it.

24 (Laughter.)

25 THE COURT: But I needed to tell you that

1 background.

2 All right. My concern is the -- sort of the uneven
3 development of these -- these various counts. And I would --
4 what has -- the idea that's come to me is that I could
5 separate Count I from the other matters, and I can probably
6 get that done here with great work and have it in front of
7 the Supreme Court by June.

8 I can't possibly have the rest of this ready for
9 the Supreme Court by June. Normally, I mean, these unfair
10 trade practices cases could take years. I've had them. So,
11 I -- you know, that's -- I'm not going to get those ready for
12 higher review, you know, this -- probably not this year.

13 The -- but I could do something with Count I. And
14 so I would like to consider separating that under Rule 213
15 and progressing with that. But I don't want to do that --
16 although I think I can do it on my own motion, I don't want
17 to do that without letting everybody have a say on that. So
18 that's where I want to start the conversation, with how do I
19 deal with the uneven development of the issues.

20 If we're proceeding on that basis, I think we're
21 going to -- if we're proceeding on that basis and the case
22 isn't dismissed because of the motion to dismiss, there would
23 be a -- some sort of hearing probably in May. And I would --
24 it would be useful to know -- I think the Attorney General's
25 Office has a -- a burden in this case, so they would probably

1 need some sort of hearing. I would need to know how long
2 that -- how long a fact-finding or a hearing or a trial would
3 entail, how much it would entail.

4 So, anyway, let me start with my first concern.
5 And let me ask the petitioner here, the Commonwealth of
6 Pennsylvania through the Office of Attorney General, what --
7 is there anything you want to bring to my attention about the
8 possibility of separating Count I from the rest of the
9 matters that are currently before us?

10 MR. DONAHUE: Your Honor, I think that given the
11 time constraints, we had sort of always envisioned a -- you
12 know, really focusing on -- on Count I in -- in terms of
13 our -- how we -- how we would progress here.

14 I think that many of the -- much of the information
15 we'd present would also later be applicable to the -- to the
16 other counts. But we can certainly focus on, you know, Count
17 I. You know, the main reason we're here is a -- you know,
18 modifying the existing consent decree. We're focused on
19 that -- the modification clause of the -- of the consent
20 decrees and the burden that that places there. And I think
21 those are the elements that we -- we would be focused on
22 anyway. So, you know --

23 THE COURT: How -- how much time would you need to
24 prove -- I guess I'm asking, how many days would you need to
25 prove the public interest, which I think is your burden under

1 that clause in the consent decree -- consent decrees?

2 MR. DONAHUE: You know, I think we're thinking of,
3 you know, a couple of days of testimony from the people that
4 we would -- we would bring to --

5 THE COURT: Okay.

6 MR. DONAHUE: -- to there.

7 THE COURT: Okay. Who will speak for UPMC?

8 MR. COZEN: Steve Cozen, Your Honor, from Cozen
9 O'Connor.

10 THE COURT: Okay. At ease.

11 MR. COZEN: At ease? I may -- I may sit and
12 address the Court?

13 THE COURT: Sure.

14 MR. COZEN: Well, if Your Honor please, I
15 understand your dilemma. And I think that without consulting
16 with my client as to their views on the matter, my own
17 personal view is that I would not object to a bifurcation and
18 deal with Count I first if there is anything to deal with
19 after the Court looks at and makes the determination with
20 regard to -- with regard to Count I and the motion to
21 dismiss, although the motion to dismiss and preliminary
22 objections go beyond Count I. They go to all the counts.

23 In that regard, let me say, Your Honor, that, you
24 know, from -- from our perspective, the -- if we are correct
25 in the positions we've taken with regard to the impropriety

1 of modification which would extend the consent decree beyond
2 that time period that the Supreme Court has said you can't
3 extend it, and other reasons, then under those circumstances,
4 the Commonwealth would still have the right after June 30,
5 2019, to come and sue us if they thought we were violating
6 the Charities Act or the -- or the Consumer Protection Law or
7 -- or any -- any other law that they thought they had a right
8 to sue us on.

9 So I think from a -- from a practical -- as a
10 practical matter, as a practical matter, even if we are
11 correct -- and I think we are -- that this case should be
12 dismissed at this time, they still would have the right to
13 proceed if they chose to do so on these other counts as
14 separate law- -- lawsuits that they might bring against us.
15 So for that reason, I think there's a lot of wisdom in
16 actually separating and bifurcating the issues and dealing
17 with the -- with the modification issue first.

18 THE COURT: Okay. Who's here for Highmark?

19 MR. CAMERON: I am.

20 I don't have a mic. I'll come up here.

21 THE COURT: Okay. Thank you.

22 MR. COZEN: Excuse me.

23 MR. CAMERON: Okay.

24 MR. COZEN: David?

25 MR. CAMERON: Doug.

1 MR. COZEN: Doug.

2 THE COURT: I'm sorry. I thought you were finished
3 too.

4 MR. COZEN: No. No. I was finished. But the fact
5 that -- the fact that -- Mr. Cameron?

6 MR. CAMERON: Yes.

7 MR. COZEN: The fact that Mr. Cameron approaches
8 the bench is a concern to me. The -- and I --

9 THE COURT: All right. Could you sit down please?

10 MR. COZEN: Yes.

11 THE COURT: He -- he wanted to use the microphone.
12 That's what he -- that's all he said. He just came up to use
13 the microphone.

14 MR. COZEN: No. No. That's not the problem.

15 MR. CAMERON: I think he has a different point.

16 MR. COZEN: I have a different point, if -- if Your
17 -- if the Court will bear with me.

18 In our view, the matter that is pending now before
19 the Court is the Attorney General versus UPMC. Highmark,
20 although it was an original party to the -- to the petition
21 for review that has been before the Supreme Court on a couple
22 of different occasions, has no role to play in this
23 proceeding other than perhaps as -- as a witness or
24 witnesses. But I do not believe that Highmark should be
25 heard by the Court or -- or be required even to respond to

1 any of the -- any of the motions and -- and arguments that
2 the Attorney General and UPMC are going to be lodging against
3 each other.

4 THE COURT: All right. Well, if that's an
5 objection, it's overruled. I'm going -- I'm going to hear --

6 MR. COZEN: Thank you, Your Honor.

7 MR. CAMERON: Your Honor --

8 THE COURT: -- from Highmark for this hearing.

9 MR. CAMERON: -- Douglas -- Douglas Cameron
10 representing Highmark.

11 We -- we would agree with what the parties said.
12 We -- we see the wisdom in separating out. Our -- our
13 primary interest obviously is with Count I, and we have a
14 primary interest around the June 30 -- 30 date.

15 THE COURT: Right.

16 MR. CAMERON: To his point, we are -- we are a
17 party to the -- we are a party to this action, as we have
18 been in the others. We are going to be bound by whatever the
19 Court rules in terms of modifications. We have indicated
20 that we were in agreement with the proposed modification
21 provided it equally applies to UPMC.

22 But this could take a number of different turns. I
23 mean, it could come out through the Court with different
24 modifications. We're going to be bound by that. And as a
25 result, we feel, just like all the other -- in all the other

1 litigations, we should be a full participant in -- in the
2 proceedings.

3 THE COURT: Okay. So I'm not hearing a -- I'm not
4 hearing an objection to this plan here.

5 All right. I'm going to try and plan something --
6 I -- I need to plan a couple months ahead. I can't just,
7 like, all of a sudden set up a trial and be there. My dance
8 card is pretty full between now and, you know, the end of
9 June. So if we're going to have something in May, I need to
10 start planning it now. I can't wait. You know, I don't
11 think I can wait much at all. So I'm going to start thinking
12 about that.

13 There doesn't seem to be an objection to it. And
14 I'm probably going to only deal with the preliminary
15 objections and motion to dismiss to the extent that it deals
16 with Count I. There are some that are just demurrers to the
17 other counts, and I'm obviously -- I'm not going to do those
18 now.

19 MR. COZEN: We understand, Your Honor.

20 THE COURT: By the way, I forgot to ask you this:
21 What's going on with the federal court action?

22 MR. COZEN: The -- the federal court case is -- is
23 proceeding. The -- the Attorney General has filed a -- a --
24 a motion challenging the jurisdiction of the federal court to
25 proceed. I assume it's going to be a motion for abstention,

1 something similar to a motion for abstention. They have two
2 weeks, I think, to file a brief in support of their motion
3 under the Middle District rules. And that's going to be
4 fully briefed and argued before they proceed, although they
5 are proceeding with discovery as well.

6 THE COURT: Okay. Is there -- do you have a judge?

7 MR. COZEN: Judge Jones.

8 THE COURT: Okay. Well, he's such a smart guy;
9 you'd be in pretty good hands in federal court.

10 All right. Are there any -- is there any
11 fact-finding that needs to be done before I dispose of the
12 preliminary objections and motion to dismiss relating to
13 Count I?

14 MR. DONAHUE: We'll be filing our brief on -- you
15 know, on Monday --

16 THE COURT: Right.

17 MR. DONAHUE: -- as you ordered. And we'll address
18 that there. There's no separate fact-finding that --

19 THE COURT: Okay. So I don't --

20 MR. DONAHUE: -- needs to be made.

21 THE COURT: I don't have to have a special
22 hearing --

23 MR. DONAHUE: No.

24 THE COURT: -- or fact-finding process before I
25 dispose of it, these --

1 MR. DONAHUE: No.

2 MR. COZEN: We -- we agree with that, Your Honor.

3 THE COURT: Okay.

4 MR. COZEN: We believe that the -- that the motion
5 tests the allegations of the petition as a matter of law.

6 And also the only facts that need to be before the Court are
7 those which have been properly alleged as facts and anything
8 the Court could take judicial notice of, and we've given the
9 Court a lot to take judicial notice of.

10 THE COURT: I haven't read all of these exhibits
11 yet, but I'll -- I'll get to them.

12 Okay. Assuming that I -- so I'm going to set up
13 something for a week in May. That probably -- that may mean
14 that I need to be relieved from other duties to -- to get
15 that in. That's why I have to start planning it now.

16 Are there any scheduling concerns -- and I don't
17 know whether we'll get to it or not, so I'm not trying to put
18 the cart before the horse here. But I'm just trying to say
19 I've got to think through this and plan for it now. Are
20 there any scheduling concerns with regard to some sort of --

21 MR. DONAHUE: Your Honor, I think --

22 THE COURT: -- hearing in May?

23 MR. COZEN: Yes. We -- we've exchanged proposed
24 scheduling orders. They're not too --

25 THE COURT: Oh, good.

1 MR. COZEN: -- different, not too different. If
2 you'd like us to hand --

3 THE COURT: That would be great.

4 MR. COZEN: -- hand it up?

5 THE COURT: Could you hand it to my --

6 MR. COZEN: Sure.

7 THE COURT: -- court officer please?

8 MR. COZEN: And you have -- you have a copy of
9 mine.

10 THE COURT: That's even better.

11 MR. COZEN: I don't have a copy of yours because I
12 was --

13 MR. DONAHUE: Yeah. Here. Here you go.

14 MR. COZEN: But that's okay.

15 MR. DONAHUE: Here you are.

16 (Handing to Mr. Cozen and to the Court Crier.)

17 MR. COZEN: (Handing to Mr. Donahue and the Court
18 Crier.)

19 THE COURT CRIER: (Handing to the Court.)

20 THE COURT: Do we have one of each? Okay.

21 MR. COZEN: And they're not too different, Your
22 Honor, except with -- perhaps in one respect and -- and with
23 regard to some dates. If I might be permitted to address the
24 Court on -- on that issue?

25 THE COURT: Okay. We're talking about dates?

1 MR. COZEN: Yeah. And -- and one provision --

2 THE COURT: You can sit down.

3 MR. COZEN: Okay. One -- I'm just not used to --

4 THE COURT: You're making me nervous looming around
5 like that.

6 MR. COZEN: Oh, okay. Well, that's the last thing
7 in the world I want to do, Your Honor.

8 So with -- the one -- one difference that jumps out
9 is this: In -- our scheduling order number 1 says that we
10 should have until Friday, March 15th to file a reply to what
11 they file on the 11th. Normally we file the motion. They
12 would file a response. We'd get a reply.

13 Now I understand the Court wants to decide this
14 without oral argument, so we're -- we're not going to be able
15 to make oral argument. It seems to me only to be fair to at
16 least give us a couple of days -- and I'm not asking for more
17 than four --

18 THE COURT: All right.

19 MR. COZEN: -- four days -- to file a short reply.

20 THE COURT: And -- all right. So that's item
21 number 1 in your proposed --

22 MR. COZEN: In our proposal, yes.

23 THE COURT: Got it. Got it.

24 MR. COZEN: The -- Your Honor mentioned the -- the
25 motion to quash that was just filed as --

1 THE COURT: Right.

2 MR. COZEN: Okay. And Mr. Donahue and I have
3 spoken about that, and we're going to respond to it in the
4 normal course unless you want us to respond to it sooner.
5 We're happy to do so. But we plan to respond to it in the
6 normal course.

7 THE COURT: All right. Let me -- I don't know what
8 the normal course means, but --

9 MR. COZEN: Well, according --

10 THE COURT: -- because I don't think there's
11 anything normal with the course of this --

12 MR. COZEN: According to the --

13 THE COURT: -- litigation.

14 MR. COZEN: According to the timetable set forth in
15 the rules of the Court. So we would normally take 14 days.
16 We're happy to take less. If it's 10 days, if it's 7 days,
17 we'll respond to the --

18 THE COURT: I'm probably ready to resolve this
19 today. Do you -- do you want more time to respond to the
20 motion other than any oral argument you're granted today?

21 MR. COZEN: Yes.

22 THE COURT: Okay. What do you need?

23 MR. COZEN: I said we'll be happy to do it in five
24 days.

25 THE COURT: Okay. Five days for the motion to

1 quash.

2 MR. COZEN: For the motion to quash, yes.

3 THE COURT: Okay. What -- what was it for the --
4 you said --

5 MR. COZEN: And -- and five days from the 11th for
6 the reply.

7 THE COURT: I guess -- I guess I'm getting confused
8 here. All right. So just focusing on the motion to quash,
9 you want five days to respond.

10 MR. COZEN: Yes, sir.

11 THE COURT: Okay.

12 Do you care?

13 MR. DONAHUE: No.

14 THE COURT: All right. You got it.

15 MR. COZEN: Thank you, Your Honor.

16 THE COURT: You got it.

17 MR. DONAHUE: Your Honor, on the issue of replying
18 to the -- the motion to -- to dismiss --

19 THE COURT: Yeah. Let me stay -- let me stay with
20 this --

21 MR. DONAHUE: Okay.

22 THE COURT: -- because this is what I'm trying to
23 work through right now.

24 MR. DONAHUE: All right.

25 THE COURT: I'm not really at the motion to quash

1 yet, but --

2 MR. DONAHUE: Yes. So there's the motion to quash.
3 If they want to respond in five days, which is a little bit
4 shorter than they normally would get, that's fine with us.

5 THE COURT: Okay. Let me tell you what my
6 immediate schedule is. So this is -- this affects how
7 responsive I'm going to be to you.

8 My entire court is going to be in Philadelphia next
9 week, and we are fully engaged. So the chances of my getting
10 anything done on your case next week are slim to none,
11 although you -- you know where I'll be. You know where to
12 find me.

13 The week after that, however, I hope you don't find
14 me because I have a prepaid vacation to take my five-year-old
15 grandson to Disney. It will be his first trip to Disney, and
16 I'm not answering your phone calls at all. You will not be
17 able to reach me.

18 So -- but what I -- my point to you is there are
19 two weeks that you're just -- I'm going to lose two weeks
20 here. I'm just not going to be working on your case for
21 those two weeks.

22 So since I'm not going to get anything until, what,
23 the end of next week and then the week after that I'm gone,
24 so you're looking deep into, you know, March before I --
25 before I'm going to be able to really put a cherry on this --

1 on the POs and the motion to dismiss. So that's -- that's
2 what we're talking about.

3 Okay. Was there anything --

4 MR. COZEN: So giving us five days to reply is
5 okay?

6 THE COURT: That's fine.

7 MR. COZEN: Okay. Thanks.

8 THE COURT: That's fine. But I haven't really
9 gotten to the -- the motion to quash and the deposition and
10 the protective order yet. I'm -- I'm still really trying to
11 focus on the preliminary objections and the motion to --

12 MR. COZEN: Sure.

13 THE COURT: -- and the motion to dismiss.

14 So your -- your proposed scheduling order refers to
15 March 15, which would be four days. Isn't that, like -- the
16 11th to the 15th --

17 MR. DONAHUE: Right.

18 THE COURT: -- is four days.

19 MR. COZEN: Well, we could make it the 18th.

20 THE COURT: Backing it up isn't really helping me
21 get -- get through it. That's --

22 MR. COZEN: But you're not going to be reading it
23 in any event, right?

24 THE COURT: Well, that's -- that's true.

25 MR. COZEN: So we could -- we could do it, if it

1 was a full five days including the weekend --

2 THE COURT: Well, how much -- how much time did I
3 give the -- excuse me just a moment. Let me ask a question.

4 What -- how much time did I give you to put your
5 brief together? I can't remember now. I think I gave you,
6 like, two weeks because --

7 MR. COZEN: Yes.

8 MR. DONAHUE: Yeah. Yeah, basically.

9 MR. COZEN: Yes.

10 THE COURT: All right. The 18th.

11 MR. COZEN: Okay.

12 THE COURT: Okay.

13 MR. COZEN: Thank you, Your Honor.

14 THE COURT: Ultimately I guess where I'm going,
15 it's going to -- it's going to be the 18th for both of these
16 things, both the reply to the Attorney General's brief and
17 also to respond to the motion for protective order which I'm
18 not going to rule on today, I guess.

19 MR. COZEN: Yeah. Okay.

20 THE COURT: Okay. Is there anything else that you
21 want to bring to my attention on the --

22 MR. COZEN: Yes.

23 THE COURT: -- proposed scheduling order?

24 MR. COZEN: Yes, Your Honor. I would -- the --
25 most of the things that -- that Mr. Donahue has in his

1 proposed order which are modifications of ours are -- are
2 dates. As a --

3 THE COURT: Right.

4 MR. COZEN: As a for instance, he's looking for
5 expert reports served no later than May 10. I had May 1. He
6 -- he's looking for pretrial memorandum May 21. I had May 14
7 because I anticipated that you were going to be trying to
8 push everything as fast as you could. And motions --
9 motions -- dispositive motions and motions in limine I had
10 May 10. He has May 15. It's -- it's up to the Court what
11 you want --

12 THE COURT: Okay.

13 MR. COZEN: -- to do with those dates.

14 THE COURT: I've got to figure out what my -- you
15 know, what the -- I don't remember exactly what week we have
16 argument court in May off the top of my head.

17 MR. COZEN: And if I may, Your Honor?

18 THE COURT: Yeah.

19 MR. COZEN: Okay. Mr. Donahue in his -- in his
20 proposed schedule has a provision that in the event the Court
21 denies in whole or in part our motion to dismiss and
22 preliminary objections, then we shall file an answer within
23 ten days. And -- and -- and that's perfectly agreeable to us
24 because we anticipate if we get that far -- and we hope we
25 don't -- that we will file an answer, new matter, and perhaps

1 counterclaims.

2 THE COURT: Counterclaims. I'm really trying to
3 get this done, you know, by early June. Okay.

4 MR. COZEN: Oh, there's one other -- one other
5 thing, Your Honor.

6 THE COURT: My court officer is telling me that we
7 -- we have argument court in Pittsburgh the week of May 6th.
8 Okay.

9 MR. COZEN: One other thing, Your Honor.
10 Mr. Donahue put in his proposed scheduling order that each
11 side shall be limited to 15 depositions. That's okay with
12 me, but I wanted to make clear that it's 15 depositions of
13 any one party so that if we -- if there are third parties
14 that we want to depose outside of witnesses that are -- are
15 subject to the control of the Attorney General, we want to be
16 able to do that.

17 THE COURT: Okay. You're going to have to spell
18 that out a little bit more clearly for me.

19 MR. COZEN: Okay. There may be Highmark witnesses.

20 THE COURT: Okay.

21 MR. COZEN: And there -- there may be the
22 Pennsylvania Insurance Department witnesses. There may be
23 Department of Health witnesses. There may be witnesses from
24 the Governor's Office. Then there are factual witnesses in
25 -- in terms of the consuming public. And -- and I don't want

1 to be limited to 15 depositions total for everybody,
2 including party witnesses and nonparty witnesses.

3 I want to be able to take up to 15 depositions for
4 -- I'm okay with 15 depositions for each party witness but
5 not for third parties. In other words, I want more latitude
6 than that.

7 MR. DONAHUE: Your Honor, can I respond to that? I
8 think 15 depositions -- you know, we -- first, to be clear,
9 we were talking 15 depositions total, including, you know,
10 any third parties that anybody would -- would want to depose.
11 And I don't think that -- you know, given the time period
12 that we're dealing with, we're really basically talking about
13 doing a deposition every day once we sort of get through the
14 initial discovery.

15 THE COURT: I get it. I get it.

16 MR. DONAHUE: It is -- you know, I've been in cases
17 where we've even quin- -- quintuple tracked.

18 MR. COZEN: Yeah. We can -- we can multiple track.

19 MR. DONAHUE: But, you know, I don't think that's
20 reasonable, you know, in this case where we're talking about
21 now one count; we're talking about, you know, a very specific
22 issue. I think that 15 depositions a side is adequate for --
23 for both.

24 THE COURT: Okay. I understand the points of view.

25 Let me just look at the very last paragraph of each

1 of the proposed orders.

2 All dispositive and pretrial motions. Okay. How
3 do you think I'm going to get these dispositive and pretrial
4 motions resolved without delaying, you know, a hearing in
5 May? That I just -- I don't see how I'm going to be able to
6 entertain dispositive and pretrial motions. I think the --
7 the dispositive motions are the preliminary objections and
8 motion to dismiss as far as Count I goes. So we're -- so
9 we're making ample opportunity to deal with that issue.

10 But I'm -- you're going to have -- someone is going
11 to have to explain to me how I am going to be able to
12 entertain these motions without delaying a hearing. So both
13 of you asked for this. I don't see how I can give it to
14 either of you. So I'm -- I'm willing --

15 MR. DONAHUE: I'm happy to withdraw our request --

16 THE COURT: I'm willing to get you in the
17 courtroom, let you make your record. Assuming we're still,
18 you know, functioning on this, I'm willing to get you in the
19 courtroom, let you make your record, and you'll have
20 something to present to the -- to the Supreme Court when they
21 -- when they get their shot at -- at this. But I -- I mean,
22 I am -- it's hard for me to imagine that I'm going to be able
23 to deal with dispositive motions here.

24 MR. COZEN: Well, if I may, Your Honor, suggest
25 something? And that is that as -- as we go through the

1 discovery and as we find out things that we think would be
2 dispositive of Count I, that we have the right then to file a
3 motion with the Court, assuming that we're going forward with
4 this case.

5 THE COURT: Well, I am -- it's unlikely that I'm
6 going to have a -- it's likely -- unlikely that I'm going to
7 have a paragraph that talks about a deadline for dispositive
8 motions. So we'll -- I'll deal with it when it -- when it
9 comes to me.

10 MR. COZEN: Okay.

11 THE COURT: I'm not going to preclude it, but I'm
12 certainly not going to give you a deadline for it which
13 basically allows you to do it up to the deadline. So -- but
14 you kind of know where I'm going with that one.

15 MR. COZEN: I do.

16 THE COURT: So -- so if -- if you -- if you're told
17 that it's going to delay the trial, then, you know, you
18 aren't going to be surprised by that.

19 MR. COZEN: Your Honor, I think the -- the only
20 other difference that we had was I wanted to kind of
21 fast-track the -- the responses to interrogatories, request
22 for production, and request for admissions, and make it 20
23 days to respond as opposed to 30. So if the responses,
24 objections, they would be promptly filed --

25 THE COURT: Okay. Hang on. What -- what paragraph

1 are we talking about?

2 MR. COZEN: Oh, I had it in my paragraph 2.

3 THE COURT: Okay.

4 MR. COZEN: I don't -- I forget what paragraph --
5 what paragraph --

6 MR. DONAHUE: We had it as 30 days as opposed to --

7 MR. COZEN: Yeah.

8 MR. DONAHUE: -- 20 days.

9 MR. COZEN: It's your paragraph 1.
10 He has 30 days. I have 20 days.

11 THE COURT: Okay. I -- I see that. I see --

12 MR. DONAHUE: Your Honor, I can sort of --

13 THE COURT: -- the different dates.

14 MR. DONAHUE: If I can address that? You know --

15 THE COURT: Okay.

16 MR. DONAHUE: So we've already started working --
17 you know, they've served extensive discovery on -- on us.

18 We've served extensive discovery on them. And obviously I
19 think -- you know, we've worked with -- with them before. We
20 will meet and confer and try to narrow that down to something
21 that's -- that's reasonable for everybody.

22 But right now where -- where we are is there are 62
23 custodians that are implicated by their discovery request.

24 In the antitrust section, there's 23 separate investigations
25 that their discovery requests -- you know, investigative

1 files that are involved. In our health-care section, we have
2 1300 complaints that -- that are relevant.

3 So that just -- you know, the -- to get through all
4 of that stuff, get -- we -- we're committed to getting them
5 what they can -- what they're entitled to. We, of course,
6 are not going to waive privilege or any, you know, other
7 things. But that's a tremendous amount of work to get done.
8 And we can do it in 30 days. Twenty days is just going to --
9 is just impossible. That's why we put 30.

10 THE COURT: Okay. I understand your positions.

11 All right. Anything else that you want to bring to
12 my attention?

13 I'm -- I'm really directing my question at this
14 point to UPMC and the Attorney General's Office.

15 Anything else you want to bring to my attention
16 about these proposed scheduling orders?

17 MR. COZEN: I don't think so, Your Honor.

18 THE COURT: Okay.

19 MR. DONAHUE: No. Thank you, Your Honor.

20 THE COURT: Highmark, do you want to be heard on
21 this?

22 MR. CAMERON: Sorry, Your Honor. We just -- we
23 just saw the discussions you had with parties. We're fine by
24 that. We'll live -- we'll live with that. We can
25 communicate with the parties if we have any thoughts on

1 those, but I think -- I think they were covered pretty well.

2 THE COURT: Okay.

3 Okay. So since I'm not going to deal with the --
4 the request for protective order, is there anything else that
5 you want me to address as far as our status
6 conference/scheduling conference goes?

7 MR. DONAHUE: One other thing. On the -- on the
8 motion for protective order, can we have a couple days to do
9 a reply brief, you know, since we're going to have a reply
10 brief on the motion to dismiss?

11 THE COURT: I'll be in Disney, so I guess it
12 doesn't -- it doesn't hurt anything. Just -- just so we
13 understand, there are -- some of these things I'm ready to
14 deal with right away, and --

15 MR. DONAHUE: Right.

16 THE COURT: -- everybody wants, like, more time
17 to --

18 MR. DONAHUE: Okay.

19 THE COURT: -- to brief the stuff. You know, I'll
20 give you more time, but I have other things to do --

21 MR. DONAHUE: We understand.

22 THE COURT: -- besides this case as well. So it's
23 not just like I can pick this up anytime I feel like it. I
24 really need some time to get into it and give it some
25 continued attention.

1 So -- okay. So you want -- you're going to file a
2 reply on --

3 MR. COZEN: The 18th, I think.

4 THE COURT: March 18.

5 MR. COZEN: Yes.

6 THE COURT: And you want five days, which brings us
7 to what?

8 MR. GOLDMAN: And, Judge, if I may, what we would
9 say is if we -- if we read their brief and we feel like --

10 THE COURT: Right.

11 MR. GOLDMAN: -- we don't need to burden the Court
12 with that --

13 THE COURT: I get it.

14 MR. GOLDMAN: -- extra reply brief, we will let the
15 Court know.

16 THE COURT: Okay. Well, five days makes it
17 Saturday the 23rd. That doesn't help me. What -- what day
18 do you want?

19 MR. GOLDMAN: Monday would be great, whatever that
20 Monday is.

21 THE COURT: All right. So the 20th -- no. Wait.

22 MR. GOLDMAN: The 20th.

23 THE COURT: Hang on. The 22nd.

24 MR. GOLDMAN: 27th. Okay.

25 THE COURT: Okay. Anything else on this matter?

1 MR. DONAHUE: No, Your Honor. I think we've --

2 MR. COZEN: Oh, did you -- did you include, Jim,
3 inter- -- I'm sorry, Your Honor.

4 MR. DONAHUE: No, I didn't change the intervenor --
5 the intervenor --

6 MR. COZEN: Okay.

7 MR. DONAHUE: I didn't change the intervenor --

8 MR. COZEN: We -- we both put in I think it was
9 April 1 for any -- any motions for -- to intervene. I think
10 it would be helpful to the Court if we had an order saying
11 anybody that believes they want to be an intervenor has to
12 file on or before April 1.

13 THE COURT: Okay. So you both have that in there?

14 MR. DONAHUE: Yes.

15 MR. COZEN: Yes.

16 MR. DONAHUE: Same -- we have the same --

17 MR. COZEN: Same -- same provision.

18 MR. DONAHUE: Right.

19 THE COURT: Okay.

20 All right. Anything else on this first hearing?

21 MR. COZEN: No, sir.

22 THE COURT: Okay. Then the status conference, you
23 know, scheduling conference is -- is concluded. But what I
24 have also scheduled now is a motion for intervention. I
25 think Dr. Sklaroff has -- has joined us.

1 This is your motion, Dr. Sklaroff. Do you want to
2 come forward?

3 Right. I know you. Come on -- come on forward.
4 And, you know -- you may speak at the mic. You want to be a
5 party in this case.

6 DR. SKLAROFF: Yes.

7 THE COURT: Okay. I'm not sure why, but it's -- it
8 would keep you very busy. That's for sure. But the primary
9 thing I want to know -- I've read your papers which were, you
10 know, filed without the assistance of an attorney. But
11 you've been doing that for a while, so you're developing some
12 skills at that.

13 The -- my concern is I didn't really understand
14 what enforceable interest that you might have that could be
15 affected by anything I'm doing here.

16 DR. SKLAROFF: Okay. I can do two things. Either
17 I can directly answer -- I have no problem answering -- or I
18 can go through a couple arguments and refute them per my
19 filings. What would you like me to do?

20 THE COURT: Just answer my questions at this point.

21 DR. SKLAROFF: Okay. My interest is threaded right
22 back to what was created a quarter century ago, namely, the
23 social mission of Pennsylvania Blue Shield. There's a
24 mistake in one of these briefs. Pennsylvania Blue Cross.
25 No. It was Blue Cross of Western PA consolidating with

1 Pennsylvania Blue Shield.

2 And the bottom line is that I was a corporate
3 member; and so, therefore, I had by the Court here afforded
4 standing. I have no economic interest whatsoever. In fact,
5 just to make sure, I resigned as a Highmark provider.

6 THE COURT: Okay. So your enforceable interest is
7 that you used to be --

8 DR. SKLAROFF: It -- it still is. The social
9 mission as manifest both in the -- what I saw in the filing
10 from the AG, namely, competition and price control issues.
11 And I have interest in both of those because they are
12 according to the motives that I share. Not the outcome issue
13 as is mentioned somewhere in one of these briefs, but the
14 motives are identical, namely, to ensure that the social
15 mission is upheld.

16 THE COURT: Okay. Is there anything else you want
17 to say about that?

18 DR. SKLAROFF: What?

19 THE COURT: Is there anything else you want to say
20 about that?

21 DR. SKLAROFF: Well, yeah, depending on how much
22 you want to hear. I can talk for about probably five
23 minutes.

24 Go for it.

25 THE COURT: Go for it.

1 DR. SKLAROFF: Okay.

2 THE COURT: Go for it.

3 DR. SKLAROFF: All right. The first thing is I
4 also filed in the federal court case. And so what I did is I
5 took the filing here, and then I went to Middle District
6 section. And I saw five cases on standing. So I figured I'd
7 tell them in the language they could most understand where I
8 was relative to those five cases, three of which had to do
9 with the Dover case, the intelligent design case.

10 So what I did is I -- they already have copies of
11 this. I am going to give to the clerk for your benefit how I
12 refuted their determinations that the other entities didn't
13 have standing because I feel I do have standing for the four
14 reasons that are articulated in what was filed by the
15 Commonwealth Court through both the Attorney General and the
16 -- Highmark.

17 THE COURT: Okay.

18 DR. SKLAROFF: Now --

19 THE COURT: Hang on. I'm getting confused now.

20 DR. SKLAROFF: Yeah.

21 THE COURT: You're going to hand up something that
22 you filed in the federal case?

23 DR. SKLAROFF: Yeah, because it's talks
24 specifically about standing, the last couple pages of it.
25 That's all. Just so the record is complete and everyone has

1 everything --

2 THE COURT: Okay.

3 DR. SKLAROFF: -- because they already have this.

4 So the first thing I want to do is make sure that
5 there's no conflict of interest issues and also to illustrate
6 my attitude towards why I am different from all the -- the
7 three other parties, even though two of them might behave
8 identically. And that is that in the history of the
9 Commonwealth Court case previously, I was president of PSIM,
10 Pennsylvania Society of Internal Medicine, when we filed. I
11 then arched my back against PSIM when it hired a law firm
12 financed by UPMC when I learned, as did everybody, including
13 at Highmark, that there was a Chinese wall issue regarding
14 representation in New York versus Washington with division or
15 whatever.

16 So I came out against PSIM in favor of Highmark in
17 that situation. And to me that illustrates, number one,
18 perhaps why there might be some electrical silence with UPMC
19 challenging me, but that notwithstanding, that fact that I
20 can still maintain a lot of independence relative to issues
21 that are presumably in my best interest. I have zero problem
22 going against my best interest if I see a reason why.

23 In a lot of the other motions back and forth in the
24 other case, sometimes I came on relative to, like, burden of
25 proof or whatever, deadlines, on the side of Highmark; and

1 sometimes I came on relative to the views of what had been
2 PSIM. Now it's dead. So that's sort of like a disclaimer
3 relative to prior representation and also an emphasis on
4 independence.

5 Now having done that, now I'm going to go through
6 something that Mr. Donahue had a role in preparing. And I
7 mention that because I met with him more than a quarter
8 century ago with John F. X. Trevi, the executive director for
9 Philadelphia County Medical Society, and the then president
10 Raymond J. Lodise. And he generated a letter prior to the
11 consolidation saying the Western Cross was already a monopoly
12 and should be split up. So that is the kind of institutional
13 memory that I bring to this relative to the behavior of the
14 players all the way through the case.

15 Now having said that, I'm going to parse a few of
16 the phrases in this brief, and then -- or I guess it's a
17 response.

18 THE COURT: Okay. Hang on a second. What are you
19 reading from?

20 DR. SKLAROFF: I'm reading from the Commonwealth's
21 answer in opposition to the application for leave to
22 intervene of me.

23 THE COURT: Okay. So that's a filing in this case.

24 DR. SKLAROFF: Yes. I'm now flash-forward.

25 THE COURT: Okay.

1 DR. SKLAROFF: Okay. But I noticed his signature
2 here, and I couldn't resist making sure that everyone knew a
3 little bit of background.

4 It says that -- there's a denial in here that I was
5 granted leave to participate in the prior proceedings. I
6 think I was. I'm not exactly sure what the difference is at
7 the end here as to whether or not I should be allowed to
8 participate versus whether I should be allowed to have
9 standing. So maybe someone could clarify that because to me
10 it's a distinction without a difference.

11 It is denied that any of these proceedings and
12 those proceedings involve the same facts and matters. The
13 answer is the gravamen of the filing, the 90-some odd page
14 filing, is whether or not competition should be enhanced and
15 there should be any kind of price controls exerted in order
16 to benefit the public. That directly in that filing is
17 tethered to social mission.

18 THE COURT: Okay. What -- what filing are we
19 talking about?

20 DR. SKLAROFF: The initial filing by the AG.

21 THE COURT: Okay. In -- in this case.

22 DR. SKLAROFF: In this case, right. So, therefore,
23 I think that there is not only an overlap but a direct
24 overlap on a potential outcome.

25 THE COURT: Well, let me ask you this since you

1 just mentioned the overlap: Why --

2 DR. SKLAROFF: What?

3 THE COURT: -- why isn't the Attorney General's
4 Office capable of this handling this on their own?

5 DR. SKLAROFF: Okay. I was going to get to that
6 later. I'll do it right now.

7 The answer to that is as follows: I have
8 demonstrated and they have not demonstrated in either of
9 these filings that I can deviate from expectations in order
10 to stick to the matter. I will not probably get very much
11 involved in all of the motions to quash or anything like
12 that. My focus is on whatever rules might be generated based
13 upon the outcome of this evaluation.

14 And I know that I am entirely independent based on
15 what I would be viewing as manifesting my original stance
16 based on Pennsylvania Blue Shield's standards. And I have a
17 whole set of filing cabinet full plus of explanations as to
18 what the -- the social mission was even when it was created
19 in 1939.

20 THE COURT: Okay.

21 DR. SKLAROFF: Continue? Okay. So --

22 THE COURT: Well, I think you have two minutes --

23 DR. SKLAROFF: What?

24 THE COURT: I think you have two minutes left.

25 DR. SKLAROFF: Oh, well, I'm doing the best I can.

1 Maybe it's going to be a little longer, but I'll see what I
2 can do.

3 THE COURT: We'll see.

4 DR. SKLAROFF: So anyway --

5 THE COURT: We'll see.

6 DR. SKLAROFF: I -- I think that I've already
7 established I have a direct, immediate, and substantial
8 interest based on the prior case beyond the general public
9 because of the standing in the other case.

10 It is denied that due diligence is needed or a
11 disinterested assessment is needed. But I've explained why I
12 would like to assess the motives and manifestations of all of
13 the parties. In other words, I would look at what Highmark
14 files and UPMC files and decide for my own way based on what
15 I interpret to be the social mission of PBS how it might best
16 be adjudicated. And I don't know which way I would go
17 depending upon the issue.

18 It is denied that I possess any special interest
19 such that granting my intervention. Well, my special
20 interest is not financial, but I saw case law saying I don't
21 have to have financial, it could be other interests.

22 And the denial -- oh, and the last denial is this
23 Mon Valley thing. I didn't say I'm going to represent them.
24 I remember them from way back when, and I even remember the
25 lawyer involved with that when they were denied standing.

1 And what I would do with them and also the other PBS
2 corporate members who are still alive, I would get their
3 input.

4 So, in other words, I -- let's say someone files --
5 this is a potential resolution of the case; send it out to
6 everybody who's still interested, get their input, and then
7 channel it through. And I think that would be actually part
8 of the social mission that I would be manifesting, bringing
9 in both these other parties plus the docs.

10 Now maybe the Attorney General may feel he or
11 she can do -- he can do that too, but all I can do is say
12 what I would do.

13 So now Highmark. I'll see if I can avoid the
14 repetition.

15 The Hershey thing. The fact that the alumni were
16 not accepted sort of reminds me of the Barnes case where they
17 didn't have already established the fact that they had
18 standing in this kind of matter. So, therefore, I don't -- I
19 think that's inapposite to be applied here.

20 Let's see. Next. A petition to intervene should
21 be denied if the claim or defense of the petitioner is not in
22 subordination to or in recognition of the property of the
23 action. I'm defining property as not necessarily financial.

24 The interests of the petitioner are already
25 adequately represented. I think I've shown you why not, and

1 they have never shown you otherwise.

2 And the petitioner has unduly delayed in an attempt
3 to intervene. That was part of a lot of the discussion of
4 the Middle District cases. I have worked apace in this
5 regard.

6 All right. In terms of argument, the initial
7 section is that the AG is empowered to do everything. It
8 says I have not established and cannot establish standing to
9 intervene. I already have established standing to intervene
10 in the core issue of how Highmark does behave. My -- it's
11 more than intellectual interest. And that's the Hershey
12 case.

13 And then my adequately represented. No, they're
14 not adequately represented.

15 And intervention would only serve to unduly delay.
16 I will not delay. Something comes in; I'll process it, get
17 it right out again. I will not -- and, in fact, that --
18 that's illustrated by the fact that I worked apace not only
19 here but also in the federal court situation.

20 So I won't hold you up.

21 THE COURT: Okay. Well, let -- let me just make it
22 clear to everybody here I -- I've dealt with Dr. Sklaroff
23 before. The specific case was Robert B. Sklaroff, M.D.,
24 versus the Insurance Department. It was Number 1238 CD 2006.
25 And I wrote an 80-page opinion. It was filed November 14,

1 2007. Most of the 80 pages dealt with Mr. -- Dr. Sklaroff's
2 arguments. So I'm -- I'm familiar with the -- your pro se
3 written presentations to the Court.

4 Here are my problems. Here are my problems. I
5 don't really see a -- an enforceable interest that would
6 allow you to qualify for intervention under our Civil Rule
7 2327.

8 The other problem I have is that I've had some
9 difficulty following what you're saying here today and trying
10 to figure out how that's helping me decide intervention.
11 This was very similar to the problem I had with your filings
12 and your arguments back in this other case that -- that I
13 handled about 10 or 12 years ago.

14 I -- I think that you would be a distraction. I
15 think you would distract me. I think you would distract the
16 parties. And it would not help me focus on the important
17 legal matters that are being -- that are being talked here.

18 I -- you know, I don't need somebody who's sort of
19 like an outside expert to educate me about the original
20 mission of these nonprofits. I -- I need to hear from the
21 parties themselves about what their differences are. So that
22 -- and that's a problem under our Civil Rule 2329.

23 So I -- there are a couple of different bases under
24 which I'm going to deny your petition to intervene. So I'm
25 going to enter an order today that -- or maybe not today;

1 maybe tomorrow because I'm driving back to Nazareth today.

2 DR. SKLAROFF: You're what?

3 THE COURT: I'm driving back to Nazareth,
4 Pennsylvania, today which is where -- where my home chambers
5 are. So I'm not going to be hanging around in my -- in my
6 chambers here to -- to write --

7 DR. SKLAROFF: How -- how soon will I get your
8 opinion so I can appeal it to the Supreme Court?

9 THE COURT: I'm giving it to you now.

10 DR. SKLAROFF: What?

11 THE COURT: I'm giving it to you now. You're --

12 DR. SKLAROFF: Well --

13 THE COURT: You're going to get an order, and I'm
14 explaining the reasons for the order right now.

15 DR. SKLAROFF: Great. Thank you.

16 Oh, and one more thing, by the way, an ad hominem
17 in here that has to be fixed. I was denied standing on the
18 tobacco case not because I didn't have --

19 THE COURT: Okay. You know what --

20 DR. SKLAROFF: -- according to the Court --

21 THE COURT: You know what; this is sort of the
22 problem.

23 DR. SKLAROFF: What?

24 THE COURT: This is sort of the problem. This is a
25 good illustration of the problem that I -- that I just

1 mentioned, that you're going off on denied standing in the
2 tobacco case. That's not my -- that's not an issue in front
3 of me.

4 DR. SKLAROFF: Well, it was a mistake in here. It
5 basically --

6 THE COURT: In where?

7 DR. SKLAROFF: It was whether I had a con- -- an
8 interest that was directly related to the case.

9 THE COURT: In -- a mistake in where, sir?

10 DR. SKLAROFF: What?

11 THE COURT: A mistake in where? Where is this
12 mistake that you're talking about?

13 DR. SKLAROFF: The mistake was made -- thank you
14 for asking -- as to whether or not I had a case or
15 controversy, con- -- ripe for adjudication at the time. And
16 I did because there was a billboard that was greater than
17 whatever the size should be outside Manayunk, which I then
18 filed to illustrate that I did have a case or controversy.

19 But in the first case, they said you didn't have a
20 case or controversy. And in the second case, they said I
21 didn't have standing. So the answer is yes, I was rejected;
22 but I feel they made a mistake because I did meet the
23 standard of the Court.

24 THE COURT: Who made a mistake, sir?

25 DR. SKLAROFF: I think it was one of the judges of

1 City Hall.

2 THE COURT: In Philadelphia?

3 DR. SKLAROFF: A Commonwealth Court judge -- a
4 common -- no. No. A Commerce Court judge.

5 THE COURT: Okay. Well, see, this is the problem,
6 that we sort of get sidetracked on some issues that don't
7 really seem to have anything to do with the case that's in
8 front of me right now.

9 DR. SKLAROFF: Well, it was raised in here, so
10 that's why I'm telling you.

11 THE COURT: It's raised in where, sir?

12 DR. SKLAROFF: In -- in one of the filings here
13 that I was denied, according to Highmark. So I wanted to
14 explain that their -- their appreciation of the facts was
15 inaccurate.

16 THE COURT: Okay. Well, I've tried to spread upon
17 the record the reasons for my -- for my ruling, and I think
18 there are ample illustrations in this transcript. So you
19 will get my -- you'll get the written order within the next
20 few days.

21 DR. SKLAROFF: Okay. Thank you. And then let me
22 just suggest to you that --

23 THE COURT: Sir --

24 DR. SKLAROFF: -- I have answered your questions
25 directly.

1 THE COURT: Yes, you have. We're done here. Thank
2 you, sir.

3 DR. SKLAROFF: Thank you.

4 THE COURT: Is there anything further I need to
5 address today?

6 MR. DONAHUE: Nothing, Your Honor, from us.

7 MR. COZEN: No. No. Thank you, Your Honor.

8 THE COURT: There being nothing further to come
9 before the Court, we stand adjourned until the next call of
10 the Crier.

11 MR. COZEN: Thank you.

12 MR. DONAHUE: Thank you, Your Honor.


13 THE COURT CRIER: Commonwealth Court is now
14 adjourned.

15 (Whereupon, the proceedings adjourned at 1:50 p.m.)
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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the proceedings of the above cause and that this copy is a correct transcript of the same.

DATED: March 19, 2019


Rebecca Toner, RPR

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.)

EXHIBIT 8

Bayer, Jared D.

From: Donahue, III, James A. <jdonahue@attorneygeneral.gov>
Sent: Tuesday, March 26, 2019 3:51 PM
To: Bayer, Jared D.; jweimer@reedsmith.com
Cc: Pacella, Mark A.; Thomson, Jennifer A.; Wertz, Tracy W.; Betsko, Joseph S.; Foerster, Michael T.; VanceRittman, Heather J.; Goldman, Jonathan Scott; Neary, Keli; dcameron@reedsmith.com; 'dbooker@reedsmith.com'; kwatterson@reedsmith.com;
Subject: Cozen, Stephen; Miller, Stephen; Potts, James R.; Linz, Andrew D.
RE: Attorney General v. UPMC

****EXTERNAL SENDER****

Thank you. This is my understanding and we will let you know of the same with any third parties we subpoena. Jim

From: Bayer, Jared D. [JBayer@cozen.com]
Sent: Tuesday, March 26, 2019 3:49 PM
To: Donahue, III, James A.; jweimer@reedsmith.com
Cc: Pacella, Mark A.; Thomson, Jennifer A.; Wertz, Tracy W.; Betsko, Joseph S.; Foerster, Michael T.; VanceRittman, Heather J.; Goldman, Jonathan Scott; Neary, Keli; dcameron@reedsmith.com; 'dbooker@reedsmith.com'; kwatterson@reedsmith.com; Cozen, Stephen; Miller, Stephen; Potts, James R.; Linz, Andrew D.
Subject: Attorney General v. UPMC

Jim and Jeff:

Per the exchange of voicemails and calls with each of you, I write to confirm that we have agreed for third-party custodian of records subpoenas, the parties collectively consent to accept production of the documents sought in lieu of convening a formal deposition to collect the documents. This is obviously without prejudice to a subpoenaed party asserting any objections it may have. We will let the parties we have subpoenaed to date know and will ensure that documents that are produced are produced to all parties.

Thanks,
Jed



Jared D. Bayer
Member | Cozen O'Connor
One Liberty Place | 1650 Market Street, Suite 2800 | Philadelphia, PA 19103
P: 215-665-4127 F: 215-701-2427
[Email](#) | [Bio](#) | [LinkedIn](#) | [Map](#) | [cozen.com](#)

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EXHIBIT 9

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
By KATHLEEN G. KANE, Attorney General; :
PENNSYLVANIA DEPARTMENT OF INSURANCE; :
and :
PENNSYLVANIA DEPARTMENT OF HEALTH :
 :
Petitioners, :
 :
v. : No. 334 M.D. 2014
 :
UPMC , A Nonprofit Corp.; :
UPE, a/k/a, HIGHMARK HEALTH, A Nonprofit Corp.; :
and :
HIGHMARK, INC., A Nonprofit Corp.; :
 :
Respondents. :

MOTION TO APPROVE PROTECTIVE ORDER

1. In anticipation of providing each other discovery and a hearing on May 27th, the Petitioners and Respondents (“the Parties”) have agreed on the entry of the attached Protective Order.

2. The Parties anticipate that some of the information they will exchange will contain proprietary, competitively sensitive and possibly personal health information.

3. The Parties agree such information should be covered by a Protective Order

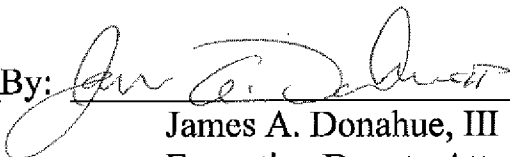
4. All Parties to this litigation consent to entry of this Order.

WHEREFORE, Petitioners respectfully request that this Honorable Court approve the proposed Protective Order.

Respectfully submitted

COMMONWEALTH OF PENNSYLVANIA

KATHLEEN G. KANE
Attorney General

Date: 5/12/2015 By: 
James A. Donahue, III
Executive Deputy Attorney General
Public Protection Division
Attorney I.D. No.: 42624
14th Floor Strawberry Square,
Harrisburg, PA 17120
(717) 787-4530

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
By KATHLEEN G. KANE, Attorney General;	:	
PENNSYLVANIA DEPARTMENT OF	:	
INSURANCE, By TERESA D. MILLER,	:	
Acting Insurance Commissioner; and	:	
PENNSYLVANIA DEPARTMENT OF	:	
HEALTH, By DR. KAREN MURPHY, Acting	:	
Secretary of Health,	:	No. 334 M.D. 2014
	:	
Petitioners,	:	
	:	
v.	:	
	:	
UPMC, A Nonprofit Corp.; UPE, a/k/a	:	
HIGHMARK HEALTH, A Nonprofit Corp.;	:	
and HIGHMARK INC., A Nonprofit Corp.,	:	
	:	
Respondents.	:	

**[PROPOSED] PROTECTIVE ORDER
GOVERNING CONFIDENTIAL MATERIAL**

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material (“Protective Order”) shall govern the handling of all Confidential Material and Highly Confidential Material, as hereafter defined.

1a. As used in this Order, “Confidential Material” shall refer to any document or portion thereof that contains privileged information, competitively sensitive information, sensitive personal information, or protected health information covered by the Health Insurance Portability and Accountability Act as explained more fully below, or Medicare data or beneficiary information covered by CMS regulations and the Medicare Marketing Guidelines.

“Sensitive personal information” shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial information, credit card or debit card number, driver's license number, state-issued identification number, passport number, or date of birth (other than year).

“Document” shall refer to any writing, recording, transcript of oral testimony, or electronically stored information produced by a party or a third party in the above-captioned case.

“Competitively sensitive information” shall refer to, but shall not be limited to, information that: (i) is not in the public domain (meaning that it is not generally known or reasonably ascertainable by proper means) or is information relating to the requesting party's competitors; and (ii) contains a non-public trade secret, or

other confidential research, development or commercial information, as those terms are used in Pa. R. Civ. P. 4012(9).

“Protected health information” shall have the same scope and definition as set forth in 45 C.F.R. § 160.103. Without limitation to the definition provided therein, “protected health information” shall include, but is not limited to, health information, including demographic information, that relates to (i) the past, present, or future physical or mental condition of an individual, (ii) the provision of care to an individual, or (iii) the payment for care provided to an individual; and that identifies or reasonably could be expected to identify that individual.

1b. As used in this Order, “Highly Confidential Material” shall refer to any document or portion thereof that contains material that the designating party reasonably and in good faith believes (i) is competitively sensitive confidential or proprietary information, including, but not limited to, confidential competitive planning documents, and (ii) would, if disclosed, have a substantial likelihood of compromising or jeopardizing that party’s business interests were it designated as merely “Confidential Material.”

2. Any document or portion thereof submitted by Petitioners, Respondents or a third party during the course of this proceeding that is entitled to confidentiality under the Uniform Trade Secrets Act, 12 Pa. §§ 5301-08; Pa. R. Civ. Pro. 4012, or federal statute or regulation, or under any Pennsylvania or federal

court precedent interpreting such statute or rule, as well as any information that discloses the substance of the contents of any Confidential Material or Highly Confidential Material derived from a document subject to this Order, shall be treated as Confidential Material or Highly Confidential Material for purposes of this Order. The identity of a third party submitting such Confidential Material or Highly Confidential Material shall also be treated as Confidential Material or Highly Confidential Material for the purposes of this Order where the submitter has requested such confidential treatment.

3. The parties and any third parties, in complying with formal or informal discovery requests, disclosure requirements, or discovery demands in this proceeding, may designate any responsive document or portion thereof as Confidential Material or Highly Confidential Material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each third party of his, her, or its rights herein.

5. A designation of material as Confidential Material or Highly Confidential Material shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain, and that counsel believes the material so designated constitutes

Confidential Material or Highly Confidential Material as defined in Paragraphs 1a and 1b of this Order.

6. Material may be designated as Confidential Material or Highly Confidential Material by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), the designation “CONFIDENTIAL–PA v. UPMC, et al., Case No.334 M.D. 2014,” “HIGHLY CONFIDENTIAL–PA v. UPMC, et al., Case No.334 M.D. 2014,” or any other appropriate notice that identifies this proceeding.

Confidential Material or Highly Confidential Material contained in electronic documents may also be designated as confidential by placing the designation “CONFIDENTIAL PA. v. UPMC, et al., Case No. 334 MD 2014,” “HIGHLY CONFIDENTIAL–PA v. UPMC, et al., Case No.334 M.D. 2014,” or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. In addition, the parties shall produce a Bates-numbered slip sheet for any documents produced in native form, which slip sheet shall be marked “CONFIDENTIAL PA. v. UPMC, et al., Case No. 334 MD 2014,” “HIGHLY CONFIDENTIAL–PA v. UPMC, et al., Case No.334 M.D. 2014,” or with any other appropriate notice that identifies this proceeding. Masked or otherwise redacted copies of documents may be produced where the portions masked or redacted contain privileged matter, provided that the

copy produced shall indicate at the appropriate point that portions have been masked or redacted and the reasons therefor.

Any Confidential Material or Highly Confidential Material provided or contained in deposition testimony or a deposition exhibit shall be so designated by a statement to such effect on the record and in the course of the deposition, or alternatively, by letter from such counsel sent within seven (7) days of receipt of the final deposition transcript or a copy thereof. For the entirety of the seven-day period and the preceding time before receipt of the final transcript, the entire deposition and transcript, including exhibits, shall be treated as Highly Confidential Material under this Protective Order.

7a. Confidential Material shall be disclosed only to: (a) the Court presiding over this proceeding, personnel assisting the Court, the Petitioner, Petitioners' employees, and personnel retained by Petitioner as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction of any appellate proceeding involving this matter; (c) outside counsel of record for any Respondent, their associated attorneys, other employees of their law firm(s), provided they are not employees of a Respondent, and their copying, data processing, or graphic production vendors; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a Respondent (or a

competitor of Respondent) and have signed an agreement in the form of Exhibit A to abide by the terms of the protective order; (e) any witness or deponent who authored or received the information in question; (f) a Respondent's employees to the extent that counsel for that Respondent has a good faith belief that the employee was involved in the issues or subject matter referred to in the Confidential Material; (g) a person testifying as a corporate representative for a Respondent if a director, officer, employee or agent of that Respondent authored or received the information in question; (h) Respondents' in-house litigation counsel identified on Exhibit B hereto; and (i) any other individual as agreed by the parties on the record or in writing.

7b. Highly Confidential Material shall be disclosed only to the individuals identified in (a), (b), (c), (d), (e), (g), (h) and (i) in Section 7a above.

8. Disclosure of Confidential Material or Highly Confidential Material to any person described in Paragraphs 7a or 7b of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal in this matter, and for no other purpose whatsoever.

If Confidential Material or Highly Confidential Material is disclosed to any person other than in accordance with this Protective Order, the party responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the designating party or third party. The party

responsible for the disclosure must make every effort to retrieve the improperly disclosed information and to prevent further unauthorized disclosure on its own part or on the part of the recipient of such Confidential or Highly Confidential Material. All such efforts shall be without prejudice to the rights and remedies of the designating party or third party.

Nothing in this Protective Order shall be construed to affect the right of any party to maintain its own documents as it chooses, or to disclose or use for any purpose its own documents designated Confidential Material or Highly Confidential Material, subject to the right of any other party to seek removal of the designation as a result of such disclosure or use.

All parties to this action that are “covered entities” as defined by 45 C.F.R. § 160.103 (“Covered Entities”), along with their attorneys, are hereby authorized to receive, subpoena, and transmit protected health information pertaining to their respective patients, members, and/or insureds, to the extent provided and subject to the conditions outlined herein. All such parties may use protected health information obtained through such means in any manner that is reasonably connected with this action and consistent with the other provisions of this Protective Order. Such uses include, but are not limited to, disclosure to other parties, their attorneys, their insurers, their experts, their consultants, personnel or the Court, copy services, and other entities involved in this action.

In accordance with 45 C.F.R. § 164.512(e)(1), the parties may not use or disclose any protected health information received in discovery from a party or non-party for any purpose or in any manner that is not reasonably connected with this action.

The parties shall comply with all applicable Medicare regulations and guidelines with respect to Medicare data or beneficiary information produced in this action, specifically the Medicare Marketing Guidelines issued by CMS June 17, 2014, Sections 70.4 and 160 (including sub-sections 160.1, 160.2, 160.3, 160.4), the federal regulations upon which the Guidelines in those Sections are based, and all other statutes, regulations and guidelines set forth in Appendix 2 of Section 160.

Within thirty (30) days of the conclusion of this action, any party and any person or entity in possession of protected health information received from a party in accordance with this Protective Order shall return to the producing party or destroy with a certification of such destruction of any and all protected health information and copies thereof. Notwithstanding the foregoing, any such party may retain any protected health information generated or provided by it; furthermore, Respondents may retain protected health information produced by either Respondent in their possession until the conclusion of this action. For purposes of this provision, this action concludes as to any Respondent when (a) a

final order is entered that disposes of the entire case as to that Respondent, or (b) all arbitration, trial and appellate proceedings have been exhausted as to that Respondent. Nothing in this Protective Order shall limit or control the use of protected health information pertaining to a patient, member, or insured of any party that is received by any party or its attorney from a source other than a covered entity, as defined in 45 C.F.R. § 160.103.

9a. In the event that any Confidential Material or Highly Confidential Material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Court, the Court shall be so informed by the party filing such papers, and such papers shall be filed *under seal*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential Material or Highly Confidential Material contained in the papers shall continue to have *under seal* treatment until further order of the Court, provided, however, that such papers may be furnished to persons or entities who may receive Confidential Material or Highly Confidential Material pursuant to Paragraphs 7a or 7b. Upon or after filing any paper containing Confidential Material or Highly Confidential Material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal the Confidential Material or Highly Confidential Material. Further, if

the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

9b. No party is required to challenge the propriety of a designation as Confidential Material or Highly Confidential Material at the time such designation is made. A failure to make such a challenge at the time of designation shall not preclude a subsequent challenge thereto.

If a party objects to a designation pursuant to this Protective Order, the objecting party shall consult with the designating party to attempt to resolve the dispute. If the parties are unable to resolve the dispute, the objecting party may, after giving notice to the designating party, move the Court for a ruling that the designation is improper.

If such a motion is made, the designating party shall have the burden of establishing the propriety of the designation. Any Confidential Material or Highly Confidential Material that is the subject of such a motion shall be treated in accordance with the requirements for the relevant initial designation until the Court issues its ruling on the motion.

9c. Any party that inadvertently fails to designate or misdesignates any Confidential or Highly Confidential Material pursuant to this Protective Order at the time of its production may subsequently make a designation or a correction of the initial designation.

Any such designation or correction, along with notice thereof, shall be made in writing within a reasonable time of discovery of the non-designation or misdesignation, and shall be accompanied by substitute copies with appropriate designations.

All persons who received the non-designated or misdesignated materials prior to receipt of such notice shall, within five (5) days of receipt of substitute copies, destroy the non-designated or misdesignated materials or return them to counsel representing the producing party. All persons who reviewed the non-designated or misdesignated materials prior to receipt of such notice shall abide by the relevant provisions of this Protective Order with respect to the use and disclosure of any Confidential Material or Highly Confidential Material contained in the nondesignated or misdesignated materials

9d. If a party discloses information that is subject to a claim of attorney client privilege, attorney work product, or joint defense privilege/common-interest privilege protection (“Privileged Disclosures”), such disclosure shall not constitute or be deemed a waiver or other forfeiture of any claim of privilege or attorney work product protection that the party making the disclosure would otherwise be entitled to assert with respect to either the disclosed information or its subject matter.

Any materials claimed by the producing party to contain Privileged Disclosures shall be, upon written request, promptly returned to the producing party or destroyed at the producing party's option. This includes all copies, electronic or otherwise, of any such documents. In the event that the producing party requests destruction, the other party shall provide written certification of compliance within ten (10) days of such written request. A party's return or destruction of documents containing Privileged Disclosures shall not waive its right to seek a determination as to the assertion of privilege or attorney work product protection for the Privileged Disclosures. No Privileged Disclosures may, after notice of the claim of privilege, be used as evidence against the producing party or disclosed to any third parties. Should a party challenge the assertion of privilege or attorney work product protection, that challenging party may not use or disclose the materials at issue or their contents without a resolution allowing such disclosure by either agreement of the parties and/or by order of the Court. Should any Privileged Disclosures that subsequently are identified by the producing party as such be disclosed to any persons not a party to this action, the party causing such disclosure shall inform the person receiving the Privileged Disclosures that the information is covered by this Order and make its best efforts to retrieve the Privileged Disclosures. Notwithstanding the foregoing, this

Protective Order shall not be deemed to limit a party's right to withhold privileged or work product protected materials pursuant to law.

10. If counsel plans to introduce into evidence at the hearing any document containing Confidential Material or Highly Confidential Material produced by another party or by a third party, they shall provide advance notice to the other party or third party (or disclose the document on its exhibit list, whichever is later) for purposes of allowing that party to seek an order that the document be granted *in camera* treatment. If that party wishes *in camera* treatment for the document, the party shall file an appropriate motion with the Court at least one (1) day prior to the hearing. Except where such an order is granted, all documents shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document, with the Confidential Material or Highly Confidential Material redacted, may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of Confidential Material or Highly Confidential Material designated by another party or third party, the recipient of the discovery request shall promptly notify the designating party or third party of the receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the

submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder.

If the designating party or third party responds that it will seek court protection, then the subpoenaed party or person may not produce the Confidential Material or Highly Confidential Material until the court resolves the issue or until the designating and subpoenaed parties otherwise agree. The designating party or third parties and the subpoenaed party shall cooperate and use best efforts to promptly resolve such issues.

Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of Confidential Material or Highly Confidential Material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Court. The recipient shall not oppose the submitter's efforts to challenge the disclosure of Confidential Material or Highly Confidential Material.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated Confidential Material or Highly Confidential Material that are in the possession of such person, together with all notes, memoranda or other work

papers containing Confidential Material or Highly Confidential Material. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return or destroy documents containing Confidential Material or Highly Confidential Material produced in this action to their submitters, provided, however, that all notes, memoranda or other work papers reflecting Confidential Material or Highly Confidential Material shall be retained by the parties creating them. The termination of the proceeding shall not result in such papers losing their confidential status.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Court, continue to be binding after the conclusion of this proceeding.

ISSUED this ____ day of _____, 2015.

ORDERED:

Judge Daniel Pellegrini

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
By KATHLEEN G. KANE, Attorney General;	:	
PENNSYLVANIA DEPARTMENT OF	:	
INSURANCE, By TERESA D. MILLER,	:	
Acting Insurance Commissioner; and	:	
PENNSYLVANIA DEPARTMENT OF	:	
HEALTH, By DR. KAREN MURPHY, Acting	:	
Secretary of Health,	:	No. 334 M.D. 2014
	:	
Petitioners,	:	
	:	
v.	:	
	:	
UPMC, A Nonprofit Corp.; UPE, a/k/a	:	
HIGHMARK HEALTH, A Nonprofit Corp.;	:	
and HIGHMARK INC., A Nonprofit Corp.,	:	
	:	
Respondents.	:	

EXHIBIT A

CERTIFICATION

- (1) My name is _____
- (2) I live at _____
- (3) I am employed as (state position) _____, and
my employer is (state name and address) _____.
- (4) I have received and read a copy of the Protective Order that has been
entered in this Action. I understand the provisions of this Order, and I agree to

comply with, and to be bound by, its provisions. I also consent to the jurisdiction of this Court with respect to enforcement of this Order.

(5) I declare under penalty of perjury that the foregoing is true and correct.

Executed this ____ day of _____ by

Signed: _____

EXHIBIT B

**LIST OF IN-HOUSE COUNSEL FOR RESPONDENTS HIGHMARK
HEALTH AND HIGHMARK INC.**

Thomas VanKirk

David Gaertner

Anne Shearon

LIST OF IN-HOUSE COUNSEL FOR RESPONDENT UPMC

Tom McGough

Mark Tamburri

Joe Ramirez

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
By KATHLEEN G. KANE, Attorney General; :
PENNSYLVANIA INSURANCE DEPARTMENT; :
and :
PENNSYLVANIA DEPARTMENT OF HEALTH, :
 :
Petitioners, :
v. : No. 334 M.D. 2014
 :
UPMC, A Nonprofit Corp.; :
UPE, a/k/a HIGHMARK HEALTH, A Nonprofit Corp.;; :
and :
HIGHMARK, INC., A Nonprofit Corp., :
 :
Respondents. :

CERTIFICATE OF SERVICE

I hereby certify that I am this day, May 15, 2015, sending a copy of the foregoing Commonwealth of Pennsylvania's Motion to Approve Protective Order to all persons and in the manner indicated below.

SERVICE MADE BY United States First Class mail and electronically addressed as follows:

Leon F. DeJulius, Jr.
Paul M. Pohl
Rebekah B. Kcehowski
Jones Day
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