

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

PENNSYLVANIA HEALTH ACCESS NETWORK’S APPLICATION TO QUASH UPMC’S SUBPOENAS AND FOR A PROTECTIVE ORDER

The University of Pittsburgh Medical Center (“UPMC”) has served two subpoenas on the Pennsylvania Health Access Network (“PHAN”), a non-profit with eleven employees dedicated to advocating for expanded access to healthcare and to assisting individuals as they navigate the healthcare system. The first subpoena, dated March 21, 2019, purports to be a deposition subpoena for April 9, 2019 at 10:00am, but, in purpose and effect, it is actually a document subpoena that UPMC issued in a manner meant to circumvent the mandates of Rule 4009.21 of the Pennsylvania Rules of Civil Procedure, which requires a twenty-day notice period prior to service of the subpoena. The second subpoena, dated March 27, unlike the first, is a genuine deposition subpoena for April 18, 2019 at 10:00am. Both subpoenas seek information not relevant to the parties’ pending dispute, are

improperly overbroad, would impose an unreasonable burden on third-party PHAN, and are procedurally deficient. Accordingly, pursuant to Rules 234.4(b), 4011, and 4012(a) of the Pennsylvania Rules of Civil Procedure and Rule 123 of the Pennsylvania Rules of Appellate Practice, and for the reasons set forth below, PHAN files this Application to Quash UPMC’s Subpoenas and for a Protective Order.

BACKGROUND

A. UPMC’s Subpoenas to PHAN

UPMC, over the past several weeks, has sought a wide range of third-party discovery in connection with the Petition to Modify Consent Decree (the “Petition”) filed by the Commonwealth acting as *parens patriae* through its Attorney General, Josh Shapiro (the “Attorney General”). As relevant here, UPMC served two subpoenas on PHAN.

1. On March 21, 2019, UPMC served a subpoena on PHAN, which is attached as Exhibit A. Though styled as a “deposition subpoena” with a scheduled date of April 9, 2019, UPMC made clear it is functionally just a document subpoena, stating in the cover letter and in the subpoena addendum itself that UPMC was “willing to accept production of the documents requested in lieu of a deposition.” Exhibit A at 1; *see also id.* (Addendum at 1) (“the documents may be produced to all parties at an agreed time in lieu of the deposition”).

The March 21 request for documents includes, *inter alia*, all communications between PHAN and eight entities (“UPMC, Highmark, the OAG, PID, DOH, Governor, SEIU, SEIU Healthcare Pennsylvania”) as well “any and all other persons or entities acting or purporting to act” on behalf of these entities—a provision that expands the universe of possible recipients or senders of communications into the hundreds, if not thousands—on any one of 18 broad subject matters, for a period of over eight years. *See* Exhibit A (Addendum at 4-5). And that is just the first of a dozen document requests in the subpoena. *Id.* (Addendum at 5-7). Other requests broaden the net even further, including by seeking communications with “any” of the following entities or people: any “patient,” “provider,” “employer,” “elected or appointed government official or legislator,” “chamber of commerce,” “industry group,” or “other third party.” *Id.* (Addendum at 6).

The docket in this action does not reflect any filing by UPMC of the certificate that is required under Rule 4009.22 as a prerequisite to the service of a subpoena for documents. *See* Pa. R.C.P. No. 4009.22(a) (document subpoena may be served “only if it is identical to the subpoena” attached to a notice sent to all parties “at least twenty days” before service); *see also* Pa. R.C.P. No. 4009.25.

2. About a week after the first subpoena, UPMC served a second subpoena on PHAN dated March 27, which is attached as Exhibit B. This subpoena appears

to be a genuine request for a deposition of PHAN’s custodian of records on April 18, 2019 at 10:00am on a list of topics closely tracking UPMC’s request for documents in the earlier subpoena. This subpoena seeks testimony on, among other things, “all meetings or communications” between PHAN and the same universe of hundreds or thousands of persons “acting or purporting to act” on behalf of eight entities (including UPMC itself) over the course of eight years—as well as on “[a]ll communications” with “any” patient, provider, employer, government official, legislator, industry group, or other third party. Exhibit B (Addendum at 3-4). The subpoena also seeks testimony concerning any “advocacy efforts by PHAN to influence or involve itself in the debate or public discourse concerning” litigation that occurred in 2015, as well as information about PHAN’s internal operations, including “PHAN’s direct or indirect receipt and use of any federal funding.” *Id.* (Addendum at 5).

3. The breadth of UPMC’s subpoenas is in stark contrast with the narrow legal issue that is in dispute in the Petition to Modify the Consent Decrees. In light of the Court’s order that Count I of the Petition “shall be litigated separately and expeditiously,” Scheduling Order II (Mar. 13, 2019) ¶ 1, what is now in dispute is whether, as alleged by the Attorney General in Count I of the Petition, the proposed modification of the Consent Decrees of both UPMC and Highmark is

needed to protect the public’s interest—as to which PHAN’s communications have zero bearing or relevance.¹

B. The State Agencies’ Application to Quash UPMC’s Subpoenas

Before serving its subpoenas on PHAN, UPMC also served broad subpoenas on the Governor’s Office, the Pennsylvania Department of Health (“DOH”), and the Pennsylvania Insurance Department (“PID”).² Those subpoenas, like the first UPMC subpoena to PHAN, purported to be deposition subpoenas but admitted that UPMC “was willing to accept production of the documents requested in lieu of a deposition.” *See* Exs. A-C to PA Agencies’ Application to Quash. Indeed, confirming the pretense of the scheduled “depositions,” UPMC scheduled all three to be taken on the same day between 12:30 p.m. to 1:30 p.m. *See id.*

On March 28, these governmental actors (styling themselves as the “PA Agencies”), which are also not parties to this proceeding, filed an application to quash the subpoenas and for a protective order. *See* PA Agencies’ Application to

¹ The documents and information requested in the subpoenas have even less bearing, relevance, or connection to the remaining counts in the Petition, which have been severed from the present litigation. Count II concerns UPMC’s alleged violations of the Solicitation of Funds for Charitable Purposes Act; Count III alleges that UPMC breached fiduciary duties to constituent healthcare providers and the public; and Count IV alleges violations by UPMC of the Unfair Trade Practices and Consumer Protection Law.

² Counsel for PHAN understands that UPMC has served similar subpoenas on other third parties as well.

Quash (Mar. 28, 2019). That pending application raises arguments—many of which we adopt here—that apply with equal or greater force to PHAN, which is not just a third-party to this litigation but is also, unlike DOH and PID, not a signatory to the Consent Decrees in 2014.

On April 1, the Court entered a rule requiring the parties to show cause why the relief requested in the application to quash the subpoenas should not be granted and stayed all discovery directed to the PA Agencies in the meantime. *See* Apr. 1, 2019 Order.

C. PHAN’s Attempts to Have UPMC Withdraw or Narrow the Subpoenas

On April 3, 2019, counsel for PHAN asked UPMC to withdraw the subpoenas based upon the extent of PHAN’s non-involvement in the underlying facts relevant to the Petition—or, alternatively, to narrow the subpoena to information relevant to the Petition. *See* Exhibit C (email chain between A. Carter and J. Bayer). On April 4, 2019, UPMC declined to withdraw the document subpoena (i.e., the March 21 subpoena) because “without seeing the documents” UPMC “will not be in a position to evaluate whether some form of stipulation in lieu of a corporate designee deposition” (i.e., the March 27 subpoena) “would be acceptable.” *Id.*

Despite good-faith efforts by counsel for UPMC and PHAN to meet and confer regarding the subpoenas, which included a telephonic conference on the

afternoon of April 4, no agreement could be reached concerning an adequate narrowing of the subpoena—necessitating the filing of this application to quash and for a protective order.

ARGUMENT

A. The Subpoenas Seek Irrelevant Information

Rule 4011 of the Pennsylvania Rules of Civil Procedure prohibits discovery that “is beyond the scope of discovery as set forth in Rules 4003.1 through 4003.6,” Pa. R.C.P. No. 4011(c), and Rule 4003.1 expressly limits the scope of discovery to matters “*relevant* to the subject matter involved in the pending action.” Pa. R.C.P. No. 4003.1(a) (emphasis added). A subpoena, like any other discovery request, must seek relevant information. The subpoenas here transgress this fundamental limitation, asking for a smorgasbord of information that has no bearing whatsoever to the claims and defenses in this suit.

Paragraph IV(C)(10) of the Consent Decrees provides that, following a request for a modification of the Decrees, “[i]f the parties cannot agree on a modification, the party seeking modification may petition the Court for modification and shall bear the burden of persuasion that the requested modification is in the public interest.” *See* Petition ¶ 72. The issue in dispute is thus whether, as a factual matter, the modification the Attorney General proposed is in the public interest.

Whether the modification is in the public interest does not turn on the information requested in the subpoenas to PHAN. For example, PHAN’s communications or meetings with any one of eight entities, like PHAN’s communications with any “employer,” “patient,” “provider,” “elected or appointed government official or legislator,” “chamber of commerce,” “industry group,” or “other third party,” Exhibit A (Request Nos 3, 5), are not relevant to whether, as a factual matter, the modification of the Consent Decrees is in the public interest, *see, e.g.*, Exhibit A (Request Nos. 1-3, 5, 9), since the subjective intent of the parties, let alone third parties, has no bearing on what is, and what is not, in the public interest. *See, e.g., City of Columbia v. Omni Outdoor Adver., Inc.*, 499 U.S. 365, 377 (1991) (“The situation would not be better, but arguably even worse, if the courts were to apply a subjective test: not whether the action was in the public interest, but whether the officials involved thought it to be so. This would require the sort of deconstruction of the governmental process and probing of the official ‘intent’ that we have consistently sought to avoid.”). Similarly, whether or not “any affiliation or relationship” exists between “PHAN, SEIU, or SEIU Healthcare PA,” *see id.* (Request No. 10), is quite obviously irrelevant to whether the proposed modification is in the public interest.³ Nor is there any conceivable relevance to

³ Indeed, the notion that UPMC would request information that is so patently irrelevant, such as this, suggests bad faith on UPMC’s part. Discovery “sought in bad faith” is prohibited. Pa. R.C.P. No. 4011(a).

any receipt by PHAN of “federal funding,” *see id.* (Request No. 11), or any “advocacy efforts by PHAN to influence or involve itself” in litigation that ended in 2015, *see id.* (Request No. 12), long before the modification the Attorney General now proposes.

When counsel for PHAN asked counsel for UPMC to explain the relevance of the information requested in the subpoena, the primary explanation offered was that UPMC is entitled to understand whether the Attorney General’s proposed modifications to the consent decree were made with any input from outside groups.⁴ But this theory of relevance is both wrong and insufficient to justify the vast majority of what UPMC requests. It is wrong because the issue in dispute as to Count I is whether the proposed modification is actually in the public interest, and not why the Attorney General proposed the modification in the first place. And in any event, UPMC’s sole theory of relevance does not justify the vast majority of its requests which are not limited to PHAN’s interactions with the Office of the

⁴ Counsel for UPMC also articulated UPMC’s belief in the existence of coordinated advocacy regarding the Consent Decrees among third parties like PHAN and asserted, without explanation, that such coordination, if it existed, would be relevant to the Petition. But this suggestion of relevance is even further afield than UPMC’s primary theory. The modification of the Consent Decrees the Attorney General proposed either is or is not in the public interest, and the resolution of that issue does not turn in any way on the subjective intent of third parties or on how, if at all, third parties discussed or coordinated their public advocacy.

Attorney General, but rather address PHAN's interactions with many other entities and individuals.

B. The Subpoenas Would Impose an Unreasonable Burden on PHAN

Even where discovery seeks relevant information, Rule 4011 prohibits discovery that either “would cause unreasonable annoyance, embarrassment, oppression, burden or expense” or, similarly, “would require the making of an unreasonable investigation by the deponent or any party or witness.” Pa. R.C.P. No. 4011(b), (e); *see also* Pa. R.C.P. No. 4012 (“upon motion by a party ... and for good cause shown, the court may make any order which justice requires to protect a party from unreasonable ... burden or expense”).

UPMC's subpoenas to PHAN flout this rule. It is clear from the face of the subpoenas that they would place an extreme burden and expense on PHAN—a non-profit with the same number of employees as UPMC has lawyers in this lawsuit (eleven), *see* Docket Sheet, No. 334 M.D. 2014. UPMC, in short, is “not permitted ‘to fish with a net rather than with a hook or a harpoon.’” *Arvonio v. PNC Wealth Mgmt.*, 35 Pa. D. & C. 5th 213, 2013 WL 10607804, at *5 (Pa. Com. Pl. Dec. 20, 2013). And even if one believed the broad requests for documents and information included, among all the irrelevant chaff, a kernel of relevancy, they would nonetheless be barred as unreasonably burdensome.

1. The Subpoenas Are Extraordinarily Broad

UPMC's subpoenas to PHAN seek information and documents during an eight-year "relevant period," *see* Exhibits A, B, and the requests—read in conjunction with their expansive definitions—are not tailored in a manner that would permit for a reasonable investigation and production to occur.

For example, Document Requests Nos. 1-3 and Deposition Requests Nos. 1-2 seek documents and information concerning "communications" and "meetings" with PHAN and *eight* other entities (as well as one person, Chelsa Wagner). Exhibit A (Addendum at 4-6); Exhibit B (Addendum at 3-4). The document subpoena's definitions multiply, by several orders of magnitude, the possible communications called for by the subpoena. Thus, UPMC's definition of the "Governor" includes the "Governor's Office" and "any and all persons or entities acting or purporting to act on his or its behalf," and thus apparently includes every current and former employee over the past 8 years who works in an executive agency.

Were these requests not broad enough, Document Request No. 5 and Deposition Request No. 3 seek communications with *any* "patient," *any* "provider," *any* "employer," *any* "elected or appointed government official or legislator," *any* "chamber of commerce," *any* "industry group," and—lest the

foregoing have left anyone out—*any* “other third party.” Exhibit A (Addendum at 6); Exhibit B (Addendum at 4).

The enumerated subject matters of the communications sought in the subpoenas do little to narrow this broad universe of documents. Document Request No. 1 and Deposition Request No. 1 enumerate *eighteen* different subjects, including, e.g., “UPMC/Highmark provider contracting” or “[c]onsumer complaints about UPMC or UPMC/Highmark provider contracting.” Exhibit A (Addendum at 5); Exhibit B (Addendum at 3). Particularly for a non-profit, like PHAN, whose focus is consumer *healthcare* advocacy in Pennsylvania, the laundry list of *healthcare*-related subject matters sought in the subpoenas does not sufficiently winnow the expansive universe of communications involving hundreds or thousands of possible individuals “acting or purporting to act” on behalf of the various named entities.

In light of the broad universe of potentially responsive communications called for in the subpoenas, not to mention the irrelevance of the information to the dispute currently at issue, the burden that would be imposed on PHAN, a small non-profit, is self-evident and unreasonable. *See generally In re Modern Plastics Corp.*, 890 F.3d 244, 252 (6th Cir. 2018) (affirming sanctions against party serving non-party subpoena seeking documents from “36 broad categories” spanning nine years); *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 46-51

(S.D.N.Y.1996) (quashing subpoena as facially overbroad and unduly burdensome where requests sought “all documents” relating to defendant’s financial condition); *see also generally Simon v. Simon*, 6 Pa. D. & C. 3d 196, 205 (Pa. Com. Pl. 1977) (observing “rule of thumb” that “a person should be compelled to undergo greater burdens relative to a lawsuit to which he is a party than a stranger should be asked to undertake”).

2. The Subpoenas Request Information Available through Party Discovery or Public Sources

a. The burden that the subpoenas would impose on PHAN is all the more improper because UPMC can obtain much of the information it seeks through *party* discovery without ever having a need to burden third-party entities like PHAN. *See Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 300 F.R.D. 406, 410 (C.D. Cal. 2014) (a “court may prohibit a party from obtaining discovery from a non-party if that same information is available from another party to the litigation” (citation and internal quotation marks omitted)).

As discussed above, UPMC’s primary argument for why, in its view, the requests in the subpoenas call for relevant documents and information is that UPMC is entitled to understand whether the Attorney General’s proposed modifications to the Consent Decrees were made with input from outside groups. *Supra* at 9. Even if that were a relevant issue (though it is not, for the reasons also discussed above, *id.*), UPMC can obtain any possible Attorney General-PHAN

communications from the Attorney General directly. And UPMC has, in fact, already served expansive discovery on the Attorney General, including voluminous interrogatories, requests for admissions, and document requests on March 1, 2019—requests that overlap in material respects with the subpoenas to PHAN. *Compare* Exhibit D, *with* Exhibits A, *and* Exhibit B.

b. For similar reasons, the significant burden that the subpoenas would impose on PHAN is rendered all the more unreasonable by the fact that certain of the requested documents and information are in UPMC’s possession or in the public domain. It is “not a purpose of discovery for a party to supply, at its own expense, information already under the control or readily available to the opposing party,” *Boyle v. Steiman*, 631 A.2d 1025, 1031 (Pa. Super. 1993), and it is inappropriate for a party already in possession of documents to request the production of the same documents, *Schultz v. Schultz*, 184 A.3d 168, 184 (Pa. Super. 2018).

And yet UPMC’s subpoenas seek “communications and documents exchanged with UPMC,” Exhibit A (Addendum at 4), as well as “public statements, advertising, or other advocacy efforts by PHAN,” *id.* (Addendum at 7).

3. The Substantial Burden Imposed by the Subpoenas Is All the More Unreasonable Because It Implicates PHAN's First Amendment Interests

The acute burdens imposed by the subpoenas are exacerbated by additional First Amendment harm they would entail. Because the subpoenas seek information about PHAN's advocacy efforts and the strategic partners with whom it associates, as well as PHAN's communications with consumers, patients, employers, industry groups, elected officials, and the like, UPMC's subpoenas impinge upon PHAN's First Amendment protections. *See, e.g., NAACP v. Alabama*, 357 U.S. 449, 460-61 (1958) (explaining that "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association" and that "curtail[ment of] the freedom to associate is subject to the closest scrutiny"); *House v. Napolitano*, No. 11-10852 (DJC), 2012 WL 1038816, at *12 (D. Mass. Mar. 28, 2012) (holding that plaintiff stated a claim for violation of freedom of association because "[c]ompulsory disclosure of [his organization's] members, supporters and internal communications of the organization . . . can seriously infringe on privacy of association and belief guaranteed by the First Amendment and can have a profound chilling effect" (internal punctuation and citations omitted)); *ETSI Pipeline Project v. Burlington N., Inc.*, 674 F. Supp. 1489, 1490 (D.D.C. 1987) (making clear that a subpoena may be quashed where "First Amendment rights have been implicated")

and where the party issuing the subpoena “has not sufficiently exhausted all alternative sources for the information sought here or made reasonable efforts to obtain the information elsewhere”).

C. The Court Has Not Authorized Third-Party Discovery.

As the PA Agencies explained in their March 28, 2019 application to quash, the Court’s orders regarding discovery in connection with the pending Petition did not authorize third-party discovery. *See* Application to Quash (Mar. 28, 2019) at 4-7. That ground for a protective order, needless to say, applies equally to the subpoenas UPMC has served on PHAN, since it is also a third party to this litigation.

Though we do not repeat that argument in full here, we note the following for the convenience of the Court. Neither of the Court’s two scheduling orders make reference to any non-party discovery, despite what the PA Agencies describe as “UPMC’s statements during the status conference with this Court that it sought ‘third-party’ discovery of PID, DOH and others.” PA Agencies’ Application to Quash at 3-4; *see also* Scheduling Order I; Scheduling Order II. And in tailoring an expedited schedule for litigating Count I, the Court limited the number of depositions to be taken by each side and ordered that all written discovery requests shall be answered within 30 days of service.

D. The March 21 Subpoena Is Procedurally Deficient Because It Is a Document Subpoena Issued in a Manner Meant to Circumvent the Requirements Applicable to Document Subpoenas

Finally, the March 21 subpoena should be quashed because it clearly was intended to circumvent the twenty-day notice requirement in Rule 4009.21 of the Pennsylvania Rules of Civil Procedure, which provides that a party seeking production from a non-party must give written notice to every party of its intent to serve a subpoena at least twenty days before the date of service. Pa. R.C.P. No. 4009.21(a). The PA Agencies raised this ground in their March 28, 2019 application to quash, *see* Application to Quash (Mar. 28, 2019) at 22-23, and PHAN adopts their arguments in full.

While the Rules allow a limited exception to the twenty-day notice requirement for a subpoena *duces tecum* for documents to be produced in connection with a deposition, Pa. R.C.P. No. 234.1 & 4007.1(d)(2), the language of and comments to those Rules show that the intent behind that exception is that the subpoenaed documents would be produced in connection with a deposition that was noticed legitimately and in good faith. *See, e.g.*, Note to Pa. R.C.P. No. 234.1 (explaining that twenty-day notice requirement not required in deposition context because reasonable notice is ensured by Rule 4007.1(d)(2)'s requirement that documents "shall be produced at the deposition and not earlier, except upon the consent of all parties to the action"); Pa. R.C.P. No. 234.1(b)(1)-(2) (providing that

subpoena “may be used to command a person to attend and to produce documents or things only at” (1) a trial or hearing; or (2) a deposition).

As with UPMC’s subpoenas to the PA Agencies, the March 21 subpoena to PHAN is undoubtedly just a document subpoena. Indeed, counsel for UPMC acknowledged as much. If a party were permitted to notice a sham deposition to obtain documents in contravention of the twenty-day notice requirement for a document subpoena, Pa. R.C.P. No. 4009.21(a) would be a dead letter. *See Tollari v. Gen. Motors Corp.*, 40 D. & C. 4th 339, 347 (Pa. Com. Pl. 1998) (noting that “under Rule 4007.1” defendants “were not permitted to give [subpoenaed non-party] the option of furnishing documents by mail in lieu of travelling” to attend noticed deposition).

CONCLUSION

For the reasons set forth above, PHAN respectfully requests that the Court grant its Application to Quash UPMC’s Subpoenas and for a Protective Order.

BREDHOFF & KAISER, P.L.L.C.

/s/ Matthew H. Clash-Drexler

Matthew H. Clash-Drexler, I.D. No. 86136

Abigail V. Carter (*pro hac vice* application pending)

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mcdrexler@bredhoff.com

acarter@bredhoff.com

Dated: April 8, 2019

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2019, I caused a true and correct copy of the foregoing document to be served on all counsel of record via PACFile.

/s/ Matthew H. Clash-Drexler
Matthew H. Clash-Drexler, I.D. No. 86136

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/ Matthew H. Clash-Drexler
Matthew H. Clash-Drexler, I.D. No. 86136

Dated: April 8, 2019

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

ORDER

AND NOW on this ____ day of _____, 2019, upon consideration of non-party/movant Pennsylvania Health Access Network’s (“PHAN”) Application to Quash and for a Protective Order and any responses thereto, it is HEREBY ORDERED that PHAN’s Application is **GRANTED**. It is FURTHER ORDERED that the subpoenas directed to PHAN, which were the subject of PHAN’s Application, are quashed, and that PHAN is not required to provide any documents or attend any noticed deposition in connection with the subpoenas.

BY THE COURT

Exhibit A



March 21, 2019

VIA HAND DELIVERY

Jared D. Bayer

Direct Phone 215-665-4127
Direct Fax 215-701-2427
jbayer@cozen.com

The Custodian of Records for PHAN
Penna. Health Access Network
1501 Cherry Street
Philadelphia, PA 19102

**Re: Commonwealth of Pennsylvania, By Josh Shapiro, Attorney General, et al. v.
UPMC, A Nonprofit Corporation, et al.
Commonwealth Court of Pennsylvania, No. 334 MD 2014**

Dear Sir or Madam:

Enclosed please find a custodian of records deposition subpoena directed to you for a deposition on April 9, 2019 at 10:00 a.m. at the Office of Cozen O'Connor, One Liberty Place, 1650 Market Street, Suite 2800, Philadelphia, Pennsylvania, which directs you to produce at that time the documents identified in Addendum A to the subpoena.

If all parties to the case consent, we are willing to accept production of the documents requested in lieu of a deposition.

Please let me know if you have any questions.

Sincerely,

COZEN O'CONNOR


By: Jared D. Bayer

JDB:pd
Enclosure

cc: James A. Donahue, III, Esquire (w/encl.)(via email)
Douglas E. Cameron, Esquire (w/encl.)(via email)
Stephen A. Cozen, Esquire (w/encl.)(via email)

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No. 334 MD 20 14

COMMONWEALTH COURT
OF PENNSYLVANIA

Commonwealth of Pennsylvania, By
Joshua Shapiro, Attorney General,
et al., Petitioners,

UPMC, A Nonprofit Corporation, et
al., Respondents.

TO Custodian of Records for PHAN (Penna. Health Access Network)

1. You are ordered by the Court to come to Cozen O'Connor, One Liberty Place, 1650 Market St.,
28th Floor at Philadelphia, Pennsylvania on April 9, 2019 at 10:00 A.M.

to testify on behalf of Respondent, UPMC in the above case, and to remain until
excused.

2. And to bring with you the following: See Attached Addendum

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

Issued by: Stephen A. Cozen, 1650 Market St., 28th Fl., Phila., PA 19103

Tel: 215-665-2020
PA Bar Id#: 03492

(State attorney's name, address, telephone number and identification number)

Date: March 20, 2019

BY THE COURT,

By



Chief Clerk

Seal of the Court



Addendum A to Subpoena

You are directed to produce the documents and things identified below at the time of the custodian of records deposition. Alternatively, with the consent of all parties, the documents may be produced to all parties at an agreed time in lieu of the deposition (but only with the consent of all parties).

I. INSTRUCTIONS

1. Furnish all documents and things that are available to you, including documents in the possession of your attorney or other representative or otherwise subject to your possession and/or control.

2. If it is claimed that an answer (in whole or in part) to any document request or any part thereof is privileged or otherwise protected from discovery, identify such information by its subject matter and state with particularity the nature and basis of each such claim. Any such objection or claim of privilege must be substantiated by a privilege log.

3. The conjunctions "and" and "or" shall not be interpreted disjunctively to exclude any information otherwise within the scope of any request.

4. Unless otherwise provided, the relevant time period for these requests for production is January 1, 2011 through and including the present, which is also referred to in these requests as the "relevant time period."

II. DEFINITIONS

1. "Documents" whenever used herein is intended to be an all-inclusive term referring to any writing and/or recorded or graphic matter, including electronically-stored information, however produced or reproduced. The term "documents" includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts,

diaries, logs, proposals, printouts, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. "Documents" also include any preliminary notes and drafts of all the foregoing, in whatever form, for example: printed, typed, longhand, shorthand, on paper, paper type, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other form. "Documents" also include any document created or generated on a computer, laptop, tablet, smartphone, or personal digital assistant, including, but not limited to, any computer documents, electronic communications, notes, memoranda, internal or external emails, of any kind, in any form, in whatever manner stored, including, but not limited, information stored on a disc, network or tape. This definition covers all such documents so defined in your possession and/or control that are known by you to exist.

2. The term "concerning" means relating to, referring to, describing, evidencing, memorializing, and/or constituting.

3. The term "OAG" shall refer to the Attorney General and Office of the Attorney General, including any and all other persons or entities acting or purporting to act on either of their behalf.

4. The term "Petition" shall refer to the "Commonwealth's Petition to Modify Consent Decrees" filed by the OAG in the matter captioned *Commonwealth of Pennsylvania, by Josh Shapiro, Attorney General v. UPMC, a Nonprofit Corp.*, No. 334 MD 2014 (Pa. Commw. Ct.), a copy of which is attached as Exhibit 1.

5. The term "UPMC" shall refer to UPMC and its subsidiaries and affiliates.

6. The term "Highmark" shall refer to Highmark Health and its subsidiaries and affiliates (including specifically AHN as defined below), as well as any and all other persons or entities acting or purporting to act on any of their behalf.

7. The term “Governor” shall refer to the Pennsylvania Governor, the Pennsylvania Governor’s Office, and any and all persons or entities acting or purporting to act on his or its behalf.

8. The term “PID” shall refer to the Pennsylvania Insurance Department, including any and all other persons or entities acting or purporting to act on its behalf.

9. The term “DOH” shall refer to the Pennsylvania Department of Health, including any and all other persons or entities acting or purporting to act on its behalf.

10. The term “AHN” shall refer to Allegheny Health Network and its subsidiaries, affiliates and predecessors, including any other persons or entities acting or purporting to act on any of their behalf.

11. The term “Consent Decree” shall refer to the separate, nearly identical, reciprocal Consent Decrees entered into on June 27, 2014 between the Commonwealth and UPMC and Highmark respectively.

12. The term “Mediated Agreement” shall refer to the Mediated Agreement agreed to by UPMC and Highmark on or about May 1, 2012.

13. The term “Second Mediated Agreement” shall refer to the Agreement between UPMC and Highmark negotiated through the auspices of the Governor and entered into on or about December 20, 2017.

14. The term “Proposed Modifications” shall refer to the proposed modifications to the Consent Decree set out in ¶ 75 of the Petition and Exhibit G to Petition, including any prior iterations or versions thereof.

15. The term “UPE Approving Order” shall refer to the Pennsylvania 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. April 29, 2013) and subsequently-issued Findings of Fact and Conclusions of Law.

16. The term “Expiration Date Litigation” shall refer to the litigation concerning the expiration date of the Consent Decree that commenced with UPMC’s September 26, 2017 notice that it would terminate its provider contracts on December 31, 2018 and concluded with the Pennsylvania Supreme Court’s Opinion issued on July 18, 2018.

17. The term “Medicare Advantage Litigation” shall refer to the 2015 litigation concerning whether the Consent UPMC precluded UPMC from declining to renew its Medicare Advantage contracts with Highmark that concluded with the Supreme Court’s Opinion in *Commonwealth ex rel. Kane v. UPMC*, 129 A.3d 441 (Pa. 2015).

18. The term “SEIU” shall refer to Service Employees International Union and its subsidiaries and affiliates, as well as any and all other persons or entities acting or purporting to act on any of their behalf.

19. The term “SEIU Healthcare Pennsylvania” shall refer to SEIU Healthcare Pennsylvania and its subsidiaries and affiliates, as well as any and all other persons or entities acting or purporting to act on any of their behalf.

20. The term “PHAN” shall refer to Pennsylvania Health Access Network and its subsidiaries and affiliates, as well as any and all other persons or entities acting or purporting to act on any of their behalf.

III. REQUESTS FOR PRODUCTION

1. All communications and documents exchanged with UPMC, Highmark, the OAG, PID, DOH, Governor, SEIU, SEIU Healthcare Pennsylvania, or Chelsa Wagner concerning any of the following subject matters—

1. UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;
2. Consumer complaints about UPMC or UPMC/Highmark provider contracting;
3. The Consent Decree and/or expiration of the Consent Decree;
4. The Proposed Modifications and/or the Petition;
5. The impact of contracting with UPMC on the financial performance of AHN;
6. The Mediated Agreement and/or the Second Mediated Agreement;
7. The UPE Approving Order;
8. The Petition for Review that was resolved by the Consent Decree, the Expiration Date Litigation, and/or the Medicare Advantage Litigation;
9. Public confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark provider contracts;
10. PMF Industries;
11. INDECS Corporation;
12. Highmark's out-of-network rider product(s);
13. Direct payment by Highmark to UPMC for services provided to out-of-network Highmark insureds;
14. Advertising concerning the Consent Decree, the expiration of the Consent Decree, and/or UPMC/Highmark provider contracting;
15. Tiering and steering;
16. Assessment or evaluation of whether/how the Proposed Modifications further the public interest and/or all communications concerning the Attorney General's ability to advance the public interest;
17. Insurance competition in western Pennsylvania; or
18. Provider competition in western Pennsylvania.

—during the relevant time period.

2. All notes, memoranda, or other documents concerning meetings, conversations, or communications with UPMC, Highmark, the OAG, PID, DOH, Governor, SEIU, SEIU Healthcare Pennsylvania, or Chelsa Wagner concerning the Proposed Modifications, AHN's financial condition, the termination of the Consent Decree, and/or the UPMC/Highmark provider contracts.

3. All notes, memoranda, or other documents used in preparation for meetings with the OAG, PID, DOH, Governor, SEIU, SEIU Healthcare Pennsylvania, Chelsa Wagner, UPMC, and/or Highmark during the relevant time period.

4. All internal documents concerning consumer complaints about UPMC, the Consent Decree, the Mediated Agreement, the Second Mediated Agreement, the Proposed Modifications, and/or UPMC/Highmark provider contracting.

5. All communications or documents exchanged with any employer, state/local/national elected or appointed government official or legislator, chamber of commerce or industry group, patient, APPRISE, provider, and/or other third party (but not including the OAG, PID, DOH, or Governor) regarding the UPE Approving Order, Mediated Agreement, Second Mediated Agreement, Consent Decree, Proposed Modifications, and/or the OAG's Petition.

6. All documents regarding the negotiation of the Mediated Agreement, Consent Decree, Second Mediated Agreement, and/or Proposed Modifications,.

7. All internal documents concerning assessment or evaluation of whether/how the Proposed Modifications further the public interest, and all documents concerning the Attorney General's ability to advance the public interest.

8. All assessments, analyses, and projections concerning the impact of the expiration of the Consent Decree.

9. All notes, memoranda, or other documents used in preparation for meetings with the OAG, PID, DOH, or Governor in 2013, 2014, 2015, 2016, 2017, or 2018.

10. Documents reflecting, concerning, or sufficient to establish any affiliation or relationship between PHAN, SEIU, or SEIU Healthcare PA.

11. Documents regarding the direct or indirect receipt and use by PHAN of any federal funding, including but not limited to funding for the health care “navigator” program.

12. Any and all documents regarding any positions, public statements, advertising, or other advocacy efforts by PHAN to influence or involve itself in the debate or public discourse concerning the Medicare Advantage Litigation.

Exhibit B

No. 334 MD 2014
Commonwealth of Pennsylvania, By
Joshua Shapiro, Attorney General,
et al., Petitioners,

COMMONWEALTH COURT
OF PENNSYLVANIA

vs.
UPMC, A Nonprofit Corporation, et al.,
Respondents.

TO Penna. Health Access Network ("PHAN")

1. You are ordered by the Court to come to Cozen O'Connor, One Liberty Place, 1650 Market Street, Floor 28 Philadelphia, Pennsylvania on Apr. 18, 2019 at 10:00 A.M.

to testify on behalf of UPMC, regarding the topics set forth in the above case, and to remain until excused. in Addendum A.

2. And to bring with you the following: _____

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

Issued by: Stephen A. Cozen, 1650 Market St., 28th Fl., Phila., PA 19103

(State attorney's name, address, telephone number and identification number)
Tel: 215-665-2020
PA#: 03492

BY THE COURT,

Date: March 27, 2019

By *[Signature]*
Chief Clerk

Seal of the Court



ATTORNEY OPERATING ACCOUNT
ONE LIBERTY PLACE
1650 MARKET STREET
PHILADELPHIA, PA 19103
215-665-2104

CHECK NO. 698691

55-7265/212

DATE Mar 28, 2019

\$*****15.00

Fifteen and 00/100

PAY TO THE ORDER OF PHAN (Pennsylvania Health Access Network)

PHAN (Pennsylvania Health Access Network)
1501 Cherry Street
Philadelphia, PA 19102

Citibank, N.A.
New York, NY

[Signature]

IF OVER \$2,000 TWO SIGNATURES REQUIRED

89476

⑈698691⑈ ⑆021272655⑆ 9340101394⑈

Addendum A to Notice of Deposition

You are directed to produce one or more representatives to testify concerning the following topics:

Definitions

1. The term “concerning” means relating to, referring to, describing, evidencing, memorializing, and/or constituting.
2. The term “OAG” shall refer to the Attorney General and Office of the Attorney General, including any and all other persons or entities acting or purporting to act on either of their behalf.
3. The term “Petition” shall refer to the “Commonwealth’s Petition to Modify Consent Decrees” filed by the OAG in the matter captioned *Commonwealth of Pennsylvania, by Josh Shapiro, Attorney General v. UPMC, a Nonprofit Corp.*, No. 334 MD 2014 (Pa. Commw. Ct.), attached as Exhibit A.
4. The term “UPMC” shall refer to UPMC and its subsidiaries and affiliates.
5. The term “Highmark” shall refer to Highmark Health and its subsidiaries and affiliates (including specifically AHN as defined below), as well as any and all other persons or entities acting or purporting to act on any of their behalf.
6. The term “Governor” shall refer to the Pennsylvania Governor, the Pennsylvania Governor’s Office, and any and all persons or entities acting or purporting to act on his or its behalf.
7. The term “PID” shall refer to the Pennsylvania Insurance Department, including any and all other persons or entities acting or purporting to act on its behalf.
8. The term “DOH” shall refer to the Pennsylvania Department of Health, including any and all other persons or entities acting or purporting to act on its behalf.
9. The term “AHN” shall refer to Allegheny Health Network and its subsidiaries, affiliates and predecessors, including any other persons or entities acting or purporting to act on any of their behalf.
10. The term “Consent Decree” shall refer to the separate, nearly identical, reciprocal Consent Decrees entered into on June 27, 2014 between the Commonwealth and UPMC and Highmark respectively.
11. The term “Mediated Agreement” shall refer to the Mediated Agreement agreed to by UPMC and Highmark on or about May 1, 2012.

12. The term “Second Mediated Agreement” shall refer to the Agreement between UPMC and Highmark negotiated through the auspices of the Governor and entered into on or about December 20, 2017.

13. The term “Proposed Modifications” shall refer to the proposed modifications to the Consent Decree set out in ¶ 75 of the Petition and Exhibit G to Petition, including any prior iterations or versions thereof.

14. The term “UPE Approving Order” shall refer to the Pennsylvania 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. April 29, 2013) and subsequently-issued Findings of Fact and Conclusions of Law.

15. The term “Expiration Date Litigation” shall refer to the litigation concerning the expiration date of the Consent Decree that commenced with UPMC’s September 26, 2017 notice that it would terminate its provider contracts on December 31, 2018 and concluded with the Pennsylvania Supreme Court’s Opinion issued on July 18, 2018.

16. The term “Medicare Advantage Litigation” shall refer to the 2015 litigation concerning whether the Consent UPMC precluded UPMC from declining to renew its Medicare Advantage contracts with Highmark that concluded with the Supreme Court’s Opinion in *Commonwealth ex rel. Kane v. UPMC*, 129 A.3d 441 (Pa. 2015).

17. The term “SEIU” shall refer to Service Employees International Union and its subsidiaries and affiliates, as well as any and all other persons or entities acting or purporting to act on any of their behalf.

18. The term “SEIU Healthcare Pennsylvania” shall refer to SEIU Healthcare Pennsylvania and its subsidiaries and affiliates, as well as any and all other persons or entities acting or purporting to act on any of their behalf.

19. The term “PHAN” shall refer to Pennsylvania Health Access Network and its subsidiaries and affiliates, as well as any and all other persons or entities acting or purporting to act on any of their behalf.

20. The term “PBGH” shall refer to the Pittsburgh Business Group on Health and its subsidiaries and affiliates, as well as any and all other persons or entities acting or purporting to act on any of their behalf.

21. The term “Affiliation Transaction” means the affiliation transaction involving Highmark and West Penn Allegheny Health System that was the subject of the UPE Approving Order.

22. The term “Injunction Litigation” means the litigation in the Court of Common Pleas of Allegheny County, Pennsylvania, No. GD-12-018361, and captioned *Highmark Inc. v. West Penn Allegheny Health System, Inc., et al.*

Topics

1. All meetings or communications with UPMC, Highmark, the OAG, PID, DOH, Governor, SEIU, SEIU Healthcare Pennsylvania, or Chelsa Wagner concerning any of the following subject matters—
 - A. UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;
 - B. Consumer complaints about UPMC or UPMC/Highmark provider contracting;
 - C. The Consent Decree and/or expiration of the Consent Decree;
 - D. The Proposed Modifications and/or the Petition;
 - E. The impact of contracting with UPMC on the financial performance of AHN;
 - F. The Mediated Agreement and/or the Second Mediated Agreement;
 - G. The Affiliation Transaction, the Form A application filed with the PID seeking approval of the Affiliation Transaction and all amendments to the Form A, the proceedings thereon, the UPE Approving Order, and/or the Injunction Litigation;
 - H. The Petition for Review that was resolved by the Consent Decree, the Expiration Date Litigation, and/or the Medicare Advantage Litigation;
 - I. Public confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark provider contracts;
 - J. PMF Industries;
 - K. INDECS Corporation;
 - L. Highmark's out-of-network rider product(s);
 - M. Direct payment by Highmark to UPMC for services provided to out-of-network Highmark insureds;
 - N. Advertising concerning the Consent Decree, the expiration of the Consent Decree, and/or UPMC/Highmark provider contracting;
 - O. Tiering and steering;
 - P. Assessment or evaluation of whether/how the Proposed Modifications further the public interest and/or all communications concerning the Attorney General's ability to advance the public interest;

Q. Insurance markets in western Pennsylvania; or

R. Provider markets in western Pennsylvania.

—during the relevant time period.

2. Consumer complaints about UPMC, the Consent Decree, the Mediated Agreement, the Second Mediated Agreement, the Proposed Modifications, and/or UPMC/Highmark provider contracting.

3. All communications with any employer, state/local/national elected or appointed government official or legislator, chamber of commerce or industry group, patient, provider, APPRISE, PBGH, and/or other third party (but not including the OAG, PID, DOH, or Governor) regarding the Affiliation Transaction, the UPE Approving Order, the Mediated Agreement, the Second Mediated Agreement, the Consent Decree, the Proposed Modifications, the OAG's Petition, and/or UPMC/Highmark provider contracting.

4. The Mediated Agreement, negotiation of the Mediated Agreement, terms of the Mediated Agreement, and all communications with Highmark, UPMC, the OAG, PID, DOH, and/or the Governor concerning the Mediated Agreement.

5. The Consent Decree, negotiation of the Consent Decree, terms of the Consent Decree, the impact and purpose of the Consent Decree, and all communications with Highmark, UPMC, the OAG, PID, DOH, and/or the Governor concerning the Consent Decree.

6. The Second Mediated Agreement, negotiation of the Second Mediated Agreement, terms of the Second Mediated Agreement, and all communications with Highmark, UPMC, the OAG, PID, DOH, and/or the Governor concerning the Second Mediated Agreement.

7. The Proposed Modifications, negotiations or discussions concerning the Proposed Modifications, terms of the Proposed Modifications, and all communications with Highmark, UPMC, the OAG, PID, DOH, and/or the Governor concerning the Proposed Modifications.

8. The terms of the Proposed Modifications:

A. Imposition of a firewall between affiliated providers and insurers (Pet. ¶ 75.a).

B. Duty of providers to contract with any willing insurer (with binding arbitration following duty to negotiate) (Pet. ¶ 75.b).

C. Duty of insurers to contract with any willing insurer (with binding arbitration following duty to negotiate) (Pet. ¶ 75.c).

D. Prohibition on anti-tiering or anti-steering provisions (Pet. ¶ 75.d).

E. Prohibition on gag clauses (Pet. ¶ 75.e).

- F. Prohibition on “most favored nation” clauses (Pet. ¶ 75.f).
- G. Prohibition on “must have” clauses (Pet. ¶ 75.g).
- H. Prohibition on provider-based billing (Pet. ¶ 75.h).
- I. Prohibition on “all-or-nothing” clauses (Pet. ¶ 75.i).
- J. Prohibition on exclusive contracts (Pet. ¶ 75.j).
- K. Limitation on charges for emergency services to out-of-network patients to the provider’s average in-network rates (Pet. ¶ 75.k).
- L. Prohibition on terminating existing payer contracts other than for cause (Pet. ¶ 75.l).
- M. Requiring payers to pay providers directly for emergency services at in-network rates (Pet. ¶ 75.m).
- N. Prohibition on discrimination against patients based on their physician or insurer (Pet. ¶ 75.n).
- O. Requiring payers to maintain direct communications with any provider regarding patients being treated by the provider (Pet. ¶ 75.o).
- P. Prohibition on unclear or misleading advertising (Pet. ¶ 75.p).
- Q. Replacement of a majority of Board members that were on Board as of April 1, 2013 (Pet. ¶ 75.q).
- R. Indefinite extension of the term (Pet. ¶ 75.r).

9. Any assessment or evaluation of whether/how the Proposed Modifications further the public interest, and all documents concerning the Attorney General’s ability to advance the public interest.

10. All assessments, analyses, and projections concerning the impact of the expiration of the Consent Decree.

11. Any affiliation or relationship between PHAN, SEIU, or SEIU Healthcare PA.

12. PHAN’s direct or indirect receipt and use of any federal funding, including but not limited to funding for the health care “navigator” program.

13. Any positions, public statements, advertising, or other advocacy efforts by PHAN to influence or involve itself in the debate or public discourse concerning the Medicare Advantage Litigation.

Exhibit C

From: Bayer, Jared D. <JBayer@cozen.com>
Sent: Friday, April 5, 2019 8:35 AM
To: Abigail Carter
Cc: Graham Lake
Subject: RE: UPMC Subpoena to PHAN

Abigail:

Thank you for your email. After discussion with my team here, we do want production of documents from PHAN, as without seeing the documents, we will not be in a position to evaluate whether some form of stipulation in lieu of a corporate designee deposition would be acceptable. I am available today between 11am and 4pm to discuss the document subpoena further. Having reviewed the document subpoena again after our call, I do think it is narrowly tailored to the documents we are seeking, but am more than happy to discuss with you. (And, you are correct that for the custodian of records subpoena, the parties have consented to your production of documents without convening a formal deposition.) Please let me know what time you would like to talk, and either I can call you or you can call me then.

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](#)

From: Abigail Carter <acarter@bredhoff.com>
Sent: Thursday, April 4, 2019 4:52 PM
To: Bayer, Jared D. <JBayer@cozen.com>
Cc: Graham Lake <glake@bredhoff.com>
Subject: UPMC Subpoena to PHAN

****EXTERNAL SENDER****

Jared,

Thank you for taking my call yesterday about the subpoenas UPMC served upon the Pennsylvania Health Access Network dated 3/21 and 3/27. Please allow this email to confirm the substance of our conversation on the following points:

- As to the subpoena dated 3/21, you don't need a PHAN representative to show up for a deposition on 4/9 as the parties have agreed to accept documents in lieu of a deposition.
- Separate from the document subpoena, you request a PHAN representative be made available on 4/18 for a deposition, in connection with the subpoena dated 3/27, though you indicated you are flexible on dates – which is appreciated because I am unavailable on the 4/18.

In addition, I wanted to follow up on my request about whether UPMC will withdraw the subpoenas based upon some set of assurances about the extent of PHAN's non-involvement in certain events relevant to the pending petition to modify the consent decree. Please let me know UPMC's position on this. If we are unable to reach agreement on terms under which UPMC would withdraw its subpoenas, we will want to discuss narrowing the subpoenas.

As I mentioned on the phone, we read the subpoenas as seeking information well beyond what is relevant to the non-dismissed portions of the complaint. On our call, you articulated your view that UPMC is entitled to understand whether OAG's proposed modifications to the consent decree were made with any input from outside groups. Putting aside our disagreement with the relevance of that proposition for the moment, even if accepted, that theory of relevance would not justify the burden of production as to the wide range of documents you have requested. Therefore, prior to undertaking the expensive and time-consuming process of attempting to collect and produce the documents sought by your subpoena, we would like to discuss your theory of relevance as to the documents sought in the subpoena and ways to narrow the subpoena.

Please let me know if you would be available to discuss these issues tomorrow afternoon. Given the return date of April 9, we will want to take steps to ensure we preserve all of our objections prior to Tuesday.

Thanks, Abigail Carter

Notice: This communication, including attachments, may contain information that is confidential and protected by the attorney/client or other privileges. It constitutes non-public information intended to be conveyed only to the designated recipient(s). If the reader or recipient of this communication is not the intended recipient, an employee or agent of the intended recipient who is responsible for delivering it to the intended recipient, or you believe that you have received this communication in error, please notify the sender immediately by return e-mail and promptly delete this e-mail, including attachments without reading or saving them in any manner. The unauthorized use, dissemination, distribution, or reproduction of this e-mail, including attachments, is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) is not a waiver of any attorney/client or other privilege.

Exhibit D



March 1, 2019

Stephen A. Cozen

Direct Phone 215-665-2020

Direct Fax 215-701-2020

scozen@cozen.com

**VIA E-MAIL (JDONAHUE@ATTORNEYGENERAL.GOV)
VIA U.S. MAIL**

James A. Donahue, III
PA Office of Attorney General
Public Protection Division
14th Fl. Strawberry Square
Harrisburg, PA 17120

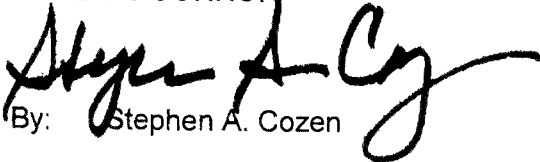
**Re: Commonwealth of Pennsylvania by Josh Shapiro, Attorney General, et al. v.
UPMC, A Nonprofit Corp., et al.**

Dear Jim:

Enclosed please find UPMC's First Set of Interrogatories and Requests for Production Directed to the Attorney General.

Sincerely,

COZEN O'CONNOR


By: Stephen A. Cozen

SAC:pd
Enclosure

LEGAL401478201

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

**UPMC'S FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION DIRECTED TO THE ATTORNEY GENERAL**

Pursuant to Rules 4005 and 4009.11 of the Pennsylvania Rules of Civil Procedure, respondent UPMC hereby propounds the following interrogatories and requests for the production of documents and things to petitioner Attorney General Josh Shapiro and requests that responses to and production of the documents and materials requested be served within thirty days or such shorter time as the Court may order.

I. INSTRUCTIONS

1. Furnish all information that is available to you, including information in the possession of your attorney or other representative or otherwise subject to your possession and/or control.

2. If it is claimed that an answer (in whole or in part) to any interrogatory or document request or any part thereof is privileged or otherwise protected from discovery, identify such information by its subject matter and state with particularity the nature and basis of

each such claim. Any such objection or claim of privilege must be substantiated by a privilege log to be served with your responses to these interrogatories and requests.

3. If you object to any part of an interrogatory or document request, answer all parts of such request as to which you do not object and, as to each part to which you do object, separately set forth the specific basis for the objection.

4. If you do not possess knowledge of the requested information, you should so state your lack of knowledge and describe all efforts made by you to obtain the information or documents necessary to answer the request.

5. The conjunctions “and” and “or” shall not be interpreted disjunctively to exclude any information otherwise within the scope of any interrogatory or request.

6. Unless otherwise provided, the relevant time period for these interrogatories and requests for production is January 1, 2011 through and including the present, which is also referred to in these interrogatories and requests as the “relevant time period.”

II. DEFINITIONS

1. “Documents” whenever used herein is intended to be an all-inclusive term referring to any writing and/or recorded or graphic matter, including electronically-stored information, however produced or reproduced. The term “documents” includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, printouts, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. “Documents” also include any preliminary notes and drafts of all the foregoing, in whatever form, for example: printed, typed, longhand, shorthand, on paper, paper type, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion

picture film, phonograph records, or other form. "Documents" also include any document created or generated on a computer, laptop, tablet, smartphone, or personal digital assistant, including, but not limited to, any computer documents, electronic communications, notes, memoranda, internal or external emails, of any kind, in any form, in whatever manner stored, including, but not limited, information stored on a disc, network or tape. This definition covers all such documents so defined in your possession and/or control that are known by you to exist.

2. The terms "describe in detail," "identify with particularity," "state with particularity," and "set forth the factual basis" shall mean to describe fully by reference to underlying facts rather than by ultimate facts or conclusions of facts or law and to particularize as to time, place and manner.

3. The term "identify" when used with reference to an individual person shall mean to state his or her full name (or if not known, his or her job title or position and employer, or if no other identification is possible provide sufficient description so that he or she will be identifiable to the recipients of your answer), and last known residence or business address.

4. The term "identify" when used with reference to a document or written communication shall mean to state the type of document or communication (e.g., memorandum, employment application, letter, handwritten notes, etc. including any document which is or has been attached to the document being identified), state its date, identify the author (and if different, the originator and signer), state the title of the document or communication and if any such document or communication was, but no longer is, in your possession or subject to your control, state the present or last known location of the document or communication. Further, set forth the substance of the document or communication, or, in the alternative, produce the document.

5. The term "identify" when used with reference to an oral communication, discussion, conversation or any other oral statement, shall mean to describe in detail the

substance of each such communication, discussion, conversation or statement, state the date of such communication, discussion, conversation or statement, the place where such communication, discussion, conversation or statement was held and identify each person present for such communication, discussion, conversation or statement.

6. The term “concerning” means relating to, referring to, describing, evidencing, memorializing, and/or constituting.

7. “You” or “Your” whenever used in these interrogatories and requests for production shall refer to the Attorney General and Office of the Attorney General (“OAG”), including any and all other persons or entities acting or purporting to act on either of their behalf.

8. The term “Petition” shall refer to the “Commonwealth’s Petition to Modify Consent Decrees” filed by the OAG in the matter captioned *Commonwealth of Pennsylvania, by Josh Shapiro, Attorney General v. UPMC, a Nonprofit Corp.*, No. 334 M.D. 2014 (Pa. Commw. Ct.), and the term “Lawsuit” shall refer to the instant lawsuit.

9. The term “UPMC” shall refer to UPMC and its subsidiaries and affiliates.

10. The term “Highmark” shall refer to Highmark Health and its subsidiaries and affiliates, including any and all other persons or entities acting or purporting to act on any of their behalf.

11. “Governor” means the Pennsylvania Governor, the Pennsylvania Governor’s Office, and any and all persons or entities acting or purporting to act on his or its behalf.

12. The term “PID” shall refer to the Pennsylvania Insurance Department, including any and all other persons or entities acting or purporting to act on its behalf.

13. The term “DOH” shall refer to the Pennsylvania Department of Health, including any and all other persons or entities acting or purporting to act on its behalf.

14. The term “Consent Decree” shall refer to the separate, nearly identical, reciprocal Consent Decrees entered into on June 27, 2014 between the Commonwealth and UPMC and Highmark respectively.

15. The term “Mediated Agreement” shall refer to the Mediated Agreement agreed to by UPMC and Highmark on or about May 1, 2012.

16. The term “Proposed Modifications” shall refer to the proposed modifications to the Consent Decree set out in ¶ 75 of the Petition and Exhibit G to Petition, including any prior iterations or versions thereof.

17. The term “UPE Approving Order” shall refer to the Pennsylvania 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. April 29, 2013) and subsequently-issued Findings of Fact and Conclusions of Law.

III. FIRST SET OF 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:

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:

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:

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

ANSWER:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

21. 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:

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:

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:

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:

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

ANSWER:

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:

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:

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:

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:

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:

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:

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:

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:

IV. FIRST REQUEST FOR PRODUCTION

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.

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

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.

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.

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.

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

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.

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.

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

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.

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

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

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.

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

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.

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.

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

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

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

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.

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

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.

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

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

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.

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.

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.

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.

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.

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

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

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.

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

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

Dated: March 1, 2019

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/s/ Stephen A. Cozen

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