

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
By JOSH SHAPIRO,
Attorney General, et al.;

Petitioners,

v.

UPMC, A Nonprofit Corp., et al.;

Respondents.

No. 334 M.D. 2014

**HIGHMARK'S RESPONSE TO THE PETITION OF THE
COMMONWEALTH OF PENNSYLVANIA OFFICE OF ATTORNEY
GENERAL TO MODIFY CONSENT DECREES**

A. Introduction

Respondents Highmark Health and Highmark Inc. (collectively, “Highmark”) hereby file this Response to the Commonwealth’s Petition to Modify Consent Decrees (the “OAG Petition”) filed by the Office of the Attorney General (the “Attorney General”).

Highmark agrees with the Attorney General that nonprofit charitable health systems must be operated to benefit the community and to follow their stated charitable purposes. Highmark has agreed to the terms of the Attorney General’s proposed modified consent decree as described in the OAG Petition provided that the terms apply to both respondents equally. Highmark supports the Attorney General’s position that this Court should modify the Consent Decrees to ensure

that charitable healthcare organizations operate in accord with their charitable obligations to provide reasonably priced and accessible healthcare to the community and should enter the proposed consent decree attached to the OAG Petition as Exhibit G.

As further introduction, Highmark is not required to and does not respond to legal or factual allegations not directed at Highmark.

B. UPMC's Stated Charitable Purposes and Representations to the Public

1-6. The averments contained in Paragraphs 1-6 are not directed at Highmark, and therefore no response is required.

C. Public Financial Support for UPMC

7. Highmark admits the averments contained in subsections (b) and (c) of Paragraph 7. All other averments contained in Paragraph 7 are not directed at Highmark, and therefore no response is required.

8-11. The averments contained in Paragraphs 8-11 are not directed at Highmark, and therefore no response is required.

D. History

12-13. Admitted.

14. The averments contained in Paragraph 14 are not directed at Highmark, and therefore no response is required.

15. Highmark admits that it agreed to the Mediated Agreement¹ on May 1, 2012, and states that the Mediated Agreement speaks for itself.

16. Admitted.

17. Highmark denies the averment of Paragraph 17 that Highmark engaged in any misleading marketing campaigns. The remaining averments of Paragraph 17 are not directed at Highmark, and therefore no response is required.

18. Admitted.

19. Highmark admits that the Attorney General and other state agencies have been involved in addressing and resolving disputes between Highmark and UPMC arising under the Consent Decrees, both in and out of court. Highmark admits that the Petition represents the first action taken by any party to modify the terms of the Consent Decrees.

20. Highmark admits that on December 20, 2017 it signed a Term Sheet for continued access for Highmark commercial members to certain UPMC services, which Term Sheet was negotiated through the auspices of Governor Tom Wolf. Highmark further admits that the Term Sheet does not include Highmark's Medicare Advantage plans.

¹ All capitalized terms not defined herein shall have the same definition as provided in the OAG Petition.

21. Highmark admits that the 2017 Term Sheet provides access for Highmark commercial members to fewer services, and offers fewer protections, than those afforded under the Consent Decrees.

22-23. The averments contained in Paragraphs 22-23 are not directed at Highmark, and therefore no response is required.

E. UPMC's Departure From Its Charitable Purpose²

24. As to the first sentence of Paragraph 24, Highmark states that the Consent Decrees are written documents that speak for themselves. Highmark admits the averments contained in the second sentence of Paragraph 24. All other averments contained in Paragraph 24 are not directed at Highmark, and therefore no response is required.

25. The averments contained in Paragraph 25 are not directed at Highmark, and therefore no response is required.

26. Highmark agrees that the Consent Decrees have not fully secured UPMC's compliance with its stated charitable purpose as evidenced by UPMC's efforts to deny or delay services to, and impose costs on, out-of-network patients including a requirement for prepayment before care is delivered to some patients. By way of further response, in keeping with Highmark Health's stated charitable purpose, and out of concern for healthcare consumers in the Commonwealth,

² The introduction to Section E contains legal conclusions directed at a party other than Highmark to which no response is required.

Highmark was motivated to accept the terms of the Attorney General's proposed modifications to the Consent Decrees, provided that UPMC also was subject to the same terms. Highmark denies all other allegations contained in Paragraph 26.

27-63. The averments contained in Paragraphs 27-63 are not directed at Highmark, and therefore no response is required.

F. UPMC's Expansion

64-70. The averments contained in Paragraphs 64-70 are not directed at Highmark, and therefore no response is required.

Count I
Modification of the Consent Decrees is Necessary to Ensure Compliance with Charities Laws

71-84. Highmark agrees with the Attorney General that nonprofit charitable health systems must be operated to benefit the community and to follow their stated charitable purposes. Highmark has agreed to the terms of the Attorney General's modified consent decree as described in the OAG Petition provided that the terms apply to both respondents equally. Highmark supports the Attorney General's position that this Court should modify the Consent Decrees to ensure that charitable organizations operate in accord with their charitable obligations to provide reasonably priced and accessible healthcare to the community and should enter the proposed consent decree attached to the OAG Petition as Exhibit G.

Count II
UPMC's Violation of the Solicitation of Funds for Charitable Purposes Act
(Charities Act)

85-97. The averments contained in Count II are not directed at Highmark, and therefore no response is required.

Count III
UPMC's Breach of its Fiduciary Duties of Loyalty and Care Owed to its
Constituent Health Care Providers and Public-at-Large

98-110. The averments contained in Count III are not directed at Highmark, and therefore no response is required.

Count IV
UPMC's Violations of the Unfair Trade Practices and Consumer Protection
Law

111-125. The averments contained in Count IV are not directed at Highmark, and therefore no response is required.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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.

Submitted by:	UPE, a/k/a Highmark
Signature:	Health and Highmark Inc.
Name:	<u>/s/ Douglas E. Cameron</u>
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 21st day of February, 2019, a true and correct copy of the foregoing document was served upon the following counsel by electronic PACFile:

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