

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

**THE COMMONWEALTH OF PENNSYLVANIA’S APPLICATION
TO QUASH UPMC’S SUBPOENA TO DEPOSE ITS LEAD COUNSEL
AND APPLICATION FOR A PROTECTIVE ORDER**

The Commonwealth of Pennsylvania, acting by Attorney General Josh Shapiro and through the Office of Attorney General (the “Commonwealth”), hereby moves pursuant to Pennsylvania Rule of Appellate Procedure 123 and Pennsylvania Rule of Civil Procedure 4012(a) to quash the notice of deposition and subpoena sent to its lead counsel, Executive Deputy Attorney General James A. Donahue, III, and respectfully asks this Court to issue a protective order prohibiting Respondent UPMC, A Nonprofit Corp., et al. (“UPMC”) from taking his deposition. In support its application, the Commonwealth states as follows:

INTRODUCTION

Respondent UPMC, in short order, has served the Commonwealth with voluminous and redundant written discovery in three separate forums related to the

matter before this Court. Before a single written response or document was due to be served, UPMC steamrolled forward, demanding the deposition under oath of the Commonwealth's longtime lead counsel in all UPMC/Highmark matters, Executive Deputy James A. Donahue, III. UPMC subpoenaed him for deposition at a date and time it chose unilaterally: *this Friday*, March 8 at 10:00 a.m.

In any case, depositions of an adversary's counsel are presumptively disallowed. And, here, the deposition of Mr. Donahue should be outright denied. In addition to the attorney-client privilege and work product doctrine, which typically bar the testimony of opposing counsel, the Attorney General is protected by even more stringent, specialized privileges that prevent his investigatory and decision-making processes from disclosure. Among these privileges are the deliberative process and investigative privileges.

In correspondence this week asking UPMC to voluntarily withdraw its subpoena, UPMC effectively admitted that the information it seeks from Mr. Donahue is precisely that which the above legal protections are meant to prevent. Further, even in the rare case where a party is permitted to depose its adversary's counsel, such a deposition should be narrowly proscribed, only after a showing of cause, because more appropriate forms of discovery failed to disclose a necessary, non-protected fact. Never should a party be permitted to subpoena opposing counsel without constraints by serving a subpoena out of the gate. For these

reasons, the Commonwealth's Motion should be granted, UPMC's subpoena should be quashed, and a protective order should be issued preventing the deposition of the Commonwealth's counsel.

FACTUAL BACKGROUND

1. On Friday, March 1, 2019 at 5:00 p.m., Respondent UPMC emailed and sent to the Commonwealth a letter enclosing a notice of deposition and subpoena directing Executive Deputy Attorney General James A. Donahue, III, to attend a deposition under oath which it unilaterally scheduled for the following Friday, March 8, seven days later. A copy of the letter, notice and subpoena is attached hereto, collectively, as **Exhibit A**.¹

¹ In the same email, UPMC served the Attorney General with 33 interrogatories and 52 requests for production of documents. A true and correct copy of this discovery is attached hereto as **Exhibit B**. Document request number 3, alone, demands "[a]ll communications and documents exchanged with" 20 enumerated individuals and entities (the last of which is any "other third parties,") on any of 19 enumerated topics, during a more-than-8-year time period. Ex. B.

Indeed, far beyond the objectionable deposition of Executive Deputy Attorney General James A. Donahue, III, UPMC has pursued voluminous discovery related to this matter in several different forums:

- On February 12, UPMC's counsel submitted to the Office of Attorney General an extensive demand for records under Pennsylvania's Right to Know Law. A true and correct copy UPMC's Right to Know Request is attached hereto as **Exhibit C**;
- On March 4, UPMC served the Attorney General with 202 new requests for admission in this Commonwealth Court matter. A true and correct copy UPMC's 202 requests for admission in this matter is attached hereto as **Exhibit D**; and
- On March 5, UPMC served the Attorney General with UPMC's "first set[s]" of interrogatories, requests for production of documents, and

2. Executive Deputy Attorney General Donahue has been the Office of Attorney General's top attorney on the issues before the Court since the inception of its involvement in the conflict between UPMC and Highmark.

3. UPMC failed to identify any basis for taking Mr. Donahue's deposition in its initial correspondence, and the Commonwealth was concerned in light of the many legal privileges and protections that prevent Mr. Donahue from disclosing the information UPMC apparently sought.

4. That Monday, March 4, the Commonwealth wrote UPMC an email expressing its concerns and asking to discuss them by phone; asking for UPMC to clarify what, if any, non-privileged and non-protected factual information it sought from Mr. Donahue's testimony; and offering to produce to UPMC any such information in a less-intrusive manner. In the absence of a legitimate purpose for Mr. Donahue's testimony that would not invoke the Attorney General's many legal privileges and protections, the Commonwealth respectfully requested that UPMC voluntarily withdraw its subpoena to avoid otherwise unnecessary motion practice.

33 requests for admission in an overlapping federal court injunction UPMC brought against the Attorney General. *UPMC Pinnacle, et al., v. Joshua D. Shapiro*, 1:19-CV-00298 (M.D. Pa.). True and correct copies of UPMC's discovery in the overlapping federal matter are attached hereto as **Exhibit E**. Prior to a hearing on UPMC's preliminary injunction, that Court allowed the Commonwealth to file a Motion to Dismiss on the grounds of ripeness and federal abstention, and briefing on that Motion is pending. *Shapiro, supra*, Docs. 20, 36.

A true and correct copy of the Commonwealth's March 4, 2019 email is attached hereto as **Exhibit F**.

5. UPMC did not call the Commonwealth to discuss but, instead, sent a letter the following day refusing to withdraw its subpoena and inviting the Commonwealth to file this Motion. A true and correct copy of UPMC's March 5, 2019 letter is attached hereto as **Exhibit G**.

6. In its letter, UPMC admitted what the Commonwealth had feared: UPMC is seeking from Mr. Donahue testimony that is legally protected from disclosure by, among other things, the attorney work product doctrine, the attorney-client privilege, the deliberative process privilege, and the investigative privilege. Ex. G.

7. Specifically, UPMC acknowledged that it wishes to depose Mr. Donahue because he "was privy to, or a participant in, *the determination*" by the Attorney General of the Commonwealth's legal strategy to petition this Court to modify the Consent Decree between the parties. Ex. G. at 2 (emphasis added).

8. UPMC indicated that it seeks Mr. Donahue's testimony about the Commonwealth's "*investigat[ion]*" into the conduct of Highmark and UPMC" and its "*negotiat[ion]*" on behalf of the OAG" of the "understandings and agreements reached" between the parties. Ex. G. at 2 (emphasis added).

9. UPMC also admitted that it seeks to depose Mr. Donahue regarding “the *basis for the conclusions he reached*,” the “*actions that he took on behalf of the OAG*,” and “his many *private and public* statements ... *on behalf of the OAG*.” Ex. G. at 2 (emphasis added).

10. UPMC may not do so.

LEGAL ARGUMENT

11. At all relevant times, Mr. Donahue served as the Commonwealth’s lead counsel with respect to the issues raised in this lawsuit. As set forth below, by seeking to depose counsel without demonstrating any particular need, UPMC’s deposition is presumptively impermissible and should be quashed. The deposition topics listed by UPMC in its letter are also improper because they are protected by legal privileges and any non-privileged information appears to be available from other sources. UPMC’s deposition should be quashed for these separate and independent reasons.

A. UPMC’s Deposition Is Presumptively Impermissible.

12. Depositions of opposing counsel are permissible only if the party seeking the deposition can show that “(1) no other means exist to obtain the information; (2) the information sought is relevant and non-privileged; and (3) the information sought is crucial to the preparation of the case.” *In re Linerboard Antitrust Litig.*, 237 F.R.D. 373, 385 (E.D. Pa. 2006). “[P]lacing the burden on the

party seeking to depose opposing counsel . . . better safeguards the considerable policy concerns that arise when a litigant attempts to depose its opponent's counsel of record.” *State Farm. Mut. Auto. Ins. Co. v. Stravropolskiy*, 2017 WL 3116284, at *2 (E.D. Pa. July 21, 2017).

13. UPMC has made no effort whatsoever to show that any of the above factors are satisfied, and they cannot. UPMC has not even waited to see the objections and responses to the information sought by written discovery and it appears only to be seeking information that is privileged. The deposition should be quashed for these reasons alone.

B. UPMC Is Seeking To Depose The Commonwealth's Lead Counsel On Impermissible Topics

14. Even if UPMC was able to depose Mr. Donahue without satisfying the above factors (it cannot), the deposition is also improper because the topics listed by UPMC are impermissible. This is a separate and independent basis to quash the deposition.

15. UPMC seeks to depose Mr. Donahue on the following topics: (i) “the nature of the facts that he found during his investigations” of Highmark and UPMC; (ii) “the basis for the conclusions he reached”; (iii) the basis for “actions he took on behalf of the OAG”; and (iv) “his many private and public statements and admissions on behalf of the OAG.” **Exhibit G.** Each of those topics is either protected by an applicable privilege or relates to information that may be available

through less intrusive and burdensome means. As such, the topics are improper and the deposition should be quashed.

1. UPMC Is Seeking Privileged Information.

(i) *The Attorney-Work Product Doctrine Applies.*

16. Topics (i) (investigative factual findings) and (ii) and (iii) (the basis for conclusions and actions) improperly seek testimony that is based on protected attorney-work product information.

17. Pennsylvania courts apply the attorney work product doctrine broadly. *See* Pa. R. Civ. P. 4003.3. In particular, the courts have held that the “work product doctrine protects ‘mental impressions, theories, notes, strategies, research and the like created by an attorney in the course of his or her professional duties’” *Estate of Paterno v. Nat’l Collegiate Athletic Ass’n*, 168 A.3d 187, 201 (Pa. Super. Ct. 2017) (quoting *Bagwell v. Pennsylvania Dep’t of Corr.*, 103 A.3d 409, 411 (Pa. Cmwlth. Ct. 2014)). “Thus, materials that contain mental impressions are protected regardless of whether they are prepared in anticipation of litigation.” *Id.*

18. Testimony relating to investigative findings or determinations made by opposing counsel during the course of his legal duties (topic i) plainly encompass “personal recollections prepared or formed by an adverse party’s counsel in the course of his legal duties.” *Upjohn Co. v. United States*, 449 U.S. 383, 397 (1981); *see Estate of Paterno*, 168 A.3d at 199 (“The trial court erred in

ordering Appellants to produce redacted copies of . . . attorney interview notes and summaries. Work product doctrine protects those documents in their entirety.”). In addition, discovery of the basis for conclusions and actions of opposing counsel (topics ii and iii) implicates the very core of the attorney work-product doctrine. *See* Pa. R.C.P. 4003.3 (discovery “shall not include disclosure of the mental impressions of a party’s attorney or his or her conclusions, opinions . . . or legal theories”). As such, any testimony by Mr. Donahue concerning those topics is barred by the attorney work product doctrine.²

(ii) The Attorney-Client Privilege Applies.

19. UPMC also seeks to depose Mr. Donahue on “his many private statements” (topic iv). That topic is not only impermissibly (and impossibly) vague, it is also improper because it seeks information protected by the attorney client privilege.

20. “[I]n Pennsylvania, the attorney-client privilege operates in a two-way fashion to protect confidential client-to-attorney or attorney-to-client

² UPMC is especially focused on Mr. Donahue's October 2014 testimony before the Democratic Policy Committee of the Pennsylvania House of Representatives. UPMC has the information regarding that hearing it is entitled to, a transcript and a video recording of the testimony. It is not entitled to look into the drafting, formulation and mental impressions of Mr. Donahue which led to that testimony.

communications made for the purpose of obtaining or providing professional legal advice.” *Gillard v. AIG Ins., Co.*, 15 A.3d 44, 59 (Pa. 2011).

21. Under that standard, any private statements made by Mr. Donahue to OAG or other Commonwealth officials for the purpose of providing legal advice are privileged and can only be waived by the client. *See Commodity Futures Trading Comm’n v. Weintraub*, 471 U.S. 343, 348 (1985); 204 Pa. Code Rule 1.6 (“A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent . . .”). UPMC has made no attempt to limit the topic to non-privileged information and it is therefore improper.

(iii) The Deliberative Process Privilege Applies.

22. The deliberative process privilege also prohibits UPMC from seeking testimony from Mr. Donahue on the above topics. The deliberative process privilege prevents the disclosure of “confidential deliberations of law or policymaking, reflecting opinions, recommendations or advice.” *Chisler v. Johnston*, 796 F.Supp.2d. 632, 640 (W.D. Pa. 2011). The privilege “benefits the public, and not the officials who assert the privilege,” by “recognize[ing] that if governmental agencies were forced to operate in a fishbowl, the frank exchange of ideas and opinions would cease and the quality of administrative decisions would consequently suffer.” *Commonwealth v. Vartan* 733 A.2d 1258, 1264 (Pa. 1999) (citations omitted).

23. The privilege applies with particular force in this case because UPMC is seeking testimony from a government lawyer concerning the basis for policy related investigations, conclusions, and actions.

(iv) The Investigative Privilege Applies.

24. The investigative privilege is rooted in “a public interest in minimizing disclosure of documents that would tend to reveal law enforcement investigative techniques or sources.” *Black v. Sheraton Corp. of Am.*, 564 F.2d 531, 545 (D.C. Cir. 1977). The privilege applies to agencies like the OAG that “have authority to initiate criminal, civil, administrative or disciplinary actions on behalf of the Commonwealth[.]” *Van Hine v. Department of State*, 856 A.2d 204, 207 (Pa. Cmwlth. Ct. 2004).

25. Here, UPMC candidly admits that it is seeking information relating to investigations performed by the OAG as well as the basis for the OAG’s conclusions and actions. All of that information is protected by the investigative privilege and is therefore protected from disclosure.

2. UPMC Is Seeking Information That Is Available By Other Means

26. UPMC’s other requests for documents and written discovery confirm that UPMC believes that the information it seeks from Mr. Donahue is available by other means. Indeed, UPMC’s requests seek the exact same information from non-privileged sources. For example:

- Document request 11: “All documents related to any OAG investigation of Highmark from 2011 to the present.”
- Document request 12: “Your complete investigation/evaluation/review files for each hospital/health system acquisition transaction alleged in the Petition ¶¶ 64-65.”
- Document Request 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.”
- Document Request 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.”

And UPMC did not even wait for responses to written discovery before subpoenaing Mr. Donahue.

27. UPMC cannot have it both ways. UPMC cannot serve innumerable discovery requests seeking enormous amounts of information from non-privileged sources, on the one hand, and concomitantly subpoena the Commonwealth’s counsel regarding the same topics without even reviewing first any information that will be provided, on the other.

WHEREFORE, for all these reasons, this Court should grant the Commonwealth of Pennsylvania’s Motion, quash the deposition of Executive

Deputy Attorney General James A. Donahue, III, and enter an appropriate protective order prohibiting UPMC from taking the deposition of the lead counsel to the Commonwealth in this matter.

Respectfully submitted,

JOSH SHAPIRO
Attorney General

Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120

By: s/ Jonathan Scott Goldman

JONATHAN SCOTT GOLDMAN
Executive Deputy Attorney General
Civil Law Division
Phone: (717) 787-8058
jgoldman@attorneygeneral.gov

JAMES A. DONAHUE, III
Executive Deputy Attorney General
Public Protection Division
Attorney ID 42624

KELI M. NEARY
Chief Deputy Attorney General
Civil Litigation Section
kneary@attorneygeneral.gov
Phone: (717) 787-1180

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) Jonathan Scott Goldman
Jonathan Scott Goldman
Executive Deputy Attorney General

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

CERTIFICATE OF SERVICE

I hereby certify that this document was served on all counsel via PACFile.

(s) Jonathan Scott Goldman
Jonathan Scott Goldman
Executive Deputy Attorney General

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

ORDER

AND NOW this _____ day of _____, 2019, upon consideration of the Commonwealth's Application to Quash and for Protective Order, it is hereby ORDERED that the Application is GRANTED. Respondent UPMC's notice and subpoena for the deposition of Executive Deputy Attorney General James A. Donahue, III, is hereby QUASHED and a Protective Order is entered prohibiting the deposition.

BY THE COURT:

, J.

EXHIBIT A



March 1, 2019

**VIA E-MAIL
VIA FEDERAL EXPRESS MAIL**

Stephen A. Cozen

Chairman
Direct Phone 215-665-2020
Direct Fax 215-701-2020
scozen@cozen.com

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 is a notice for your deposition at our Harrisburg office on Friday, March 8, 2019 at 10:00am. Also, enclosed is a subpoena compelling your attendance.

If you require formal service of the subpoena, please advise and we will accommodate.

Sincerely,

COZEN O'CONNOR

By:  Stephen A. Cozen

SAC:n
Enclosures

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.	:	

NOTICE OF DEPOSITION

To: James A. Donahue, III
Executive Deputy Attorney General
Pennsylvania Office of Attorney General
Strawberry Square, 14th Floor
Harrisburg, PA 17120

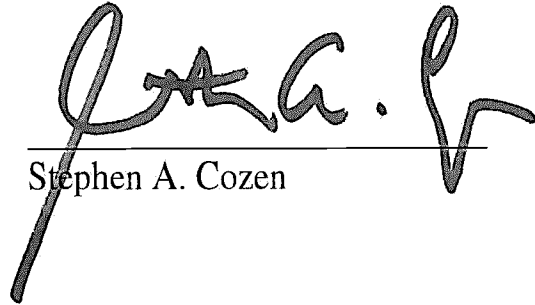
PLEASE TAKE NOTICE that Respondent UPMC, by and through its attorneys, Cozen O'Connor, will conduct the deposition of James A. Donahue, III, on Friday, March 8, 2019 at 10:00 a.m.

The deposition will take place at the offices of Cozen O'Connor located at 17 North Second Street, Suite 1410, Harrisburg, PA 17101, upon oral examination pursuant to the Rules of Civil Procedure, recorded by stenographic means before an officer authorized to administer oaths.

The oral examination will continue from day to day until completed. You are invited to attend the deposition and participate in same.

COZEN O'CONNOR

By:

A handwritten signature in dark ink, appearing to read "S.A. Cozen", written over a horizontal line.

Stephen A. Cozen

Dated: March 1, 2019

No. 334 MD 20 14

COMMONWEALTH COURT
OF PENNSYLVANIA

Commonwealth of Pennsylvania by
Josh Shapiro, Attorney General, et al.,
Petitioners, vs.
UPMC, a Nonprofit Corp., et al.;
Respondents.

TO James A. Donahue, III, Exec. Deputy Attorney General

1. You are ordered by the Court to come to Cozen O'Connor, 17 North Second Street,
Suite 1410 at Harrisburg, Pennsylvania on March 8, 2019 at 10:00 AM.

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

2. And to bring with you the following: Not applicable

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 F., Phila., PA 19103; 215-665-
2020. PA ID#03492. (State attorney's name, address, telephone number and identification number)

Date: March 1, 2019

Seal of the Court

BY THE COURT,

By



Chief Clerk

COMMONWEALTH OF PENNSYLVANIA, ss:

On the _____ day of _____, 20____, I, _____,

with the foregoing subpoena by: (Describe method of service)

_____, served _____
(name of person served)

Court Subpoena

No. 334 MD, 2014

I verify that the statements in this return of service are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to the unsworn falsification to authorities.

Date _____

(signature)

EXHIBIT B



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

A handwritten signature in black ink, appearing to read "Stephen A. Cozen", written over the printed name.

By: Stephen A. Cozen

SAC:pd
Enclosure

LEGAL\40147820\1

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

**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

COZEN O'CONNOR

/s/ Stephen A. Cozen

Stephen A. Cozen (Pa. 03492)

James R. Potts (Pa. 73704)

Stephen A. Miller (Pa. 308590)

Jared D. Bayer (Pa. 201211)

Andrew D. Linz (Pa. 324808)

1650 Market Street, Suite 2800

Philadelphia, PA 19103

Tel.: (215) 665-2000

JONES DAY

Leon F. DeJulius, Jr. (Pa. 90383)

Rebekah B. Kcehowski (Pa. 90219)

Anderson Bailey (Pa. 206485)

500 Grant Street, Suite 4500

Pittsburgh, PA 15219

Tel.: (412) 391-3939

Attorneys for Respondent UPMC

EXHIBIT C

Official Use Only – RTKL
Request Date Received

Official Use Only – Due Date

RECEIVED
Office of Attorney General

FEB 13 2019

Right to Know Officer

PENNSYLVANIA OFFICE OF ATTORNEY GENERAL
RIGHT-TO-KNOW OFFICER
15TH FLOOR – STRAWBERRY SQUARE
HARRISBURG, PA 17120
TELEPHONE: 717-783-1111
FACSIMILE: 717-705-7244
www.attorneygeneral.gov/r2k.aspx

RECORDS REQUEST FORM

Please print all information legibly.

Name of Requestor:	Williams	Colleen	D.
	Last	First	Initial
Mailing Address:	Cozen O'Connor, 1650 Market Street, Suite 2800		
	Street/P.O. Box	Apt. No.	
	Philadelphia	PA	19103
	City	State	Zip Code
Telephone Number:	215-665-2754	Fax Number:	215-701-2055
	<i>optional</i>		<i>optional</i>
Email address:	cwilliams@cozen.com		
	<i>optional</i>		

Identify each document requested with sufficient specificity to assist in ascertaining possession and/or location of the documents requested.

Please see attached Right to Know Requests

2019-046

Note all Right-to-Know requests are subject to reasonable fees pursuant to the RTKL.

Please visit www.attorneygeneral.gov for more information about the Office of Attorney General.

RIGHT-TO-KNOW REQUEST TO THE OFFICE OF THE PENNSYLVANIA
ATTORNEY GENERAL

Pursuant to 65 P.S. § 67.101, *et seq.*, University of Pittsburgh Medical Center ("UPMC") requests the following records from the Pennsylvania Office of the Attorney General ("OAG") covering the period April 1, 2011 through the present:

1. All documents that contain, evidence or relate to communications, between any representative of the OAG and any individual who was making a complaint or grievance, or had previously made a complaint or grievance, against the University of Pittsburgh Medical Center.
2. All documents that contain, evidence or relate to communications between any representative of the OAG and any representative of Highmark, Inc.
3. All documents that contain, evidence or relate to communications, or records of communications between any representative of the OAG and any member of the Pennsylvania General Assembly — including such member's staff, employees or agents — regarding UPMC, its nonprofit or charitable status, its pricing, its patient care or treatment, its acceptance or management of medical insurance coverage, its relationship with Highmark, Inc., or any grievance or complaint against UPMC.
4. All documents that contain, evidence or relate to communications between any representative of the OAG and any member or representative of the Service Employees International Union.
5. All documents that contain, evidence or relate to communications between any representative of the OAG and Chelsa Wagner.
6. All documents that contain, evidence or relate to communications between OAG and any person regarding UPMC, Highmark, Inc. or any consent decree to which UPMC or Highmark Inc. is a party.

Trotter, Carolyn

From: Williams, Coleen D. <CWilliams@cozen.com>
Sent: Tuesday, February 12, 2019 4:49 PM
To: Right To Know Law
Cc: Miller, Stephen; Cozen, Stephen; Bayer, Jared D.; Fritzinger, Arthur
Subject: UPMC Right-to-Know Request
Attachments: RTK Request to PA OAG.pdf

This request is being submitted to the Right-to-Know Officer (Open Records), by email and USPS as follows:

Office of Attorney General
Right-to-Know Officer
15th Floor, Strawberry Square
Harrisburg, PA 17120



Coleen D. Williams
Paralegal | Cozen O'Connor
One Liberty Place, 1650 Market Street, Suite 2800 | Philadelphia, PA 19103
P: 215-665-2754 F: 215-701-2055
Email | Map | cozen.com

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.

Click [here](#) to report this email as spam.

EXHIBIT D

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 REQUESTS FOR ADMISSION
DIRECTED TO THE ATTORNEY GENERAL**

Pursuant to Pennsylvania Rule of Civil Procedure 4014, respondent UPMC hereby serves these Requests for Admission and demands that petitioner Attorney General Josh Shapiro serve its full and complete responses to each of the following Requests for Admission pursuant to the Rules of Civil Procedure no later than April 8, 2019 or at such earlier time as ordered by the Court at the offices of Cozen O’Connor, One Liberty Place, 1650 Market Street, Suite 2800, Philadelphia, PA 19103.

DEFINITIONS

1. UPMC hereby incorporates by reference the Definitions set forth in its First Set of Interrogatories and Requests for Production Directed to the Attorney General.
2. The term “Previous Enforcement Actions” shall refer to the litigation related to the following filings in the Commonwealth Court of Pennsylvania under case number 334 M.D. 2014: the Commonwealth’s “Application to Hold Highmark in Contempt and Enforce Consent

Decree and Issue a Preliminary Injunction” dated October 10, 2014; the “Petitioner’s Motion to Enforce Consent Decrees and Compel Arbitration” dated April 27, 2015; and the “Petition of the Commonwealth of Pennsylvania Office of Attorney General to Enforce Consent Decrees” dated November 20, 2017.

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

INSTRUCTIONS

1. Any Request for Admission propounded in the disjunctive shall also be read as if propounded in the conjunctive and vice versa. Any Request for Admission propounded in the masculine shall also be read as if propounded in the feminine and vice versa. Any Request for Admission in the singular shall also be read as if propounded in the plural and vice versa. Any Request for Admission propounded in the present tense shall also be read as if propounded in the past tense and vice versa.

REQUESTS FOR ADMISSIONS

1. Admit that the Consent Decree released any and all claims You brought or could have brought relating to the conduct of UPMC alleged in the 2014 Petition for Review, encompassed within the Consent Decree, or referred to in the Mediated Agreement, between July 1, 2012 and July 1, 2014.

RESPONSE:

2. Admit that the Consent Decree released any and all claims You brought or could have brought relating to the conduct of UPMC alleged in the 2014 Petition for Review, encompassed within the Consent Decree, or referred to in the Mediated Agreement, during the term of the Consent Decree.

RESPONSE:

3. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's refusal to treat Highmark Community Blue subscribers between July 1, 2012 and July 1, 2014, including those alleged in the Petition ¶¶ 16, 96, 103, 107.a, and 118.a-118.c.

RESPONSE:

4. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's refusal to treat Highmark Community Blue subscribers during the term of the Consent Decree, including those alleged in the Petition ¶¶ 16, 96, 103, 107.a, and 118.a-118.c.

RESPONSE:

5. Admit that You were aware before November 20, 2017 of UPMC's refusal to treat Highmark Community Blue subscribers, as alleged in the Petition ¶¶ 16, 96, 103, 107.a, and 118.a-118.c.

RESPONSE:

6. Admit that You could have asserted before November 20, 2017 claims relating to UPMC's refusal to treat Highmark Community Blue subscribers, including those alleged in the Petition ¶¶ 16, 96, 103, 107.a, and 118.a-118.c, in one of the Previous Enforcement Actions.

RESPONSE:

7. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's allegedly "misleading" marketing campaigns between July 1, 2012 and July 1, 2014, including those alleged in the Petition ¶¶ 17, 109, 117, and 119.c.

RESPONSE:

8. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's allegedly "misleading" marketing campaigns during the term of the Consent Decree, including those alleged in the Petition ¶¶ 17, 109, 117, and 119.c.

RESPONSE:

9. Admit that You were aware before November 20, 2017 of UPMC's allegedly "misleading" marketing campaigns, as alleged in the Petition ¶¶ 17, 109, 117, and 119.c.

RESPONSE:

10. Admit that You could have asserted before November 20, 2017 claims relating to UPMC's allegedly "misleading" marketing campaigns, including those alleged in the Petition ¶¶ 17, 109, 117, and 119.c, in one of the Previous Enforcement Actions.

RESPONSE:

11. Admit that UPMC's allegedly "misleading" marketing campaigns were a subject matter discussed at a meeting with UPMC representatives in October 2013.

RESPONSE:

12. Admit that UPMC's allegedly "misleading" marketing campaigns were a subject matter discussed at a meeting with UPMC representatives in April 2014.

RESPONSE:

13. Admit that UPMC's allegedly "misleading" marketing campaigns were a subject matter discussed at a meeting with UPMC representatives in June 2014.

RESPONSE:

14. Admit that UPMC's allegedly "misleading" marketing campaigns were a subject matter discussed at a meeting with UPMC representatives in August 2017.

RESPONSE:

15. Admit that UPMC's allegedly "misleading" marketing campaigns were a subject matter discussed at a meeting with UPMC representatives in November 2018.

RESPONSE:

16. Admit that the Consent Decree released any and all claims You brought or could have brought relating to any breach of the Mediated Agreement by UPMC between July 1, 2012 and July 1, 2014, including those alleged in the Petition ¶¶ 16, 103, and 118.a-118.c.

RESPONSE:

17. Admit that the Consent Decree released any and all claims You brought or could have brought relating to any breach of the Mediated Agreement by UPMC during the term of the Consent Decree, including those alleged in the Petition ¶¶ 16, 103, and 118.a-118.c.

RESPONSE:

18. Admit that You were aware before November 20, 2017 of the alleged breaches of the Mediated Agreement by UPMC alleged in the Petition ¶¶ 16, 103, and 118.a-118.c.

RESPONSE:

19. Admit that You could have asserted before November 20, 2017 claims relating to any breach of the Mediated Agreement by UPMC, including those alleged in the Petition ¶¶ 16, 103, and 118.a-118.c, in one of the Previous Enforcement Actions.

RESPONSE:

20. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged refusal to write and/or refill prescriptions for medications for Highmark Community Blue subscribers between July 1, 2012 and July 1, 2014, including those alleged in the Petition ¶ 16 n.6.

RESPONSE:

21. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged refusal to write and/or refill prescriptions for medications for Highmark Community Blue subscribers during the term of the Consent Decree, including those alleged in the Petition ¶ 16 n.6.

RESPONSE:

22. Admit that You were aware before November 20, 2017 of UPMC's alleged refusal to write and/or refill prescriptions for medications for Highmark Community Blue subscribers, as alleged in the Petition ¶ 16 n.6.

RESPONSE:

23. Admit that You could have asserted before November 20, 2017 claims relating to UPMC's alleged refusal to write and/or refill prescriptions for medications for Highmark Community Blue subscribers, including those alleged in the Petition ¶ 16 n.6, in one of the Previous Enforcement Actions.

RESPONSE:

24. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged refusal to schedule medical appointments and/or procedures for Highmark Community Blue subscribers between July 1, 2012 and July 1, 2014, including those alleged in the Petition ¶ 16 n.6.

RESPONSE:

25. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged refusal to schedule medical appointments and/or procedures for Highmark Community Blue subscribers during the term of the Consent Decree, including those alleged in the Petition ¶ 16 n.6.

RESPONSE:

26. Admit that You were aware before November 20, 2017 of UPMC's alleged refusal to schedule medical appointments and/or procedures for Highmark Community Blue subscribers, as alleged in the Petition ¶ 16 n.6.

RESPONSE:

27. Admit that You could have asserted before November 20, 2017 claims relating to UPMC's alleged refusal to schedule medical appointments and/or procedures for Highmark Community Blue subscribers, including those alleged in the Petition ¶ 16 n.6, in one of the Previous Enforcement Actions.

RESPONSE:

28. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged refusal to provide obstetrics and gynecological services to Highmark Community Blue subscribers between July 1, 2012 and July 1, 2014, including those alleged in the Petition ¶ 16 n.6.

RESPONSE:

29. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged refusal to provide obstetrics and gynecological services to Highmark Community Blue subscribers during the term of the Consent Decree, including those alleged in the Petition ¶ 16 n.6.

RESPONSE:

30. Admit that You were aware before November 20, 2017 of UPMC's alleged refusal to provide obstetrics and gynecological services to Highmark Community Blue subscribers, as alleged in the Petition ¶ 16 n.6.

RESPONSE:

31. Admit that You could have asserted before November 20, 2017 claims relating to UPMC's alleged refusal to provide obstetrics and gynecological services to Highmark Community Blue subscribers, including those alleged in the Petition ¶ 16 n.6, in one of the Previous Enforcement Actions.

RESPONSE:

32. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged refusal to provide non-emergency based follow-up treatment to Highmark Community Blue subscribers admitted through the emergency room between July 1, 2012 and July 1, 2014, including those alleged in the Petition ¶ 16 n.6.

RESPONSE:

33. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged refusal to provide non-emergency based follow-up treatment to Highmark Community Blue subscribers admitted through the emergency room during the term of the Consent Decree, including those alleged in the Petition ¶ 16 n.6.

RESPONSE:

34. Admit that You were aware before November 20, 2017 of UPMC's alleged refusal to provide non-emergency based follow-up treatment to Highmark Community Blue subscribers admitted through the emergency room, as alleged in the Petition ¶ 16 n.6.

RESPONSE:

35. Admit that You could have asserted before November 20, 2017 claims relating to UPMC's alleged refusal to provide non-emergency based follow-up treatment to Highmark Community Blue subscribers admitted through the emergency room, including those alleged in the Petition ¶ 16 n.6, in one of the Previous Enforcement Actions.

RESPONSE:

36. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC, between July 1, 2012 and July 1, 2014, allegedly advising a Highmark Community Blue subscriber who had been on the transplant waiting list for several years to find a new provider, including those alleged in the Petition ¶ 16 n.6.

RESPONSE:

37. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC, during the term of the Consent Decree, allegedly advising a Highmark Community Blue subscriber who had been on the transplant waiting list for several years to find a new provider, including those alleged in the Petition ¶ 16 n.6.

RESPONSE:

38. Admit that You were aware before November 20, 2017 of UPMC allegedly advising a Highmark Community Blue subscriber who had been on the transplant waiting list for several years to find a new provider, as alleged in the Petition ¶ 16 n.6.

RESPONSE:

39. Admit that You could have asserted before November 20, 2017 claims relating to UPMC allegedly advising a Highmark Community Blue subscriber who had been on the transplant waiting list for several years to find a new provider, including those alleged in the Petition ¶ 16 n.6, in one of the Previous Enforcement Actions.

RESPONSE:

40. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged refusal to treat a patient with multiple insurance policies, including Highmark Community Blue, between July 1, 2012 and July 1, 2014, including those alleged in the Petition ¶ 16 n.6.

RESPONSE:

41. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged refusal to treat a patient with multiple insurance policies, including Highmark Community Blue, during the term of the Consent Decree, including those alleged in the Petition ¶ 16 n.6.

RESPONSE:

42. Admit that You were aware before November 20, 2017 of UPMC's alleged refusal to treat a patient with multiple insurance policies, including Highmark Community Blue, as alleged in the Petition ¶ 16 n.6.

RESPONSE:

43. Admit that You could have asserted before November 20, 2017 claims relating to UPMC's alleged refusal to treat a patient with multiple insurance policies, including Highmark Community Blue, including those alleged in the Petition ¶ 16 n.6, in one of the Previous Enforcement Actions.

RESPONSE:

44. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged refusal to treat Highmark Community Blue subscribers on a non-emergency basis between July 1, 2012 and July 1, 2014, including those alleged in the Petition ¶ 16 n.6.

RESPONSE:

45. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged refusal to treat Highmark Community Blue subscribers on a non-emergency basis during the term of the Consent Decree, including those alleged in the Petition ¶ 16 n.6.

RESPONSE:

46. Admit that You were aware before November 20, 2017 of UPMC's alleged refusal to treat Highmark Community Blue subscribers on a non-emergency basis, as alleged in the Petition ¶ 16 n.6.

RESPONSE:

47. Admit that You could have asserted before November 20, 2017 claims relating to UPMC's alleged refusal to treat Highmark Community Blue subscribers on a non-emergency basis, including those alleged in the Petition ¶ 16 n.6, in one of the Previous Enforcement Actions.

RESPONSE:

48. Admit that the Consent Decree released any and all claims You brought or could have brought relating to any assurances that seniors would never be impacted by UPMC's contractual disputes made by UPMC between July 1, 2012 and July 1 2014, including those alleged in the Petition ¶¶ 22 and 28.

RESPONSE:

49. Admit that the Consent Decree released any and all claims You brought or could have brought relating to any assurances that seniors would never be impacted by UPMC's contractual disputes made by UPMC during the term of the Consent Decree, including those alleged in the Petition ¶¶ 22 and 28.

RESPONSE:

50. Admit that You were aware before November 20, 2017 of assurances that seniors would never be impacted by UPMC's contractual disputes allegedly made by UPMC, as alleged in the Petition ¶¶ 22 and 28.

RESPONSE:

51. Admit that You could have asserted before November 20, 2017 claims relating to any assurances that seniors would never be impacted by UPMC's contractual disputes made by UPMC, including those alleged in the Petition ¶¶ 22 and 28, in one of the Previous Enforcement Actions.

RESPONSE:

52. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged practice of transferring medical procedures to its higher cost specialty providers between July 1, 2012 and July 1 2014, including those alleged in the Petition ¶¶ 31.a and 74.c.

RESPONSE:

53. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged practice of transferring medical procedures to its higher cost specialty providers during the term of the Consent Decree, including those alleged in the Petition ¶¶ 31.a and 74.c.

RESPONSE:

54. Admit that You were aware before November 20, 2017 of UPMC's alleged practice of transferring medical procedures to its higher cost specialty providers, as alleged in the Petition ¶¶ 31.a and 74.c.

RESPONSE:

55. Admit that You could have asserted before November 20, 2017 claims relating to UPMC's alleged practice of transferring medical procedures to its higher cost specialty providers, including those alleged in the Petition ¶¶ 31.a and 74.c, in one of the Previous Enforcement Actions.

RESPONSE:

56. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged practice of using "provider based," "facilities based," and/or "hospital based" billing between July 1, 2012 and July 1, 2014, as alleged in the Petition ¶¶ 31.b and 74.b.

RESPONSE:

57. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged practice of using "provider based," "facilities based," and/or "hospital based" billing during the term of the Consent Decree, as alleged in the Petition ¶¶ 31.b and 74.b.

RESPONSE:

58. Admit that You were aware before November 20, 2017 of UPMC's alleged practice of using "provider based," "facilities based," and/or "hospital based" billing, as alleged in the Petition ¶¶ 31.b and 74.b.

RESPONSE:

59. Admit that You could have asserted before November 20, 2017 claims relating to UPMC's alleged practice of using "provider based," "facilities based," and/or "hospital based" billing, as alleged in the Petition ¶¶ 31.b and 74.b, in one of the Previous Enforcement Actions.

RESPONSE:

60. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged practice of balance billing out-of-network patients, even when the insurance payments it received exceeded the actual costs of its care between July 1, 2012 and July 1, 2014, including those alleged in the Petition ¶ 31.c.

RESPONSE:

61. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged practice of balance billing out-of-network patients, even when the insurance payments it received exceeded the actual costs of its care during the term of the Consent Decree, including those alleged in the Petition ¶ 31.c.

RESPONSE:

62. Admit that You were aware before November 20, 2017 of UPMC's alleged practice of balance billing out-of-network patients, even when the insurance payments it received exceeded the actual costs of its care, as alleged in the Petition ¶ 31.c.

RESPONSE:

63. Admit that You could have asserted before November 20, 2017 claims relating to UPMC's alleged practice of balance billing out-of-network patients, even when the insurance payments it received exceeded the actual costs of its care, including those alleged in the Petition ¶ 31.c, in one of the Previous Enforcement Actions.

RESPONSE:

64. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged practice of insisting upon full "up front" payments from Out-of-Network insureds before rendering any medical services between July 1, 2012 and July 1, 2014, as alleged in the Petition ¶¶ 31.d and 74.a.

RESPONSE:

65. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's alleged practice of insisting upon full "up front" payments from Out-of-Network insureds before rendering any medical services during the term of the Consent Decree, as alleged in the Petition ¶¶ 31.d and 74.a.

RESPONSE:

66. Admit that You were aware before November 20, 2017 of UPMC's alleged practice of insisting upon full "up front" payments from Out-of-Network insureds before rendering any medical services, as alleged in the Petition ¶¶ 31.d and 74.a.

RESPONSE:

67. Admit that You could have asserted before November 20, 2017 claims relating to UPMC's alleged practice of insisting upon full "up front" payments from Out-of-Network insureds before rendering any medical services, as alleged in the Petition ¶¶ 31.d and 74.a, in one of the Previous Enforcement Actions.

RESPONSE:

68. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC Health Plan subscribers who "unwittingly" purchased coverage for UPMC's community hospitals that did not include In-Network access to UPMC's premier and/or exception hospitals between July 1, 2012 and July 1, 2014, as alleged in the Petition ¶ 36.

RESPONSE:

69. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC Health Plan subscribers who "unwittingly" purchased coverage for UPMC's community hospitals that did not include In-Network access to UPMC's premier and/or exception hospitals during the term of the Consent Decree, as alleged in the Petition ¶ 36.

RESPONSE:

70. Admit that You were aware before November 20, 2017 of UPMC Health Plan subscribers who “unwittingly” purchased coverage for UPMC’s community hospitals that did not include In-Network access to UPMC’s premier and/or exception hospitals, as alleged in the Petition ¶ 36.

RESPONSE:

71. Admit that You could have asserted before November 20, 2017 claims relating to UPMC Health Plan subscribers who “unwittingly” purchased coverage for UPMC’s community hospitals that did not include In-Network access to UPMC’s premier and/or exception hospitals, as alleged in the Petition ¶ 36, in one of the Previous Enforcement Actions.

RESPONSE:

72. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC charges for Out-of-Network emergency services to patients with Highmark or other insurance between July 1, 2012 and July 1, 2014, including those alleged in the Petition ¶¶ 50-51.

RESPONSE:

73. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC charges for Out-of-Network emergency services to patients with Highmark or other insurance during the term of the Consent Decree, including those alleged in the Petition ¶¶ 50-51.

RESPONSE:

74. Admit that You were aware before November 20, 2017 of UPMC charges at allegedly “significantly higher prices” for Out-of-Network emergency services to patients with Highmark or other insurance, as alleged in the Petition ¶¶ 50-51.

RESPONSE:

75. Admit that You could have asserted before November 20, 2017 claims relating to UPMC charges for Out-of-Network emergency services to patients with Highmark or other insurance, as alleged in the Petition ¶¶ 50-51, in one of the Previous Enforcement Actions.

RESPONSE:

76. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's executive compensation between July 1, 2012 and July 1, 2014, including those alleged in the Petition ¶¶ 60.a and 109.

RESPONSE:

77. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's executive compensation during the term of the Consent Decree, including those alleged in the Petition ¶¶ 60.a and 109.

RESPONSE:

78. Admit that You were aware before November 20, 2017 that UPMC's CEO allegedly receives in excess of \$6 million in annual compensation and/or that thirty-one UPMC executives allegedly receive in excess of \$1 million in annual compensation, as alleged in the Petition ¶¶ 60.a and 109.

RESPONSE:

79. Admit that You could have asserted before November 20, 2017 claims relating to UPMC's executive compensation, including those alleged in the Petition ¶¶ 60.a and 109, in one of the Previous Enforcement Actions.

RESPONSE:

80. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's corporate offices between July 1, 2012 and July 1, 2014, including those alleged in the Petition ¶¶ 60.b and 109.

RESPONSE:

81. Admit that the Consent Decree released any and all claims You brought or could have brought relating to UPMC's corporate offices during the term of the Consent Decree, including those alleged in the Petition ¶¶ 60.b and 109.

RESPONSE:

82. Admit that You were aware before November 20, 2017 of the location of UPMC's corporate offices, as alleged in the Petition ¶¶ 60.b and 109.

RESPONSE:

83. Admit that You could have asserted before November 20, 2017 claims relating to UPMC's corporate offices, including those alleged in the Petition ¶¶ 60.b and 109, in one of the Previous Enforcement Actions.

RESPONSE:

84. Admit that You were aware before November 20, 2017 of UPMC's alleged deletion of "source of payment" from the non-discrimination clause of UPMC's "Patient Rights & Responsibilities at UPMC Hospitals" hosted on UPMC's website, as alleged in the Petition ¶ 5 n.1.

RESPONSE:

85. Admit that You could have asserted before November 20, 2017 claims relating to UPMC's alleged deletion of "source of payment" from the non-discrimination clause of UPMC's "Patient Rights & Responsibilities at UPMC Hospitals" hosted on UPMC's website, as alleged in the Petition ¶ 5 n.1, in one of the Previous Enforcement Actions.

RESPONSE:

86. Admit that You were aware before November 20, 2017 of the disputes between UPMC and Highmark that required informal mediations by Commonwealth agencies, as alleged in the Petition ¶ 19.

RESPONSE:

87. Admit that You could have asserted before November 20, 2017 claims relating to the disputes between UPMC and Highmark that required informal mediations by Commonwealth agencies, including those alleged in the Petition ¶ 19, in one of the Previous Enforcement Actions.

RESPONSE:

88. Admit that You were aware before November 20, 2017 of UPMC's alleged "thwarting" of patients' efforts to use Highmark's Out-of-Network policy riders, as alleged in the Petition ¶ 24.

RESPONSE:

89. Admit that You could have asserted before November 20, 2017 claims relating to UPMC's alleged "thwarting" of patients' efforts to use Highmark's Out-of-Network policy riders, as alleged in the Petition ¶ 24, in one of the Previous Enforcement Actions.

RESPONSE:

90. Admit that You were aware before November 20, 2017 of a patient having to change hospitals to have surgery on an In-Network basis and avoid paying UPMC \$11,816.67 in up-front charges, as alleged in the Petition ¶ 25.a.

RESPONSE:

91. Admit that You could have asserted before November 20, 2017 claims relating to a patient having to change hospitals to have surgery on an In-Network basis and avoid paying UPMC \$11,816.67 in up-front charges, including those alleged in the Petition ¶ 25.a, in one of the Previous Enforcement Actions.

RESPONSE:

92. Admit that You were aware before November 20, 2017 of a patient being charged \$65,181.70 in up-front charges before UPMC would perform brain surgery, as alleged in the Petition ¶ 25.b.

RESPONSE:

93. Admit that You could have asserted before November 20, 2017 claims relating to a patient being charged \$65,181.70 in up-front charges before UPMC would perform brain, including those alleged in the Petition ¶ 25.b, in one of the Previous Enforcement Actions.

RESPONSE:

94. Admit that You were aware before November 20, 2017 of a promotional flyer circulated by the UPMC Health Plan on or about July 17, 2017, as alleged in the Petition ¶¶ 33-35 and 119.b.

RESPONSE:

95. Admit that You could have asserted before November 20, 2017 claims relating to a promotional flyer circulated by the UPMC Health Plan on or about July 17, 2017, including those alleged in the Petition ¶¶ 33-35 and 119.b, in one of the Previous Enforcement Actions.

RESPONSE:

96. Admit that You were aware before November 20, 2017 of UPMC Susquehanna's alleged denial of access to its physician practice for patients employed by PMF Industries, as alleged in the Petition ¶¶ 38-38.g, 96, 104, 107.a, and 119.a.

RESPONSE:

97. Admit that You could have asserted before November 20, 2017 claims relating to UPMC Susquehanna's alleged denial of access to its physician practice for patients employed by PMF Industries, including those alleged in the Petition ¶¶ 38-38.g, 96, 104, 107.a, and 119.a, in one of the Previous Enforcement Actions.

RESPONSE:

98. Admit that You were aware before November 20, 2017 of UPMC's alleged rejection of efforts by employers to use reference based prices or tiering and steering, as alleged in the Petition ¶ 41.

RESPONSE:

99. Admit that You could have asserted before November 20, 2017 claims relating to UPMC's alleged rejection of efforts by employers to use reference based prices or tiering and steering, including those alleged in the Petition ¶ 41, in one of the Previous Enforcement Actions.

RESPONSE:

100. Admit that any and all claims relating to UPMC's September 26, 2017 public announcement of the termination of its Highmark Medicare Advantage contracts, including those alleged in the Petition ¶¶ 120-120.c, were resolved by the Pennsylvania Supreme Court's decision in *Commonwealth ex rel. Shapiro v. UPMC*, 188 A.3d 1122 (Pa. 2018).

RESPONSE:

101. Admit that you are not aware of any instance, other than with respect to Highmark, where UPMC or any UPMC provider has refused to contract with any health insurer, as alleged in the Petition ¶ 23.

RESPONSE:

102. Admit that UPMC's refusal to commit its newly acquired health care systems to contracting with all health insurers going forward alleged in the Petition ¶ 30 has not yet occurred.

RESPONSE:

103. Admit that UPMC's policy of requiring all Out-of-Network patients to pay all of UPMC's expected charges for non-emergency services up-front and in-full after the expiration of the Consent Decree alleged in the Petition ¶¶ 52-54 is not currently in effect.

RESPONSE:

104. Admit that the notice to a UPMC cancer patient suffering from Uterine Carcinosarcoma that she will no longer be able to see her UPMC oncologists In-Network after June 30, 2019 unless she transitions insurance plans, as alleged in the Petition ¶ 37.a, was the result of UPMC informing current Highmark patients of their coverage options after the termination of the Consent Decree.

RESPONSE:

105. Admit that the UPMC kidney transplant patient who will no longer be able to see her UPMC specialists after June 30, 2019 unless she transitions insurance plans, as alleged in the Petition ¶ 37.b, is a current Highmark patient informed by UPMC of her coverage options after the termination of the Consent Decree.

RESPONSE:

106. Admit that the UPMC cancer patient who will no longer be able to access UPMC facilities after June 30, 2019 unless she transitions insurance plans, as alleged in the Petition ¶ 37.c, is a current Highmark patient informed by UPMC of her coverage options after the termination of the Consent Decree.

RESPONSE:

107. Admit that the UPMC Parkinson's disease patient who will no longer be able to see her UPMC Movement Disorder Specialist after June 30, 2019 unless she transitions insurance plans, as alleged in the Petition ¶ 37.d, is a current Highmark patient informed by UPMC of her coverage options after the termination of the Consent Decree.

RESPONSE:

108. Admit that the notice to a UPMC cancer patient with Lymphocytic Leukemia that she will no longer be able to see her UPMC oncologist In-Network after June 30, 2019 unless she transitions insurance plans, as alleged in the Petition ¶ 44.e, was the result of UPMC informing current Highmark patients of their coverage options after the termination of the Consent Decree.

RESPONSE:

109. Admit that UPMC's participation in the Apprise program conducted on October 11, 2018, as alleged in the Petition ¶ 121, was consistent with UPMC informing current Highmark patients of their coverage options after the termination of the Consent Decree.

RESPONSE:

110. Admit that the mailers that omitted Gateway as having In-Network access to UPMC, as alleged in the Petition ¶ 117.b, were the results of UPMC informing current Highmark patients of their coverage options after the termination of the Consent Decree.

RESPONSE:

111. Admit that UPMC's refusal to contract with Highmark for any of its non-commercial Medicare Advantage plans, as alleged in the Petition ¶¶ 106 and 119.c, is consistent with the June 30, 2019 termination of Highmark Medicare Advantage contracts permitted under the Consent Decree.

RESPONSE:

112. Admit that UPMC's refusal to enter certain future commercial and non-commercial Medicare Advantage contracts with Highmark, as alleged in the Petition ¶ 107.b, is consistent with the June 30, 2019 termination of Highmark Medicare Advantage contracts permitted under the Consent Decree.

RESPONSE:

113. Admit that the terms and agreements encompassed within the Consent Decree do not conflict with UPMC's obligations under the laws governing non-profit corporations and charitable trusts, consumer protection laws, antitrust laws, insurance laws and health laws.

RESPONSE:

114. Admit that the Consent Decree must be interpreted consistently with the UPE Approving Order.

RESPONSE:

115. Admit that the UPE Approving Order requires Highmark to provide the PID with updated information on the impact of the terms of any new contract between Highmark and UPMC on the financial performance of the West Penn Allegheny Health System.

RESPONSE:

116. Admit that Highmark did not provide the PID with the information described in Request for Admission #115 before You filed the Petition.

RESPONSE:

117. Admit that Highmark has not provided the PID with the information described in Request for Admission #115 as of the date of Your response to this Request.

RESPONSE:

118. Admit that You received the letter from W. Thomas McGough, Jr. to James A. Donahue, III, dated January 16, 2019, attached as Exhibit 1.

RESPONSE:

119. Admit that an *in-camera* conference took place in chambers on January 17, 2018, in a Prior Enforcement Action in Commonwealth Court.

RESPONSE:

120. Admit that James A. Donahue, III and Mark Pacella (“OAG Counsel”) were present at the *in-camera* conference described in Request for Admission #119.

RESPONSE:

121. Admit that, in the course of the *in-camera* conference described in Request for Admission #119, Judge Pellegrini raised the prospect of extending the expiration date of the Consent Decree through its modification provision.

RESPONSE:

122. Admit that, in the course of the *in-camera* conference described in Request for Admission #119, OAG Counsel stated they might eventually seek to extend the expiration date of the Consent Decree through its modification provision.

RESPONSE:

123. Admit that, in the course of the *in-camera* conference described in Request for Admission #119, the Court instructed OAG Counsel to produce in that enforcement action any witnesses they had in support of modification of the Consent Decree, explaining that the parties “can’t come back later” to seek extension of the Consent Decree by modification.

RESPONSE:

124. Admit that, during the Prior Enforcement Action described in Request for Admission #119, OAG Counsel did not produce any witnesses in support of modification of the Consent Decree.

RESPONSE:

125. Admit that, during the Prior Enforcement Action described in Request for Admission #119, OAG Counsel did not seek modification of the Consent Decree.

RESPONSE:

126. Admit that You filed the “Complaint for Temporary Restraining Order and Preliminary Injunction” in the United States District Court for the Middle District of Pennsylvania, Civil Action Number 1:15-cv-2362, dated December 9, 2015, attached as Exhibit 2.

RESPONSE:

127. Admit that You filed the “Brief of the Federal Trade Commission and the Commonwealth of Pennsylvania” in the United States Court of Appeals for the Third Circuit, Number 16-2365, dated June 1, 2016, attached as Exhibit 3.

RESPONSE:

128. Admit that You filed the “Commonwealth’s Findings of Fact and Memorandum of Law” in the Court of Common Pleas of Allegheny County, Pennsylvania, Case Number GD12-18361, dated November 7, 2016, attached as Exhibit 4.

RESPONSE:

129. Admit that James A. Donahue, III appeared at a public hearing on October 10, 2014.

RESPONSE:

130. Admit that James A. Donahue, III stated the following at the October 10, 2014 public hearing:

The simple question we faced was could we force UPMC and Highmark to contract with each other? We concluded that we could not for several reasons. First, there is no statutory basis to make UPMC and Highmark contract with each other. . . . Second, the disputes that we see here that exist between Highmark and UPMC are similar to although less publicly known than disputes between health plans and hospitals around the country. These disputes over how, what the terms of contracts are go on every day and there are very vigorous and acrimonious disputes going on with many hospital systems and many health plans throughout the Commonwealth. If we forced a resolution in this case we really could not avoid trying to force a similar resolution in all those other situations and that is just simply an unworkable method of dealing with these problems. Third, the contracting process involves two parties willingly coming to an agreement. By us trying to force the parties to enter into an agreement we would be putting our finger on

the scale so to speak and having effects that we aren't quite sure what those effects would be. And in particular we wouldn't be sure about what the price effects that we would impose would be. In contract negotiations one of the key things is that each party has the ability to walk away from the negotiations. That ability to walk away forces each side to be reasonable in most circumstances, putting our finger on the scale in favor of one side or the other changes that dynamic in ways that are unpredictable. And one of the key things here in most contract negotiations is price, and price is at the heart of the dispute between Highmark and UPMC, and there is no mechanism in Pennsylvania for resolving this price dispute.

RESPONSE:

131. Admit that Mark Pacella appeared at a public hearing on September 13, 2011.

RESPONSE:

132. Admit that Mark Pacella stated the following at the September 13, 2011 public hearing:

[The Attorney General] does not have the authority to substitute her judgment for that deliberative process and due diligence functioning of a board of directors and their executive staff, etcetera. We don't have that expertise. They do.

RESPONSE:

133. Admit that Mark Pacella stated the following at the September 13, 2011 public hearing:

We're similarly concerned about whether Highmark has the financial wherewithal to fix the [West Penn Allegheny Health System] or to save the [West Penn Allegheny Health System]. We've been around the hospital failure scenario with AGH We were actively involved at that time, but you know we certainly don't want to see us from a community standpoint now throw good money after bad.

RESPONSE:

134. Admit that Mark Pacella stated the following at the September 13, 2011 public hearing:

[L]et me just say at the outset that the office of Attorney General doesn't have any enforcement role pursuant to Act 55.

RESPONSE:

135. Admit that Mark Pacella stated the following at the September 13, 2011 public hearing:

The authority that the [Attorney General's] Office has is fundamentally grounded in its common law *parens patriae* authority that the Commonwealth has. . . . [A]ll I want to make clear is that whatever authority the AG has it's by delegation by the Commonwealth to pursue that or provide that function [protecting charitable assets].

RESPONSE:

136. Admit that Mark Pacella stated the following at the September 13, 2011 public hearing:

Our function is to ensure that charitable assets are duly administered. We wouldn't typically, in my time in the office, we've never challenged the tax exempt status of an organization and that's the focus of [Act] 55. . . . I don't recall us challenging a healthcare system on its operations.

RESPONSE:

137. Admit that Adrian King, James A. Donahue, III, and Mark Pacella attended a meeting with UPMC representatives on or about April 29, 2014.

RESPONSE:

138. Admit that, at the April 29, 2014 meeting described in Request for Admission #137, Mark Pacella stated, in sum and substance, that You could not force UPMC to contract with Highmark and/or force UPMC to contract.

RESPONSE:

139. Admit that, at the April 29, 2014 meeting described in Request for Admission #137, James A. Donahue, III stated, in sum and substance, that Your goal was not to give either UPMC or Highmark a monopoly but rather to address public uncertainty about UPMC and Highmark's relationship.

RESPONSE:

140. Admit that, at the April 29, 2014 meeting described in Request for Admission #137, Mark Pacella stated, in sum and substance, that Your concern was that there might not be complete access to UPMC's services.

RESPONSE:

141. Admit that, at the April 29, 2014 meeting described in Request for Admission #137, Adrian King stated, in sum and substance, that You were not trying to force a contract because You agreed that you cannot force a contract.

RESPONSE:

142. Admit that, at the April 29, 2014 meeting described in Request for Admission #137, James A. Donahue, III stated, in sum and substance, that You had stated repeatedly that You did not intend to try to force a contract.

RESPONSE:

143. Admit that Joshua Shapiro and James A. Donahue, III attended a meeting with UPMC representatives on or about November 26, 2018.

RESPONSE:

144. Admit that, at the November 26, 2018 meeting described in Request for Admission #143, James A. Donahue, III and/or Joshua Shapiro stated, in sum and substance, that You would apply the proposed modifications to which You asked UPMC to agree to all healthcare nonprofits in the Commonwealth.

RESPONSE:

145. Admit that, at the November 26, 2018 meeting described in Request for Admission #143, James A. Donahue, III stated, in sum and substance, that the proposed modifications to which You asked UPMC to agree would apply to all nonprofits.

RESPONSE:

146. Admit that, at the November 26, 2018 meeting described in Requests for Admission #143 and 145, James A. Donahue, III stated, in sum and substance, that You were planning to apply the terms of the proposed modifications to the whole Commonwealth but were beginning with UPMC.

RESPONSE:

147. Admit that, at the November 26, 2018 meeting described in Requests for Admission #143, 145, and 146, Joshua Shapiro stated, in sum and substance, that the proposed modifications to which You asked UPMC to agree would apply to everyone.

RESPONSE:

148. Admit that, at the November 26, 2018 meeting described in Requests for Admission #143 and 145-147, Joshua Shapiro stated, in sum and substance and in response to a UPMC representative's question whether the terms of the proposed modifications would also be applied to Geisinger Health System, Penn State Milton S. Hershey Medical Center, and other healthcare nonprofits in the Commonwealth, that You apply the law without fear or favor.

RESPONSE:

149. Admit that Mark Pacella attended a meeting with UPMC representatives on or about August 8, 2017.

RESPONSE:

150. Admit that, at the August 8, 2017 meeting described in Request for Admission #149, Mark Pacella stated, in sum and substance, that Your concern was that the benefits of UPMC's services were not available to everyone at the same price.

RESPONSE:

151. Admit that, at the August 8, 2017 meeting described in Request for Admission #149, Mark Pacella stated, in sum and substance, that You did not intend to regulate costs but did intend to require all charities in Pennsylvania to provide access to any willing insurer at in-network rates.

RESPONSE:

152. Admit that James A. Donahue, III participated in a telephone call with Gerald Pappert on or about October 17, 2014.

RESPONSE:

153. Admit that, during the October 17, 2014 call described in Request for Admission #152, Gerald Pappert told James A. Donahue, III, in sum and substance, that Mr. Donahue needed to be prepared to testify as a witness in the then-pending litigation surrounding Highmark, West Penn Allegheny Health System, and UPMC.

RESPONSE:

154. Admit that, during the October 17, 2014 call described in Request for Admission #152, Gerald Pappert told James A. Donahue, III, in sum and substance, that Mr. Donahue should prepare an experienced litigator in the Office of Attorney General to handle the imminent proceedings, because Mr. Donahue would be unable to handle them himself as a witness.

RESPONSE:

155. Admit that James A. Donahue, III sent a letter to W. Thomas McGough, Jr. dated November 18, 2011 containing 34 requests for information from UPMC.

RESPONSE:

156. Admit that the November 18, 2011 letter described in Request for Admission #155 included requests for all minutes of the meetings of UPMC's Board of Directors and any reports, evaluations, studies, or projections concerning the expected effects upon UPMC's finances that UPMC's Board of Directors considered in deciding not to renew UPMC's provider contract with Highmark.

RESPONSE:

157. Admit that when You signed the Consent Decree in June 2014, You were aware that the UPMC Board of Directors passed a resolution on or about June 12, 2013 declining to extend UPMC's contract with Highmark after 2014.

RESPONSE:

158. Admit that when You filed the Petition, You were aware that UPMC had been requiring prepayment for Out-of-Network services to Highmark subscribers for approximately two years.

RESPONSE:

159. Admit that federal law permits UPMC to require prepayment for Out-of-Network services.

RESPONSE:

160. Admit that UPMC is the largest non-governmental employer in the Commonwealth.

RESPONSE:

161. Admit that UPMC employs over 84,000 people in Pennsylvania.

RESPONSE:

162. Admit that UPMC provides millions of dollars a year in benefits to the communities it serves, including free and reduced-price medical care.

RESPONSE:

163. Admit that UPMC operates a world-renowned medical research center.

RESPONSE:

164. Admit that the Pennsylvania General Assembly considered so-called Any Willing Provider (“AWP”) legislation before You filed the Petition.

RESPONSE:

165. Admit that the Pennsylvania General Assembly did not enact AWP legislation before You filed the Petition.

RESPONSE:

166. Admit that the Petition only seeks relief against UPMC.

RESPONSE:

167. Admit that the Petition does not seek relief against any for-profit healthcare provider and/or insurer in the Commonwealth.

RESPONSE:

168. Admit that the Petition does not seek to impose the terms of the Proposed Modified Consent Decree attached to the Petition as Exhibit G on any for-profit healthcare provider and/or insurer in the Commonwealth.

RESPONSE:

169. Admit that James A. Donahue, III was involved in the negotiations related to the entry of the Consent Decree.

RESPONSE:

170. Admit that James A. Donahue, III was involved in drafting the Consent Decree.

RESPONSE:

171. Admit that James A. Donahue, III made statements at public hearings concerning the terms of the Consent Decree.

RESPONSE:

172. Admit that James A. Donahue, III made statements at public hearings concerning the Commonwealth's participation in the Consent Decree.

RESPONSE:

173. Admit that UPMC Altoona has not to terminated its Medicare Advantage provider contracts with Highmark.

RESPONSE:

174. Admit that UPMC Altoona has not terminated its commercial provider contracts with Highmark.

RESPONSE:

175. Admit that the Governor announced an agreement in January 2019 between Highmark and UPMC in which they pledged to maintain In-Network access to UPMC Altoona beyond June 30, 2019 for patients with Highmark Medicare Advantage and/or commercial insurance plans.

RESPONSE:

176. Admit that UPMC Bedford has not terminated its Medicare Advantage provider contracts with Highmark.

RESPONSE:

177. Admit that UPMC Bedford has not terminated its commercial provider contracts with Highmark.

RESPONSE:

178. Admit that the Governor announced an agreement in January 2019 between Highmark and UPMC in which they pledged to maintain In-Network access to UPMC Bedford beyond June 30, 2019 for patients with Highmark Medicare Advantage and/or commercial insurance plans.

RESPONSE:

179. Admit that UPMC Horizon has not terminated its Medicare Advantage provider contracts with Highmark.

RESPONSE:

180. Admit that UPMC Horizon has not terminated its commercial provider contracts with Highmark.

RESPONSE:

181. Admit that the Governor announced an agreement in January 2019 between Highmark and UPMC in which they pledged to maintain In-Network access to UPMC Horizon beyond June 30, 2019 for patients with Highmark Medicare Advantage and/or commercial insurance plans.

RESPONSE:

182. Admit that UPMC Jameson has not terminated its Medicare Advantage provider contracts with Highmark.

RESPONSE:

183. Admit that UPMC Jameson has not terminated its commercial provider contracts with Highmark.

RESPONSE:

184. Admit that the Governor announced an agreement in January 2019 between Highmark and UPMC in which they pledged to maintain In-Network access to UPMC Jameson beyond June 30, 2019 for patients with Highmark Medicare Advantage and/or commercial insurance plans.

RESPONSE:

185. Admit that UPMC Kane has not terminated its Medicare Advantage provider contracts with Highmark.

RESPONSE:

186. Admit that UPMC Kane has not terminated its commercial provider contracts with Highmark.

RESPONSE:

187. Admit that the Governor announced an agreement in January 2019 between Highmark and UPMC in which they pledged to maintain In-Network access to UPMC Kane beyond June 30, 2019 for patients with Highmark Medicare Advantage and/or commercial insurance plans.

RESPONSE:

188. Admit that UPMC Northwest has not terminated its Medicare Advantage provider contracts with Highmark.

RESPONSE:

189. Admit that UPMC Northwest has not terminated its commercial provider contracts with Highmark.

RESPONSE:

190. Admit that the Governor announced an agreement in January 2019 between Highmark and UPMC in which they pledged to maintain In-Network access to UPMC Northwest beyond June 30, 2019 for patients with Highmark Medicare Advantage and/or commercial insurance plans.

RESPONSE:

191. Admit that UPMC Western Psychiatric Institute and Clinic has not terminated its Medicare Advantage provider contracts with Highmark.

RESPONSE:

192. Admit that UPMC Western Psychiatric Institute and Clinic has not terminated its commercial provider contracts with Highmark.

RESPONSE:

193. Admit that the Governor announced an agreement in January 2019 between Highmark and UPMC in which they pledged to maintain In-Network access to UPMC Western Psychiatric Institute and Clinic beyond June 30, 2019 for patients with Highmark Medicare Advantage and/or commercial insurance plans.

RESPONSE:

194. Admit that UPMC Children's Hospital of Pittsburgh has not terminated its Medicare Advantage provider contracts with Highmark.

RESPONSE:

195. Admit that UPMC Children's Hospital of Pittsburgh has not terminated its commercial provider contracts with Highmark.

RESPONSE:

196. Admit that the Governor announced an agreement in January 2019 between Highmark and UPMC in which they pledged to maintain In-Network access to UPMC Children's Hospital of Pittsburgh beyond June 30, 2019 for patients with Highmark Medicare Advantage and/or commercial insurance plans.

RESPONSE:

197. Admit that no UPMC Pinnacle hospital has terminated its Medicare Advantage provider contracts with Highmark.

RESPONSE:

198. Admit that no UPMC Pinnacle hospital has terminated its commercial provider contracts with Highmark.

RESPONSE:

199. Admit that the Governor announced an agreement in January 2019 between Highmark and UPMC in which they pledged to maintain In-Network access to all UPMC Pinnacle hospitals beyond June 30, 2019 for patients with Highmark Medicare Advantage and/or commercial insurance plans.

RESPONSE:

200. Admit that no UPMC Susquehanna hospital has terminated its Medicare Advantage provider contracts with Highmark.

RESPONSE:

201. Admit that no UPMC Susquehanna hospital has terminated its commercial provider contracts with Highmark.

RESPONSE:

202. Admit that the Governor announced an agreement in January 2019 between Highmark and UPMC in which they pledged to maintain In-Network access to all UPMC Susquehanna hospitals beyond June 30, 2019 for patients with Highmark Medicare Advantage and/or commercial insurance plans.

RESPONSE:

Dated: March 4, 2019

COZEN O'CONNOR

/s/ Stephen A. Cozen

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Attorneys for Respondent UPMC

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UPMC Pinnacle; UPMC Somerset; UPMC Health Plan, Inc.; UPMC Health Coverage, Inc.; UPMC Health Network, Inc.; UPMC Benefit Management Services, Inc,

Plaintiffs, on their own and on behalf of All Others Similarly Situated,

v.

Joshua D. Shapiro, in his official capacity as Attorney General of the Commonwealth of Pennsylvania,

Defendant.

Civil Action No. 19-298

PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION TO DEFENDANT

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Plaintiffs serve the following Requests for Admission (the "Requests") upon Defendant Joshua D. Shapiro, Attorney General of the Commonwealth of Pennsylvania, to be answered in writing within 14 days of service. These Requests are continuing and therefore may require supplemental responses pursuant to the Federal Rules of Civil Procedure.

INSTRUCTIONS

1. Each Request shall operate and be construed independently. Unless otherwise indicated, no Request limits the scope of any other Request.
2. Respond separately to each Request. If You object to any portion of any Request, identify the portion to which you object and respond to the remainder.

3. If You find the meaning of any term in these Requests to be unclear, then You should assume a reasonable meaning, state what that assumed meaning is, and answer the Request on the basis of that assumed meaning.

4. When a response is not provided in full, state with particularity the reason or reasons it is not being provided in full and describe with particularity the portion or portions of the response that are being withheld.

5. If any Request is answered by reference to a document, identify, by production number, the document containing the requested information.

6. In the event You assert any form of objection or privilege as a ground for not answering any Request or any part of a Request, set forth the legal grounds and facts upon which the objection or privilege is based. If the objection relates to only part of the Request, the unobjectionable portion of the Request should be answered in full.

7. In answering these Requests, You shall respond based on all information known or available to You.

8. For each Request, the following constructions should be applied:

a. Construing the terms “and” and “or” in the disjunctive or conjunctive, as necessary, to make the Request more inclusive;

b. Construing the singular form of any word to include the plural and the plural form to include the singular;

c. Construing the past tense of the verb to include the present tense and the present tense to include the past tense;

d. Construing the masculine form to include the feminine form;

e. Construing negative terms to include the positive and vice versa; and

f. Construing “include” to mean include or including “without limitation.”

9. Unless otherwise specified, these Requests seek information that relates to the time period from January 1, 2014 to the present.

10. These Requests are continuing in nature and should be supplemented as required by Federal Rule of Civil Procedure 26(e).

DEFINITIONS

1. Unless otherwise defined herein, the Definitions provided in the proposed Modified Consent Decree shall apply to these Requests.

2. “December 28, 2018 Telephone Conference” means the telephone conference held on December 28, 2018 and attended by Defendant representatives James A. Donahue, III, Mark A. Pacella, and Tracy W. Wertz and UPMC representatives W. Thomas McGough, Jr., Mark L. Tamburri, and Stephen A. Cozen.

3. “Defendant” means Joshua D. Shapiro, Attorney General of the Commonwealth of Pennsylvania, including without limitation each employee, agent, representative, attorney, advisor, and any other Persons presently or formerly acting or purporting to act on his or the Office of Attorney General's behalf.

4. “Proposed Modified Consent Decree” means that document authored by You as communicated to UPMC on or about January 8, 2019, which is attached as Exhibit A to plaintiffs’ complaint filed on February 21, 2019 (Doc. No. 1-3).

5. “You” and “Your” refers to Defendant.

REQUESTS FOR ADMISSION

REQUEST NO. 1. Admit that on November 26, 2018, representatives of Defendant, including Joshua Shapiro, Mark A. Pacella, James A. Donahue, III, Tracy W. Wertz, Michelle Henry, and David Wade, met with representatives of UPMC to discuss the outlines of a proposed modified Consent Decree that would be sent to UPMC and Highmark.

RESPONSE:

REQUEST NO. 2. Admit that on December 14, 2018, You sent a draft modified consent decree to both UPMC and Highmark, a copy of which is attached hereto as Exhibit 1.

RESPONSE:

REQUEST NO. 3. Admit that Your December 14, 2018 cover letter accompanying the draft modified consent decree sent to UPMC and Highmark included the statement: “If we reach agreement with you on a modified consent decree, we will announce that the consent decree embodies the principles we expect to apply to all nonprofit charitable health systems.”

RESPONSE:

REQUEST NO. 4. Admit that on December 20, 2018, UPMC sent a letter to OAG Executive Deputy Attorney General James A. Donahue which set forth certain questions about the proposed modified consent decree provided to UPMC on December 14, 2018.

RESPONSE:

REQUEST NO. 5. Admit that on December 28, 2018, representatives of Defendant, including James A. Donahue, III, Mark A. Pacella, and Tracy W. Wertz, participated in the December 28, 2018 Telephone Conference to discuss UPMC's questions concerning the proposed modified consent decree provided to UPMC on December 14, 2018.

RESPONSE:

REQUEST NO. 6. Admit that during the December 28, 2018 Telephone Conference, You indicated Your intent to require all nonprofit charitable health systems in Pennsylvania to comply with the principles found in paragraphs 3.2 through 3.11 and paragraphs 4.1 through 4.8 of the proposed modified consent decree sent to UPMC and Highmark on December 14, 2018.

RESPONSE:

REQUEST NO. 7. Admit that during the December 28, 2018 Telephone Conference, You indicated that You intended to require all nonprofit charitable health systems in Pennsylvania to comply with the principles found in paragraphs 3.2 through 3.11 and paragraphs 4.1 through 4.8 of the proposed modified consent decree sent to UPMC and Highmark on December 14, 2018 through serial enforcement actions, beginning with matters You currently have under investigation.

RESPONSE:

REQUEST NO. 8. Admit that during the December 28, 2018 Telephone Conference, You indicated Your intent to enforce a Duty to Negotiate on all nonprofit charitable health care providers in Pennsylvania, consistent with the terms that would be imposed on UPMC's and Highmark's respective Health Care Provider Subsidiaries through paragraph 3.2 of the proposed modified consent decree sent to UPMC and Highmark on December 14, 2018.

RESPONSE:

REQUEST NO. 9. Admit that You intend to apply and enforce a Duty to Negotiate on all nonprofit charitable health care providers in Pennsylvania consistent with the terms that would be imposed on UPMC's and Highmark's respective Health Care Provider Subsidiaries through paragraph 3.2 of the proposed Modified Consent Decree.

RESPONSE:

REQUEST NO. 10. Admit that during the December 28, 2018 Telephone Conference, You indicated Your intent to enforce a Duty to Negotiate on all nonprofit charitable health plans in Pennsylvania, consistent with the terms that would be imposed on UPMC's and Highmark's respective Health Plan Subsidiaries through paragraph 3.3 of the proposed modified consent decree sent to UPMC and Highmark on December 14, 2018.

RESPONSE:

REQUEST NO. 11. Admit that You intend to apply and enforce a Duty to Negotiate on all nonprofit charitable health plans in Pennsylvania, consistent with the terms that would be imposed on UPMC's and Highmark's respective Health Plan Subsidiaries through paragraph 3.3 of the proposed Modified Consent Decree.

RESPONSE:

REQUEST NO. 12. Admit that during the December 28, 2018 Telephone Conference, You indicated Your intent to enforce the "Contract Resolution (Last Best Offer Arbitration)" provisions on all nonprofit charitable health care providers and insurers in Pennsylvania, consistent with the terms that would be imposed on UPMC and Highmark through paragraphs 4.1 through 4.8 of the proposed modified consent decree provided to UPMC and Highmark on December 14, 2018.

RESPONSE:

REQUEST NO. 13. Admit that You intend to apply and enforce the “Contract Resolution (Last Best Offer Arbitration)” provisions that would be imposed on UPMC and Highmark through paragraphs 4.1 through 4.8 of the proposed Modified Consent Decree to all nonprofit charitable health care providers and insurers in Pennsylvania.

RESPONSE:

REQUEST NO. 14. Admit that during the December 28, 2018 Telephone Conference, You indicated Your intent to enforce a prohibition against the use of certain contract terms by any nonprofit charitable health care provider or insurer in Pennsylvania, including prohibitions on: (1) Any Anti-Tiering or Anti-Steering practice, term or condition; (2) Any Gag Clause, practice, term or condition; (3) Any Most Favored Nation practice, term or condition; (4) Any Must Have practice, term or condition; (5) Any Provider-Based Billing practice, term or condition; (6) Any All-or-Nothing practice, term or condition; and (7) Any Exclusive Contracts practice, term or condition, as reflected in paragraph 3.4 of the proposed modified consent decree sent to UPMC and Highmark on December 14, 2018.

RESPONSE:

REQUEST NO. 15. Admit that You intend to enforce a prohibition against the use of certain contract terms by any nonprofit charitable health care provider or insurer in Pennsylvania, including prohibitions on: (1) Any Anti-Tiering or Anti-Steering practice, term or condition; (2) Any Gag Clause, practice, term or condition; (3) Any Most Favored Nation practice, term or condition; (4) Any Must Have practice, term or condition; (5) Any Provider-Based Billing practice, term or condition; (6) Any All-or-Nothing practice, term or condition; and (7) Any Exclusive Contracts practice, term or condition, as reflected in paragraph 3.4 of the proposed Modified Consent Decree.

RESPONSE:

REQUEST NO. 16. Admit that during the December 28, 2018 Telephone Conference, You indicated Your intent to enforce a Limitation of Charges for Emergency Services upon all nonprofit charitable health care providers or their subsidiary organizations in Pennsylvania consistent with the terms that would apply to UPMC and Highmark under paragraph 3.5 of the proposed modified consent decree provided to UPMC on December 14, 2018.

RESPONSE:

REQUEST NO. 17. Admit that You intend to enforce a Limitation of Charges for Emergency Services upon all nonprofit charitable health care providers or their subsidiary organizations in Pennsylvania consistent with the terms that would apply to UPMC and Highmark under paragraph 3.5 of the proposed Modified Consent Decree.

RESPONSE:

REQUEST NO. 18. Admit that during the December 28, 2018 Telephone Conference, You indicated that the principles evidenced in the proposed modified consent decree sent to UPMC on December 14, 2018 would not apply to for-profit health care providers.

RESPONSE:

REQUEST NO. 19. Admit that You do not intend to apply or enforce the principles evidenced in the proposed Modified Consent Decree to or against for-profit health care providers.

RESPONSE:

REQUEST NO. 20. Admit that You do not intend to apply or enforce the principles in the proposed Modified Consent Decree against for-profit health care insurers unless they are owned by nonprofits.

RESPONSE:

REQUEST NO. 21. Admit that during the December 28, 2018 Telephone Conference, You indicated Your intent to require all nonprofit charitable health care providers in Pennsylvania to enter into a contract with any Health Plan seeking a services contract for Medicare Advantage patients.

RESPONSE:

REQUEST NO. 22. Admit that You intend to require all nonprofit charitable health care providers in Pennsylvania to enter into a contract with any Health Plan seeking a services contract for Medicare Advantage patients.

RESPONSE:

REQUEST NO. 23. Admit that during the December 28, 2018 Telephone Conference, You indicated Your intent to require all nonprofit health plans in Pennsylvania to enter into a contract with any nonprofit health care provider seeking a services contract for Medicare Advantage patients.

RESPONSE:

REQUEST NO. 24. Admit that You intend to require all nonprofit charitable health plans in Pennsylvania to enter into a contract with any nonprofit health care provider seeking a services contract for Medicare Advantage patients.

RESPONSE:

REQUEST NO. 25. Admit that during the December 28, 2018 Telephone Conference, You indicated that Your authority to enforce compliance with paragraphs 3.2 and 3.3 of the proposed modified consent decree provided to UPMC and Highmark on December 14, 2018 supersedes the non-interference provisions of the Social Security Act, 42 U.S.C. § 1395w-24(a)(6)(B)(iii).

RESPONSE:

REQUEST NO. 26. Admit that during the December 28, 2018 Telephone Conference, You indicated Your intent to regulate employer-sponsor health plans that are administered by nonprofit charitable health care insurers or their subsidiaries in the same manner as health plans that are not employer-sponsored, as reflected in paragraphs 3.3, 3.4, 2.5, and 3.7 of the proposed modified consent decree provided to UPMC and Highmark on December 14, 2018.

RESPONSE:

REQUEST NO. 27. Admit that during the December 28, 2018 Telephone Conference, You indicated that Your authority to enforce certain principles evidenced in the proposed modified consent decree provided to UPMC and Highmark on December 14, 2018 supersedes ERISA's preemption clause, 29 U.S.C. § 1144(a).

RESPONSE:

REQUEST NO. 28. Admit that during the December 28, 2018 Telephone Conference, You indicated your understanding that the Duty to Negotiate, as reflected in paragraphs 3.2 and 3.3 of the proposed modified consent decree provided to UPMC and Highmark on December 14, 2018, would not be exempt from antitrust scrutiny under the state-action immunity doctrine.

RESPONSE:

REQUEST NO. 29. Admit that none of the terms included in the proposed Modified Consent Decree are exempt from antitrust scrutiny under the state-action immunity doctrine.

RESPONSE:

REQUEST NO. 30. Admit that on January 2, 2019, UPMC sent You a letter summarizing the responses You provided during the December 28, 2018 Telephone Conference to certain questions that UPMC posed to Defendant on December 20, 2018.

RESPONSE:

REQUEST NO. 31. Admit that UPMC's letter of January 2, 2019 fairly represented the responses that You provided during the December 28, 2018 Telephone Conference to certain questions that UPMC posed to Defendant on December 20, 2018.

RESPONSE:

REQUEST NO. 32. Admit that UPMC's letter of January 2, 2019 included the statement: "If we have misunderstood or misrepresented OAG's position on any of these questions, please let me know as soon as possible."

RESPONSE:

REQUEST NO. 33. Admit that You have not indicated that UPMC's letter of January 2, 2019 misunderstood or misrepresented OAG's position on the questions raised in UPMC's letter of December 20, 2018.

RESPONSE:

Dated: March 5, 2019

Respectfully submitted,

/s/ Leon F. DeJulius, Jr.

Leon F. DeJulius Jr. (Pa. No. 90383) (*pro hac*)

Anderson T. Bailey (Pa. No. 206485) (*pro hac*)

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On behalf of Plaintiffs and All

Other Members of the Plaintiff Class

EXHIBIT 1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioners, :

v. :

No. 334 M.D. 2014

UPMC, A Nonprofit Corp.; :
UPE, a/k/a, HIGHMARK HEALTH, A Nonprofit Corp. :
and :
HIGHMARK, INC., A Nonprofit Corp.; :

Respondents. :

MODIFIED CONSENT DECREE

AND NOW, this _____ day of _____, 20__,

upon the *Petition for Supplemental Relief to Modify Consent Decrees* filed by the Commonwealth of Pennsylvania through its Attorney General, Josh Shapiro, and the record in this case, the Consent Decrees approved by this Court on July 1, 2014 are hereby combined into this single decree and modified as follows:

INTERPRETIVE PRINCIPLES

1. The terms of this Modified Consent Decree are based upon the status of the respondents as charitable institutions committed to public benefit and are intended to promote the public's interest by: enabling open and affordable

access to the respondents' health care services and products through negotiated contracts; requiring last best offer arbitration when contract negotiations fail; and, ensuring against the respondents' unjust enrichment by prohibiting excessive and unreasonable charges and billing practices in the rendering of medically necessary health care services.

DEFINITIONS

- 2.1 "Acquire" means to purchase the whole or the majority of the assets, stock, equity, capital or other interest of a corporation or other business entity or to receive the right or ability to designate or otherwise control the corporation or other business entity.
- 2.2 "All-or-Nothing" means any written or unwritten practice or agreement between a Health Care Provider and a Health Plan that requires either party to contract for all of the other party's providers, services or products in order to contract with any of the other party's providers, services or products.
- 2.3 "Anti-Tiering or Anti-Steering" means any written or unwritten agreement between a Health Care Provider and a Health Plan that prohibits the Health Plan from placing the Health Care Provider in a tiered Health Plan product for the purpose of steering members to lower cost, higher quality Health Care Providers, or which requires that the Health Plan place the Health Care Provider in the most desired tier in a tiered Health Plan product.

- 2.4 “Average In-Network Rate” means the average of all of a Health Care Provider’s In-Network reimbursement rates for each of its specific health care services provided, including, but not limited to, reimbursement rates for government, commercial and integrated Health Plans.
- 2.5 “Balance Billing” means when a Health Care Provider bills or otherwise attempts to recover the difference between the provider’s charge and the amount paid by a patient’s insurer and through member cost-shares.
- 2.6 “Cost-Share” or “Cost-Sharing” means any amounts that an individual member of a Health Plan is responsible to pay under the terms of the Health Plan.
- 2.7 “Credential” or “Credentialing” means the detailed process that reviews physician qualifications and career history, including, but not limited to, their education, training, residency, licenses and any specialty certificates. Credentialing is commonly used in the health care industry to evaluate physicians for privileges and health plan enrollment.
- 2.8 “Emergency Services/ER Services” means medical services provided in a hospital emergency department in response to the sudden onset of a medical condition requiring intervention to sustain the life of a person or to prevent damage to a person’s health and which the recipient secures immediately after

the onset or as soon thereafter as the care can be made available, but in no case later than 72 hours after the onset.

- 2.9 “Exclusive Contract” means any written or unwritten agreement between a Health Care Provider and a Health Plan that prohibits either party from contracting with any other Health Care Provider or Health Plan.
- 2.10 “Gag Clause” means any written or unwritten agreement between a Health Care Provider and a Health Plan that restricts the ability of a Health Plan to furnish cost and quality information to its enrollees or insureds.
- 2.11 “Health Care Provider” means hospitals, skilled nursing facilities, ambulatory surgery centers, laboratories, physicians, physician networks and other health care professionals and health care facilities.
- 2.12 “Health Care Provider Subsidiary” means a Health Care Provider that is owned or controlled by either of the respondents.
- 2.13 “Health Plan” means all types of organized health-service purchasing programs, including, but not limited to, health insurance or managed-care plans, whether offered by government, for-profit or non-profit third-party payors, Health Care Providers or any other entity.
- 2.14 “Health Plan Subsidiary” means a Health Plan that is owned or controlled by either of the respondents.

- 2.15 “Highmark” means Highmark, Inc., the domestic nonprofit corporation incorporated on December 6, 1996, with a registered office at Fifth Avenue Place, 120 Fifth Avenue, Pittsburgh, Pennsylvania 15222. Unless otherwise specified, all references to Highmark include UPE and all of its controlled nonprofit and for-profit subsidiaries, partnerships, trusts, foundations, associations or other entities however styled.
- 2.16 “Hospital” means a health care facility, licensed as a hospital, having a duly organized governing body with overall administrative and professional responsibility and an organized professional staff that provides 24-hour inpatient care, that may also provide outpatient services, and that has, as a primary function, the provision of inpatient services for medical diagnosis, treatment and care of physically injured or sick persons with short-term or episodic health problems or infirmities.
- 2.17 "Inflation Index" means the Medicare Hospital Inpatient PPS market basket index published annually by the Centers for Medicaid and Medicare Services.
- 2.18 “In-Network” means where a Health Care Provider has contracted with a Health Plan to provide specified services for reimbursement at a negotiated rate to treat the Health Plan’s members. The member shall be charged no more than the co-pay, co-insurance or deductible charged by his or her Health Plan, the member shall not be refused treatment for the specified services in

the contract based on his or her Health Plan and the negotiated rate paid under the contract by the Health Plan and the member shall be payment in full for the specified services.

- 2.19 "Most Favored Nations Clause" means any written or unwritten agreement between a Health Care Provider and a Health Plan that allows the Health Plan to receive the benefit of a better payment rate, term or condition that the provider gives to another Health Plan.
- 2.20 "Must Have" means any written or unwritten practice or agreement between a Health Care Provider and a Health Plan that requires either party to contract for one or more of the other party's providers, services or products in order to contract with any of the other party's providers, services or products.
- 2.21 "Narrow Network Health Plan" means where a Health Plan provides access to a limited and specifically identified set of Health Care Providers who have been selected based upon cost and quality.
- 2.22 "Out-of-Network" means where a Health Care Provider has not contracted with a Health Plan for reimbursement for treatment of the Health Plan's members.
- 2.23 "Payor Contract" means a contract between a Health Care Provider and a Health Plan for reimbursement for the Health Care Provider's treatment of the Health Plan's members.

- 2.24 “Provider Based Billing,” also known as “Facility Based Billing” and “Hospital Based Billing,” means charging a fee for the use of the Health Care Provider’s building or facility at which a patient is seen.
- 2.25 “Tiered Insurance Plan” or “Tiered Network” means where a Health Plan provides a network of Health Care Providers in tiers ranked on cost and quality, and provides members with differing Cost-Share amounts based on the Health Care Provider’s tier.
- 2.26 “Top Tier” or “Preferred Tier” means the lowest Cost-Share Healthcare Providers within a Tiered Insurance Plan or Tiered Network.
- 2.27 “Unreasonably Terminate” means to terminate an existing contract prior to its expiration date for any reason other than cause.
- 2.28 “UPE,” also known as “Highmark Health,” means the entity incorporated on October 20, 2011, on a non-stock, non-membership basis, with its registered office located at Fifth Avenue Place, 120 Fifth Avenue, Pittsburgh, Pennsylvania 15222. UPE serves as the controlling member of Highmark.
- 2.29 “UPMC” and the “UPMC Health System,” also known as the “University of Pittsburgh Medical Center,” means the non-profit, tax-exempt corporation organized under the laws of the Commonwealth of Pennsylvania having its principal address at 600 Grant Street, Pittsburgh, Pennsylvania 15219. Unless otherwise specified, all references to UPMC include all of its controlled

nonprofit and for-profit subsidiaries, partnerships, trusts, foundations, associations or other entities however styled.

2.30 “UPMC Health Plan” means the Health Plan owned by UPMC which is licensed by the Pennsylvania Department of Insurance.

2.31 “UPMC Hospitals” means the Hospitals operated by the following UPMC subsidiaries: UPMC Presbyterian-Shadyside, Children’s Hospital of Pittsburgh of UPMC, Magee Women’s Hospital of UPMC, UPMC McKeesport, UPMC Passavant, UPMC St. Margaret, UPMC Bedford Memorial, UPMC Horizon, UPMC Northwest, UPMC Mercy, UPMC East, UPMC Hamot, UPMC Hamot, affiliate - Kane Community Hospital, UPMC Altoona, UPMC Jameson, UPMC Susquehanna, UPMC Pinnacle, UPMC Cole, Western Psychiatric Institute and Clinic of UPMC and any other Hospital acquired by UPMC following the entry of the Court’s July 1, 2014 Consent Decree or this Modified Consent Decree.

TERMS

3.1 Internal Firewalls – Highmark and UPMC shall implement internal firewalls that prohibit the sharing of competitively sensitive information between and among their respective Health Plans and Health Care Provider subsidiaries.

3.2 Health Care Provider Subsidiaries’ Duty to Negotiate – Highmark’s and UPMC’s respective Health Care Provider Subsidiaries shall negotiate with

any Health Plan seeking a services contract and submit to single, last best offer arbitration after 90 days to determine all unresolved contract issues.

3.3 Health Plan Subsidiaries' Duty to Negotiate – Highmark's and UPMC's respective Health Plan Subsidiaries shall negotiate with any credentialed Health Care Provider seeking a services contract and submit to single, last best offer arbitration after 90 days to determine all unresolved contract issues. Nothing herein shall be construed to require a Health Plan Subsidiary to negotiate with a Health Care Provider for participation in a Narrow Network Health Plan, including as a Top Tier provider in a Tiered Insurance Plan or Tiered Network.

3.4 Prohibited Contract Terms – Highmark and UPMC are prohibited from utilizing in any of their Health Care Provider or Health Plan contracts:

3.4.1 Any Anti-Tiering or Anti-Steering practice, term or condition;

3.4.2 Any Gag Clause, practice, term or condition;

3.4.3 Any Most Favored Nation practice, term or condition;

3.4.4 Any Must Have practice, term or condition;

3.4.5 Any Provider-Based Billing practice, term or condition;

3.4.6 Any All-or-Nothing practice, term or condition;

3.4.7 Any Exclusive Contracts practice, term or condition;

- 3.5 Limitations on Charges for Emergency Services – Highmark’s and UPMC’s Health Care Provider Subsidiaries shall limit their charges for all emergency services to their Average In-Network Rates for any patient receiving emergency services on an Out-of-Network basis.
- 3.6 Limitations on Terminations – Highmark and UPMC shall not unreasonably terminate any existing Payor Contract.
- 3.7 Direct Payments Required – Highmark’s and UPMC’s Health Plan Subsidiaries shall pay all Health Care Providers directly in lieu of paying through their subscribers for services.
- 3.8 Non-Discrimination – Highmark and UPMC shall not discriminate in the provision of health care services, the release of medical records, or information about patients based upon the identity or affiliation of a patient's primary care or specialty physician, the patient's Health Plan or the patient's utilization of unrelated third-party Health Care Providers – provided, however, that this provision shall not be understood to require Highmark and UPMC to provide privileges or credentials to any Health Care Provider who otherwise does not qualify for privileges and credentials.
- 3.9 Duty to Communicate – Highmark and UPMC shall maintain direct communications concerning any members of their respective health plans that are being treated by the other’s provider to ensure that their respective agents,

representatives, servants and employees provide consistently accurate information regarding the extent of their participation in a patient's Health Plan, including, but not limited to, the payment terms of the patient's expected out-of-pocket costs.

- 3.10 Advertising – Highmark and UPMC shall not engage in any public advertising that is unclear or misleading in fact or by implication.
- 3.11 Changes to Corporate Governance – Highmark Health and UPMC shall replace a majority of their respective board members on or before January 1, 2020, with individuals lacking any prior relationship to either respondent for the preceding five (5) years.

**CONTRACT RESOLUTION
(LAST BEST OFFER ARBITRATION)**

- 4.1 Highmark and UPMC shall provide a copy of this Modified Consent Decree to any Health Plan licensed by the Pennsylvania Department of Insurance seeking a services contract or, to any Health Care Provider licensed by the Pennsylvania Department of Health seeking a services contract. Any such Health Plan or Health Care Provider may, at its option, require Highmark or UPMC to participate in the two-step contract resolution provisions of this Modified Consent Decree contained in paragraphs 4.2 through 4.8 by opting in, as set forth in paragraph 4.2, provided that: in the case of Health Care Providers, the Health Care Provider has identified the specific Health Plan

product of either Highmark or UPMC with which the Health Care Provider desires to contract.

4.1.1 First Step - period of good faith negotiations. If no contract is reached during the period;

4.1.2 Second Step - the Health Plan or Health Care Provider may request binding arbitration as outlined in paragraphs 4.3 through 4.8.

4.2 A Health Plan or Health Care Provider must give written notice to Highmark or UPMC of its desire to opt in and utilize the contract resolution provisions of this Modified Consent Decree at least ninety (90) days prior to the expiration of its existing contract with Highmark or UPMC. If a Health Plan or Health Care Provider does not have an existing contract with Highmark or UPMC, the Health Plan or Health Care Provider must give such notice within thirty (30) days after it has notified Highmark or UPMC, in writing, of its interest in a contract. A failure to opt-in to this contract resolution provision is deemed an opt-out.

4.3 As the First Step, a Health Plan or Health Care Provider shall negotiate in good faith toward a contract for Highmark's or UPMC's health care services and/or health plan for at least ninety (90) days. At the

conclusion of the ninety (90) day negotiation period, if the negotiations have been unsuccessful, the Health Plan or Health Care Provider may trigger binding arbitration with Highmark or UPMC (hereinafter collectively referred to as the "Arbitration Parties") before an independent body, but must do so, in writing, within thirty (30) days after the conclusion of good faith negotiations:

4.3.1 The arbitration panel will be an independent body made up of five representatives. A representative or his or her employer shall not have been an officer, director, employee, medical staff member, consultant or advisor, currently or within the past five (5) years with either of the Arbitration Parties:

4.3.1.1 The local or regional Chamber of Commerce shall appoint one (1) member from an employer with less than 100 employees;

4.3.1.2 The local or regional Chamber of Commerce shall appoint one (1) member from an employer with more than 100 employees;

- 4.3.1.3 The Pennsylvania Health Access Network
shall appoint one (1) member;
- 4.3.1.4 The Health Plan or Health Care Provider
shall appoint one (1) member; and
- 4.3.1.5 Highmark or UPMC, where they are an
Arbitration Party, shall appoint one (1)
member.

4.3.2 The Arbitration Parties shall each submit to the independent body its last contract offer and a statement of agreed upon contract terms and those which remain unresolved. The independent body may reject a request for arbitration if the number of unresolved contract terms exceed the number of agreed upon contract terms and order the Arbitration Parties to engage in another sixty (60) days of negotiation.

4.3.3 The independent body may retain such experts or consultants to aid it in its deliberations, provided that any such experts or consultants shall not have been an officer, director, employee, medical staff member, consultant or advisor, currently or within the past five (5) years with either of the Arbitration Parties. The

cost of such experts or consultants shall be divided equally between the Arbitration Parties.

4.3.4 If, during the course of the negotiation process outlined above, either of the Arbitration Parties fails to propose material contract terms prior to arbitration, the arbitration panel shall impose the proposed terms of the party which did make a proposal. If both Arbitration Parties submit proposed contracts, the independent body shall inform the Arbitration Parties of any information the independent body believes would be helpful in making a decision. The independent body shall not prohibit the presentation of information by either of the Arbitration Parties for consideration, but must consider the following:

4.3.4.1 The existing contract or contracts, if any, between the Arbitration Parties.

4.3.4.2 The prices paid for comparable services by other Health Plans and/or accepted by other Health Care Providers within the community.

4.3.4.3 The criteria required by either Highmark or UPMC concerning the credentialing of Health

Care Providers seeking an agreement with either Highmark or UPMC.

4.3.4.4 Whether the Health Care Provider is seeking an agreement in a tiered Health Plan of either Highmark or UPMC; in no event shall either respondent be required to permit a Health Care Provider to participate in a Narrow Network Health Plan, including as a Top Tier provider in either of the respondents' Tiered Insurance Plans or Tiered Networks.

4.3.4.5 Whether a contract between the Arbitration Parties would prevent other Health Care Providers in such Health Plan from meeting quality standards or receiving contracted for compensation.

4.3.4.6 The weighted average rates of other area hospitals for all payors, separately for each product line (commercial, Medicare managed care and/or Medicaid managed care) for which the Health Plan or Health Care Provider is

seeking an agreement with either Highmark or UPMC.

4.3.4.7 The costs incurred in providing the subject services within the community and the rate of increase or decrease in the median family income for the relevant county(ies) as measured by the United States Department of Labor, Bureau of Labor Statistics.

4.3.4.8 The rate of inflation as measured by the Inflation Index, and (i) the extent to which any price increases under the existing contract between the Health Plan or Health Care Provider and Highmark or UPMC (as applicable) were commensurate with the rate of inflation and (ii) the extent to which the Health Plan's premium increases, if any, were commensurate with the rate of inflation.

4.3.4.9 The rate of increase, if any, in appropriations for Managed Care Organizations participating in Pennsylvania's Medical Assistance program for

the Department of Public Welfare, in the case of a Medicaid Managed Care Organization participant in this arbitration process.

4.3.4.10 The actuarial impact of a proposed contract or rates paid by the Health Plan and a comparison of these rates in Pennsylvania with Health Plan or Health Care Provider rates in other parts of the country.

4.3.4.11 The expected patient volume which likely will result from the contract.

4.3.4.12 The independent body shall not consider the extent to which a party is or is not purchasing health plan or health care services from the other party.

4.4 Once the arbitration process has been invoked, the independent body shall set rules for confidentiality, exchange and verification of information and procedures to ensure the fairness for all involved and the confidentiality of the process and outcome. In general, the Arbitration Parties may submit confidential, competitively-sensitive information. Therefore, the independent body should ensure that it and

any consultants it retains do not disclose this information to anyone outside the arbitration process.

4.5 The independent body must select the contract terms proposed by one of the Arbitration Parties. The parties are bound by the decision of the independent body.

4.6 Because of the important interests affected, the independent body shall commence the arbitration process within twenty (20) days after it is triggered by a written request from a Health Plan or Health Care Provider. It shall hold an arbitration hearing, not to exceed three (3) days, within sixty (60) days of the commencement of the arbitration process. The independent body shall render its determination within seven (7) days after the conclusion of the hearing. The Arbitration Parties, by agreement, or the independent body, because of the complexity of the issues involved, may extend any of the time periods in this section, but the arbitration process shall take no more than ninety (90) days from its commencement.

4.7 The Arbitration Parties shall each bear the cost of their respective presentations to the independent body and shall each bear one-half of any other costs associated with the independent review.

4.8 During the above arbitration process:

- 4.8.1 If the Arbitration Parties have an existing contract, the reimbursement rates set forth in that contract will remain in effect and the reimbursement rates will be adjusted retroactively to reflect the actual pricing determined by the independent body.
- 4.8.2 If the Arbitration Parties have no contract, the Health Plan shall pay for all services by Highmark or UPMC (as applicable) for which payment has not been made, in an amount equal to the rates in its proposed contract. This amount will be adjusted retroactively to reflect the actual pricing determined by the independent body.
- 4.8.3 If the amounts paid pursuant to paragraphs 4.8.1 and 4.8.2 are less than the amounts owed under the contract awarded as the result of arbitration, the Health Plan shall pay interest on the difference. If the amounts paid pursuant to paragraphs 4.8.1 and 4.8.2 are greater than the amounts owed under the contract awarded as the result of arbitration, the Health Care Provider shall reimburse the excess and pay interest on the difference. For purposes of calculating interest due under this paragraph, the interest rate shall be the U.S. prime lending rate offered by PNC

Bank or its successor as of the date of the independent body's decision on arbitration.

MISCELLANEOUS TERMS

5. Binding on Successors and Assigns – The terms of this Consent Decree are binding on Highmark and UPMC, their directors, officers, managers, employees (in their respective capacities as such) and to their successors and assigns, including, but not limited to, any person or entity to whom Highmark or UPMC may be sold, leased or otherwise transferred, during the term of this Modified Consent Decree. Highmark and UPMC shall not permit any of their substantial parts to be acquired by any other entity unless that entity agrees in writing to be bound by the provisions of this Modified Consent Decree.
6. Enforcement – The OAG, PID and DOH shall have exclusive jurisdiction to enforce this Modified Consent Decree. If the OAG, PID or DOH believe that a violation of this Modified Consent Decree has taken place, they shall so advise Highmark and UPMC and give the offending respondent twenty (20) days to cure the violation. If after that time the violation has not been cured, the OAG, PID or DOH may seek enforcement of the Modified Consent Decree in the Commonwealth Court. Any person who believes they have been aggrieved by a violation of this Modified Consent Decree may file a complaint with the OAG, PID or DOH for review. If after that review, the

OAG, PID or DOH believes either a violation of the Modified Consent Decree has occurred or they need additional information to evaluate the complaint, the complaint shall be forwarded to Highmark or UPMC for a response within thirty (30) days. If after receiving the response, the OAG, PID or DOH, believe a violation of the Consent Decree has occurred, they shall so advise Highmark or UPMC and give the offending party twenty (20) days to cure the violation. If after that time the violation is not cured, the OAG, PID or DOH may seek enforcement of the Modified Consent Decree in this Court. If the complaint involves a patient in an ongoing course of treatment who must have the complaint resolved in a shorter period, the OAG, PID or DOH may require responses within periods consistent with appropriate patient care.

7. Release – This Modified Consent Decree releases any and all claims the OAG, PID or DOH brought or could have brought against Highmark or UPMC for violations of any laws or regulations within their respective jurisdictions, including claims under laws governing non-profit corporations and charitable trusts, consumer protection laws, insurance laws and health laws relating to the facts alleged in the Petition for Review or encompassed within this Modified Consent Decree for the period of July 1, 2012 to the date of filing. Any other claims, including but not limited to violations of the crimes code, Medicaid fraud laws or tax laws are not released.

8. Compliance with Other Laws – The parties agree that the terms and agreements encompassed within this Consent Decree do not conflict with the obligations of Highmark and UPMC under the laws governing non-profit corporations and charitable trusts, consumer protection laws, antitrust laws, insurance laws and health laws.
9. Notices – All notices required by this Modified Consent Decree shall be sent by certified or registered mail, return receipt requested, postage prepaid or by hand deliver to:

If to the Attorney General:

Executive Deputy Attorney General
Public Protection Division
Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120

Chief Deputy Attorney General
Charitable Trusts and Organizations Section
Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120

Chief Deputy Attorney General
Health Care Section
Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120

Chief Deputy Attorney General
Antitrust Section
Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120

If to Highmark

Chief Executive Officer
120 Fifth Avenue, Suite 3112
Pittsburgh, PA 15222

Copies to:

Executive Vice President and Chief Legal Officer
120 Fifth Avenue, Suite 3112
Pittsburgh, PA 15222

If to UPMC:

Chief Executive Officer
University of Pittsburgh Medical Center
U.S. Steel Tower
62nd Floor
600 Grant Street
Pittsburgh, PA 15219

Copies to:

General Counsel
University of Pittsburgh Medical Center
U.S. Steel Tower
62nd Floor
600 Grant Street
Pittsburgh, PA 15219

10. Averment of Truth – Highmark and UPMC aver that, to the best of their knowledge, the information they have provided to the OAG, PID and DOH in connection with this Modified Consent Decree is true.
11. Termination – This Consent Decree shall remain in full force and effect until further order of the Court.
12. Modification – If either the OAG, PID, DOH, Highmark or UPMC believes that further modification of this Modified Consent Decree would be in the

public interest, that party shall give notice to the other parties and the parties shall attempt to agree on a modification. If the parties agree on a modification, they shall jointly petition the Court to modify the Consent Decree. If the parties cannot agree on a modification, the party seeking modification may petition the Court for further modification and shall bear the burden of persuasion that the requested modification is in the public interest.

13. Retention of Jurisdiction – Unless this Modified Consent Decree is terminated, jurisdiction is retained by this Court to enable any party to apply to this Court for such further orders and directions as may be necessary and appropriate for the interpretation, modification and enforcement of this Modified Consent Decree.
14. No Admission of Liability – Highmark and UPMC, desiring to resolve the OAG's, PID's and DOH's concerns without trial or adjudication of any issue of fact or law, have consented to the entry of this Modified Consent Decree, which is not an admission of liability by Highmark or UPMC as to any issue of fact or law and may not be offered or received into evidence in any action as an admission of liability, whether arising before or after the matters referenced herein.
15. Counterparts – This Modified Consent Decree may be executed in counterparts.

NOW THEREFORE, without trial or adjudication of the facts or law herein between the parties to this Modified Consent Decree, the respondents agree to the signing of this Modified Consent Decree and this Court hereby orders that Highmark and UPMC shall be enjoined from breaching any and all of the aforementioned provisions.

WHEREFORE, and intending to be legally bound, the parties have hereto set their hands and seals to this Modified Consent Decree and submit the same to this Honorable Court for the making and entry of a Modified Consent Decree, Order or Judgment of the Court on the dates indicated below.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UPMC Pinnacle; UPMC Somerset; UPMC Health Plan, Inc.; UPMC Health Coverage, Inc.; UPMC Health Network, Inc.; UPMC Benefit Management Services, Inc,

Plaintiffs, on their own and on behalf of All Others Similarly Situated,

v.

Joshua D. Shapiro, in his official capacity as Attorney General of the Commonwealth of Pennsylvania,

Defendant.

Civil Action No. 19-298

**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS AND TANGIBLE THINGS TO DEFENDANT**

Pursuant to Federal Rule of Civil Procedure 34, Plaintiffs request that Defendant Joshua D. Shapiro, Attorney General of the Commonwealth of Pennsylvania, produce the documents requested herein by making them available for inspection and copying at the offices of Jones Day, 500 Grant Street, Suite 4500, Pittsburgh, Pennsylvania, 15219-2514, within 14 days from the date of service of these Requests.

INSTRUCTIONS

1. ***Time Frame.*** Unless otherwise specified, these requests seek documents prepared from January 1, 2014 to the present.
2. If any document was but is no longer in your possession, custody, or control, or was known to You, but is no longer in existence, state, as to each document, its date, author(s), recipient(s) and what disposition was made of it or what became of it.

3. When an objection is made to any request or any subpart thereof, state with specificity the part or subpart of the document request considered to be objectionable and all grounds for the objection.

4. If You find the meaning of any term in these document requests to be unclear, then You should assume a reasonable meaning, state what that assumed meaning is, and answer the request on the basis of that assumed meaning.

5. Each request for documents seeks production of the document in its entirety, without abbreviation or redaction, including all attachments or other matters affixed thereto.

6. With respect to each document that is withheld from production for any reason, or any portion of any document that has been redacted for any reason in connection with the production of a document, provide a statement setting forth:

- (a) its date;
- (b) its title;
- (c) its author;
- (d) its addressee;
- (e) the identify of each person who received and/or saw the original or any copy of such document
- (f) the specific privilege under which it is withheld;
- (g) its general subject matter;
- (h) its present custodian; and
- (i) description of it that you contend is adequate to support that contention that it is privileged.

7. With respect to any conversation for which a privilege is being asserted, identify by stating the following:

- (a) when and where the conversation occurred;
- (b) the name, title and job or position of each person who present at or during the conversation whether or not such conversation was in person or by telephone;
- (c) a brief description of the conversation's subject matter;
- (d) the statute, rule or decision that is claimed to give rise to the privilege; and
- (e) the name, title and job or position of all persons on whose behalf the privilege is asserted.

8. All documents are to be produced as they are kept in the usual course of business, their relative order in such files, and how such files were maintained. All electronic files should be produced where possible in electronic form, along with any software needed to access the information contained in the file and appropriate legends, keys, or other information needed to access and understand the data.

DEFINITIONS

1. Unless otherwise defined herein, the Definitions provided in the proposed Modified Consent Decree shall apply to these Requests.

2. “Attorney General Principles” means the terms in the proposed Modified Consent Decree that Defendant has stated apply to UPMC, Highmark, and all other nonprofit healthcare providers and insurers in Pennsylvania.

3. “Communication” means any oral or written exchange of words, thoughts or ideas to another person or entity, whether in person, in a group, by telephone, by letter, by telex or by any other process, electric, electronic or otherwise. All such communications in writing shall include, without limitation, printed, typed, handwritten, or other readable documents, whether in hardcopy, electronic mail or stored electronically on a computer disk or otherwise, contracts, correspondence, diaries, drafts (initial and all subsequent), forecasts, invoices, logbooks, memoranda, minutes, notes, reports, statements, studies, surveys and any and all non-identical copies thereof.

4. “Concern,” “concerning,” “relating to,” or “relate to” means refer to, regard, concern, describe, explain, state, evidence, record, constitute, pertain to, reflect, comprise, contain, embody, mention, show, support, contradict, and discuss, whether directly or indirectly, as required by the context to bring within the scope of the requests in this request for production of documents any documents that might be deemed outside their scope by another construction.

5. “Defendant” means Joshua D. Shapiro, Attorney General of the Commonwealth of Pennsylvania, including without limitation each employee, agent, representative, attorney, advisor, and any other Persons presently or formerly acting or purporting to act on his or the Office of Attorney General’s behalf.

6. “Documents” means all original written, recorded, or graphic matters whatsoever, and any and all non-identical copies thereof, including but not limited to advertisements, affidavits, agreements, analyses, applications, appointment books, bills, binders, books, books of account, brochures, calendars, charts, checks or other records of payment, communications, computer printouts, computer stores data, conferences, or other meetings, contracts, correspondence, diaries, electronic mail, evaluations, facsimiles, files, filings, folders, forms, interviews, invoices, jottings, letters, lists, manuals, memoranda, microfilm or other data compilations from which information can be derived, minutes, notations, notebooks, notes, opinions, pamphlets, papers, photocopies, photographs or other visual images, policies, recordings of telephone or other conversations, records, reports, resumes, schedules, scraps of paper, statements, studies, summaries, tangible things, tapes, telegraphs, telephone logs, telex messages, transcripts, website postings, and work papers, which are in Your possession, custody, or control. A draft or non-identical copy is a separate document within the meaning of this term.

7. “Proposed Modified Consent Decree” means that document authored by You as communicated to UPMC on or about January 8, 2019, which is attached as Exhibit A to plaintiffs’ complaint filed on February 21, 2019 (Doc. No. 1-3).

8. “U.S. Government” means and refers to the all legislative and executive branches, agencies, departments, or committees of the United States Government, including the administrators, staff, employees, agents, consultants, accountants, or attorneys of any of the

foregoing. U.S. Government includes but is not limited to CMS, Congress, Department of Commerce, Department of Defense, DOJ, DHHS, FTC, and any other agency, department, or committee of the U.S. Government that Defendants know or have reason to believe have materials discoverable in this litigation.

9. “You” or “or “Your” refers to Defendant.

DOCUMENTS REQUESTED

1. All Documents identified in Your responses to Plaintiffs’ First Set of Interrogatories, served concurrently herewith.
2. All Documents considered or relied upon in preparing Your responses to Plaintiffs’ First Set of Interrogatories and Plaintiffs’ First Set of Requests for Admission, served concurrently herewith.
3. All Documents and Communications concerning whether any of the Attorney General Principles are preempted or contrary to federal law, including with respect to the Medicare Act, the ACA, ERISA, or the Sherman Act.
4. All Communications with the U.S. Government concerning the Attorney General Principles.

Dated: March 5, 2019

Respectfully submitted,

/s/ Leon F. DeJulius Jr.

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*On behalf of Plaintiffs and All
Other Members of the Plaintiff Class*

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UPMC Pinnacle; UPMC Somerset; UPMC Health Plan, Inc.; UPMC Health Coverage, Inc.; UPMC Health Network, Inc.; UPMC Benefit Management Services, Inc,

Plaintiffs, on their own and on behalf of All Others Similarly Situated,

v.

Joshua D. Shapiro, in his official capacity as Attorney General of the Commonwealth of Pennsylvania,

Defendant.

Civil Action No. 19-298

PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANT

Pursuant to Federal Rule of Civil Procedure 33, Plaintiffs serve the following Interrogatories upon Defendant Joshua D. Shapiro, Attorney General of the Commonwealth of Pennsylvania, to be answered under oath within 14 days of service. These Interrogatories are continuing and therefore may require supplemental responses pursuant to the Federal Rules of Civil Procedure.

INSTRUCTIONS

1. Each Interrogatory shall operate and be construed independently. Unless otherwise indicated, no paragraph limits the scope of any other paragraph.
2. Respond separately to each Interrogatory. If You object to any portion of any Interrogatory, identify the portion to which you object and respond to the remainder.

3. If You find the meaning of any term in these Interrogatories to be unclear, then You should assume a reasonable meaning, state what that assumed meaning is, and answer the Interrogatory on the basis of that assumed meaning.

4. When a response is not provided in full, state with particularity the reason or reasons it is not being provided in full and describe with particularity the portion or portions of the response that are being withheld.

5. If any Interrogatory is answered by reference to a document, identify, by production number, the document containing the requested information.

6. In the event You assert any form of objection or privilege as a ground for not answering an Interrogatory or any part of an Interrogatory, set forth the legal grounds and facts upon which the objection or privilege is based. If the objection relates to only part of the Interrogatory, the unobjectionable portion of the Interrogatory should be answered in full.

7. In answering these Interrogatories, You shall furnish all information known or available. If any of these Interrogatories cannot be answered in full, the Interrogatory shall be answered to the extent possible.

8. Whenever necessary to bring within the scope of a Interrogatory a response that might otherwise be construed to be outside its scope, the following constructions should be applied:

a. Construing the terms “and” and “or” in the disjunctive or conjunctive, as necessary, to make the Interrogatory more inclusive;

b. Construing the singular form of any word to include the plural and the plural form to include the singular;

c. Construing the past tense of the verb to include the present tense and the present tense to include the past tense;

d. Construing the masculine form to include the feminine form;

- e. Construing negative terms to include the positive and vice versa; and
- f. Construing “include” to mean include or including “without limitation.”

9. Unless otherwise specified, these Interrogatories seek information that relates to the time period from January 1, 2014 to the present.

10. These Interrogatories are continuing in nature and should be supplemented as required by Federal Rule of Civil Procedure 26(e).

DEFINITIONS

1. Unless otherwise defined herein, the Definitions provided in the proposed Modified Consent Decree shall apply to these Requests.

2. “Attorney General Principles” means the terms in the proposed Modified Consent Decree that Defendant has stated apply to UPMC, Highmark, and all other nonprofit healthcare providers and insurers in Pennsylvania.

3. “Concern,” “concerning,” “relating to,” or “relate to” means refer to, regard, concern, describe, explain, state, evidence, record, constitute, pertain to, reflect, comprise, contain, embody, mention, show, support, contradict, and discuss, whether directly or indirectly, as required by the context to bring within the scope of the requests in this request for production of documents any documents that might be deemed outside their scope by another construction.

4. “Defendant” means Joshua D. Shapiro, Attorney General of the Commonwealth of Pennsylvania, including without limitation each employee, agent, representative, attorney, advisor, and any other Persons presently or formerly acting or purporting to act on his or the Office of Attorney General’s behalf.

5. “Documents” means all original written, recorded, or graphic matters whatsoever, and any and all non-identical copies thereof, including but not limited to advertisements,

affidavits, agreements, analyses, applications, appointment books, bills, binders, books, books of account, brochures, calendars, charts, checks or other records of payment, communications, computer printouts, computer stores data, conferences, or other meetings, contracts, correspondence, diaries, electronic mail, evaluations, facsimiles, files, filings, folders, forms, interviews, invoices, jottings, letters, lists, manuals, memoranda, microfilm or other data compilations from which information can be derived, minutes, notations, notebooks, notes, opinions, pamphlets, papers, photocopies, photographs or other visual images, policies, recordings of telephone or other conversations, records, reports, resumes, schedules, scraps of paper, statements, studies, summaries, tangible things, tapes, telegraphs, telephone logs, telex messages, transcripts, website postings, and work papers, which are in Your possession, custody or control. A draft or non-identical copy is a separate document within the meaning of this term.

6. “Proposed Modified Consent Decree” means that document authored by You as communicated to UPMC on or about January 8, 2019, which is attached as Exhibit A to plaintiffs’ complaint filed on February 21, 2019 (Doc. No. 1-3).

7. “You” or “or “Your” refers to Defendant.

INTERROGATORIES

INTERROGATORY NO. 1: Identify each nonprofit healthcare provider and insurer that is or would be subject to the Attorney General Principles, what steps You have taken to enforce the Attorney General Principles against each such nonprofit healthcare provider and insurer, and how and when You intend to apply and enforce the Attorney General Principles against such healthcare providers and insurers.

RESPONSE:

INTERROGATORY NO. 2: Identify each nonprofit healthcare provider and insurer

You have contacted about any of the Attorney General Principles and indicate whether they have agreed to support or have opposed the Attorney General Principles.

Identify all Documents relating to information provided in response to this Interrogatory.

RESPONSE:

INTERROGATORY NO. 3: Explain how the Attorney General Principles will be

applied uniformly to each Affordable Care Act health plan offered for sale in Pennsylvania.

RESPONSE:

INTERROGATORY NO. 4: Identify any economist or expert You have contacted or

relied upon, and any assessment, analysis, study, examination, evaluation, or empirical research You have undertaken or relied upon, to assess the actual or potential impact of the Attorney General Principles, including, but not limited to, impacts on nonprofit insurers or providers; consumer choice; the cost of health care insurance; the availability and quality of health care; public health; provider reimbursement rates; charity care; or competition in the healthcare delivery and healthcare insurance markets in Pennsylvania.

Identify all Documents relating to information provided in response to this Interrogatory.

RESPONSE:

INTERROGATORY NO. 5: Identify any alleged procompetitive or beneficial effects of the proposed terms, individually and collectively, of the Attorney General Principles, and describe your consideration, assessment, and evaluation of any alternative, less-restrictive mechanisms to accomplish those putative procompetitive or beneficial effects.

Identify all Documents relating to information provided in response to this Interrogatory.

RESPONSE:

INTERROGATORY NO. 6: Identify all witness, including both fact and expert witnesses, that You intend to call at any evidentiary hearing or trial in this action and describe the topics on which You expect each such person to testify.

RESPONSE:

INTERROGATORY NO. 7: For each of Your responses to Plaintiffs' Requests for Admission (served concurrently herewith) which is not an unqualified admission, state the basis for Your denial of the fact(s) stated in each Request.

RESPONSE:

Dated: March 5, 2019

Respectfully submitted,

/s/ Leon F. DeJulius Jr.

Leon F. DeJulius Jr. (Pa. No. 90383) (*pro hac*)

Anderson T. Bailey (Pa. No. 206485) (*pro hac*)

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On behalf of Plaintiffs and All

Other Members of the Plaintiff Class

EXHIBIT F

From: Goldman, Jonathan Scott <jgoldman@attorneygeneral.gov>
Sent: Monday, March 4, 2019 6:20 PM
To: Cozen, Stephen <SCozen@cozen.com>
Cc: Miller, Stephen <samiller@cozen.com>; Bayer, Jared D. <JBayer@cozen.com>; Potts, James R. <JPotts@cozen.com>; 'Williams, Coleen D.' <CWilliams@cozen.com>; DeJulius, Jr., Leon F. <lfdejulius@JonesDay.com>; Linz, Andrew D. <ALinz@cozen.com>; Bailey, Anderson T. <atbailey@JonesDay.com>; Donahue, III, James A. <jdonahue@attorneygeneral.gov>; Neary, Keli <kneary@attorneygeneral.gov>; Sheidy, Lisa L. <lsheidy@attorneygeneral.gov>
Subject: UPMC's Desire to Depose Jim Donahue

Dear Steve,

The Office of Attorney General received UPMC's subpoena for the deposition of Executive Deputy Attorney General James A. Donahue, III, by email on Friday at 5:00 p.m., and I received it the following afternoon. UPMC unilaterally scheduled EDAG Donahue's deposition for 10:00 a.m. on Friday, March 8, a date on which he is unavailable. UPMC's letter, deposition notice and subpoena did not indicate anything about the testimony you seek from EDAG Donahue but, candidly, given the strong legal privileges and protections at stake, I cannot think of any topic on which his testimony would be allowed. It is for this reason that we seek to better understand what additional non-privileged, non-protected factual information you seek from EDAG Donahue regarding the issue before this Court: *Whether the modification of the Consent Decree sought by the Office of Attorney General is in the public interest.* If any such information exists, we are open to sharing it with your client in a less-intrusive manner.

Executive Deputy Attorney General Donahue has been the Office of Attorney General's top attorney on the issues before the Court since the inception of this matter, the same way you and others have been primary counsel to UPMC throughout the negotiation and litigation surrounding the Consent Decree. In addition to the same, obvious legal privileges (attorney-client, etc.) and protections (work-product, etc.) that would counsel against the deposition of UPMC's counsel here, the deliberative process privilege prevents EDAG Donahue from disclosing any internal processes, deliberations or decisions of the Office of Attorney General here. This, of course, does not mean that UPMC is not entitled to discovery regarding the Office of Attorney General's Petition to modify the Consent Decree in this matter. It is. Indeed, UPMC has aggressively sought voluminous discovery and has promised more to come. Along with Friday evening's emailed subpoena, UPMC served the Attorney General with 33 interrogatories and 52 requests for production of documents. Document request number 3, alone, demands "[a]ll communications and documents exchanged with" 20 enumerated individuals and entities (the last of which is any "other third parties,") on any of 19 enumerated topics, during a more-than-8-year time period. In addition, on February 12, your law firm submitted to the Office of Attorney General a related, extensive demand for records under Pennsylvania's Right to Know Law. Further still, on last Tuesday's conference call with Judge Jones in the overlapping federal court litigation UPMC brought against the Attorney General, UPMC promised to propound still more discovery upon the Attorney General. Then, just this afternoon, UPMC served the Attorney General with 202 new requests for admission in this Commonwealth Court matter.

If, in addition to what it already has sought through the above, voluminous requests (to which our office reserves the right to make any and all appropriate objections), UPMC is truly entitled to any legitimate, non-privileged and non-protected factual information on the issue of why modification of the Consent Decree is in the public interest we want to make that information available to you and your

client. Kindly call me to discuss the specific additional information you seek from EDAG Donahue at your earliest convenience. My assistant, Lisa Sheidy (copied), would be happy to assist us in setting up a call.

It is our hope and belief that any such information can be provided through a less harassing, more appropriate mechanism than the deposition of the Attorney General's top attorney on this issue. For these reasons, we respectfully ask that UPMC promptly withdraw its subpoena to avoid otherwise unnecessary motion practice. We would appreciate this courtesy and suspect that the Commonwealth Court would, as well.

Sincerely,

Jonathan

C: 717-580-7342

Jonathan Scott Goldman

Executive Deputy Attorney General

Civil Law Division

Pennsylvania Office of Attorney General

Strawberry Square, 15th Floor

Harrisburg, PA 17120

jgoldman@attorneygeneral.gov

Telephone: [717-787-8058](tel:717-787-8058)

Facsimile: [717-772-4526](tel:717-772-4526)

EXHIBIT G

March 5, 2019

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

Stephen A. Cozen

Chairman

Direct Phone 215-665-2020

Direct Fax 215-701-2020

scozen@cozen.com

Jonathan Scott Goldman
Executive Deputy Attorney General
Civil Law Division
Pennsylvania Office of Attorney General
Strawberry Square, 15th Floor
Harrisburg, PA 17120

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

Dear Jonathan:

I acknowledge receipt of your letter of March 4th regarding the deposition of Jim Donahue scheduled for Friday March 8, 2019. With respect, the letter is both wrong and disingenuous.

First, whether or not the alleged "modification" is in the public interest is not the sole question or even the predicate question in this case. As articulated clearly in our Motion to Dismiss whether the conduct complained of in your Petition and claims arising therefrom is barred by the release provision of the Consent Decree is a predicate question. Whether the OAG has the authority to force two or more non-profit healthcare companies to contract with each other is another predicate question. Whether you have the right to extend the Consent Decree by an alleged "modification" in light of the decision of the Supreme Court in July 2018 is yet another predicate question, particularly, when the alleged "modification" is really an entirely new and different enforcement action.

Second, it is apparent that whether the "modification" is in the public interest is not a predicate question in this case. If it were, it would have been totally unnecessary for the OAG to allege improper conduct on the part of UPMC to support its wrongheaded Petition. This is one of the reasons why I wrote the Rule 1023 letter to Jim Donahue (copy attached).

Moreover, it appears to me that instead of allowing the Consent Decree to expire, as the Supreme Court said it must, and then bringing claims against UPMC for future conduct allegedly in violation of existing law, the OAG tried, by the device of alleged "modification" to come

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through the back door and do indirectly that which it cannot do directly: change the healthcare laws of Pennsylvania. It has no such regulatory nor other legal power to do so.

Mr. Donahue was privy to, or a participant in, the determination to do so.

If there are, indeed, privilege objections you may raise them at his deposition.

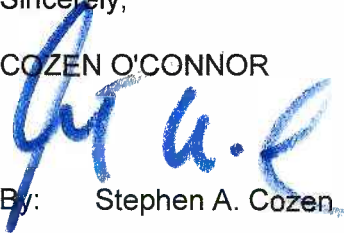
Third, Jim Donahue is and has been since prior to 2011 a percipient witness in connection with the matters complained of in the Petition. He has investigated into the conduct of Highmark and UPMC in their normal and daily operations and he has negotiated on behalf of the OAG many of the understandings and agreements reached between those parties. He has made both public and private statements – some under oath - in his capacity as the lead OAG attorney. We are entitled to inquire into the nature of the facts that he found during his investigations, the basis for the conclusions he reached, actions that he took on behalf of the OAG and his many private and public statements and admissions on behalf of the OAG.

Fourth, if indeed, Mr. Donahue is unavailable for his deposition on Friday because of personal commitments, we understand and are willing to reschedule his deposition to a later date only on condition that the OAG not proceed with any other depositions until Jim's deposition has taken place. As I will be travelling next week, I would very much like to arrive at such an understanding immediately.

If the foregoing suggestion is unacceptable then I believe, regrettably, it will be necessary for you to file a Motion for a Protective Order.

Sincerely,

COZEN O'CONNOR



By: Stephen A. Cozen

SAC:n

Enclosure

cc: Stephen A. Miller, Esquire
Jed D. Bayer, Esquire
James R. Potts, Esquire
Andrew D. Linz, Esquire
Leon F. DeJulius, Jr., Esquire
Anderson T. Bailey, Esquire
James A. Donahue, III, Esquire
Mark A. Pacella, Esquire
Tracy A. Wertz, Esquire



February 21, 2019

Stephen A. Cozen

Direct Phone 215-665-2020

Direct Fax 215-701-2020

scozen@cozen.com

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:

Pursuant to Rules 1023.1-1023.4 of the Pennsylvania Rules of Civil Procedure, we are providing you with notice of matters alleged in your Petition to Modify Consent Decrees that have no evidentiary support whatsoever, are not warranted by existing law or by a non-frivolous argument for the extension, modification or reversal of existing law, or appear to be included for an improper purpose. More specifically,

1. The OAG previously admitted that it cannot force UPMC to contract against its will. The basic premise of the OAG's Petition and the principal relief sought on each count is to force UPMC hospitals to enter into contracts with Highmark (and every other willing payor) and to force the UPMC Health Plan to enter into contracts with Allegheny Health Network (or any other willing provider) at rates and on terms determined by outside arbitrators, or to impose this regime by requiring UPMC to provide healthcare services to everyone, regardless of whether there is a provider contract, at in-network rates. But, the OAG has specifically admitted that it has no legal authority to force UPMC to contract with Highmark—that was the basis for the negotiating mutually-agreed reciprocal consent decrees with UPMC and Highmark (collectively the "Consent Decree") in the first instance. You moreover specifically testified to this before the Democratic Policy Committee of the Pennsylvania House of Representatives on October 10, 2014. In that testimony, you defended the Commonwealth's strategy in securing the Consent Decrees with UPMC and Highmark by explaining that the Commonwealth could not force UPMC to contract with Highmark or anyone else. You testified that the OAG evaluated whether it could "force UPMC and Highmark to contract with each other," and "concluded that we could not" because "there is no statutory basis to make UPMC and Highmark contract with each other." We called this testimony to your attention on January 31 and were therefore surprised to see the contrary assertions in your Petition when it was filed a week later. Any assertion that your office has the authority to compel contracts between UPMC and Highmark should therefore be withdrawn.

2. The core allegations in the Petition were released in the Consent Decree. As alleged in the Petition, the “Patients First Initiative” was formed by the Commonwealth “to resolve the disrupted health care and In-Network access issues presented” in 2014 by the impending end of UPMC’s provider contracts with Highmark. (¶ 18.) The end result of that initiative was the Consent Decree, which comprehensively addressed the wind-down and eventual termination of the UPMC/Highmark relationship, and “release[d] any and all claims the OAG, PID or DOH brought or could have brought against UPMC for violations of any laws or regulations within their respective jurisdictions, including claims under laws governing non-profit corporations and charitable trusts, consumer protection laws, insurance laws and health laws relating to the facts alleged in the Petition for Review or encompassed within this Consent Decree for the period of July 1, 2012 to the date of filing.” (Consent Decree §IV.C.5.) The OAG’s Petition nonetheless rests almost entirely on a recitation of clearly released allegations, including:
- a. The dispute regarding Highmark’s Community Blue plan, which occurred during 2013 and which was expressly resolved by the Consent Decree, (see Petition ¶¶ 16-18, 96, 103, 107, 118);
 - b. Allegedly misleading marketing campaigns regarding access to UPMC physicians for Highmark subscribers, which occurred in the course of the Community Blue dispute. (See *id.* ¶ 17.) The Consent Decree expressly resolved and addressed this by requiring UPMC and Highmark to jointly pay into a Consumer Education Fund for the Commonwealth to inform consumers about the end of the UPMC/Highmark relationship, (Consent Decree § IV.B);
 - c. The compensation of UPMC’s executives and location of its headquarters, both of which were in place long before the Consent Decree went into effect on July 1, 2014, (see Petition ¶ 60);
 - d. Various, allegedly revenue-increasing practices — including transferring procedures to specialty providers, charging provider-based fees, and charging Out-of-Network patients for the unreimbursed balance of the services they receive — all of which predated, and were specifically addressed by, the Consent Decree, (see *id.* ¶ 31; Consent Decree §§ IV.A.8 (regulating transfer of patients), IV.A.3 & IV.A.4 (regulating balance billing), & IV.C.1 (setting a schedule of billing rates in the absence of a negotiated rate)); and
 - e. Most importantly, UPMC’s refusal to contract with Highmark to provide In-Network access to Highmark enrollees. (See Petition ¶¶ 27-29, 106, 107, 117, 119.c.) As discussed above, the Consent Decree and the Mediated Agreement that predated it were occasioned by UPMC’s decision to terminate its relationship with Highmark. (See *id.* ¶¶ 12-18.) The Consent Decree was put in place to implement the separation over time — UPMC’s efforts to initiate that separation *necessarily preceded* and were covered in the Consent Decree.

Not only did your Petition not even mention the Release contained in the Consent Decrees it was seeking to “modify,” it proposes a modified decree that deletes the

Release entirely. Clearly the failure of your Petition to account for the Release and the deletion of that Release from the proposed "modification" cannot be squared with good faith and should be rectified by withdrawal of those claims in the Petition that have been released.


3. The allegations regarding UPMC Susquehanna (§§ 38-41 & 104) have no evidentiary basis. The Petition alleges a sequence of events involving UPMC Susquehanna, PMF Industries (also referred to as "a Williamsport area manufacturing business"), and PMF's unnamed "insurer." (Petition ¶ 38.) It proceeds to allege that PMF "purchase[s] health insurance" for its employees from this "insurer," which in turn tries to contract with providers for "Reference Based Pricing." The refusal of UPMC Susquehanna to enter into these contracts with PMF or its insurer is then cited as a supposed violation of the Nonprofit Corporations Law ("NCL") and Unfair Trade Practices and Consumer Protection Law ("UTCPL"). In fact, as you must know, PMF's "insurer," INDECS, is not an insurer at all, but rather a self-styled "third-party administrator" that does not engage in reference based pricing. It instead arbitrarily decides on an ad hoc basis how much to pay for a service already rendered to a patient without any reference to the hospital's charge, Medicare/Medicaid rates, or any other published rate schedule. It is moreover operated by a convicted felon and has been sanctioned for misconduct in both New Jersey and New York. The allegations regarding UPMC Susquehanna are false, have no evidentiary basis, and should be withdrawn.
4. The allegations regarding out-of-area BCBS companies (§§ 42-43) are false. The Petition alleges that UPMC "decide[d] to not participate" in the networks of out-of-area Blue Cross Blue Shield ("BCBS") companies. That, as you must know, is false. In fact, UPMC has repeatedly offered to enter into full in-network provider contracts with these out-of-area BCBS companies, but they have refused to contract with UPMC because of the Blue Cross Blue Shield Association's ("BCBSA") illegal and anticompetitive market allocation rules for its affiliated companies, which are enforced in Western Pennsylvania by Highmark, precluding out-of-area BCBS companies from contracting with UPMC. UPMC is currently seeking an injunction in the U.S. District Court for the Northern District of Alabama against enforcement of those rules, which have been declared *per se* violations of the Sherman Act. UPMC demands that the OAG withdraw the false allegations in paragraphs 42-43, and would welcome the OAG to join in the effort to undo the BCBSA illegal market allocation compact.
5. The OAG contends that the expansion of UPMC (§§ 64-70) will allegedly harm more patients, but the OAG reviewed and did not object to these transactions. The Petition alleges that "[t]he effects on the public of UPMC's conduct were previously limited to the greater Pittsburgh area[, but] with its expansion across the Commonwealth, even more patients will experience these negative impacts," (Petition at 35), and that "its potential to deny care or increase costs will impact thousands more Pennsylvanians," (¶ 70). As the OAG knows, however, the refusal of certain UPMC hospitals to contract with Highmark is and always has been limited to Allegheny and Erie Counties, where Highmark owns and operates a competing hospital system, and thus does not extend to hospitals outside of those areas. Moreover, the OAG reviewed each of these transactions (up to and including the transaction with Somerset Hospital, which closed on February 1, 2019)

for compliance with both charitable trust law and antitrust law and, with the exception of Jameson Health System, made no objection. In the case of UPMC Jameson, moreover, the OAG litigated its objections and lost. The allegations concerning potential harm caused by UPMC's expansion are therefore unfounded and should be withdrawn.

To bring your filing into compliance with Rules 1023.1-1023.4, please withdraw or correct the above-noted errors within twenty-eight days of the date of this letter.

Sincerely,

COZEN O'CONNOR

By:  Stephen A. Cozen

SAC:jdl