

MONITOR AGREEMENT (DRAFT)

Monitor Agreement (the "Agreement"), dated as of September 28, 2016, between CentraCare Health, ~~Inc.~~ ("the Respondent"), and Richard A. Shermer of R. Shermer & Company, P.O. Box 294199, Lewisville, Texas 75029 (the "Monitor").

Preliminary Statements

WHEREAS the Federal Trade Commission (the "**Commission**") is considering for public comment an Agreement Containing Consent Orders with Respondent or its parent company, which provides, among other things, that Respondent.....and engage a monitor to monitor Respondent's compliance with its obligations under the Order

WHEREAS, the Commission is expected to issue the Agreement Containing Consent Orders and appoint the Monitor pursuant to the Orders to monitor Respondent's compliance with the terms of the Orders, and the Monitor has consented to such appointment;

WHEREAS, the Orders further provide that Respondent shall execute an agreement, subject to prior approval of the Commission, conferring all the rights and powers necessary to permit Monitor to carry out its duties and responsibilities pursuant to the Orders;

WHEREAS, this Agreement, although executed by Monitor and Respondent, is not effective for any purpose, including but not limited to imposing rights and responsibilities on Respondent or Monitor under the Orders, until the Order to Maintain Assets has been issued and this Agreement has been approved by the Commission;

WHEREAS, the parties to this Agreement intend to be legally bound, subject only to the Commission's approval of this Agreement.

NOW, THEREFORE, the parties agree as follows:

DEFINITIONS

- A. "Respondent" means CentraCare Health, ~~Inc.~~ ^{system}, with its principal place of business at 1406 Sixth Avenue North, St. Cloud, MN 56303, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by CentraCare, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. All other capitalized words or phrases appearing in this Agreement that are not otherwise defined herein are deemed to have the defined meanings assigned to them in the Order.

ARTICLE I

1.1 Powers of the Monitor. Monitor shall have the rights, duties, powers and authority conferred upon Monitor by the Orders that are necessary for Monitor to monitor Respondent's compliance with the Orders. No later than one day after the Order becomes final, Respondent hereby transfers to Monitor all rights, powers, and authorities necessary to permit Monitor to perform its duties and responsibilities pursuant to the Order to Maintain Assets and consistent with the purposes of the Decision and Order. Any descriptions thereof contained in this Agreement in no way modify Monitor's powers and authority or Respondent's obligations under the Orders.

1.2 Monitor's Duties. Monitor shall monitor Respondent's compliance with the Orders, including, but not limited to:

- a. Assuring that Respondent expeditiously complies with all of the obligations, and performs all of responsibilities, of Respondent as required by the Orders in this matter;
- b. Monitoring Relevant Agreements; and
- c. Assuring that Confidential Business Information is not received or used by Respondent or Other Parties, except as allowed in the Orders in this matter.

1.3 Duration of Monitor's Authority. Monitor shall have all powers and duties described above and consistent with the Orders for the term set forth in the Orders.

1.4 Confidential and Proprietary Information. Monitor shall enter into a confidentiality agreement, agreeing to be bound by the terms and conditions of the Orders. Monitor must retain and maintain all Material Confidential Information it receives from either Respondent or Other Parties on a confidential basis, except as is permitted by the Orders. Monitor may disclose confidential information only to persons employed by or working with Monitor under this Agreement, to persons employed at the Commission, and as permitted by Respondent or Other Parties with respect to information they provided Monitor. Monitor shall require any person retained by Monitor to assist in carrying out the duties and responsibilities of Monitor to execute a confidentiality agreement that requires the same standard of care and obligations of confidentiality to which Monitor must adhere under this Agreement. Monitor shall maintain the confidentiality, for a period of five (5) years after the termination of this Agreement, of all other aspects of the performance of its duties under this Agreement and shall not disclose any confidential information relating thereto.

1.5 Restrictions. Monitor shall not be involved in any way in the management, production, supply and trading, sales marketing, and financial operations of the competing products of Respondent.

1.6 Reports. Monitor shall report to the Commission pursuant to the terms of the Orders and as otherwise requested by the Commission staff.

1.7 Access to Records, Documents and Facilities. Subject to any demonstrated legally recognized privilege, Monitor shall have full and complete access to

Respondent's personnel, to include those employees designated to be transferred to an acquirer, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as Monitor may reasonably request, related to Respondent's compliance with the obligations of Respondent under the Orders in this matter. Documents, records and other relevant information are to be provided in an electronic format if they exist in that form. Respondent shall cooperate with any reasonable request of Monitor and shall take no action to interfere with or impede Monitor's ability to monitor Respondent's compliance with the Orders.

ARTICLE II

2.1 Retention and Payment of Counsel, Consultants, and other Assistants. Monitor shall have the authority to employ, at the cost and expense of the Respondent, (with the written prior approval of Respondent which shall not be unreasonably withheld) such attorneys, consultants, accountants, and other representatives and assistants as are necessary to carry out the Monitor's duties and responsibilities as allowed pursuant to the Orders.

2.2 Compensation. Monitor shall be compensated by Respondent for his services under this Agreement, including all work in connection with the negotiation and preparation of this Monitor Agreement, pursuant to the fee schedule attached as Confidential Exhibit A for time spent in connection with the discharge of its duties under this Agreement and the Orders. In addition, Respondent will pay: (a) out-of-pocket expenses reasonably incurred by Monitor in the performance of its duties under the orders; and (b) fees and disbursements reasonably incurred by any advisor appointed by Monitor pursuant to the first paragraph in Article II. At its own expense, Respondent may retain an independent auditor to verify such invoices. Monitor shall provide Respondent with monthly invoices for time and expenses. Respondent shall pay such invoices within thirty (30) days of receipt. The Monitor and Respondent shall submit any disputes about invoices to the Commission for assistance in resolving such disputes.

2.3 To the extent available, Respondent will provide the Monitor with temporary workspace and access to office equipment owned or used by Respondent at sites the Monitor is required to visit in order to fulfill its obligations under this Agreement. Monitor agrees to comply with all of Respondents' safety and security regulations, instructions and procedures while at Respondents' sites.

ARTICLE III

3.1 Monitor's Liabilities and Indemnification. Respondent shall indemnify the Monitor and hold Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by Monitor. The Monitor's maximum liability to Respondents relating to services rendered in accordance with this Agreement (regardless of form of action, whether in contract, statutory law, or tort) shall

be limited to an amount equal to the total sum of the fees paid to the Monitor by the Respondent. Any claim arising from this Agreement that Respondents may have against the Monitor must be brought no later than one (1) year following the termination or expiration of this Agreement. In the performance of its duties under this Agreement, the Monitor shall exercise the standard of care and diligence that would be expected of a reasonable person in the conduct of his own business affairs. The Monitor shall not be liable for any delays or other failures to perform resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority. The Monitor warrants that it will perform its obligations hereunder in good faith. R. Shermer & Company disclaims other warranties, expressed or implied, other than those expressly agreed to in writing between the Parties.

3.2 Monitor's Removal. If the Commission determines that Monitor ceases to act or fail to act diligently and consistent with the purpose of the Orders, Respondent shall terminate this Agreement and appoint a substitute Monitor, subject to Commission approval and consistent with the Orders.

3.3 Approval by the Commission. This Agreement shall have no force or effect until approved by the Commission, other than the confidentiality provisions herein.

3.4 Termination: This Agreement shall terminate the earlier of: (a) thirty (30) days following the termination date set forth in the applicable Order; (b) Respondent's receipt of written notice from the Commission that the Commission has determined that Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor; (c) with at least thirty (30) days advance notice to be provided by Monitor to Respondent and to the Commission, upon resignation of the Monitor; or (d) when the Respondent's last obligation under the Orders and the Relevant Agreements that pertains to the Monitors' service has been fully performed; provided, however, that the Commission may require that the Respondent extend this Agreement or enter into an additional agreement with the Monitor as may be necessary or appropriate to accomplish the purposes of the Orders. If this Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force.

3.5 Conflicts of Interest: If Monitor becomes aware during the term of this Agreement that it has or may have a conflict of interest that may affect or could have the appearance of affecting performance by the Monitor of any of its duties under this Agreement, Monitor shall promptly inform Respondent and the Commission of any such conflict.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

MONITOR:

Richard A. Shermer

Richard A. Shermer
President, R. Shermer & Company

RESPONDENT:

CentraCare Health, Inc. *System*

By: *P. B. H.*
sr. v.p. + General Counsel