

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

COMMISSIONERS: **Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson**

In the Matter of

**Hackensack Meridian Health, Inc.
a corporation,**

and

**Englewood Healthcare Foundation,
a corporation.**

Docket No. 9399

**ANSWER AND DEFENSES OF RESPONDENT ENGLEWOOD HEALTHCARE
FOUNDATION**

Respondent Englewood Healthcare Foundation (“Englewood”), by and through its undersigned counsel, responds below to the Federal Trade Commission’s (“Commission” or “the FTC”) Administrative Complaint (“Complaint”) dated December 3, 2020.

GENERAL RESPONSE TO THE COMMISSION’S ALLEGATIONS

To the extent a response is required, Englewood denies the allegations and legal conclusions in the FTC’s complaint.

The proposed transaction between Englewood and Hackensack Meridian *Health* (“HMH”) will not cause any substantial lessening of competition in any relevant market, but will instead result in substantial procompetitive benefits, including, but not limited to, merger-

specific pricing efficiencies, cost synergies, and other procompetitive effects, all of which will directly benefit patients and payors in Northern New Jersey.

I.

NATURE OF THE CASE¹

1. Englewood denies the allegations contained in Paragraph 1 of the Complaint, except to admit that Englewood (a) has entered into a proposed transaction with HMH, and; (b) Englewood is an independent hospital and health system operating in Bergen County, New Jersey, among others geographies.

2. Englewood denies the allegations contained in Paragraph 2 of the Complaint and specifically denies that “[t]he Proposed Transaction would enhance HMH’s dominant position in Bergen County,” that HMH and Englewood “compete[] head-to-head,” and that the “Proposed Transaction would eliminate this competition,” except to admit that Englewood is a provider of inpatient general acute care (“GAC”) services. Englewood further states that Paragraph 2 of the Complaint contains legal conclusions as to which no response is required.

3. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 3 of the Complaint, and therefore denies the same.

4. Paragraph 4 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 4 of the Complaint, and specifically denies that “[t]he Proposed Transaction will substantially lessen competition in the market for inpatient GAC hospital services sold and

¹ For ease of reference, Englewood’s Answer utilizes the section numbering and headings in the Complaint. In so doing, Englewood does not admit or concede the factual bases or legal conclusions included in the Complaint’s headings.

provided to commercial insurers and their enrollees” and that “[t]he relevant geographic market for evaluating the Proposed Transaction is no broader than Bergen County.”

5. Englewood denies the allegations contained in Paragraph 5 of the Complaint.

6. Paragraph 6 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 6 of the Complaint.

7. Englewood denies the allegations contained in Paragraph 7 of the Complaint and specifically denies that “[q]uantitative analysis . . . confirms that HMH and Englewood are close competitors,” except to admit that, among other things, Englewood provides inpatient GAC services to patients in Bergen County, among other areas. Englewood lacks the knowledge or information sufficient to respond to the remaining allegations contained in Paragraph 7 of the Complaint as they pertain to HMH, and therefore denies the same.

8. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 8 of the Complaint, and therefore denies the same.

9. Englewood denies the allegations contained in Paragraph 9 of the Complaint, and specifically denies that Englewood offers “very similar services” as HMH’s Hackensack University Medical Center (“HUMC”) facility and that “insurers would have very few alternatives for inpatient GAC hospital services in Bergen County” as a result of the Proposed Transaction.

10. Englewood denies the allegations contained in Paragraph 10 of the Complaint.

11. Englewood denies the allegations contained in Paragraph 11 of the Complaint.

12. Englewood denies the allegations contained in Paragraph 12 of the Complaint.

II.

JURISDICTION

13. Paragraph 13 of the Complaint contains legal conclusions to which no response is required.

14. Paragraph 14 of the Complaint contains legal conclusions to which no response is required.

III.

RESPONDENTS

15. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 15 of the Complaint, and therefore denies the same.

16. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 16 of the Complaint, and therefore denies the same.

17. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 17 of the Complaint, and therefore denies the same.

18. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 18 of the Complaint, and therefore denies the same.

19. Englewood denies the allegations contained in Paragraph 19 of the Complaint, except to admit that the Englewood Healthcare Foundation (a) is a New Jersey non-profit corporation; (b) is headquartered in Englewood, New Jersey; (c) Englewood's subsidiaries and affiliates include Englewood Hospital and Medical Center, the Englewood Physician Network, and the Englewood Healthcare Foundation, and; (d) Englewood's 2019 consolidated financial statements reflect \$768.895 million in total operating revenue.

20. Englewood denies the allegations contained in Paragraph 20 of the Complaint, except to admit that (a) Englewood operates an inpatient GAC hospital in Bergen County; (b)

Englewood's services include cardiac surgery and care, cancer care, orthopedic surgery, spine surgery, vascular surgery, women's health, and bloodless medicine and surgery, and; (c)

Englewood Hospital and Medical Center is licensed to operate 531 beds.

21. Admitted.

IV.

THE PROPOSED TRANSACTION

22. Admitted.

23. Admitted.

24. Admitted.

V.

RELEVANT SERVICE MARKET

25. Paragraph 25 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 25 of the Complaint.

26. Paragraph 26 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 26 of the Complaint.

27. Paragraph 27 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 27 of the Complaint.

28. Paragraph 28 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 28 of the Complaint.

29. Paragraph 29 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 29 of the Complaint.

V.

RELEVANT GEOGRAPHIC MARKET

30. Paragraph 30 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 30 of the Complaint, and specifically denies that the relevant geographic market is “no broader than Bergen County, New Jersey.”

31. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 31 of the Complaint as they pertain to the size of Bergen County and how it would compare to other locations in the United States. Englewood admits the remaining allegations contained in Paragraph 31 of the Complaint.

32. Paragraph 32 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 32 of the Complaint.

33. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in the first sentence of Paragraph 33 of the Complaint, and therefore denies the same. Englewood further states that Paragraph 33 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 33 of the Complaint.

34. Englewood denies the allegations contained in Paragraph 34 of the Complaint. Englewood further states that Paragraph 34 of the Complaint contains legal conclusions as to

which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 34 of the Complaint.

35. Englewood denies the allegations contained in Paragraph 35 of the Complaint and specifically denies that Bergen County is the “main area of competition” between any of HMH’s hospitals and Englewood. Englewood lacks the knowledge or information sufficient to respond to the remaining allegations contained in Paragraph 35 of the Complaint as they pertain to HMH, and therefore denies the same.

VI.

MARKET STRUCTURE AND THE PROPOSED TRANSACTION’S PRESUMPTIVE ILLEGALITY

36. Paragraph 36 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 36 of the Complaint, and therefore denies the same.

37. Paragraph 37 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 37 of the Complaint and specifically denies that the relevant geographic market is “no broader than Bergen County.”

38. Paragraph 38 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 38 of the Complaint.

VII.

ANTICOMPETITIVE EFFECTS

39. Englewood states that Paragraph 39 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 39 of the Complaint.

A.

Competition among Hospitals Benefits Consumers

40. Englewood denies the allegations contained in Paragraph 40 of the Complaint, except to admit that, among other forms of competition, hospitals and health systems seek contracts with commercial insurers and seek to attract patients to their facilities.

41. Englewood denies the allegations contained in Paragraph 41 of the Complaint, except to admit that to become an in-network provider, a hospital or health system negotiates with a commercial insurer and, if mutually agreeable terms can be reached, enters into a contract.

42. Englewood denies the allegations contained in Paragraph 42 of the Complaint. Englewood lacks the knowledge or information sufficient to respond to the generalized allegations contained in Paragraph 42 of the Complaint, and therefore denies the same.

43. Englewood lacks the knowledge or information sufficient to respond to the generalized allegations contained in Paragraph 43 of the Complaint, and therefore denies the same.

44. Englewood denies the allegations contained in Paragraph 44 of the Complaint. Englewood lacks the knowledge or information sufficient to respond to the generalized allegations contained in Paragraph 44 of the Complaint as they pertain to other firms, and therefore denies the same.

45. Englewood denies the allegations contained in Paragraph 45 of the Complaint. Englewood lacks the knowledge or information sufficient to respond to the generalized

allegations contained in Paragraph 45 of the Complaint as they pertain to other firms, and therefore denies the same.

46. Englewood denies the allegations contained in Paragraph 46 of the Complaint. Englewood lacks the knowledge or information sufficient to respond to the generalized allegations contained in Paragraph 46 of the Complaint as they pertain to other firms, and therefore denies the same.

B.

The Proposed Transaction Would Eliminate Close Competition Between HMH and Englewood

47. Englewood denies the allegations contained in Paragraph 47 of the Complaint. Englewood further states that the Commission’s selective quotation of unidentified written materials or communications, offered without context, is misleading as framed and Englewood respectfully refers the Court to the quoted documents.

48. Englewood denies the allegations contained in Paragraph 48 of the Complaint, and specifically denies that “[q]uantitative evidence confirms the closeness of competition between HMH and Englewood.”

49. Englewood denies the allegations contained in Paragraph 49 of the Complaint, and specifically denies that there is “close head-to-head competition” between HMH and Englewood.

50. Englewood denies the allegations contained in Paragraph 50 of the Complaint, and specifically denies that “Englewood and HMH are important alternatives for insurers constructing networks in Bergen County.” Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 50 of the Complaint as they

pertain to HMH, and therefore denies the same. Englewood further states that Paragraph 50 of the Complaint contains legal conclusions as to which no response is required.

C.

The Proposed Transaction Will Eliminate Non-Price Competition

51. Englewood denies the allegations contained in Paragraph 51 of the Complaint, except to admit that there are several hospitals and health systems in New Jersey and New York that provide inpatient GAC services and compete with HMH, Englewood, or both.

52. Englewood denies the allegations contained in Paragraph 52 of the Complaint. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 52 of the Complaint as they pertain to HMH, and therefore denies the same.

53. Englewood denies the allegations contained in Paragraph 53 of the Complaint, and specifically denies that there will be any reduction in the quality of medical care, facilities, or service offerings as a result of the Transaction.

VIII.

LACK OF COUNTERVAILING FACTORS

A.

Entry Barriers

54. Englewood denies the allegations contained in Paragraph 54 of the Complaint. Englewood lacks the knowledge or information sufficient to respond to the remaining allegations contained in Paragraph 54 of the Complaint as they pertain to other firms, and therefore denies the same.

55. Englewood denies the allegations contained in Paragraph 55 of the Complaint. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 55 of the Complaint as they pertain to other firms, and therefore denies the same.

B.

Efficiencies

56. Englewood denies the allegations contained in Paragraph 56 of the Complaint.

IX.

VIOLATION

COUNT I – ILLEGAL AGREEMENT

57. Englewood denies the allegations contained in Paragraphs 1 through 56 of the Complaint, except where specifically admitted above.

58. Englewood denies the allegations contained in Paragraph 58 of the Complaint. Englewood further states that Paragraph 58 of the Complaint contains legal conclusions as to which no response is required.

COUNT II – ILLEGAL ACQUISITION

59. Englewood denies the allegations contained in Paragraphs 1 through 56 of the Complaint, except where specifically admitted above.

60. Englewood denies the allegations contained in Paragraph 60 of the Complaint. Englewood further states that Paragraph 60 of the Complaint contains legal conclusions as to which no response is required.

ENGLEWOOD’S AFFIRMATIVE AND OTHER DEFENSES

Englewood asserts the following defenses, without assuming the burden of proof on such defenses that would otherwise rest with the Commission:

1. The Complaint fails to state a claim upon which relief can be granted.
2. The relief sought is contrary to the public interest.
3. The Complaint fails to allege a plausible relevant geographic market.
4. The Complaint fails to allege any plausible harm to competition.
5. The Complaint fails to allege any plausible harm to any consumers.
6. The Complaint fails to allege any plausible harm to consumer welfare.
7. New entry and expansion by competitors can be timely, likely, and sufficient, such that it will ensure that there will be no harm to competition, consumers, or consumer welfare as a result of the Transaction.
8. The combination of HMM and Englewood will be procompetitive. The merger will result in substantial procompetitive benefits including, but not limited to, merger-specific efficiencies, cost-savings, innovation, and other procompetitive effects that will directly increase the consumer value proposition. These benefits greatly outweigh any and all purported anticompetitive effects.
9. Englewood reserves the right to assert other defenses as they become known to Englewood.

NOTICE OF CONTEMPLATED RELIEF

WHEREFORE, having fully answered the Complaint, Englewood respectfully requests that the Commission: (1) deny the Commission's contemplated relief; (2) dismiss the Complaint in its entirety with prejudice; (3) award Englewood its costs of suit, including experts' fees and reasonable attorneys' fees, as may be allowed by law; and (4) award each other or further relief as the Commission may deem just and proper.

DATE: December 17, 2020

Respectfully submitted,

ROPES AND GRAY LLP

s/ Chong S. Park

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*Counsel for Respondent Englewood Healthcare
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer was electronically filed using the FTC's administrative e-filing system, causing the document to be served on:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Washington, DC, 20580

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20590

I further certify that I have served via electronic mail a copy of the foregoing on the following:

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