

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

<b>COMMONWEALTH OF PENNSYLVANIA,</b>	:	
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>CIVIL ACTION NO.</b>
	:	
<b>JAMESON HEALTH SYSTEM, INC.,</b>	:	<b>15-CV-1706</b>
<b>JAMESON MEMORIAL HOSPITAL,</b>	:	
<b>UPMC d/b/a/ UNIVERSITY OF PITTSBURGH</b>	:	
<b>MEDICAL CENTER, a non-profit corporation</b>	:	
	:	
<b>Defendants</b>	:	
	:	

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**JOINT MOTION TO APPROVE FINAL ORDER**

1. The Commonwealth of Pennsylvania, Plaintiff, and Jameson Health System, Inc. and Jameson Memorial Hospital (“Jameson”), and UPMC d/b/a University of Pittsburgh Medical Center, a non-profit corporation (“UPMC”), Defendants, move this Court for an order to approve the attached final order to resolve this matter.

2. On December 29, 2015 the Commonwealth filed a complaint against Jameson alleging that the proposed merger between Jameson and UPMC was unlawful under the antitrust laws.

3. Pursuant to a January 4, 2016 Order of Court, the Commonwealth and Jameson entered into binding arbitration to determine whether Jameson had received a

qualified bid from any entity other than UPMC. The arbitrator entered a decision in favor of Jameson.

4. On March 21, 2016, Plaintiff amended the Complaint to add UPMC as a Defendant.

5. Jameson and UPMC vigorously contest the Commonwealth's allegations of fact and conclusions of law in the Amended Complaint. Defendants specifically deny that they have violated federal antitrust laws or any state common law doctrine against the suppression of competition. As a result of ongoing discussions, the Parties agree that it is in all Parties' best interest to resolve this lawsuit on mutually agreeable terms without further litigation and without the necessity for any Defendant to file any Answer or other response to the Amended Complaint.

6. Accordingly, the Commonwealth, Jameson and UPMC have negotiated a resolution of this matter that includes the entry of the attached final order and a consent agreement without trial or further adjudication of issues of fact or law raised in the Amended Complaint, that requires UPMC to comply with certain conditions for a period of 10 years. The entry into the consent agreement will not be deemed an admission of any fact by any Party.

7. WHEREFORE, for the above reasons, the Parties move this Court to enter the attached order.

**UPMC d/b/a UNIVERSITY OF  
PENNSYLVANIA  
PITTSBURGH MEDICAL CENTER,  
  
ATTORNEY GENERAL**

**COMMONWEALTH OF  
  
BRUCE R. BEEMER, FIRST DEPUTY  
a non-profit corporation**

By: /s/ Rebekah B. Kcehowski  
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By: /s/ James A. Donahue, III  
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JAMESON MEMORIAL HOSPITAL**

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Jameson Memorial Hospital

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JAMESON MEMORIAL HOSPITAL,	:	
UPMC d/b/a/ UNIVERSITY OF PITTSBURGH :	:	
MEDICAL CENTER, a non-profit corporation :	:	
	:	
Defendants	:	
_____	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I am this day, 21st day of March, 2016, sending a copy of the foregoing Joint Motion to Approve Final Order to all persons and in the manner indicated below.

SERVICE MADE BY United States First Class mail and electronically addressed as follows:

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<b>MEDICAL CENTER, a non-profit corporation</b>	:	
	:	
<b>Defendants</b>	:	
	:	
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**FINAL ORDER**

**I. INTRODUCTION**

Plaintiff, the Commonwealth of Pennsylvania, Office of Attorney General filed its Amended Complaint on March 21, 21016 under Section 7 of the Clayton Act, 15 U.S.C. §18, and under the common law of the Commonwealth of Pennsylvania alleging that the proposed acquisition of Jameson Health System, Inc. and its affiliates including Jameson Memorial Hospital and Jameson Medical Care, Inc. (“JMC”) (collectively the "Acquired Parties") by UPMC d/b/a University of Pittsburgh Medical Center ("UPMC") substantially will lessen competition in one or more relevant health care services markets. UPMC and the Acquired Parties contest the allegations of the Amended Complaint and wish to assure the Commonwealth and the communities they serve that such acquisition, if permitted to proceed, will occur in accordance with their respective missions and a commitment to the provision of high quality, affordable health care services to the community.

The parties, by their respective attorneys, have consented to the entry of this Final Order without trial or adjudication of any issue of fact or law, and without this Final Order constituting any evidence against, or any admission by any party regarding any such issue of fact or law. The essence of this Final Order is to enjoin UPMC, as parent of UPMC Jameson and JMC, and UPMC Jameson and JMC themselves, from certain practices and to continue certain other practices subsequent to the acquisition of the Acquired Parties in order to settle the parties' differences with respect to the alleged loss of competition in the Amended Complaint.

Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

## **II. JURISDICTION**

This Court has jurisdiction over the parties and subject matter of this action pursuant to Sections 4 and 16 of the Clayton Act (15 U.S.C. §§15 and 26). This Court has jurisdiction over the state claims pursuant to 28 U.S.C. § 1367(a).

## **III. DEFINITIONS**

As used in this Final Order:

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 majority of directors or trustees of a corporation or other business entity.
2. "Acquired Party" or "Acquired Parties" means Jameson Health System, Inc., Jameson Memorial Hospital and Jameson Medical Care, Inc.



3. "Anti-tiering or Anti-Steering Clause" 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 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.

4. "Charity Care" means the actual cost of uncompensated care provided to indigent, uninsured and underinsured patients. Charity Care shall be calculated as the sum of the actual costs of uncompensated care, discounted costs of care, and forgiven charges for the actual costs of care that were the responsibility of the indigent, uninsured and underinsured patients to pay and who qualified for free, discounted or forgiven costs at the time the care was rendered. Charity Care shall not be calculated or based upon the amount of any unpaid charges or the value of volunteer services. Shortfalls in the amount of any government reimbursements below actual costs shall be reported as such and shall not be characterized or reported as Charity Care.

5. "Closing" means the satisfaction of all conditions and occurrence of all events necessary to transfer control of the Acquired Parties to UPMC.

6. "Definitive Agreement" means the Integration and Affiliation Agreement by and among Jameson Health System, Inc., Jameson Memorial Hospital, UPMC Horizon and UPMC d/b/a University of Pittsburgh Medical Center dated February 25, 2015, as amended by the Amendment to Integration and Affiliation Agreement, dated December 8, 2015.

7. "Geographic Market" for purposes of this Final Order, but without constituting UPMC's or the Acquired Parties' agreement that the same is a relevant geographic market for antitrust purposes, means Lawrence County.

8. "Health Care Provider" means hospitals, laboratories, physicians, physician networks and other health care professionals.

9. "Health Plan" means any type of organized health service purchasing or third-party payment program, including, but not limited to, health insurance and managed-care plans, whether offered by government, for-profit or non-profit, third-party payors, Health Care Providers or any other entity, including Commercial, Medicare Advantage and Medicaid Managed Care Health Plan, that contracts for health care services including, inpatient and outpatient hospital services, physician services and other ancillary services.

10. "Hospital" means a health care facility, licensed as an acute care 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.

11. "Inflation Index" means, for each applicable year, the lesser of (i) that year's update to the Hospital Inpatient PPS market basket index as published annually by the Centers for Medicare and Medicaid Services (CMS) but without any reduction for any CMS adjustments or other adjustments, or (ii) two and one-half percent (2.5%) over the prior year's rates.

12. "Jameson Health System" ("JHS") is a non-profit, tax-exempt corporation based in New Castle, Pennsylvania, which controls Jameson Memorial Hospital and other Healthcare Providers. JHS is a corporation organized under the laws of the Commonwealth of Pennsylvania, having its principal address at 1211 Wilmington Avenue, New Castle, PA 16105.

13. "Jameson Memorial Hospital" ("JMH") is a non-profit hospital organized under the laws of the Commonwealth of Pennsylvania, with its principal address at 1211 Wilmington Avenue, New Castle, PA 16105. UPMC Jameson refers to JMH after Closing.

14. "Jameson Payor Contract" means a contract between JMH and a Health Plan for the furnishing of inpatient and/or outpatient health care services at JMH and for physician services at JMC, and that is in effect currently and as of the Closing Date. A Jameson Payor Contract includes any such contracts for Commercial, Medicare Advantage and Medicaid Managed Care products, unless specified otherwise.

15. "JMC" is a multi-specialty physician group practice. JMC is a non-profit, tax exempt, corporation with its principal address at 1211 Wilmington Avenue, New Castle, PA 16105. JMC shall mean, after Closing, an entity that indirectly will be controlled by UPMC.

16. "Most Favored Nations Clause" ("MFN") means any written or unwritten agreement between a Health Care Provider and a Health Plan that prevents the Health Care Provider from offering a lower reimbursement rate, or preferable term or condition to another third-party payor than the Health Care Provider provides to that Health Plan.

17. "Primary Care Physician" ("PCP") means a physician practicing internal medicine, family practice or general practice to patients eighteen years of age and older or are otherwise deemed non-pediatric patients.

18. "Primary Practice Location" means the health care facility at which a physician spends the largest number of hours per week engaged in patient encounters among all such locations where such physician practices.

19. "Restrictive Covenant" means any restriction including, but not limited to, a covenant not to compete, non-solicitation covenant or a noninterference covenant, which would limit a physician's ability to practice medicine.

20. "UPMC" means UPMC d/b/a University of Pittsburgh Medical Center, a non-profit, tax-exempt corporation organized under the laws of the Commonwealth of Pennsylvania having its principal address at 200 Lothrop Street, Pittsburgh, PA 15213. As used herein, UPMC does not include UPMC Health Plan unless otherwise specified.

21. "UPMC Health Care Providers" means any UPMC hospital except UPMC Jameson; physician practices that do not serve Lawrence County; and other UPMC health care providers including but not limited to home health providers, durable medical equipment providers, and imaging centers (other than those located on the UPMC Jameson campus).

22. "UPMC Health Plan" ("UPMCHP") is a health plan licensed by the Pennsylvania Insurance Department. UPMCHP is a non-profit corporation with its principal address at

U.S. Steel Tower, 600 Grant Street, Pittsburgh, Pennsylvania 15219, and is a subsidiary of UPMC.

23. "UPMC Health System" for purposes of this Final Order refers to the entire healthcare system consisting of UPMC as parent and all subsidiary corporate entities comprising the system.

24. "UPMC Jameson" refers to Jameson Memorial Hospital after Closing, an entity of which UPMC will be the sole member post-Closing.

25. "UPMC Physician Practice" means any of the corporations controlled by UPMC which employs physicians, including physicians in the Geographic Market, which may include but is not limited to University of Pittsburgh Physicians, UPMC Community Medicine, Inc. and, after Closing, JMC.

#### IV. TERMS

From and after the Closing, for the period set forth below, UPMC Jameson, JMC and UPMC as their ultimate parent, shall comply with the following to the extent the same are applicable to each of them:

26. **Maintaining UPMC Jameson as an Acute Care Hospital**

26.1 UPMC Jameson and JMC shall continue to provide the community they serve with quality, affordable health care services in accordance with their mission and as part of a health care system of which UPMC, a non-profit, tax exempt, corporation, is the parent.

26.2 UPMC Jameson and (to the extent within the control of UPMC Jameson) the physicians who practice at UPMC Jameson shall remain accessible to persons in the Geographic Market. UPMC Jameson will provide a level of Charity Care, as defined in Paragraph 4, that is fully compliant with Internal Revenue Code §501(r) and that is consistent with UPMC's system-wide patient financial assistance policy, but that in no event is any more restrictive or more limited than the patient financial assistance policy in place at Jameson Memorial Hospital at the time of this Final Order.

26.3 During the term of this Final Order, UPMC, as the parent of UPMC Jameson, commits that UPMC Jameson will, for a period of at least ten (10) years following the Closing, remain an acute care hospital, at JMH's current North Campus and in a manner that meets the requirements of the Pennsylvania Department of Health and the CMS Conditions of Participation. In order to maintain UPMC Jameson as a regional hub for the Lawrence and Mercer County areas, UPMC commits that it will take necessary and reasonable steps to: (a) Maintain a hospitalist program at UPMC Jameson; (b) Maintain the interventional cardiac catheterization lab certification at UPMC Jameson and assure physician coverage that complies with state requirements; and (c) Enhance the cardiothoracic surgery and comprehensive lung programs at UPMC Jameson through assisting in the provision of qualified physician specialists, which may include post-operative rounding by qualified surgical specialists. In addition to the above commitments, UPMC will assure that UPMC Jameson maintains an appropriate level of inpatient and outpatient services, including essential services that are part of an acute care hospital. This includes: emergency, general surgery, pre-natal and post-natal obstetrical care (with the goal of increasing access to fetal medicine and subspecialty services),

orthopedic surgery, gastro-intestinal, neurology, urology, non-invasive cardiology, pulmonology, nephrology, medical and surgical oncology, and emergency and outpatient behavioral health services. The following factors will be considered in evaluating the level of such services: (i) regional demographics; (ii) the availability of qualified physicians; (iii) the level of community need; and, (iv) economic feasibility.

**27. Health Plan Contracting**

27.1 UPMC shall not terminate for any reason other than cause according to the terms of each such contract a Jameson Payor Contract prior to the end of the contract term in effect at Closing. For purposes of this Agreement, Jameson Payor Contracts with an automatic renewal or “evergreen” provision rather than a fixed term will be kept in place for at least one (1) year from the Closing. Notwithstanding anything in this Paragraph 27.1, UPMC shall not be in violation of this Final Order and shall have no further obligations under this Paragraph 27.1 with respect to any Health Plan in the event that the Health Plan’s consent is necessary to assign a Jameson Payor Contract to UPMC and such consent is not given.

27.2 UPMC shall (in accordance with Paragraph 27.4) offer to each Health Plan that is a party to a Jameson Payor Contract the opportunity to extend such Contract to a date that is ten (10) years from the date of the entry of this Final Order (the “Extension Period”). The Extension Period will be deemed to include any post-termination continuation of care period in the Contract and shall be subject to the following:

A. During the first five (5) years of the Extension Period (the “First Five Year Period”), for the period remaining on the Jameson Payor Contract's term as set in the Jameson Payor Contract prior to the Extension Period (without consideration of an evergreen period), the rates under such Jameson Payor Contract shall be adjusted according to the adjustment methodology in the Jameson Payor Contract, and for the period after the end of the Contract term (without consideration of an evergreen period) through the end of the First Five Year Period, the rates shall be adjusted annually by the Inflation Index.

B. With respect to years six (6) through ten (10) of the Extension Period (the Second Five Year Period), Health Plan and UPMC Jameson shall commence good faith negotiations at the beginning of the fifth year of the First Five Year Period on rates for the Second Five Year Period. If such negotiations result in impasse after one hundred and twenty (120) days, Health Plan, at its option, may commence a Single Last Best Offer Arbitration as set forth in Exhibit A to this Final Order with respect to establishing rates for the Second Five Year Period. The Arbitration must be commenced within thirty (30) days of the end of the negotiation period unless a longer time is agreed to by UPMC and the Health Plan or was requested by the Arbitrators. If no Single Last Best Offer Arbitration is commenced, the Contract shall expire at the end of the fifth year of the First Extension Period.

27.3 Notwithstanding anything to the contrary stated herein, if a Jameson Payor Contract contains a different set of rates to be paid to UPMC Jameson in the event of a Closing (the “Change of Control Contingency Rate Adjustment”),



UPMC's obligation to extend the Jameson Payor Contract under this Paragraph shall be contingent on the Health Plan's agreement not to impose such Change of Control Contingency Rate Adjustment. Within 90 days following the Closing Date, UPMC will notify each Health Plan that is party to a Jameson Payor Contract of the offer to extend such Jameson Payor Contract on the above terms. The Health Plan must elect such extension within sixty (60) days of UPMC's offer, and failure of the Health Plan to elect such extension shall be deemed a rejection of the offer. UPMC shall extend such Jameson Payor Contract if its offer is accepted.

27.4 If a Health Plan that is a party to a Jameson Payor Contract declines the offer to extend such Contract through the Extension Period as described in Paragraph 27.2 above, UPMC shall nonetheless seek to negotiate in good faith with such Health Plan. If UPMC Jameson and the Health Plan are unable to reach an agreement on such a contract after one hundred and twenty (120) days of negotiations, the Health Plan may, at its option, by serving notice of the Arbitration within thirty (30) days of the end of the negotiations period unless a longer time is agreed to by UPMC and the Health Plan or was requested by the Arbitrators, commence a Single Last Best Offer Arbitration with UPMC Jameson as set forth in Exhibit A to this Final Order.

27.5 UPMC shall negotiate in good faith with each Health Plan that is not a party to a Jameson Payor Contract (such as those seeking to offer a health plan procured through the healthcare.gov Affordable Care Exchange serving Lawrence County, seeking to get approval from CMS to offer a Medicare Advantage Plan for

Lawrence County Pennsylvania, or offering a commercial product for either hospital or physician services). If UPMC Jameson and the Health Plan are unable to reach an agreement on such a contract after one hundred and twenty (120) days of negotiations, the Health Plan may, at its option, by serving notice of the Arbitration within thirty (30) days of the end of the negotiations period unless a longer time is agreed to by UPMC and the Health Plan or was requested by the Arbitrators, commence a Single Last Best Offer arbitration with UPMC Jameson as set forth in Exhibit A to this Final Order.

27.6 UPMC shall not enter into any Health Plan contract for hospital services at UPMC Jameson or for physician services from a UPMC Physician Practice with respect to any physician whose Primary Practice Location is located in the Geographic Market that expressly limits the Health Plan's ability to contract with non-UPMC Health Care Providers.

27.7 UPMC shall not condition any Health Plan contract for hospital services at UPMC Jameson or for physician services from any UPMC Physician Practice with respect to a physician whose Primary Practice Location is located in the Geographic Market on a Health Plan's agreement not to contract with any other Health Care Provider.

27.8 Except for physicians employed by UPMC and hospital-based physicians described in Paragraph 27.11 providing services at UPMC Jameson, UPMC shall not prohibit independent physicians who are members of any UPMC-affiliated physician-hospital network in the Geographic Market from holding privileges at any

non-UPMC Hospital or from participating in any other physician-hospital networks, Health Plans or integrated delivery systems. This Paragraph 27.8 shall not limit the UPMC Health Plan as to network requirements, plan design or otherwise.

27.9 UPMC shall not require a Health Plan to contract for the services of all or certain UPMC Health Care Providers (other than UPMC-employed or UPMC-controlled physicians providing hospital based services, as described in Paragraph 27.8, in the event of a UPMC Jameson Hospital Contract) in order for that Health Plan to obtain a contract for services at UPMC Jameson or a UPMC Physician Practice for any UPMC employed physicians whose Primary Practice Location is located in the Geographic Market.

27.10 UPMC shall not enter into any agreement with any Health Plan (including UPMC Health Plan) that includes an MFN to the benefit of UPMC, UPMC Jameson, or any Health Plan. UPMC may not renew or extend any Jameson Payor Contract without abandoning any term or provision that constitutes an MFN. UPMC shall inform the Office of Attorney General of the presence of an MFN in any existing Jameson Payor Contract by providing a list of such agreements to the Office of Attorney General not more than sixty (60) days from entry of this Final Order.

27.11 If JMH, JHS and UPMC Jameson have a contract with a Health Plan for services, UPMC shall also have a contact with such Health Plan for hospital-based services at UPMC Jameson in the specialties of radiology, pathology, anesthesiology, emergency medicine, hospitalist services, critical care medicine and oncology, provided such services are provided by a UPMC-employed or UPMC-

controlled physician group. If UPMC Jameson contracts any such hospital-based services to a third party, UPMC will use best efforts, including through contract negotiations, to encourage such physician group to contract with such Health Plan.

27.12 If the UPMC Health Plan includes an Independent Physician practicing in Lawrence County in its network of participating physicians prior to the Closing, it may not terminate such physician as a participating UPMC Health Plan physician for a period of at least three years after Closing solely because that physician is not employed by UPMC, JMH or UPMC Jameson, provided such physician meets all the other requirements to be a participating physician in the UPMC Health Plan.

28. **JMC-** Pursuant to the Definitive Agreement, UPMC will honor all the terms of all existing contracts of Jameson Health System, Inc., including any of its subsidiaries and JMH, with physicians and physician groups. Within sixty (60) days of Closing, UPMC shall permit any JMC employed physician to terminate his or her employment. UPMC shall permit any such termination to occur without financial or other penalty and without restrictions on such physician's future practice location or employer, and UPMC shall waive any Restrictive Covenant as necessary to give effect to this Paragraph 28. Notwithstanding anything in this Paragraph 28, UPMC shall not be required to waive any covenants concerning confidentiality of information.

29. **Staff Privileges**

29.1 UPMC Jameson shall maintain an open medical staff for all qualified physicians as set forth in the current JMH medical staff bylaws for at least ten years from

the Closing. Notwithstanding anything in this Paragraph 29.1, UPMC may contract on an exclusive basis, in its sole discretion, for physician services at UPMC Jameson in the specialties of radiology, pathology, anesthesiology, emergency medicine, hospitalist services, critical care medicine, and oncology.

29.2 UPMC shall not condition continuing or granting medical staff privileges at UPMC Jameson upon a physician's agreement not to practice or refer patients to another Health Care Provider or participation in UPMC Health Plan. This Paragraph 29.2 does not apply to physicians employed by UPMC. This Paragraph 29.2 shall not apply to UPMC Health Plan and shall not limit UPMC Health Plan as to network requirements, plan design or otherwise.

29.3 UPMC shall not revoke the privileges of any physician at UPMC Jameson solely because that physician is employed by a health system other than UPMC.

**30. Referrals and Transfers**

30.1 UPMC Jameson shall transfer any patient, whether for diagnosis or treatment, to a non-UPMC Health Care Provider if such transfer is requested by the patient, the patient's representative when such representative is authorized to make care decisions for the patient, or the patient's treating physician; provided that the patient is stable and that the transfer is medically appropriate and legally permissible.

30.2 In the event that a patient receiving treatment at UPMC Jameson is in need of a non-emergent transfer, and is covered by a Health Plan with which the proposed

destination UPMC health care facility does not participate or is not otherwise considered in-network for purposes of such care, UPMC Jameson shall transfer the patient to a participating non-UPMC health care facility; provided that the patient is stable and that the transfer is medically appropriate and legally permissible, and unless (i) the patient or the patient's representative expresses a contrary preference after being informed of the financial consequences of such a decision, or (ii) otherwise approved by the patient's Health Plan.

30.3 Nothing in this Paragraph 30 shall require UPMC or UPMC Jameson to make any inquiry concerning health insurance coverage in a manner that would violate the federal Emergency Medical Treatment and Active Labor Act ("EMTALA").

31. **Ancillary Services-** UPMC Jameson shall not require any patient receiving services at UPMC Jameson to obtain durable medical equipment, nonemergency transportation or home health care services from a Health Care Provider affiliated with UPMC. This Paragraph 31 shall not apply to UPMC Health Plan and shall not limit UPMC Health Plan as to network requirements, plan design or otherwise.

32. **Site of Service Designation-** UPMC shall not change the site of service designation for hospital services currently provided at JMH to show that services that are provided on-site at JMH are performed by or at some other UPMC hospital.

33. **Future Hospital Acquisitions**

33.1 UPMC shall not, directly or indirectly, acquire any hospital in Pennsylvania without providing written notice to the Office of Attorney General at least one hundred and twenty (120) days prior to the date of closing with the content of such notice consistent with the Commonwealth of Pennsylvania, Office of Office of Attorney General Review Protocol for Fundamental Change Transactions Affecting Health Care Nonprofits.

33.2 UPMC agrees, in regard to Paragraph 33.1 above, to waive the confidentiality protections under the Hart-Scott-Rodino Act, 15 U.S.C. § 18a (h) and the Antitrust Civil Process Act, 15 U.S.C. §§ 1311, et seq., insofar as these protections in any way limit confidential communications between the Federal Trade Commission or the Antitrust Division of the U.S. Department of Justice and the Office of Attorney General of the Commonwealth of Pennsylvania concerning a transaction that is the subject of notification under Paragraph 33.1, above, provided that (a) any documents or information obtained by the Office of Attorney General pursuant to such waiver will be protected from disclosure under Section 67.708(b)(10), (11) and (17) of Pennsylvania's Right to Know Law, (b) the Office of Attorney General will not waive these or any other applicable exemption(s) protecting the confidentiality of such information and documents, and (c) the Office of Attorney General shall not disclose such information or documents unless ordered to do so by a court of competent jurisdiction after the exhaustion of all appeals with prior notice to UPMC.

34. **Annual Report** –Within one hundred twenty (120) days of the closing of each fiscal year, UPMC shall submit to the Office of Attorney General an Annual Report on compliance with all of the provisions of this Final Order including a description of

UPMC Jameson's provision of the hospital services and charity care identified in Paragraphs 26.2 and 26.3. This Annual Report shall be public provided that UPMC proprietary information shall be redacted from the public version.

**35. Ombudsman**

35.1 Within sixty (60) days of entry of this Final Order, the Commonwealth and UPMC shall agree on an Ombudsman to assist the Office of Attorney General to respond to and resolve any complaints received pursuant to Paragraph 36 of this Final Order.

35.2 In the event of any dispute arising over the Ombudsman's performance or the reasonableness of the Ombudsman's cost and fees, either UPMC or the Office of Attorney General may request that the issue be resolved by this Court.

35.3 The Ombudsman may be dismissed for any reason by agreement of the Parties. In the event the Parties do not agree to the dismissal of the Ombudsman, either the Office of Attorney General or UPMC may Petition this Court for dismissal of the Ombudsman.

35.4 The Ombudsman shall be appointed for a term of ten years, to run from the Effective Date. If the Ombudsman is dismissed or leaves the position for any reason before the end of the term, another Ombudsman shall be appointed by agreement of UPMC and the Office of Attorney General to serve the remainder of the term.

35.5 UPMC shall pay the reasonable and necessary fees and costs of the Ombudsman, which for the first year shall not exceed a maximum amount of \$50,000,



and for each year thereafter shall not exceed the previous year's maximum amount plus two and one-half percent (2.5%).

35.6 The Ombudsman shall make a good faith effort to perform his or her duties in a manner designed to cause minimal disruption to UPMC. In this regard, UPMC shall designate a primary point of contact for the Ombudsman.

36. **Complaint Procedure-** Any person, Health Care Provider, Health Plan or consumer of medical services who wishes to report a possible violation of this Final Order shall send a written description of the alleged violation to the Chief Deputy Attorney General of the Antitrust Section, Pennsylvania Office of Attorney General, 14th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120. The Office of Attorney General shall transmit the complaint, keeping confidential the name of the complainant, if necessary, to the Ombudsman and to UPMC. UPMC shall respond in writing to the complainant and to the Ombudsman within thirty (30) days from the receipt of any complaint. If the complaint is still unresolved, the Ombudsman will attempt to negotiate a satisfactory resolution. If UPMC believes a complaint to be frivolous, it may so advise the Ombudsman and the Office of Attorney General and its obligations under this Paragraph 36 will be satisfied unless it is otherwise advised by the Ombudsman to respond more fully to the complaint. UPMC will cooperate with the Ombudsman to attempt to resolve the complaint.

37. **Enforcement** - If a complaint received pursuant to Paragraph 36 remains unresolved after one hundred twenty (120) days from receipt, or if the Office of Attorney General otherwise believes that there has been a violation of this Final Order, UPMC

shall be promptly notified thereof. The Office of Attorney General shall thereafter give UPMC a reasonable opportunity to refute or cure any alleged violation without instituting legal action. If the alleged violation is not refuted or substantially cured by UPMC within one hundred twenty (120) days of the notification, The Office of Attorney General may thereafter seek to undertake any remedial action deemed appropriate. This time period shall be extended in circumstances where the one hundred twenty (120) day period is not sufficient time to cure the alleged violation.

38. **Compliance-** To carry out his or her duties as described in Paragraph 36 the Ombudsman shall, and, to determine or secure compliance with this Final Order, any duly authorized representative of the Office of Attorney General shall be permitted upon reasonable notice during normal business hours: (A) to access all non-privileged books, ledgers, accounts, correspondence, memoranda, other records and documents, in the possession or under the control of UPMC relating to any matters contained in this Final Order; and (B) to interview officers, managers or employees of UPMC Jameson and UPMC regarding any non-privileged matters contained in this Final Order. The Office of the Attorney General shall communicate any request for such access to:

Stephen H. Nimmo  
Senior Associate Counsel and Vice President  
UPMC Legal Department, Hospitals and Corporate Group  
U.S. Steel Tower, 57th Floor  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 647-8480  
nimmosh@upmc.edu

39. **Binding on Successors and Assigns-** The terms of this Final Order are binding on UPMC Jameson, JMC and UPMC, and to their successors and assigns, including, but not limited to, any person or entity to which such entities may be sold, leased or otherwise transferred, during the term of the Final Order. UPMC shall not permit any substantial part of UPMC Jameson or JMC to be acquired by any other entity unless that entity agrees in writing to be bound by the provisions of this Final Order.

40. **Limited Release-** This Final Order releases UPMC, UPMC Jameson and JMC, only for claims the Office of Attorney General may have in connection with UPMC's acquisition of the Acquired Parties. All remedies, should other violations of the federal and state antitrust laws be found, shall be available to the Office of Attorney General. Nothing in this Final Order shall prevent the Office of Attorney General from investigating and prosecuting UPMC, UPMC Jameson or JMC for any other alleged violations of Federal and State antitrust laws. Nothing in this Final Order shall authorize UPMC, UPMC Jameson or JMC, their employees or subsidiaries, to engage in other conduct that would violate Sections 1 or 2 of the Sherman Act, 15 U.S.C. §§ 1 or 2, or the Pennsylvania common law doctrine against monopolies and unfair restraints of trade.

41. **Legal Exposure-** No provision of this Final Order shall be interpreted or construed to require UPMC, UPMC Jameson or JMC or UPMC Physician Practice to take any action, or to prohibit UPMC, UPMC Jameson or JMC or UPMC Physician Practice from taking any action, if that requirement or prohibition would expose UPMC, UPMC Jameson or JMC or UPMC Physician Practice to liability for negligence (including negligent credentialing or negligence in making referrals) or malpractice.

Further, this Final Order or any reports required hereunder shall not be introduced as evidence and cannot be used for any purpose or in any proceeding by a third party.

42. **Children's Hospital of Pittsburgh of UPMC** – No part of this Final Order shall affect or alter any provision in the Consent Decree between the Office of Attorney General and UPMC filed in the Court of Common Pleas of Allegheny County, Pennsylvania, Orphan's Court Division, No. 6425 of 2001.

43. **Commonwealth v. UPMC** – No part of this Final Order shall affect or alter any provision in the Consent Decrees between the Commonwealth and UPMC filed in the Commonwealth Court of Pennsylvania, No. 334 M.D. 2014.

44. **Settlement of Expenses-** Upon entry of this Final Order, UPMC shall pay a total of \$125,000 toward reimbursement of the Attorney General's costs incurred to conduct its investigation, in settlement of the parties' respective expenses in connection with the investigation, which payment shall be used for future Public Protection Division purposes.

45. **Notices-** All notices required by this Final Order shall be sent by certified or registered mail, return receipt requested, postage prepaid or by hand delivery to:

**If to the Office of Attorney General:**

Chief Deputy Attorney General

Pennsylvania Office of Attorney  
General  
Public Protection Division  
Antitrust Section  
14th Floor, Strawberry Square  
Harrisburg, PA 17120

**If to UPMC, UPMC Jameson and JMC:**

W. Thomas McGough, Jr.  
Executive Vice President and  
Chief Legal Officer UPMC  
US Steel Tower, Suite 5759  
600 Grant Street  
Pittsburgh, PA 15219

**Copy to:**

Bevin M.B. Newman  
Jones Day  
51 Louisiana Ave., NW  
Washington, D.C. 20001

**If to Jameson or Jameson Hospital**

Douglas Danko, President and CEO  
Jameson Health System  
1211 Wilmington Avenue  
New Castle, PA 16105-2595

**Copy to:**

Thomas A. Donovan, Esq.  
K&L Gates LLP  
210 Sixth Avenue  
Pittsburgh, PA 15222

46. **Averment of Truth-** UPMC, JMH, and JHS aver that, to the best of their knowledge, the information they have provided to the Office of Attorney General in connection with this Final Order is true.

47. **Termination-** This Final Order shall expire on the tenth (10<sup>th</sup>) anniversary of the Closing.

48. **Retention of Jurisdiction-** The Clerk will, by separate Order, be directed to administratively close this case. Unless this Final Order is terminated early, jurisdiction is

retained by the United States District Court for the Western District of Pennsylvania for ten (10) years following the Closing 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 Final Order.


49. **No Admission of Liability-** The Commonwealth, Office of Attorney General, UPMC, JMH and JHS desiring to settle their differences without trial or adjudication of any issue of fact or law, have consented to entry of this Final Order, which is not an admission of liability by UPMC, UPMC Jameson, JMH, JMC or JHS 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 transaction referenced herein.

50. **Condition Precedent-** This Final Order shall become null and void if the Acquired Parties are not acquired by UPMC pursuant to the Definitive Agreement, or if the Definitive Agreement is terminated, enjoined or otherwise not performed.

51. **Counterparts-** This Final Order may be executed in counterparts.

52. **Office of Attorney General's Representation-** The Office of Attorney General represents that this Final Order is in the public interest.

**COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL**

By:   
Bruce R. Beemer  
First Deputy Attorney General  
Office of Attorney General  
(717)787-3391

James A. Donahue, III  
Executive Deputy Attorney General  
Public Protection Division  
(717) 787-4530

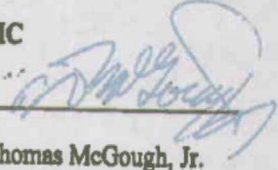
Tracy W. Wertz  
Chief Deputy Attorney General  
Antitrust Section  
(717) 787-4530

Jennifer A. Thomson  
Senior Deputy Attorney General  
Antitrust Section  
(717) 787-4530

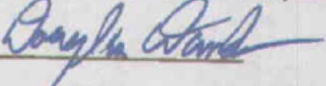
Office of Attorney General  
14<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

Attorneys for the Commonwealth of Pennsylvania

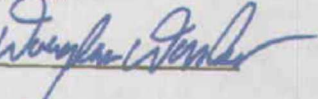
**UPMC**

By:   
W. Thomas McGough, Jr.  
Chief Legal Officer and General Counsel  
UPMC  
U.S. Steel Tower, Suite 6241  
Pittsburgh, PA 15219

**JAMESON HEALTH SYSTEM, INC.**

By:   
Douglas Danko  
President and CEO  
Jameson Health System  
1811 Wilmington Avenue  
New Castle, PA 16105

**JAMESON MEMORIAL  
HOSPITAL**

By:   
Douglas Danko  
President and CEO  
Jameson Health System  
1811 Wilmington Avenue  
New Castle, PA 16105

So Ordered:

\_\_\_\_\_  
Judge U.S.D.J.

**COMMONWEALTH OF PENNSYLVANIA**

**UPMC**

**OFFICE OF ATTORNEY GENERAL**

Bruce R. Beemer  
First Deputy Attorney General  
Office of Attorney General  
(717)787-3391

**By:** \_\_\_\_\_

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Antitrust Section  
(717) 787-4530

**JAMESON MEMORIAL  
HOSPITAL**

Office of Attorney General  
14<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

**By:** \_\_\_\_\_

Attorneys for the Commonwealth of  
Pennsylvania

Douglas Danko  
President and CEO  
Jameson Health System  
1811 Wilmington Avenue  
New Castle, PA 16105

So Ordered

\_\_\_\_\_  
U. S. Magistrate Judge



Exhibit A

**SINGLE LAST BEST OFFER ARBITRATION PROCEDURES**

I. Initiation

Health Plan may initiate binding arbitration upon satisfaction of the conditions precedent set forth in the Final Order Paragraphs 27.2, 27.4, and 27.5 by filing a demand for arbitration with the American Arbitration Association, Health Care Section.

II. Arbitration Procedures

A. Procedural Rules

The Parties agree that the arbitration shall be governed by the AAA Healthcare Payor Provider Arbitration Rules in effect at the time of the proceeding except where such rules conflict with the agreed rules set forth herein, in which case the rules of this Exhibit A shall control.

B. Case Administration

The Parties agree that the AAA shall act as the Administrator for the arbitration.

III. Arbitrators

A. Selection of Arbitrators

1. Within ten (10) days after receiving a Demand for Arbitration, the Administrator will provide the parties with a list of seven (7) arbitrators.
2. The Arbitrators must complete the Arbitrator Disclosure Checklist within ten (10) days of their selection.
3. Each Arbitrator on the list of seven arbitrators must be independent and neutral, and must possess the requisite experience described in Part III.B below. If any party believes that a selected Arbitrator is not independent and neutral, or lacks the requisite experience, that party may petition the Administrator, in writing, to disqualify the Arbitrator. Any such petition for disqualification must be filed within ten (10) days of the Arbitrator Disclosure Checklist of the challenged Arbitrator. If any Arbitrator is disqualified, the Administrator will select a replacement from the AAA roster of arbitrators until a list of seven qualified, independent and neutral Arbitrators is compiled.
4. Health Plan and UPMC will then each be granted two (2) strikes from the list of seven Arbitrators. Health Plan and UPMC will separately identify the two (2) arbitrators they wish to strike and will rank the remaining five arbitrators sequentially in order of preference. The most highly desired candidate should be ranked "1," the second choice should be ranked "2," etc. If the strikes exercised by Health Plan and UPMC contain no duplicate names, the remaining three (3) Arbitrators will serve as the Panel for the single last best offer binding arbitration. If the strikes exercised by Health Plan and UPMC contain a duplicate name or names, the Arbitrator with the highest combined score will be stricken from the list, until three

(3) arbitrators remain to serve as the Panel.

5. The three Arbitrators shall appoint from among them a Chairperson within fifteen (15) days of confirmation of the Panel. If no appointment is made within that time or any agreed extension, the AAA shall appoint the Chairperson.

B. To be qualified, an Arbitrator shall have at least ten (10) years' experience in the negotiation of contracts, rates and payments between health plans and healthcare providers and/or between health plans and health plan purchasers.

C. In addition and not contrary to the Rules established herein, at the request of any party, the Arbitrators may take any interim measures deemed necessary with respect to the dispute to further the purpose of these proceedings.

#### IV. Discovery & Pre-Arbitration Procedure

##### A. Confidentiality

1. The arbitration shall be a confidential proceeding. The Arbitrators shall establish rules for confidentiality and exchange of information designed to ensure fairness for all Parties involved. The Arbitrators and the Parties shall ensure that confidential, competitively-sensitive information shared for the purposes of this Arbitration is not disclosed or otherwise disseminated to any third Parties, including, but not limited to other Health Plans or hospitals; in particular Health Plans or hospitals that are part of UPMC or Health Plan. Further, all such confidential information shall not be used by the Parties for any other purpose apart from this Arbitration process.

2. Nothing in these Rules is designed to contravene any applicable privilege, including, but not limited to:

- a. Attorney-client privilege
- b. Peer review privilege
- c. Patient-physician privilege

##### B. Initial Disclosures

Within fifteen (15) days after the Answer is filed, UPMC and Health Plan shall exchange Initial Disclosures containing the following:

1. Identification of persons likely to have information that the disclosing party may use to support its claims or defenses
2. Identification and qualification of expert witnesses

##### C. Discovery

Fact and expert discovery procedures will be agreed upon by the Parties. In the event that the Parties cannot agree, the arbitrators will mandate reasonable and streamlined discovery procedures necessary for an efficient and expeditious resolution of the dispute.

D. Proposal for Rates and Terms

1. Initial Offer: Fifteen (15) days after the close of fact discovery, each party shall disclose its initial offer for proposed rates and terms (“Initial Offer”).
2. Best and Final Offer: Seven (7) days after the close of expert discovery, each party shall disclose its best and final offer for proposed rates and terms (“Best and Final Offer”). Each party shall be bound by its Best and Final Offer. No amendments, changes or revisions shall be made to the Best and Final Offer without leave from the Arbitrators. Nonetheless, each party expressly reserves their rights to take further expert discovery, to the extent necessary.

E. Pre-Arbitration Brief

1. Fifteen (15) days after the close of expert discovery, UPMC and Health Plan shall each submit to the Arbitration Panel and all Parties a Pre-Arbitration Brief setting forth in full the arguments and evidence in support of its proposed rates and terms, and to the extent necessary, challenging the proposed rates and terms of the opposing party. This Brief shall also contain any challenges to a proposed experts experience and expertise, or the method used to support the proposed rates and terms.
2. The Pre-Arbitration Brief shall also identify any exhibits the Parties may seek to introduce as evidence and witnesses the Parties intend to call to testify.
4. As part of the brief each party will identify the issues which have been agreed to and those which remain in dispute.
5. Without leave from the Arbitrators, the Pre-Arbitration Brief shall not exceed thirty (30) pages.

V. Arbitration Proceedings

A. Time & Place

The arbitration proceedings shall take place at a time mutually agreed upon by all Parties and the Arbitrators. If the Parties cannot agree on such matter, the time of the proceedings shall be fixed by the Arbitrators. The proceedings shall take place no more than ten (10) days after submission of the Pre-Arbitration Briefs. The proceedings will be held in Pittsburgh, Pennsylvania.

B. Record of Proceedings

The Arbitration Proceedings shall be transcribed by a sworn court reporter. The cost of the court reporter and preparation of the record shall be borne equally by UPMC and Health Plan.

C. Presentation of Arguments and Evidence

1. Each party shall have the opportunity to give an opening statement and a closing argument.
2. Each party will be given the opportunity to present evidence and witness

testimony in support of their proposed rates and terms. The Arbitrators maintain the sole discretion in determining the relevance and materiality of the evidence offered, and any decision by the Arbitrators need not be governed by the Pennsylvania Rules of Evidence.

3. The opposing party shall have the opportunity to cross-examine any witness testimony and otherwise offer rebuttal testimony in support of its position.

D. Alteration of Proceedings

The Arbitrators shall have the right to alter these proceedings as they deem necessary, but shall afford each party a full, fair and reasonable opportunity to support its position and challenge the position of the opposing party.

VI. Post-Arbitration Brief

- A. No more than fifteen (15) days from the close of the Arbitration Proceedings, each party may submit a Post-Arbitration Brief in support of its proposed rates and terms.
- B. Post-Arbitration Briefs may include references to evidence or testimony entered at the Arbitration Proceedings.
- C. Without leave from the Arbitrators, the Post-Arbitration Brief shall not exceed thirty (30) pages.

VII. Decision

- A. No more than fifteen (15) days from submission of Post-Arbitration Briefs, the panel shall issue a decision, in writing, without opinion, selecting the single last best offer that best reflects competitive rates, terms and conditions for healthcare services rendered by UPMC and fair market value for services rendered by UPMC. The panel shall select only one of the offers of either Health Plan or UPMC and shall not impose its own rates or terms onto the Parties.
- B. The Parties shall be bound by the decision of the Arbitrators, which shall not be subject to further amendment.

VIII. Costs

The Parties shall each bear their own costs arising from the Arbitration process and shall bear one-half of any other costs associated with the Arbitration process, including, but not limited to) the Arbitrators' fees.