

COMPROMISE AND SETTLEMENT AGREEMENT

This Compromise and Settlement Agreement is entered into by and between Sisters of Mercy Health System, St. Louis, Inc., a Missouri not-for-profit corporation (hereinafter referred to as "SMHS") and the Attorney General for the State of Missouri (hereinafter referred to as "the Attorney General").

WHEREAS, SMHS seeks to develop an integrated delivery system through the employment of physicians to provide a continuum of health services to the residents of central and southwest Missouri and northwest Arkansas;

WHEREAS, SMHS contends that the development of an integrated delivery system will result in significant benefits, including high quality health care at highly competitive costs, for residents of central and southwest Missouri and northwest Arkansas;

WHEREAS, the Attorney General is authorized to enforce the federal and state antitrust laws in the State of Missouri;

WHEREAS, the Attorney General contends that certain acquisitions of physician practices and hirings of physicians, either consummated or planned by SMHS, may substantially lessen competition or would be in restraint of trade or commerce, in violation of federal and Missouri antitrust laws; and

WHEREAS, by entering into this Agreement with the Attorney General, SMHS does not admit to any actual or potential violations of any federal or state antitrust law or any other federal or state law or regulation.

NOW THEREFORE, the parties herein mutually agree as follows:

1. New Physician Employment. During the term of this Agreement, SMHS shall not hire as an employee any physician who, during nine or more of the last eighteen months actually worked by the physician before such hiring, practiced in a Covered Practice Area within such area's Applicable Service Region, as set forth on Schedule A, attached hereto and incorporated herein, if (1) the physician, as an employee of SMHS, would practice within such Applicable Service Region, and (2) immediately following the physician's hiring, SMHS would employ four or more and forty percent (40%) or more of the active and licensed physicians currently practicing in such Covered Practice Area within such area's Applicable Service Region. This paragraph shall not apply to SMHS's hiring as an employee any physician who has not, during nine or more of the last eighteen months actually worked by the physician before such hiring, practiced in a Covered Practice Area within such area's Applicable Service Region.

2. Current Physician Employment. The Attorney General and SMHS understand and acknowledge that SMHS has hired or is about to hire the numbers of physicians listed on Schedule B, attached hereto and incorporated herein, to practice in the Covered Practice Areas, listed on Schedule B, within each such area's Applicable Service Region. Paragraph 1 of this Agreement shall not apply to the hirings referred to on Schedule B. For purposes of paragraphs 5 and 6 of this Agreement, each physician whose hiring is referred to on Schedule B shall be considered, irrespective of the actual facts, as having practiced, for at least nine of the last eighteen months preceding such hiring, in a Covered Practice Area within such area's Applicable Service Region.

3. Hospital Privileges. As to physicians who practice in a Covered Practice Area within such area's Applicable Service Region, SMHS shall not restrict or limit, on account of such physician not being employed by SMHS, an otherwise qualified physician's admitting privileges at, or access to hospital services (including operating room services) at, St. John's Regional Health Center in Springfield, Missouri. As to physicians employed by SMHS who practice in a Covered Practice Area within such area's Applicable Service Region, SMHS further agrees not to prevent or discourage such a physician from obtaining or maintaining admitting privileges at any hospital in Springfield, Missouri, or at any hospital within twenty-five air miles of the physician's primary work location.

4. Restrictive Covenants. If SMHS has accepted from a physician payment of the Rescission Payback Amount (defined in paragraph 10 of this Agreement), then SMHS shall not enforce any contractual restriction on such physician's discretion, after leaving employment with SMHS for any reason, (1) to practice at any location or (2) to advertise to the general public; provided, however, that if the physician has voluntarily chosen to end employment with SMHS, such contractual restriction may be enforced as to physician conduct occurring before six months has elapsed (i) from the date that the physician gave written notice of his or her intention to end such employment or, (ii) if written notice was never given, from the date that such employment actually ended. If SMHS has accepted from a physician payment of the Rescission Payback Amount, then, on or about a date selected by the physician, which shall be at least 30 days after SMHS's acceptance of the payment and not more than 30 days before the physician ends employment with SMHS, SMHS shall mail, to each patient who was served by such physician during the twelve-month period that ended seven days before the selected mailing date, a letter (i) informing the patient that the physician will be leaving or has left employment with SMHS, (ii) providing the patient with the physician's new office address and telephone number and, if the physician has not yet ended employment with SMHS, the date that the

physician plans to begin practicing at the new location, (iii) informing the patient of his or her option to have his or her medical records at SMHS forwarded, at SMHS's expense, to the physician at the new location, and (iv) providing the patient with a mail-back form to use to request that SMHS forward his or her medical records to the physician at the new location. The letter shall be in substantially the same format as Form A, attached hereto and incorporated herein. In addition, if the selected mailing date is earlier than seven days after the date that the physician ends employment with SMHS, then, within seven days after the physician ends employment with SMHS, SMHS shall mail a letter, complying with the aforementioned requirements and in substantially the same format as Form A, to each patient, if any, who was not sent a letter in the first mailing and who was served by the physician later than seven days before the selected mailing date. Upon receipt of each mail-back form requesting that a patient's medical records be forwarded to a physician, SMHS shall promptly forward the patient's medical records to the physician, at his or her current office address, without charge to the patient or to the physician.

5. Rescission Procedure for Restrictive Covenants.

SMHS shall, within five business days of tender, accept and acknowledge payment of the Rescission Payback Amount if (1) tendered by a physician who (i) provides or has previously provided a date, not more than one year in the future, for ending employment with SMHS or has already ended employment with SMHS; (ii) practiced in a Covered Practice Area within such area's Applicable Service Region for at least nine of the last eighteen months actually worked by the physician before being employed by SMHS to practice within Applicable Service Region I (as defined in Schedule A); and (iii) as an employee of SMHS, practiced within such Covered Practice Area's Applicable Service Region (whether or not he or she practiced in the Covered Practice Area); and (2) SMHS, at the time that payment is tendered, employs four or more and forty percent (40%) or more of the active and licensed physicians then practicing in such Covered Practice Area within such area's Applicable Service Region. For purposes of clause (2) of the preceding sentence, (i) a physician shall not be considered to be currently employed by SMHS if the physician's tender of the Rescission Payback Amount has been accepted and acknowledged by SMHS pursuant to this paragraph, and (ii) a physician employed by SMHS shall not be considered to be practicing within the Applicable Service Region if the physician did not practice in a Covered Practice Area within such area's Applicable Service Region for at least nine of the last eighteen months actually worked by the physician before being employed by SMHS to practice within Applicable Service Region I (as defined in Schedule A). If, within a period of five business days, SMHS receives tenders of Rescission Payback Amounts from more than one

physician practicing in the same Covered Practice Area within such area's Applicable Service Region, SMHS may choose to accept and acknowledge one such tender and require the others to be resubmitted as if never tendered.

6. Employment Termination. SMHS shall not enforce any contractual restriction on the discretion of a physician to end his or her employment with SMHS upon (a) six months' written notice of his or her intention to end such employment if, before ending such employment, the physician tenders, and (pursuant to paragraph 5 of this Agreement) SMHS is required to accept and acknowledge, payment of the Rescission Payback Amount; or (b) one year's written notice of his or her intention to end such employment if the physician (i) for at least nine of the last eighteen months actually worked by the physician before being employed by SMHS within Applicable Service Region I (as defined in Schedule A), practiced in a Covered Practice Area within such area's Applicable Service Region; and (ii) as an employee of SMHS, practiced within such Covered Practice Area's Applicable Service Region (whether or not he or she practiced in the Covered Practice Area).

7. Remedy for Breach. The Attorney General shall be entitled to specific performance and other injunctive relief to remedy any breach of this Agreement, and to all other remedies available at law or in equity. A material breach of this Agreement by SMHS shall also entitle the Attorney General to elect to terminate the Agreement and to seek judicial relief as if the Agreement had expired. However, the Attorney General shall not seek judicial relief or terminate the Agreement without giving SMHS thirty days' written notice of the intent to seek judicial relief or terminate the Agreement, and shall not terminate the Agreement without giving SMHS reasonable opportunity to cure the alleged material breach. If the Attorney General, United States Department of Justice, or the Federal Trade Commission seeks judicial relief under the antitrust laws against SMHS for allegedly attaining, increasing, or maintaining market concentration in any market for physician services within Applicable Service Region I (as defined in Schedule A), either through the acquisition of physician practices or practice groups, the hiring or retention of physicians as employees, or the enforcement of post-employment restrictive covenants in physicians' employment contracts, then SMHS may elect to terminate this Agreement, which shall then be considered as having expired. For purposes of the preceding sentence, judicial relief for breach of this Agreement shall not be considered "judicial relief under the antitrust laws."

8. Other Claims. In consideration of the above, the Attorney General agrees, while this Agreement is in effect, not to seek judicial relief under the antitrust laws against SMHS for

allegedly attaining, increasing, or maintaining a level of market concentration, in any of the Covered Practice Areas within the Applicable Service Regions listed in Schedule A, through the acquisition of physician practices or practice groups, the hiring or retention of physicians as employees, or the inclusion or enforcement of post-employment restrictive covenants in physicians' employment contracts. For purposes of the preceding sentence, judicial relief for breach of this Agreement shall not be considered "judicial relief under the antitrust laws." Following the expiration of this Agreement, in pursuing any antitrust claims against SMHS that challenge hirings or acquisitions made by SMHS before the expiration of this Agreement, the Attorney General shall not contend, in identifying physicians within, or calculating market shares or market concentration within, any proposed relevant market (consisting of a product market and geographic market) for physician services, that the proposed relevant market should include the services of any physician then employed by SMHS who (1) began practicing within the proposed geographic market for the first time (i) as an employee of SMHS, and (ii) while this Agreement was in effect; (2) since first practicing within the proposed geographic market, (i) has practiced only as an employee of SMHS, and (ii) has, during periods actually worked, practiced in a Covered Practice Area within such area's Applicable Service Region; and (3) was not hired as part of the hirings referred to in Schedule B.

9. Reporting. Beginning in May, 1995, SMHS shall prepare and submit to the Attorney General, each May and November, a report listing all physicians, in every area of practice, employed by SMHS as of the beginning of the month, who practice in Applicable Service Region I (as defined in Schedule A). The report shall provide the area of practice and work address of each physician listed, and note which physicians have given notice of their intention to end their employment with SMHS. The report shall also list the physicians employed or previously employed by SMHS in Applicable Service Region I (as defined in Schedule A) who, during the six (6) months preceding the beginning of the month, tendered payments of Rescission Payback Amounts. For each such tender of payment, the report shall indicate whether, and on what date, payment was accepted by SMHS.

10. Definitions for Purposes of this Agreement.

(a) "SMHS" shall include affiliates and subsidiaries of SMHS, including, but not limited to, St. John's Health System, Inc.

(b) A physician shall be deemed to "practice" in a Covered Practice Area if the physician could be reasonably regarded by the medical community in such area's Applicable Service Region

as actively specializing in such Covered Practice Area.

(c) The "Rescission Payback Amount" applicable to a physician shall be the greater of \$1.00 or the sum of (1) any amount paid by SMHS (i) to the physician, (ii) in connection with the initial hiring of the physician and/or the acquisition of the physician's practice, and (iii) as express and separate consideration for any covenant or covenants not to compete, or as express and separate consideration for any medical or business records acquired by SMHS, and (2) any amount paid by SMHS, per physician, (i) to a corporation, partnership, or other business entity that passed on a share of the amount to the physician (as an owner, partner, or employee), (ii) in connection with the initial hiring of the physician and/or the acquisition of the physician practice or practice group in which the physician practiced, and (iii) as express and separate consideration for any covenant or covenants not to compete, or as express and separate consideration for any medical or business records transferred to SMHS. For purposes of clause (2) of the preceding sentence, the "amount paid by SMHS, per physician" shall be the amount paid by SMHS, divided by the number of physicians who, as owners, partners, or employees of the corporation, partnership, or other business entity involved, received shares of the amount paid; except that, for a physician who was a shareholder of Smith-Glynn-Callaway Clinic, Inc. ("SGC") prior to becoming an employee of SMHS, the "amount paid by SMHS per physician" shall be that portion of the "Purchase Price" -- as defined in that certain Stock Acquisition Agreement entered into July 18, 1994, by and among Mercy Medical Group, South-Central Missouri, Inc., SGC, and the physician shareholders of SGC ("Stock Acquisition Agreement") -- that was allocated to the physician pursuant to Schedule 1.2 of the Stock Acquisition Agreement. For purposes of this paragraph, the "Purchase Price" referred to in the preceding sentence shall be deemed to be "express and separate consideration for medical and business records transferred to SMHS."

11. Term. This Agreement shall become effective when signed by the Attorney General or his authorized representative. The Agreement shall remain in effect until December 31, 1997, unless terminated earlier pursuant to paragraph 7 of the Agreement. Any physician who, pursuant to paragraph 5 of the Agreement, tenders payment of the Rescission Payback Amount prior to the expiration or termination of this Agreement shall continue to be covered by the terms of paragraphs 4 and 5 of the Agreement as to such tender, notwithstanding such expiration or termination. Also, any physician who, pursuant to paragraph 6 of the Agreement, provides notice, prior to the expiration or termination of this Agreement,

of his or her intention to terminate employment shall continue to be covered by the terms of paragraph 6 of the Agreement notwithstanding such expiration or termination. The parties may at any time seek to modify the terms of this Agreement, and the parties shall discuss in good faith any request made for modification. However, if the parties cannot in good faith agree to any requested modification, the terms of the original Agreement will remain in full force and effect until December 31, 1997, unless terminated pursuant to paragraph 7 of the Agreement. During the sixty-day period before the expiration of the Agreement, the parties shall discuss in good faith the appropriateness of extending and/or modifying the terms of the Agreement.

12. Payments for Monitoring Expenses. To defray monitoring expenses that the Attorney General expects to incur during the term of this Agreement, SMHS shall provide three payments to the Attorney General, each in the amount of \$10,000.00 and payable to the "Antitrust Revolving Fund." The first \$10,000.00 payment shall be due on December 31, 1994, the second \$10,000.00 payment shall be due on December 31, 1995, and the third \$10,000.00 payment shall be due on December 31, 1996.

13. No State Action. Nothing in this Agreement is intended by the Attorney General to constitute "state action or official action directed by a state" that, under the doctrine of Parker v. Brown, 317 U.S. 341 (1943), would displace application of the federal antitrust laws.

14. No Admission of Liability. By entering into this Agreement, SMHS does not admit to any actual or potential violations of any federal or state antitrust law or any other federal or state law or regulation.

15. Entire Agreement. This Agreement represents the entire agreement of the parties, shall be binding on any successors, and may not be modified without the express written consent of the parties herein.

IN WITNESS WHEREOF, duly authorized representatives of the parties have executed this Agreement, effective as of the date it is signed by the Attorney General.

SISTERS OF MERCY HEALTH SYSTEM, ST.
LOUIS, INC.

Sister Mary Roch Rocklage, RSM
Chief Executive Officer

ATTORNEY GENERAL FOR THE STATE OF
MISSOURI

DATE:

Jeremiah W. (Jay) Nixon
Attorney General

SCHEDULE A

APPLICABLE SERVICE REGION I includes 28 counties consisting of all of Barry, Barton, Camden, Cedar, Christian, Dade, Dallas, Douglas, Greene, Hickory, Howell, Jasper, Laclede, Lawrence, McDonald, Newton, Oregon, Ozark, Phelps, Polk, Pulaski, Shannon, St. Clair, Stone, Taney, Texas, Webster and Wright Counties.

Covered Practice Areas to which Region I applies:

1. Thoracic Surgery or Cardiac Surgery
2. Oncology or Hematology
3. Invasive Cardiology (including physicians specializing in both invasive and non-invasive cardiology, but excluding physicians specializing only in non-invasive cardiology, and excluding physicians specializing in cardiac surgery)

APPLICABLE SERVICE REGION II includes 16 counties consisting of all of Barry, Christian, Dade, Dallas, Douglas, Greene, Howell, Laclede, Lawrence, Ozark, Polk, Stone, Taney, Texas, Webster and Wright Counties.

Covered Practice Areas to which Region II applies:

4. Otolaryngology or Otorhinolaryngology
5. Urology or Urologic Surgery
6. Dermatology
7. Gastroenterology

APPLICABLE SERVICE REGION III includes 7 counties consisting of all of Christian, Dade, Dallas, Greene, Lawrence, Polk, and Webster Counties.

Covered Practice Area to which Region III applies:

8. Obstetrics & Gynecology (excluding physicians specializing only in obstetrics or only in gynecology)

APPLICABLE SERVICE REGION IV includes all of Greene County.

Covered Practice Area to which Region IV applies:

9. Pediatrics (excluding physicians in pediatric subspecialties)

SCHEDULE B

1. Thoracic Surgery or Cardiac Surgery
6 physicians
2. Oncology or Hematology
9 physicians
3. Invasive Cardiology (including physicians specializing in both invasive and non-invasive cardiology, but excluding physicians specializing only in non-invasive cardiology, and excluding physicians specializing in cardiac surgery)
11 physicians
4. Otolaryngology or Otorhinolaryngology
7 physicians
5. Urology or Urologic Surgery
9 physicians
6. Dermatology
6 physicians
7. Gastroenterology
7 physicians
8. Obstetrics & Gynecology (excluding physicians specializing only in obstetrics or only in gynecology)
15 physicians
9. Pediatrics (excluding physicians specializing in pediatric subspecialties)
16 physicians

Total physicians: 86