

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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COMMONWEALTH OF	:	
PENNSYLVANIA BY JOSH SHAPIRO,	:	
Attorney General, et al.,	:	
	:	
	:	
Petitioners,	:	NO. 334 MD 2014
	:	
v.	:	
	:	
	:	
UPMC, A Nonprofit Corp, et al.,	:	
	:	
	:	
Respondents.	:	
	:	

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**THE PENNSYLVANIA DEPARTMENT OF AGING’S APPLICATION TO QUASH  
AND FOR A PROTECTIVE ORDER**

Pursuant to Rules 234.4, 4011, and 4012(a) of the Pennsylvania Rules of Civil Procedure and Rule 123 of the Pennsylvania Rules of Appellate Practice, the Pennsylvania Department of Aging (“PDA”), files this Application to Quash and for a Protective Order to UPMC’s Subpoena *Duces Tecum* served on PDA (the “Subpoena”). PDA respectfully asks the Court to grant the application, quash the Subpoena, and issue a protective order prohibiting UPMC from taking the deposition of its custodian of record (currently set for April 11, 2019) or seeking further discovery from PDA in this matter. In support of this application, PDA states as follows:

**INTRODUCTION**

1. On March 27, 2019, UPMC served the Subpoena on PDA in connection with the Petition to Modify Consent Decree (the “Petition”) recently filed by the Commonwealth acting as *parens patriae* through its Attorney General, Josh Shapiro (the “Attorney General”). A true and correct copy of the Subpoena to PDA is attached to this Application as **Exhibit A**.

2. The Petition raises issues relating to whether UPMC is fully and faithfully meeting its mission and fulfilling its charitable responsibilities. Yet, UPMC’s vast, expansive, and all-

encompassing Subpoena is procedurally improper, seeks information that is not relevant to the claims raised in the Petition, are not narrowly tailored to the now severed claim before this Court, and implicate numerous privileges.

3. Given the claims raised in the Petition, this Court should grant PDA's Application to Quash and for a Protective Order to prevent UPMC's inappropriate fishing expedition and harassing discovery tactics.

### **BACKGROUND**

4. The dispute currently before this Court is narrow. It is limited solely to the issues raised in the Petition to Modify the Consent Decrees, and in recent weeks, has been further limited by the Court to Count I of the Attorney General's Petition, which alleges that modification of the Consent Decrees of both UPMC and Highmark is needed to protect the public's interest. PDA was not a signatory to the Consent Decrees in 2014 and is not a party to the Petition.

5. In response to the Petition, on February 21, 2019, UPMC filed its *Answer in the Nature of a Motion to Dismiss or Preliminary Objections* ("Motion to Dismiss") raising numerous legal arguments as to why the Petition is improper.

6. On February 25, 2019, the Court issued an order providing that discovery may commence immediately and must be completed prior to May 1, 2019 ("Scheduling Order I"). Scheduling Order I made no reference to any non-party discovery.

7. As such, on March 1, 2019, UPMC served its First Set of Interrogatories and Requests for Production of Documents upon the Attorney General. True and correct copies of UPMC's First Set of Interrogatories and Requests for Production served upon the Attorney General are attached to this Application as **Exhibit B**.

8. The Requests for Production of Documents to the Attorney General consisted of 52 requests, which are similar to the documents UPMC is now seeking from PDA. *Compare* Ex. A *with* Ex. B.

9. Moreover, UPMC served a similar set of Requests for Production of Documents on the Attorney General in the overlapping federal court injunction UPMC brought against the Attorney General. *See UPMC Pinnacle et al. v. Joshua D. Shapiro*, 1:19-cv-00298 (M.D. Pa., filed Feb. 21, 2019).

10. On March 12, 2019, this Court issued a supplemental scheduling order (“Scheduling Order II”), which severed Count I of the Petition and ordered the Attorney General, UPMC, and Highmark to litigate Count I of Petition separately and expeditiously, as set forth therein.

11. As part of the expedited schedule for Count I, the Court limited the number of depositions to be taken by each side and ordered that all written discovery requests shall be answered within 30 days of service. As with Scheduling Order I, the Court does not mention or allow for non-party discovery in Scheduling Order II.

12. On March 13, 2019, UPMC served Subpoenas *Duces Tecum* on the Governor’s Office, the Pennsylvania Department of Health (“DOH”), and the Pennsylvania Insurance Department (“PID”) (collectively, the “PA Agencies”), directing their respective custodians of records to attend separately noticed depositions on March 28, 2019 at 12:30 p.m. (PID), 1:00 p.m. (DOH), and 1:30 p.m. (Governor’s Office), and to bring voluminous discovery outlined in each Addendum A. True and correct copies of the Subpoenas to the Governor’s Office, DOH, and PID are attached to this Application as **Exhibits C-E**, respectively.

13. The substance of the document requests appended to the Subpoenas to the PA Agencies was identical, and the substance contained therein was similar to that contained in the discovery requests issued to the Attorney General. *See* Ex. B-E.

14. On March 20, 2019, counsel for the PA Agencies asked UPMC to withdraw the Subpoena to the PA Agencies, and on March 22, 2019, UPMC refused, but did agree to extend the dates for the custodian of records' depositions to April 3, 2019. Despite good faith attempts by counsel for UPMC and the PA Agencies to meet and confer regarding the Subpoenas, no agreement could be reached, and the PA Agencies filed their Application to Quash and for a Protective Order on March 28, 2019 (the "PA Agencies' Application").

15. On March 27, 2019, one day prior to the filing of the PA Agencies' Application, UPMC served the Subpoena on PDA. *See* Ex. A.<sup>1</sup>

16. On April 1, 2019, the Court issued a Rule on all parties to show cause why the relief requested in the PA Agencies' Application should not be granted, and set a rule returnable for written responses to be filed by no later than April 5, 2019.

17. On April 3, 2019, the Court issued an Order and Opinion ruling on UPMC's Motion to Dismiss. The Court denied UPMC's motion as to all prayers for relief except for the Attorney General's prayer to modify the termination date of the Consent Decree indefinitely. And it certified its portion of the ruling dealing with the termination date as immediately appealable.

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<sup>1</sup> PDA was not in receipt of the Subpoena at the time the PA Agencies filed their Application to Quash, otherwise PDA would have joined in the PA Agencies' Application. As such, PDA hereby incorporates by reference the arguments set forth in the PA Agencies' Application, as if fully stated herein. PDA also respectfully requests that its Application to Quash and for Protective Order be treated similarly to the PA Agencies' Application.

## ARGUMENT

### **A. The Non-Party Discovery Sought by UPMC is Improper and Not Contemplated by the Court in its Scheduling Orders.**

18. PDA was never a party to this action and therefore did not actively participate in the Court's March 7, 2019 Status Conference or have any input in the Court's scheduling orders regarding discovery limitations.

19. While the rules governing Petitions allow for discovery at the Court's discretion, these same rules do not allow *carte blanche* discovery. *See* Pa. R. Civ. Pro. 206.6 at *note*. Moreover, this Court's own Internal Operating Procedures establish that it may tailor discovery in the manner it sees fit through pre-trial orders such as those issued here. *See* IOP § 313 ("To govern the expeditious disposition of substantial trials, pretrial orders may regulate discovery . . .").

20. Here, the Court recognized that the current discovery between the Attorney General, UPMC, and Highmark would be limited solely to Count I and would be completed by the parties on an expedited basis. *See* Scheduling Order II.

21. In Count I of the Petition, the Attorney General alleges that modification of the Consent Decrees of both UPMC and Highmark is needed to protect the public's interest and seeks modification through a single combined consent decree, "to ensure that the benefits of In-Network access to their health care programs and services are available to the public at large and not just to those patients acceptable to them based upon their competitive strategic and financial considerations." Petition, at ¶¶ 71-84.

22. The central allegation in the Petition is not relevant to the documents UPMC is seeking from PDA, and neither Scheduling Order I nor Scheduling Order II contemplated non-party discovery—let alone the type of voluminous discovery sought by UPMC in the Subpoena,

which is also duplicative of the discovery UPMC is seeking from the Attorney General—a party to the instant dispute before this Court.

23. Even recognizing the expeditious nature of resolving Count I of the Petition, the Court, in Scheduling Order II, still afforded the parties with 30 days to respond to any written discovery requests, and set a discovery deadline of May 1, 2019. *See* Scheduling Order II.

24. Notwithstanding, UPMC served the Subpoena on PDA, seeking the production of voluminous documents and correspondence, and the depositions of its record custodian merely 15 days later. *See* Ex. A. In what appears to be an end-run around the discovery deadlines set by the Court in Scheduling Order II, UPMC’s Subpoena would require non-party PDA to provide discovery responses within a shorter deadline of the parties’ exchange of discovery.

25. Accordingly, the Subpoena is entirely improper in these circumstances, and should be quashed for this reason alone.

**B. The Subpoena is Overly Burdensome and Any Relevant Discovery is Available via Less Oppressive Methods or is already in UPMC’s Possession.**

**(i) The Subpoena Thrusts an Intolerable Burden on PDA.**

26. Besides its irrelevancy and contravention to the Scheduling Orders, UPMC’s Subpoena, on its face, is also impermissible because it would place an extreme burden and expense on PDA.

27. It is well-established that “a party’s right to require the production of a non-party’s documents is not unlimited.” *Woods v. Dunlop*, 334 A.2d 619, 623 n.9 (Pa. 1975).

28. Rule 4011 of the Pennsylvania Rules of Civil Procedure provides that “No discovery shall be permitted which (a) is sought in bad faith; (b) would cause unreasonable annoyance, embarrassment, oppression, burden, or expense to the deponent or to any person or party; (c) is beyond the scope of discovery permitted by Rule 4003.1 through 4003.6; . . . or (e)

would require the making of an unreasonable investigation by the deponent or any party or witness.” Pa. Rule Civ. P. 4011.

29. An entity seeking to limit discovery may move for a protective order under Pa. R. Civ. P. 4012, which provides, in relevant part, that “upon motion by a party . . . and for good cause shown, the court may make any order which justice requires to protect a party from unreasonable . . . burden or expense.” Pa. R. Civ. P. 4012(a).

30. The Subpoena asks PDA to search through records dating back over 8 years. *See* Ex. A at Instruction 4. And UPMC has not tailored the requests in a fashion that would allow for a reasonable investigation and production to occur.

31. By way of further example, UPMC’s Document Request No. 1 asks, in part, for “[a]ll communications and documents exchanged with UPMC, Highmark, the OAG, PID, DOH, Governor, SEIU, SEIU Healthcare Pennsylvania, or Chelsa Wagner concerning any of the following subject matters . . . (2) Consumer complaints about UPMC... (7) The UPE Approving Order ... (17) Insurance competition in western Pennsylvania ... (18) Provider competition in western Pennsylvania” and 14 other broad categories. *See* Ex. A at Req. No. 2.

32. Similarly, the Subpoena asks for “[a]ll communications or documents exchanged with any employer, state/local/national elected or appointed government official or legislator, chamber of commerce or industry group, patient, PHAN, provider, and/or third party (but not including the OAG, PID, DOH or Governor), regarding the UPE Approving Order, Mediated Agreement, Second Mediated Agreement, Consent Decree, Proposed Modifications, and/or the OAG’s Petition.” *Id.* at Req. No. 5; *cf. Brownstein v. Philadelphia Trans. Co.*, 46 Pa. D. & C.2d 463, 464 (Pa. Com. Pl. 1969) (finding interrogatory seeking names and addresses “of all persons known” “who have any knowledge of any facts of this accident, the surrounding circumstances,

the plaintiff's injuries and/or the plaintiff's damages resulting therefrom" to be impermissibly overbroad); *see generally In re Modern Plastics Corp.*, 890 F.3d 244, 252 (6th Cir. 2018) (affirming sanctions against party serving non-party subpoena seeking documents from "36 broad categories" spanning nine years); *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 635-38 (C.D. Cal. 2005) (quashing document subpoena as imposing undue burden on non-party where subpoena contained seven document requests each seeking "any and all documents" pertaining to category and spanning approximately ten-year time period or greater); *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 46-51 (S.D.N.Y. 1996) (quashing subpoena as facially overbroad and unduly burdensome where requests sought "all documents" relating to defendant's financial condition).

33. The burden UPMC is placing on PDA is transparent and obvious. The far-reaching requests would require PDA to sift through thousands of pages of documents in the possession of dozens of employees, including high level executive staff. And that would just be the resources required for the initial step of determining the documents' *potential* responsiveness to the Subpoena.

34. PDA has limited administrative tools and resources to slog through the requested mass of documents to try to make an expedited discovery to meet UPMC's demand. UPMC's Subpoena would place a tremendous strain on PDA and divert time and resources from their daily business functions to the Commonwealth's detriment. *See generally Koken*, 911 A.2d at 1025 (noting that discovery requests must be reasonable, "which is 'to be adjudged on the facts and circumstances of each case'"). Placing such an oppressive burden on a non-party provides grounds to quash. *See generally Simon v. Simon*, 6 Pa. D. & C. 3d 196, 205 (Pa. Com. Pl. 1977) (observing "rule of thumb" that "a person should be compelled to undergo greater burdens relative to a lawsuit to which he is a party than a stranger should be asked to undertake").

**(ii) The Subpoena is Improper Because the Information is Available through Less Intrusive Means.**

35. The Subpoena is also improper because UPMC can obtain any potentially relevant information concerning Count I of the Petition through less intrusive means.

36. UPMC has already served expansive discovery on the Attorney General, including voluminous interrogatories, requests for admissions, and document requests. *See, e.g.,* Ex. B; *see also Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 300 F.R.D. 406, 410 (C.D. Cal. 2014) (noting that “court may prohibit a party from obtaining discovery from a non-party if that same information is available from another party to the litigation”) (citation and internal quotation marks omitted).

37. Some of the document requests served on the Attorney General are very similar to the discovery UPMC seeks from non-party PDA in the Subpoena, including one request that seeks communications between the Office of Attorney General and any Commonwealth department or other third-party on any of 19-enumerated topics, during a more than **8-year** time period. *Compare* Ex. A *with* Ex. B.

38. For example, Request Number 1 of the Subpoena requests “all communications and documents exchanged with UPMC, Highmark, the OAG” and other various entities concerning numerous subject matter. As the parties would necessarily have these documents, and some have already been requested by UPMC, there is no reason to burden PDA with a request for their disclosure.

39. In addition, UPMC also attempted to subpoena an Executive Deputy Attorney General, a subpoena that this Court stayed pending further briefing on the Attorney General’s application to quash.

40. Furthermore, UPMC could attempt to obtain the documents from Highmark, who, unlike PDA, is a party to the Petition. To PDA's knowledge, UPMC has not served any discovery requests upon Highmark, which provides further evidence of UPMC's motive here: to unnecessarily harass PDA.

41. Based on the discovery demands served on the Attorney General, and the way the claims are framed in the Petition, this Court should require UPMC to exhaust other avenues of discovery before burdening non-party PDA with duplicative and exhaustive document requests.

**(iii) The Subpoenas Are Improper Because the Discovery Sought is Already in UPMC's Possession or Publicly Available.**

42. The purpose of discovery is to provide a party the opportunity to discover evidence unknown to the party and to seek possession of evidence of which the party is aware. *Com v. Hussmann*, 485 A.2d 58, 61 (Pa. Super. 1984).

43. "It is not a purpose of discovery for a party to supply, at its own expense, information already under the control or readily available to the opposing party." *Boyle v. Steiman*, 631 A.2d 1025, 1031 (Pa. Super. 1993).

44. It is an abuse of discovery for a party already in possession of documents to turn around and request the production of the same documents. *Schultz v. Schultz*, 184 A.3d 168, 184 (Pa. Super. 2018). Such discovery is vexatious and unreasonable and amounts to nothing more than gamesmanship. *Boyle*, 631 A.2d at 1031; *In re 1958 Assessment of Glen Alden Corp.*, 17 Pa. D. & C.2d 624, 626 (Pa. Com. Pl. 1959).

45. Here, countless potentially responsive documents are already in UPMC's possession and, therefore, not subject to discovery. For instance, Request 1 seeks communications and documents exchanged with UPMC regarding 18 different topics. However, UPMC is already in possession of any communications with PDA.

46. In addition, Request No. 10 seeks “[a]ny and all documents regarding any positions, public statements, advertising, or other advocacy efforts by APPRISE concerning the Medicare Advantage Litigation;” however, APPRISE educational and informative material is already publicly available.

47. Accordingly, the Subpoena is improper for these additional reasons and should be quashed.

**C. In Addition to Being Improper and Irrelevant, the Discovery Sought is Protected by Numerous Privileges.**

48. Even if the non-party discovery was appropriate and relevant to Count I of the Petition (which it is not), the broad documents requested fall under numerous privileges that prevent their disclosure.

49. Pennsylvania Rule of Civil Procedure 4003.1 permits discovery “regarding any matter, *not privileged*, which is relevant to the subject matter involved in the pending action.” Pa. R. Civ. P. No. 4003.1 (emphasis added).

50. Even a cursory review of the categories of discovery sought reveals that the majority of the items potentially responsive to the Subpoena are privileged and protected from disclosure.

**(i) The Attorney-Client and Work Product Privileges Protect Internal Communications and Documents Between Officials Within PDA.**

51. Pennsylvania courts apply the attorney-client and attorney-work product privileges broadly to protect those documents from discovery. The attorney-client privilege protects “confidential client-to-attorney or attorney-to-client communications made for the purpose of obtaining or providing professional legal advice.” *Gillard v. AIG Ins., Co.*, 15 A.3d 44, 59 (Pa. 2011). And the attorney-work product privilege—which in Pennsylvania is not limited to

documents prepared in anticipation of litigation—protects “mental impressions, theories, notes, strategies, research and the like created by an attorney in the course of his or her professional duties.” *Estate of Paterno v. NCAA*, 168 A.3d 187, 201 (Pa. Super. 2017).

52. The impermissibly broad requests contained in the Subpoenas necessarily would capture privileged attorney-client communications and work product generated within PDA.

53. For example, Request Number 8 in the Subpoena seeks “[a]ll assessments, analyses, or documents concerning the impact of the expiration of the Consent Decree.” *See Ex. A*. Similarly, Request Number 9 seeks “[a]ll notes, memoranda, or other documents used in preparation for meetings with the OAG, PID, DOH, or Governor in 2013, 2014, 2015, 2016, 2017, or 2018.” *Id.*

54. Request Number 2 seeks “[a]ll notes, memoranda, or other documents concerning meetings, conversations, or communications . . . concerning the Proposed Modifications, AHN’s financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.” *Id.* Likewise, Request Number 3 seeks “[a]ll notes, memoranda, or other documents used in preparation for meetings” with various government agencies and others. *Id.*

55. Those Requests could implicate legal staff memoranda, communications with the Office of General Counsel, or legal communications with executive staff, all of which are shielded from production. *See Sedat, Inc. v. Dep’t of Environ. Resources*, 641 A.2d 1243, 1243-46 (Pa. Cmwlth. 1994) (holding that memoranda prepared by agency attorneys protected from disclosure under attorney-client and attorney-work product privileges).

**(ii) Deliberative Process Privilege Protects Internal Communications.**

56. The deliberative process privilege permits the government to withhold documents containing confidential deliberations of law or policymaking, reflecting opinions, recommendations, or advice. *See, e.g., Ario v. Deloitte & Touche LLP*, 934 A.2d 1290, 1293 (Pa. Cmwlth. 2007) (citing *Commonwealth v. Vartan*, 733 A.2d 1258 (Pa. 1999) (citations omitted)); *Leber v. Stretton*, 928 A.2d 262, 267-68 (Pa. Super. 2007).

57. Therefore, any non-public documents that UPMC seeks to obtain from the PA Agencies that cannot be learned from the Attorney General, Highmark, or other sources, is likely protected by the deliberative process privilege.

58. For example, Request Number 8 seeks “assessments” and “analyses” concerning the impact of the expiration of the Consent Decree; Request Number 7 seeks “[a]ll internal documents concerning assessment or evaluation of whether/how the Proposed Modifications further the public interest, and all documents concerning the Attorney General’s ability to advance the public interest”; Request Number 2 seeks “[a]ll notes, memoranda, or other documents” concerning communications with various parties. *See Ex. A.*

59. These communications between officials acting in their regulatory capacity contain information that is both pre-decisional and deliberative, and it is axiomatic that such material is protected from disclosure. *See Ario*, 934 A.2d at 1291-92.

60. Furthermore, UPMC cannot establish the “extraordinary circumstance[s]” that would allow for the deliberative process privilege to be stripped. *See id.* at 1294.

61. As such, to the extent UPMC’s Subpoena seek documents relating to PDA’s communications or deliberations that implicate its policymaking functions, the Subpoena should be quashed.

**D. The Use of the Subpoena Duces Tecum to Circumvent the Rule 4009.21's Notice Requirements is an Improper Abuse of Rules 234.1 and 4007.1(d)(2).**

62. Finally, the Subpoena should be quashed because it was clearly intended to circumvent the twenty-day notice requirement in Rule 4009.21 of the Pennsylvania Rules of Civil Procedure.

63. Rule 4009.21 provides that a party seeking production from a non-party must give written notice to every party of its intent to serve a subpoena at least twenty days before the date of service. Pa. R. Civ. P. 4009.21(a).

64. The twenty-day notice requirement is meant to provide parties to an action reasonable time to object to a proposed document subpoena, and it bars service of a document subpoena on the non-party should any party lodge an objection. Pa. R. Civ. P. 4009.21(d)(1).

65. The Rules do allow a limited exception to the twenty-day notice requirement for a subpoena duces tecum for documents to be produced in connection with a deposition. Pa. R. Civ. P. 234.1 & 4007.1(d)(2).

66. But the language of and comments to those Rules show that the intent behind that exception is that the subpoenaed documents would be produced in connection with a deposition that was noticed legitimately and in good faith. *See, e.g.*, Note to Pa. R. Civ. P. 234.1 (explaining that twenty-day notice requirement not required in deposition context because reasonable notice is ensured by Rule 4007.1(d)(2)'s requirement that documents "shall be produced at the deposition and not earlier, except upon the consent of all parties to the action"); Pa R. Civ. P. 234.1(b)(1)-(2) (providing that subpoena "may be used to command a person to attend and to produce documents or things **only at**" (1) a trial or hearing; or (2) a deposition) (emphasis added).

67. That is not the case here. UPMC's communications to non-party PDA betray UPMC's true motive: to manipulate the Rules to end-around the twenty-day notice requirement

for a document subpoena. Indeed, UPMC admitted that it “was willing to accept production of the documents requested in lieu of a deposition.” *See Ex. A.*

68. UPMC should not be allowed to play games with the Rules to achieve this end result. Such a result would allow the exception to swallow the rule. *See Tollari v. General Motors Corp.*, 40 D. & C. 4<sup>th</sup> 339, 347 (Pa. Com. Pl. 1998) (noting that “under Rule 4007.1” defendants “were not permitted to give [subpoenaed non-party] the option of furnishing documents by mail in lieu of travelling” to attend noticed deposition).

69. Accordingly, the Application to Quash UPMC’s Subpoena should be granted for this additional basis.

### **CONCLUSION**

70. For the foregoing reasons, PDA respectfully request that the Court grant the Application to Quash the Subpoena and for a Protective Order to UPMC’s Subpoena *Duces Tecum* served on PDA.

#### **BLANK ROME LLP**

*/s/ Amy Joseph Coles* \_\_\_\_\_  
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Dated: April 4, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that on April 4, 2019, I caused a true and correct copy of this document to be served on all counsel of record via PACFile.

/s/ Amy Joseph Coles

**CERTIFICATION REGARDING PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Amy Joseph Coles

Dated: April 4, 2019



# **EXHIBIT**

**A**

# JONES DAY

500 GRANT STREET • SUITE 4500 • PITTSBURGH, PENNSYLVANIA 15219.2514  
TELEPHONE: +1.412.391.3939 • FACSIMILE: +1.412.394.7959

Direct Number: (412) 394-7250  
atbailey@jonesday.com

March 27, 2019

## VIA HAND DELIVERY

Department of Aging  
Office of Chief Counsel  
555 Walnut Street, 5th Floor  
Harrisburg, Pennsylvania 17101-1919

Re: Commonwealth of Pennsylvania ex rel. Shapiro, et al. v. UPMC, et al.,  
No. 334 M.D. 2014 (Pa. Commw. Ct.)

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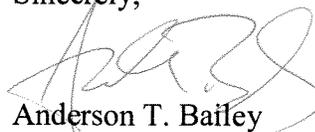
Dear Custodian of Records:

Enclosed please find a custodian of records deposition subpoena directed to you for a deposition on April 11, 2019, at 12:30 p.m. at the offices of Network Deposition Services, 200 Linglestown Road, Suite 201, Harrisburg, PA 17110. This subpoena directs you to produce at that time the documents identified in Addendum A to the subpoena.

Please note that the parties to this case have all consented to production of the documents requested in lieu of a deposition.

Please let me know if you have any questions.

Sincerely,



Anderson T. Bailey

Encl.

No. 334 MD 20 14  
Commonwealth of Pennsylvania, By  
Joshua Shapiro, Attorney General,  
et al.; Petitioners,

COMMONWEALTH COURT  
OF PENNSYLVANIA

vs.

UPMC, A Nonprofit Corp., et al.;  
Respondents.

TO The Pennsylvania Department of Aging, Custodian of Records

1. You are ordered by the Court to come to Network Deposition Service, 200 Linglestown Rd.,  
Suite 102 Harrisburg on April 11, 2019 12:30 P.  
at \_\_\_\_\_, Pennsylvania \_\_\_\_\_ at \_\_\_\_\_ M.

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

2. And to bring with you the following: See Addendum A attached hereto

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

Issued by: Anderson T. Bailey, Jones Day, 500 Grant St., Ste 4500, Pittsburgh, PA

15219

(State attorney's name, address, telephone number and identification number)

Tel: 412.394.7250  
PA ID#: 206485

BY THE COURT,



By \_\_\_\_\_

Chief Clerk

Date: March 27, 2019

Seal of the Court

No. \_\_\_\_\_, 20\_\_\_\_

# Court Subpoena

The Commonwealth Court  
of Pennsylvania

COMMONWEALTH OF PENNSYLVANIA, ss:

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I, \_\_\_\_\_

\_\_\_\_\_, served \_\_\_\_\_  
(name of person served)

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

\_\_\_\_\_  
\_\_\_\_\_

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

Date \_\_\_\_\_

## Addendum A to Subpoena

You are directed to produce the documents and things identified below at the time of the custodian of records deposition. Alternatively, all parties have consented to production of the documents in lieu of the deposition.

### **I. INSTRUCTIONS**

1. Furnish all documents and things that are available to you, including documents in the possession of your attorney or other representative or otherwise subject to your possession and/or control.

2. If it is claimed that an answer (in whole or in part) to any document request or any part thereof is privileged or otherwise protected from discovery, identify such information by its subject matter and state with particularity the nature and basis of each such claim. Any such objection or claim of privilege must be substantiated by a privilege log.

3. The conjunctions “and” and “or” shall not be interpreted disjunctively to exclude any information otherwise within the scope of any request.

4. Unless otherwise provided, the relevant time period for these requests for production is January 1, 2011 through and including the present, which is also referred to in these requests as the “relevant time period.”

### **II. DEFINITIONS**

1. “Documents” whenever used herein is intended to be an all-inclusive term referring to any writing and/or recorded or graphic matter, including electronically-stored information, however produced or reproduced. The term “documents” includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, printouts, recordings, telegrams, films, and all other such documents

tangible or retrievable of any kind. “Documents” also include any preliminary notes and drafts of all the foregoing, in whatever form, for example: printed, typed, longhand, shorthand, on paper, paper type, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other form. “Documents” also include any document created or generated on a computer, laptop, tablet, smartphone, or personal digital assistant, including, but not limited to, any computer documents, electronic communications, notes, memoranda, internal or external emails, of any kind, in any form, in whatever manner stored, including, but not limited, information stored on a disc, network or tape. This definition covers all such documents so defined in your possession and/or control that are known by you to exist.

2. The term “concerning” means relating to, referring to, describing, evidencing, memorializing, and/or constituting.

3. The term “OAG” shall refer to the Attorney General and Office of the Attorney General, including any and all other persons or entities acting or purporting to act on either of their behalf.

4. The term “Petition” shall refer to the “Commonwealth’s Petition to Modify Consent Decrees” filed by the OAG in the matter captioned *Commonwealth of Pennsylvania, by Josh Shapiro, Attorney General v. UPMC, a Nonprofit Corp.*, No. 334 MD 2014 (Pa. Commw. Ct.), a copy of which is attached as Exhibit 1.

5. The term “UPMC” shall refer to UPMC and its subsidiaries and affiliates.

6. The term “Highmark” shall refer to Highmark Health and its subsidiaries and affiliates (including specifically AHN as defined below), as well as any and all other persons or entities acting or purporting to act on any of their behalf.

7. The term “Governor” shall refer to the Pennsylvania Governor, the Pennsylvania Governor’s Office, and any and all persons or entities acting or purporting to act on his or its behalf.

8. The term “PID” shall refer to the Pennsylvania Insurance Department, including any and all other persons or entities acting or purporting to act on its behalf.

9. The term “DOH” shall refer to the Pennsylvania Department of Health, including any and all other persons or entities acting or purporting to act on its behalf.

10. The term “AHN” shall refer to Allegheny Health Network and its subsidiaries, affiliates and predecessors, including any other persons or entities acting or purporting to act on any of their behalf.

11. The term “Consent Decree” shall refer to the separate, nearly identical, reciprocal Consent Decrees entered into on June 27, 2014 between the Commonwealth and UPMC and Highmark respectively.

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

13. The term “Second Mediated Agreement” shall refer to the Agreement between UPMC and Highmark negotiated through the auspices of the Governor and entered into on or about December 20, 2017.

14. The term “Proposed Modifications” shall refer to the proposed modifications to the Consent Decree set out in ¶ 75 of the Petition and Exhibit G to Petition, including any prior iterations or versions thereof.

15. The term “UPE Approving Order” shall refer to the Pennsylvania Insurance Department’s UPE Order in the Highmark/West Penn Allegheny Health System Matter, *In Re*

*Application of UPE*, No. ID-RC-13-06 (Pa. Insur. Dept. April 29, 2013) and subsequently-issued Findings of Fact and Conclusions of Law.

16. The term “Expiration Date Litigation” shall refer to the litigation concerning the expiration date of the Consent Decree that commenced with UPMC’s September 26, 2017 notice that it would terminate its provider contracts on December 31, 2018 and concluded with the Pennsylvania Supreme Court’s Opinion issued on July 18, 2018.

17. The term “Medicare Advantage Litigation” shall refer to the 2015 litigation concerning whether the Consent Decree precluded UPMC from declining to renew its Medicare Advantage contracts with Highmark, which litigation concluded with the Supreme Court’s Opinion in *Commonwealth ex rel. Kane v. UPMC*, 129 A.3d 441 (Pa. 2015).

18. The term “SEIU” shall refer to Service Employees International Union and its subsidiaries and affiliates, as well as any and all other persons or entities acting or purporting to act on any of their behalf.

19. The term “SEIU Healthcare Pennsylvania” shall refer to SEIU Healthcare Pennsylvania and its subsidiaries and affiliates, as well as any and all other persons or entities acting or purporting to act on any of their behalf.

20. The term “PHAN” shall refer to Pennsylvania Health Access Network and its subsidiaries and affiliates, as well as any and all other persons or entities acting or purporting to act on any of their behalf.

21. The term “APPRISE” shall refer to the health insurance counseling program of that name, its subsidiaries and affiliates, the Pennsylvania Department of Aging to the extent it oversees APPRISE’s work, and any and all other persons or entities acting or purporting to act on any of their behalf.

### **III. REQUESTS FOR PRODUCTION**

1. All communications and documents exchanged with UPMC, Highmark, the OAG, PID, DOH, Governor, SEIU, SEIU Healthcare Pennsylvania, or Chelsa Wagner concerning any of the following subject matters—

1. UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;
2. Consumer complaints about UPMC or UPMC/Highmark provider contracting;
3. The Consent Decree and/or expiration of the Consent Decree;
4. The Proposed Modifications, the Petition, and/or any litigation proceeding, discovery matter, or court hearing related to the Petition;
5. The impact of contracting with UPMC on the financial performance of AHN;
6. The Mediated Agreement and/or the Second Mediated Agreement;
7. The UPE Approving Order;
8. The Petition for Review that was resolved by the Consent Decree, the Expiration Date Litigation, and/or the Medicare Advantage Litigation;
9. Public confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark provider contracts;
10. PMF Industries;
11. INDECS Corporation;
12. Highmark's out-of-network rider product(s);
13. Direct payment by Highmark to UPMC for services provided to out-of-network Highmark insureds;
14. Advertising concerning the Consent Decree, the expiration of the Consent Decree, and/or UPMC/Highmark provider contracting;
15. Tiering and steering;

16. Assessment or evaluation of whether/how the Proposed Modifications further the public interest and/or all communications concerning the Attorney General's ability to advance the public interest;
17. Insurance competition in western Pennsylvania; or
18. Provider competition in western Pennsylvania.

—during the relevant time period.

2. All notes, memoranda, or other documents concerning meetings, conversations, or communications with UPMC, Highmark, the OAG, PID, DOH, Governor, SEIU, SEIU Healthcare Pennsylvania, or Chelsa Wagner concerning the Proposed Modifications, AHN's financial condition, the termination of the Consent Decree, and/or the UPMC/Highmark provider contracts.

3. All notes, memoranda, or other documents used in preparation for meetings with the OAG, PID, DOH, Governor, SEIU, SEIU Healthcare Pennsylvania, Chelsa Wagner, UPMC, and/or Highmark during the relevant time period.

4. All internal documents concerning consumer complaints about UPMC, the Consent Decree, the Mediated Agreement, the Second Mediated Agreement, the Proposed Modifications, and/or UPMC/Highmark provider contracting.

5. All communications or documents exchanged with any employer, state/local/national elected or appointed government official or legislator, chamber of commerce or industry group, patient, PHAN, provider, and/or other third party (but not including the OAG, PID, DOH, or Governor) regarding the UPE Approving Order, Mediated Agreement, Second Mediated Agreement, Consent Decree, Proposed Modifications, and/or the OAG's Petition.

6. All documents regarding the negotiation of the Mediated Agreement, Consent Decree, Second Mediated Agreement, and/or Proposed Modifications.

7. All internal documents concerning assessment or evaluation of whether/how the Proposed Modifications further the public interest, and all documents concerning the Attorney General's ability to advance the public interest.

8. All assessments, analyses, and projections concerning the impact of the expiration of the Consent Decree.

9. All notes, memoranda, or other documents used in preparation for meetings with the OAG, PID, DOH, or Governor in 2013, 2014, 2015, 2016, 2017, or 2018.

10. Any and all documents regarding any positions, public statements, advertising, or other advocacy efforts by APPRISE concerning the Medicare Advantage Litigation.

# **EXHIBIT**

**B**



March 1, 2019

**Stephen A. Cozen**

Direct Phone 215-665-2020

Direct Fax 215-701-2020

scozen@cozen.com

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

James A. Donahue, III  
PA Office of Attorney General  
Public Protection Division  
14th Fl. Strawberry Square  
Harrisburg, PA 17120

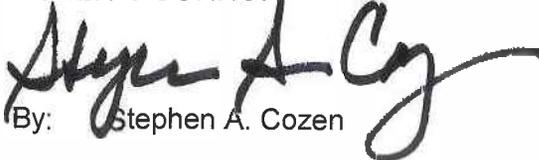
**Re: Commonwealth of Pennsylvania by Josh Shapiro, Attorney General, et al. v.  
UPMC, A Nonprofit Corp., et al.**

Dear Jim:

Enclosed please find UPMC's First Set of Interrogatories and Requests for Production Directed to the Attorney General.

Sincerely,

COZEN O'CONNOR

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

By: Stephen A. Cozen

SAC:pd  
Enclosure

LEGAL\40147820\1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :  
By JOSH SHAPIRO, Attorney General, et al.; :

Petitioners, :

v. :

UPMC, A Nonprofit Corp., et al.; :

No. 334 M.D. 2014

Respondents. :

**UPMC'S FIRST SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION DIRECTED TO THE ATTORNEY GENERAL**

Pursuant to Rules 4005 and 4009.11 of the Pennsylvania Rules of Civil Procedure, respondent UPMC hereby propounds the following interrogatories and requests for the production of documents and things to petitioner Attorney General Josh Shapiro and requests that responses to and production of the documents and materials requested be served within thirty days or such shorter time as the Court may order.

**I. INSTRUCTIONS**

1. Furnish all information that is available to you, including information in the possession of your attorney or other representative or otherwise subject to your possession and/or control.

2. If it is claimed that an answer (in whole or in part) to any interrogatory or document request or any part thereof is privileged or otherwise protected from discovery, identify such information by its subject matter and state with particularity the nature and basis of

each such claim. Any such objection or claim of privilege must be substantiated by a privilege log to be served with your responses to these interrogatories and requests.

3. If you object to any part of an interrogatory or document request, answer all parts of such request as to which you do not object and, as to each part to which you do object, separately set forth the specific basis for the objection.

4. If you do not possess knowledge of the requested information, you should so state your lack of knowledge and describe all efforts made by you to obtain the information or documents necessary to answer the request.

5. The conjunctions “and” and “or” shall not be interpreted disjunctively to exclude any information otherwise within the scope of any interrogatory or request.

6. Unless otherwise provided, the relevant time period for these interrogatories and requests for production is January 1, 2011 through and including the present, which is also referred to in these interrogatories and requests as the “relevant time period.”

## **II. DEFINITIONS**

1. “Documents” whenever used herein is intended to be an all-inclusive term referring to any writing and/or recorded or graphic matter, including electronically-stored information, however produced or reproduced. The term “documents” includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, printouts, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. “Documents” also include any preliminary notes and drafts of all the foregoing, in whatever form, for example: printed, typed, longhand, shorthand, on paper, paper type, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion

picture film, phonograph records, or other form. “Documents” also include any document created or generated on a computer, laptop, tablet, smartphone, or personal digital assistant, including, but not limited to, any computer documents, electronic communications, notes, memoranda, internal or external emails, of any kind, in any form, in whatever manner stored, including, but not limited, information stored on a disc, network or tape. This definition covers all such documents so defined in your possession and/or control that are known by you to exist.

2. The terms “describe in detail,” “identify with particularity,” “state with particularity,” and “set forth the factual basis” shall mean to describe fully by reference to underlying facts rather than by ultimate facts or conclusions of facts or law and to particularize as to time, place and manner.

3. The term “identify” when used with reference to an individual person shall mean to state his or her full name (or if not known, his or her job title or position and employer, or if no other identification is possible provide sufficient description so that he or she will be identifiable to the recipients of your answer), and last known residence or business address.

4. The term “identify” when used with reference to a document or written communication shall mean to state the type of document or communication (e.g., memorandum, employment application, letter, handwritten notes, etc. including any document which is or has been attached to the document being identified), state its date, identify the author (and if different, the originator and signer), state the title of the document or communication and if any such document or communication was, but no longer is, in your possession or subject to your control, state the present or last known location of the document or communication. Further, set forth the substance of the document or communication, or, in the alternative, produce the document.

5. The term “identify” when used with reference to an oral communication, discussion, conversation or any other oral statement, shall mean to describe in detail the

substance of each such communication, discussion, conversation or statement, state the date of such communication, discussion, conversation or statement, the place where such communication, discussion, conversation or statement was held and identify each person present for such communication, discussion, conversation or statement.

6. The term “concerning” means relating to, referring to, describing, evidencing, memorializing, and/or constituting.

7. “You” or “Your” whenever used in these interrogatories and requests for production shall refer to the Attorney General and Office of the Attorney General (“OAG”), including any and all other persons or entities acting or purporting to act on either of their behalf.

8. The term “Petition” shall refer to the “Commonwealth’s Petition to Modify Consent Decrees” filed by the OAG in the matter captioned *Commonwealth of Pennsylvania, by Josh Shapiro, Attorney General v. UPMC, a Nonprofit Corp.*, No. 334 M.D. 2014 (Pa. Commw. Ct.), and the term “Lawsuit” shall refer to the instant lawsuit.

9. The term “UPMC” shall refer to UPMC and its subsidiaries and affiliates.

10. The term “Highmark” shall refer to Highmark Health and its subsidiaries and affiliates, including any and all other persons or entities acting or purporting to act on any of their behalf.

11. “Governor” means the Pennsylvania Governor, the Pennsylvania Governor’s Office, and any and all persons or entities acting or purporting to act on his or its behalf.

12. The term “PID” shall refer to the Pennsylvania Insurance Department, including any and all other persons or entities acting or purporting to act on its behalf.

13. The term “DOH” shall refer to the Pennsylvania Department of Health, including any and all other persons or entities acting or purporting to act on its behalf.

14. The term “Consent Decree” shall refer to the separate, nearly identical, reciprocal Consent Decrees entered into on June 27, 2014 between the Commonwealth and UPMC and Highmark respectively.

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

16. The term “Proposed Modifications” shall refer to the proposed modifications to the Consent Decree set out in ¶ 75 of the Petition and Exhibit G to Petition, including any prior iterations or versions thereof.

17. The term “UPE Approving Order” shall refer to the Pennsylvania Insurance Department’s UPE Order in the Highmark/West Penn Allegheny Health System Matter, *In Re Application of UPE*, No. ID-RC-13-06 (Pa. Insur. Dept. April 29, 2013) and subsequently-issued Findings of Fact and Conclusions of Law.

### **III. FIRST SET OF INTERROGATORIES**

1. Identify each and every individual who may have knowledge of the allegations or any fact or information relating to any allegation in the Petition and/or the subject matter of this Lawsuit, and for each individual so identified, state the subject matter of his/her knowledge.

#### **ANSWER:**

2. State whether You communicated with any legislator or representatives of any legislator concerning any of the Proposed Modifications, the expiration of the Consent Decree, and/or the termination or continuation of UPMC/Highmark provider contracts, either generally or specifically, before filing the Petition, and if so, identify the person(s) with whom You

communicated, the substance of the communication with each, and identify any documents memorializing, constituting, or concerning each such communication(s).

**ANSWER:**

3. State whether You communicated with the Governor or any other department of the Commonwealth government, including but not limited to DOH or PID, concerning the Proposed Modifications, the expiration of the Consent Decree, and/or the termination or continuation of UPMC/Highmark provider contracts, either generally or specifically, before filing the Petition, and if so, identify the person(s) with whom You communicated, the substance of the communication with each, and identify any documents memorializing, constituting, or concerning each such communication(s).

**ANSWER:**

4. Identify all OAG personnel with knowledge or information regarding the allegations contained in the Petition.

**ANSWER:**

5. Identify each and every third party with whom You communicated concerning the Proposed Modifications, the expiration of the Consent Decree, and/or the termination or continuation of UPMC/Highmark provider contracts, and for each third party so identified, identify the substance of the communication with each, and identify any documents memorializing, constituting, or concerning each such communication(s).

**ANSWER:**

6. Identify each and every economist, antitrust/competition policy expert, insurance or healthcare consultant, or other expert or consultant with whom You communicated about the Proposed Modifications, the impact of the Proposed Modifications, the expiration of the Consent Decree, and/or the termination or continuation of UPMC/Highmark provider contracts, and for each person so identified, identify the substance of the communication with each, and identify any documents memorializing, constituting, or concerning each such communication(s).

**ANSWER:**

7. Identify all OAG personnel involved in the preparation for the testimony of Executive Deputy Attorney General James A. Donahue, III before the Democratic Policy Committee of the Pennsylvania House of Representatives on or around October 10, 2014.

**ANSWER:**

8. Identify each misrepresentation or deceptive or confusing statement You contend was made by UPMC and upon which the claims alleged in the Petition are based, and for each such misrepresentation or statement, identify the speaker and to whom the misrepresentation or statement was made, state the date(s) the misrepresentation or statement was made, state whether the misrepresentation or statement was written or oral, and if written, identify the writing containing the misrepresentation or statement.

**ANSWER:**

9. Identify any assessment, study, examination, evaluation, or analysis made or relied upon by You to determine the impact on the community, the healthcare industry, or the public in general related in any way to the Proposed Modifications or the expiration of the Consent Decree, including the individual(s) involved and methodology employed.

**ANSWER:**

10. Identify any and all alternative proposals to the Proposed Modifications considered by You and/or sent to or received from third parties, including all terms and parties included in such alternative proposals.

**ANSWER:**

11. State the complete factual basis for Your allegation in the Petition (at 2) that there is “widespread confusion” caused by “UPMC’s actions.”

**ANSWER:**

12. State the complete factual basis for Your allegation in the Petition (at 2) that “UPMC’s actions” are causing “personal hardships for many individual UPMC patients.”

**ANSWER:**

13. Identify and provide contact information for each patient referenced or discussed in the Petition, any patient or individual who spoke at or attended the Attorney General's press conference announcing the filing of the Petition, and any patient or individual whose experience or situation You otherwise rely upon in seeking the relief sought in this Lawsuit.

**ANSWER:**

14. Identify each nonprofit healthcare provider or payer that will be subject to the Proposed Modifications, or any similar requirements, conditions, or restrictions, and for each provider or payer so identified, state all steps You have taken and/or intend to take to enforce compliance against such entities.

**ANSWER:**

15. Identify all instances in which You took enforcement action, including any plans or threats to do so, against any nonprofit corporation or charity for any alleged violation of its charitable purpose, mission, or responsibilities.

**ANSWER:**

16. Identify all instances in which You did not take enforcement action against a nonprofit corporation or charity for violation of its charitable purpose, mission, or responsibilities based on a failure to contract with another company or entity.

**ANSWER:**

17. Identify all instances in which You took enforcement action, including any plans or threats to do so, against any nonprofit or charitable healthcare institution or health insurer for alleged violation of its charitable purpose, mission, or responsibilities based on a failure to contract with any insurer or provider.

**ANSWER:**

18. Identify all instances in which You did not take enforcement action against a nonprofit or charitable healthcare institution or health insurer for violation of its charitable purpose, mission, or responsibilities based on a failure to contract with any insurer or provider.

**ANSWER:**

19. Identify, by location and type of insurance, those patient You contend require protection through the Proposed Modifications, and explain why, by location and type of insurance, the Proposed Modifications are necessary in relation to those patients.

**ANSWER:**

20. Identify, by location and type of insurance, those patients who, upon expiration of Consent Decree, You contend will not have the independent ability to maintain in-network access to a UPMC provider at the same or lower cost.

**ANSWER:**

21. 21. Identify the approximate number of patients implicated by Your allegation in ¶ 44 of the Petition that a Medicare participating patient desiring to switch to a new health care insurer to retain in-network access to a UPMC physician “risk[s] being medically underwritten and the possibility of higher insurance premiums should they have a pre-existing condition” and provide the factual basis for Your approximation.

**ANSWER:**

22. Explain why You now contend, in contrast to the agreement reached through the Consent Decree, that every UPMC provider, including those in Allegheny and Erie counties, must enter into contracts with Highmark or any healthcare insurer seeking a services contract to fulfill their charitable missions.

**ANSWER:**

23. Explain how and why You selected the proposed arbitration panel and associated standards and procedures set out in Exhibit G to the Petition §§ 4.1-4.3.8, including the identification of all individuals and third parties involved in developing the composition of the panel and the standards and procedures.

**ANSWER:**

24. Explain how You intend to ensure that UPMC providers are treated fairly in connection with tiering and steering practices of Highmark and other payers, including how You will ensure that Highmark and other healthcare insurers do not employ arbitrary or biased determinations of cost and quality in the tiering of UPMC providers.

**ANSWER:**

25. Identify all aspects of the “misleading marketing campaign which caused widespread confusion and uncertainty,” as alleged in Petition ¶ 17.

**ANSWER:**

26. Identify all “past assurances from UPMC that seniors would never be impacted by their contractual disputes,” as alleged in the Petition ¶¶ 22 and 28.

**ANSWER:**

27. State the basis for the assertion in the Petition ¶ 23 that UPMC will “eventual[ly] refus[e] to contract with other health insurers.”

**ANSWER:**

28. State how UPMC “thwarted” patients from using Highmark’s “Out-of-Network policy riders ... under which Highmark would pay the 60% of Out-of-Network charges, less the usual co-payments and co-insurance,” as alleged in the Petition ¶ 24.

**ANSWER:**

29. Identify each and every alleged practice that forms the basis of Your allegation that “UPMC also employs practices that increase its revenue without apparent regard for the increase on the costs of the region’s health care.”

**ANSWER:**

30. Identify, as to each allegation of impropriety directed at UPMC in the Petition, whether such alleged conduct or failure to act occurred in 2012, 2013, 2014, 2015, 2016, 2017, or 2018, and specify each such instance.

**ANSWER:**

31. State the name(s) and address(es) of any economist or industry expert You contacted in connection with developing the Proposed Modifications or any other potential response to the expiration of the Consent Decree.

**ANSWER:**

32. State the names and addresses of each and every expert witness whom You may call to testify at the trial or hearing in this matter, followed by a description of the content of his or her qualifications, the materials he or she reviewed relative to this case, his or her opinions regarding this case, the basis for those opinions, and the content of his or her expected testimony.

**ANSWER:**

33. Identify all witnesses You may call at the trial or any hearing in this matter, and for each individual so identified, also state the subject matter of his/her expected testimony.

**ANSWER:**

#### **IV. FIRST REQUEST FOR PRODUCTION**

1. All documents identified in your responses to UPMC's First Set of Interrogatories, and all documents the identity of which is sought in those Interrogatories.

2. All documents referenced, consulted, or relied upon in responding to UPMC's First Set of Interrogatories.

3. All communications and documents exchanged with any of the following individuals/entities—

(a) Highmark;

(b) UPMC;

(c) the legislature, any legislative committee or caucus, or any legislator;

(d) Service Employees International Union (SEIU) including any subsidiary or affiliate thereof;

- (e) Chelsa Wagner;
- (f) PID;
- (g) DOH;
- (h) any federal agency, including the Federal Trade Commission and the Centers for Medicare and Medicaid Services (CMS);
- (i) any state/local/national elected or appointed government official or legislator, including but not limited to Dan Frankel;
- (j) any healthcare provider or payer;
- (k) any employer;
- (l) any regional chamber of commerce;
- (m) Pennsylvania Health Access Network (PHAN), APPRISE, and/or any other consumer/patient group;
- (n) Pittsburgh Business Group on Health;
- (o) INDECS;
- (p) PMF Industries;
- (q) other Commonwealth departments;
- (r) the national insurers, including Aetna, CIGNA, and United;
- (s) Western Pennsylvania community hospitals that are unaffiliated with UPMC, Highmark, or Allegheny Health Network (“AHN”);  
or
- (t) other third parties

—concerning any of the following subject matters—

- (1) UPMC;
- (2) Highmark;
- (3) UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;
- (4) consumer complaints about UPMC;
- (5) consumer complaints about Highmark;

- (6) consumer complaints about UPMC/Highmark provider contracting;
- (7) the Consent Decree and/or expiration of the Consent Decree;
- (8) the Proposed Modifications and/or the Petition;
- (9) AHN and its predecessors including their financial condition;
- (10) the Mediated Agreement or the “Second Mediated Agreement” (Petition ¶ 20);
- (11) the UPE Approving Order;
- (12) the Petition for Review that was resolved by way of the Consent Decree;
- (13) UPMC’s charitable mission, tax exemptions, compensation and benefits, office space, or alleged diversion of charitable assets;
- (14) alleged confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark provider contracts;
- (15) tiering and steering;
- (16) assessment or evaluation of whether/how the Proposed Modifications further the public interest;
- (17) UPMC Health Plan;
- (18) insurance competition in western Pennsylvania; or
- (19) provider competition in western Pennsylvania.

—during the relevant time period.

4. All communications or correspondence with Highmark or UPMC concerning the Proposed Modifications, AHN’s financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

5. All notes, memoranda, or other documents concerning meetings, conversations, or communications with Highmark or UPMC concerning the Proposed Modifications, AHN’s

financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

6. All evaluations of the Proposed Modifications by any economist, insurance consultant, healthcare consultant, or other subject matter expert.

7. All consumer complaints about UPMC or Highmark during the Consent Decree, all communications with or concerning each such complaint/complainant, and Your investigation files for each such complaint.

8. All documents reflecting expenditures and/or actions by the OAG soliciting complaints concerning UPMC, Highmark, UPMC/Highmark provider contracting, the termination of the UPMC/Highmark provider contracts, or the expiration of the Consent Decree.

9. All evaluations of the impact of the Proposed Modifications on insurance competition in western Pennsylvania, including any antitrust evaluations.

10. All documents related to any OAG investigation of UPMC from 2011 to the present including, but not limited to, the investigation reflected in the November 18, 2011 letter from James A. Donahue, III to W. Thomas McGough, Jr.

11. All documents related to any OAG investigation of Highmark from 2011 to the present.

12. Your complete investigation/evaluation/review files for each hospital/health system acquisition transaction alleged in the Petition ¶¶ 64-65.

13. All testimony, statements to legislative bodies/committees, or public statements by the OAG concerning the Highmark/UPMC contracting status, the Mediated Agreement, the Consent Decree, expiration of the Consent Decree, and/or the Proposed Modifications, or insurance competition or provider competition in western Pennsylvania.

14. All documents or other evidence that refer or relate to the impact of the Proposed Modifications on the public interest.

15. All social media posts and messaging by or with the OAG, both public and private, concerning the Highmark/UPMC contracting status, the Mediated Agreement, the Consent Decree, expiration of the Consent Decree, and/or the Proposed Modifications.

16. All documents supporting, refuting, or otherwise concerning your allegations that UPMC has engaged in deceptive or misleading advertising or made deceptive or misleading statements that are a basis for the OAG's Petition.

17. All documents concerning the Second Mediated Agreement as alleged in the Petition ¶¶ 20-23.

18. All documents supporting, refuting, or otherwise concerning Your allegation that UPMC "thwarted" patients from using Highmark's "Out-of-Network policy riders ... under which Highmark would pay the 60% of Out-of-Network charges, less the usual co-payments and co-insurance" as alleged in the Petition ¶ 24.

19. All documents supporting, refuting, or otherwise concerning the patients identified as examples of financial hardships, treatment denials, and/or treatment delays for out-of-network patients in the Petition ¶ 25, and all documents concerning any other patient You contend is similarly situated, including but not limited to documents sufficient to identify the names and contact information of all such patients.

20. All documents supporting, refuting, or otherwise concerning Your allegations that UPMC has refused to contract and/or engaged in practices to increase revenues, as alleged in the Petition ¶¶ 27-31.

21. All documents supporting, refuting, or otherwise concerning Your allegations that UPMC has engaged in unfair and misleading marketing, as alleged in the Petition ¶¶ 32-36.

22. All documents concerning the patients identified as examples of access and treatment denials in the Petition ¶ 37, and all documents concerning any other patients you contend are similarly situated, including but not limited to documents sufficient to identify the names and contact information of all such patients.

23. All documents supporting, refuting, or otherwise concerning Your allegations about UPMC Susquehanna, PMF Industries, and its alleged “insurer,” as alleged in the Petition ¶ 38.

24. All documents supporting, refuting, or otherwise concerning Your allegations that “UPMC rejects efforts by employers to use reference based prices or other cost comparison tools,” as alleged in the Petition ¶ 41.

25. All documents supporting, refuting, or otherwise concerning Your allegations that UPMC refuses to contract with out-of-area Blue Cross Blue Shield companies, as alleged in the Petition ¶ 42.

26. All documents supporting, refuting, or otherwise concerning Your allegations that “UPMC’s decision to not participate in certain Highmark or other Blue Cross Blue Shield Medicare Advantage plans imposes special costs and hardships on seniors,” as alleged in the Petition ¶¶ 43-44.

27. All documents supporting, refuting, or otherwise concerning Your allegations that out-of-network patients treated for emergency care in UPMC hospitals will pay significantly higher prices, which will also impose higher costs on employers, and increase healthcare costs, as alleged in the Petition ¶¶ 45-51.

28. All documents supporting, refuting, or otherwise concerning Your allegations that all out-of-network patients receiving non-emergency healthcare at UPMC hospitals after June 30, 2019 will be required to pay expected charges for treatment before services are provided, and the alleged unjust impact thereof, as alleged in the Petition ¶¶ 52-55.

29. All documents supporting, refuting, or otherwise concerning Your allegations in the Petition ¶¶ 56-63 regarding UPMC's financial position, spending and compensation practices, and alleged wasteful expenditures of charitable resources.

30. A full, unredacted version of the Penn State Hershey Medical Center / PinnacleHealth System merger litigation file, including all briefs, hearing transcripts, depositions, discovery, and other filings.

31. All documents concerning, or generated or reviewed in connection with, the testimony of Executive Deputy Attorney General James A. Donahue, III before the Democratic Policy Committee of the Pennsylvania House of Representatives on or around October 10, 2014 and/or the conclusions contained in his testimony, including but not limited to that the OAG has no legal basis to compel UPMC and Highmark to contract.

32. All documents relating to provider-based/hospital-based billing in Pennsylvania, including all complaints, documents indicating which providers are so billing, and what the OAG has done in response.

33. All documents concerning how the arbitration panel and associated standards and procedures set out in Exhibit G to the Petition §§ 4.1-4.3.8 were developed.

34. All communications and/or documents exchanged with any individual about serving as an arbitrator on an arbitration panel, as contemplated in Exhibit G to the Petition §§ 4.1-4.3.8.

35. All documents concerning the qualifications and selection of the arbitrators as contemplated in Exhibit G to the Petition §§ 4.1-4.3.8.

36. All documents evaluating, addressing, or concerning the OAG's authority to impose the Proposed Modifications.

37. All documents evaluating, addressing, or concerning whether the Proposed Modifications are consistent with federal law.

38. All documents relating to any effort to impose any willing payer or any willing insurer system by legislation or regulation, including but not limited to Pennsylvania General Assembly House Bill 345, Regular Session 2017-2018, February 3, 2017, and House Bill 1621, Regular Session 2017-2018, June 26, 2017.

39. Any and all literature the OAG has reviewed regarding the impact of any willing provider laws raising healthcare costs.

40. All documents concerning public support for or opposition to an any willing payer or any willing insurer regime by the OAG, Pennsylvania legislatures, and/or any trade, industry, business, consumer, or other lobbying groups.

41. All documents relating to the impact and purpose of the Consent Decree.

42. All documents relating to the 2017 UPMC/Highmark contracts.

43. All documents relating to any nonprofit healthcare provider or payer who has declined to enter into a contract with a willing provider/payer, including but not limited to Penn State Hershey Medical Center's refusal to contract with UPMC Health Plan.

44. All documents concerning ¶ 22 of the UPE Approving Order, including but not limited to, all documents that relate to Highmark's compliance or noncompliance with ¶ 22.

45. All notes, memoranda, or other documents used in preparation for meetings between the OAG and UPMC in 2013, 2014, 2015, 2016, 2017, or 2018.

46. All documents concerning or containing any information relating, in any way, to the subject matter of this Lawsuit and/or that are relevant to the claims and defenses at issue in this Lawsuit and/or, the facts underlying the allegations set forth in the Petition.

47. All documents related to or containing any information relating, in any way, to this Lawsuit received from any party, whether in response to a subpoena, demand for documents, or otherwise.

48. All statements and/or admissions concerning the claims and defenses at issue in this Lawsuit.

49. Curricula vitae for each expert consulted and/or anticipated to be called as a witness in connection with this matter.

50. All documents generated or reviewed by, or upon which each and every expert witness you may call to testify at the time of trial will rely in testifying in the Lawsuit.

51. All documents you intend to introduce as exhibits at trial or any hearing on this matter.

52. All statements by any individual who is or may be a witness at the trial or any hearing in this Lawsuit.

Dated: March 1, 2019

COZEN O'CONNOR

/s/ Stephen A. Cozen  
Stephen A. Cozen (Pa. 03492)  
James R. Potts (Pa. 73704)  
Stephen A. Miller (Pa. 308590)  
Jared D. Bayer (Pa. 201211)  
Andrew D. Linz (Pa. 324808)

1650 Market Street, Suite 2800  
Philadelphia, PA 19103  
Tel.: (215) 665-2000

JONES DAY  
Leon F. DeJulius, Jr. (Pa. 90383)  
Rebekah B. Kcehowski (Pa. 90219)  
Anderson Bailey (Pa. 206485)

500 Grant Street, Suite 4500  
Pittsburgh, PA 15219  
Tel.: (412) 391-3939

*Attorneys for Respondent UPMC*

# **EXHIBIT**

**C**

# JONES DAY

500 GRANT STREET, SUITE 4500 • PITTSBURGH, PENNSYLVANIA 15219.2514

TELEPHONE: +1.412.391.3939 • FACSIMILE: +1.412.394.7959

DIRECT NUMBER: (412) 394-7250  
ATBAILEY@JONESDAY.COM

March 13, 2019

## VIA HAND DELIVERY

Governor's Office  
Office of Counsel to Governor  
225 Main Capitol Building  
Harrisburg, Pennsylvania 17120

Re: Commonwealth of Pennsylvania, By Joshua Shapiro, Attorney General, et al. v. UPMC, et al., No. 334 M.D. 2014

Dear Custodian of Records:

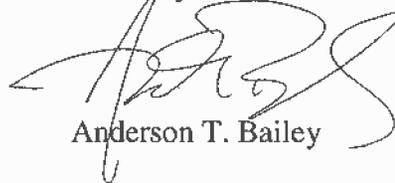
Enclosed please find a custodian of records deposition subpoena directed to you for a deposition on March 28, 2019 at 1:30 p.m. at the Office of Cozen O'Connor, 17 North Second Street, Suite 1410, Harrisburg, Pennsylvania, which directs you to produce at that time the documents identified in Addendum A to the subpoena.

If the other parties to the case consent, UPMC is willing to accept production of the documents requested in lieu of a deposition. By copy of this letter, UPMC requests that all parties consent by close of business on March 20, 2019. In light of the Attorney General's request that this matter be resolved by June 30, 2019, UPMC will presume all parties consent unless specific communication is received to the contrary.

Any deposition that may take place pursuant to this subpoena will not inquire into any of the underlying facts. UPMC will separately seek a fact deposition consistent with the Court's March 13, 2019 Order.

Please let me know if you have any questions.

Sincerely,



Anderson T. Bailey

Enclosure

March 13, 2019  
Page 2

Cc: (via email; w/encl.)

James A. Donahue, III  
Mark A. Pacella  
Tracy Wright Wertz  
Joseph Betsko  
Michael T. Foerster  
Heather Vance-Rittman  
Jonathan Goldman  
Keli Neary  
Douglas E. Cameron  
Daniel I. Booker  
Kim M. Watterson  
Jeffrey M. Weimer  
Amy Daubert  
Kenneth Joel  
Victoria S. Madden  
Yvette Kostelec

No. 334 MD 20 14

COMMONWEALTH COURT  
OF PENNSYLVANIA

Commonwealth of Pennsylvania, By  
Joshua Shapiro, Attorney General,  
et al.; Petitioners,

vs.

UPMC, A Nonprofit Corp., et al.;  
Respondents.

TO The Pennsylvania Governor's Office, Custodian of Records

1. You are ordered by the Court to come to Network Deposition Services, 200 Linglestown Rd.,  
Suite 102 at Harrisburg, Pennsylvania on March 28, 2019 at 1:30 P.M.

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

2. And to bring with you the following: See Addendum A attached hereto

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions autho-  
rized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

Issued by: Anderson T. Bailey, Jones Day, 500 Grant St., Ste. 4500, Pittsburgh, PA  
15219  
(State attorney's name, address, telephone number and identification number)

Tel: 412-394-7250  
PA Id#: 206485

BY THE COURT,

By   
Chief Clerk

Date: March 8, 2019

Seal of the Court

## Addendum A to Subpoena

You are directed to produce the documents and things identified below at the time of the custodian of records deposition. Alternatively, with the consent of all parties, the documents may be produced to all parties at an agreed time in lieu of the deposition (but only with the consent of all parties).

### **I. INSTRUCTIONS**

1. Furnish all documents and things that are available to you, including documents in the possession of your attorney or other representative or otherwise subject to your possession and/or control.
2. If it is claimed that an answer (in whole or in part) to any document request or any part thereof is privileged or otherwise protected from discovery, identify such information by its subject matter and state with particularity the nature and basis of each such claim. Any such objection or claim of privilege must be substantiated by a privilege log.
3. The conjunctions "and" and "or" shall not be interpreted disjunctively to exclude any information otherwise within the scope of any request.
4. Unless otherwise provided, the relevant time period for these requests for production is January 1, 2011 through and including the present, which is also referred to in these requests as the "relevant time period."

### **II. DEFINITIONS**

1. "Documents" whenever used herein is intended to be an all-inclusive term referring to any writing and/or recorded or graphic matter, including electronically-stored information, however produced or reproduced. The term "documents" includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts,

diaries, logs, proposals, printouts, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. "Documents" also include any preliminary notes and drafts of all the foregoing, in whatever form, for example: printed, typed, longhand, shorthand, on paper, paper type, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other form. "Documents" also include any document created or generated on a computer, laptop, tablet, smartphone, or personal digital assistant, including, but not limited to, any computer documents, electronic communications, notes, memoranda, internal or external emails, of any kind, in any form, in whatever manner stored, including, but not limited, information stored on a disc, network or tape. This definition covers all such documents so defined in your possession and/or control that are known by you to exist.

2. The term "concerning" means relating to, referring to, describing, evidencing, memorializing, and/or constituting.

3. The term "OAG" shall refer to the Attorney General and Office of the Attorney General, including any and all other persons or entities acting or purporting to act on either of their behalf.

4. The term "Petition" shall refer to the "Commonwealth's Petition to Modify Consent Decrees" filed by the OAG in the matter captioned *Commonwealth of Pennsylvania, by Josh Shapiro, Attorney General v. UPMC, a Nonprofit Corp.*, No. 334 MD 2014 (Pa. Commw. Ct.).

5. The term "UPMC" shall refer to UPMC and its subsidiaries and affiliates.

6. The term "Highmark" shall refer to Highmark Health and its subsidiaries and affiliates, including any and all other persons or entities acting or purporting to act on any of their behalf.

7. The term “Governor” shall refer to the Pennsylvania Governor, the Pennsylvania Governor’s Office, and any and all persons or entities acting or purporting to act on his or its behalf.

8. The term “PID” shall refer to the Pennsylvania Insurance Department, including any and all other persons or entities acting or purporting to act on its behalf.

9. The term “DOH” shall refer to the Pennsylvania Department of Health, including any and all other persons or entities acting or purporting to act on its behalf.

10. The term “AHN” shall refer to Allegheny Health Network and its subsidiaries, affiliates and predecessors, including any other persons or entities acting or purporting to act on any of their behalf.

11. The term “Consent Decree” shall refer to the separate, nearly identical, reciprocal Consent Decrees entered into on June 27, 2014 between the Commonwealth and UPMC and Highmark respectively.

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

13. The term “Second Mediated Agreement” shall refer to the Agreement between UPMC and Highmark negotiated through the auspices of the Governor and entered into on or about December 20, 2017.

14. The term “Proposed Modifications” shall refer to the proposed modifications to the Consent Decree set out in ¶ 75 of the Petition and Exhibit G to Petition, including any prior iterations or versions thereof.

15. The term “UPE Approving Order” shall refer to the Pennsylvania Insurance Department’s UPE Order in the Highmark/West Penn Allegheny Health System Matter, *In Re*

*Application of UPE*, No. ID-RC-13-06 (Pa. Insur. Dept. April 29, 2013) and subsequently-issued Findings of Fact and Conclusions of Law.

16. The term “Expiration Date Litigation” shall refer to the litigation concerning the expiration date of the Consent Decree that commenced with UPMC’s September 26, 2017 notice that it would terminate its provider contracts on December 31, 2018 and concluded with the Pennsylvania Supreme Court’s Opinion issued on July 18, 2018.

### III. REQUESTS FOR PRODUCTION

1. All documents during the time period from July 1, 2014 through the present concerning Highmark’s duty to provide updated financial documentation in anticipation of any new provider contract with UPMC and/or ¶ 22 of the UPE Approving Order.

2. All communications and documents exchanged with the OAG concerning any of the following subject matters—

- (1) UPMC;
- (2) Highmark;
- (3) UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;
- (4) consumer complaints about UPMC;
- (5) consumer complaints about Highmark;
- (6) consumer complaints about UPMC/Highmark provider contracting;
- (7) the Consent Decree and/or expiration of the Consent Decree;
- (8) the Proposed Modifications and/or the Petition;
- (9) AHN and its predecessors including their financial condition;
- (10) the Mediated Agreement or the Second Mediated Agreement;
- (11) the UPE Approving Order;

- (12) the Petition for Review that was resolved by way of the Consent Decree;
- (13) UPMC's charitable mission; tax exemptions; compensation, benefits, and perquisites; office space; or alleged diversion of charitable assets;
- (14) alleged confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark provider contracts;
- (15) tiering and steering;
- (16) assessment or evaluation of whether/how the Proposed Modifications further the public interest;
- (17) UPMC Health Plan;
- (18) insurance competition in western Pennsylvania;
- (19) provider competition in western Pennsylvania; or
- (20) the Expiration Date Litigation.

—during the relevant time period.

3. All assessments, analyses, or documents otherwise concerning any of the following subject matters—

- (1) UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;
- (2) consumer complaints about UPMC;
- (3) consumer complaints about Highmark;
- (4) consumer complaints about UPMC/Highmark provider contracting;
- (5) the Consent Decree and/or expiration of the Consent Decree;
- (6) the Proposed Modifications and/or the Petition;
- (7) AHN and its predecessors including their financial condition;
- (8) the Mediated Agreement or the Second Mediated Agreement;
- (9) the Petition for Review that was resolved by way of the Consent Decree;

(10) UPMC's charitable mission; tax exemptions; compensation, benefits, and perquisites; office space; or alleged diversion of charitable assets;

(11) alleged confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark provider contracts;

(12) tiering and steering by Highmark regarding UPMC;

(13) assessment or evaluation of whether/how the Proposed Modifications further the public interest;

(14) insurance competition in western Pennsylvania;

(15) provider competition in western Pennsylvania; or

(16) the Expiration Date Litigation.

—during the relevant time period.

4. All communications or correspondence with Highmark concerning the Proposed Modifications, AHN's financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

5. All notes, memoranda, or other documents concerning meetings, conversations, or communications with the OAG, Highmark, or UPMC concerning the Proposed Modifications, AHN's financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

6. All documents concerning ¶ 22 of the UPE Approving Order, including but not limited to, all documents that relate to Highmark's compliance or noncompliance with ¶ 22.

7. Communications with Highmark and/or the OAG regarding the PID's FAQs for End of Consent Decree Between Highmark and UPMC, available at <https://www.insurance.pa.gov/Companies/Documents/FAQ%20for%20End%20of%20Consent%20Decree%20Final.pdf>.

# **EXHIBIT**

**D**

# JONES DAY

500 GRANT STREET, SUITE 4500 • PITTSBURGH, PENNSYLVANIA 15219.2514

TELEPHONE: +1.412.391.3939 • FACSIMILE: +1.412.394.7959

DIRECT NUMBER: (412) 394-7250  
ATBAILEY@JONESDAY.COM

March 13, 2019

## VIA HAND DELIVERY

Department of Health  
Office of Chief Counsel  
8th Floor West, Health and Welfare Building  
Harrisburg, Pennsylvania 17108

Re: Commonwealth of Pennsylvania, By Joshua Shapiro, Attorney General, et al. v. UPMC, et al., No. 334 M.D. 2014

Dear Custodian of Records:

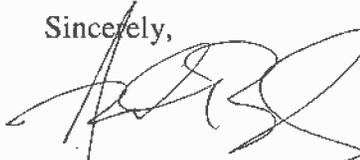
Enclosed please find a custodian of records deposition subpoena directed to you for a deposition on March 28, 2019 at 1:00 p.m. at the Office of Cozen O'Connor, 17 North Second Street, Suite 1410, Harrisburg, Pennsylvania, which directs you to produce at that time the documents identified in Addendum A to the subpoena.

If the other parties to the case consent, UPMC is willing to accept production of the documents requested in lieu of a deposition. By copy of this letter, UPMC requests that all parties consent by close of business on March 20, 2019. In light of the Attorney General's request that this matter be resolved by June 30, 2019, UPMC will presume all parties consent unless specific communication is received to the contrary.

Any deposition that may take place pursuant to this subpoena will not inquire into any of the underlying facts. UPMC will separately seek a fact deposition consistent with the Court's March 13, 2019 Order.

Please let me know if you have any questions.

Sincerely,



Anderson T. Bailey

Enclosure

March 13, 2019

Page 2

Cc: (via email; w/encl.)

James A. Donahue, III  
Mark A. Pacella  
Tracy Wright Wertz  
Joseph Betsko  
Michael T. Foerster  
Heather Vance-Rittman  
Jonathan Goldman  
Keli Neary  
Douglas E. Cameron  
Daniel I. Booker  
Kim M. Watterson  
Jeffrey M. Weimer  
Amy Daubert  
Kenneth Joel  
Victoria S. Madden  
Yvette Kostelec

No. 334 MD 2014

COMMONWEALTH COURT  
OF PENNSYLVANIA

Commonwealth of Pennsylvania, By  
Joshua Shapiro, Attorney General,  
et al.; Petitioners,

vs.

UPMC, A Nonprofit Cor., et al.;

Respondents.

TO The Pennsylvania Dept. of Health, Custodian of Records

1. You are ordered by the Court to come to Network Deposition Services, 200 Linglestown Rd.,  
Suite 102 at Harrisburg, Pennsylvania on March 28, 2019 at 1:00 P.M.

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

2. And to bring with you the following: See Addendum A attached hereto

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions autho-  
rized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

Issued by: Anderson T. Bailey, Jones Day, 500 Grant St., Ste. 4500, Pittsburgh, PA  
15219 (State attorney's name, address, telephone number and identification number)

Tel: 412-394-7250  
PAID# 206485

BY THE COURT,

Date: March 8, 2019

By

  
Chief Clerk

Seal of the Court

## Addendum A to Subpoena

You are directed to produce the documents and things identified below at the time of the custodian of records deposition. Alternatively, with the consent of all parties, the documents may be produced to all parties at an agreed time in lieu of the deposition (but only with the consent of all parties).

### **I. INSTRUCTIONS**

1. Furnish all documents and things that are available to you, including documents in the possession of your attorney or other representative or otherwise subject to your possession and/or control.

2. If it is claimed that an answer (in whole or in part) to any document request or any part thereof is privileged or otherwise protected from discovery, identify such information by its subject matter and state with particularity the nature and basis of each such claim. Any such objection or claim of privilege must be substantiated by a privilege log.

3. The conjunctions "and" and "or" shall not be interpreted disjunctively to exclude any information otherwise within the scope of any request.

4. Unless otherwise provided, the relevant time period for these requests for production is January 1, 2011 through and including the present, which is also referred to in these requests as the "relevant time period."

### **II. DEFINITIONS**

1. "Documents" whenever used herein is intended to be an all-inclusive term referring to any writing and/or recorded or graphic matter, including electronically-stored information, however produced or reproduced. The term "documents" includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts,

diaries, logs, proposals, printouts, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. "Documents" also include any preliminary notes and drafts of all the foregoing, in whatever form, for example: printed, typed, longhand, shorthand, on paper, paper type, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other form. "Documents" also include any document created or generated on a computer, laptop, tablet, smartphone, or personal digital assistant, including, but not limited to, any computer documents, electronic communications, notes, memoranda, internal or external emails, of any kind, in any form, in whatever manner stored, including, but not limited, information stored on a disc, network or tape. This definition covers all such documents so defined in your possession and/or control that are known by you to exist.

2. The term "concerning" means relating to, referring to, describing, evidencing, memorializing, and/or constituting.

3. The term "OAG" shall refer to the Attorney General and Office of the Attorney General, including any and all other persons or entities acting or purporting to act on either of their behalf.

4. The term "Petition" shall refer to the "Commonwealth's Petition to Modify Consent Decrees" filed by the OAG in the matter captioned *Commonwealth of Pennsylvania, by Josh Shapiro, Attorney General v. UPMC, a Nonprofit Corp.*, No. 334 MD 2014 (Pa. Commw. Ct.).

5. The term "UPMC" shall refer to UPMC and its subsidiaries and affiliates.

6. The term "Highmark" shall refer to Highmark Health and its subsidiaries and affiliates, including any and all other persons or entities acting or purporting to act on any of their behalf.

7. The term “Governor” shall refer to the Pennsylvania Governor, the Pennsylvania Governor’s Office, and any and all persons or entities acting or purporting to act on his or its behalf.

8. The term “PID” shall refer to the Pennsylvania Insurance Department, including any and all other persons or entities acting or purporting to act on its behalf.

9. The term “DOH” shall refer to the Pennsylvania Department of Health, including any and all other persons or entities acting or purporting to act on its behalf.

10. The term “AHN” shall refer to Allegheny Health Network and its subsidiaries, affiliates and predecessors, including any other persons or entities acting or purporting to act on any of their behalf.

11. The term “Consent Decree” shall refer to the separate, nearly identical, reciprocal Consent Decrees entered into on June 27, 2014 between the Commonwealth and UPMC and Highmark respectively.

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

13. The term “Second Mediated Agreement” shall refer to the Agreement between UPMC and Highmark negotiated through the auspices of the Governor and entered into on or about December 20, 2017.

14. The term “Proposed Modifications” shall refer to the proposed modifications to the Consent Decree set out in ¶ 75 of the Petition and Exhibit G to Petition, including any prior iterations or versions thereof.

15. The term “UPE Approving Order” shall refer to the Pennsylvania Insurance Department’s UPE Order in the Highmark/West Penn Allegheny Health System Matter, *In Re*

*Application of UPE*, No. ID-RC-13-06 (Pa. Insur. Dept. April 29, 2013) and subsequently-issued Findings of Fact and Conclusions of Law.

16. The term “Expiration Date Litigation” shall refer to the litigation concerning the expiration date of the Consent Decree that commenced with UPMC’s September 26, 2017 notice that it would terminate its provider contracts on December 31, 2018 and concluded with the Pennsylvania Supreme Court’s Opinion issued on July 18, 2018.

### **III. REQUESTS FOR PRODUCTION**

1. All documents during the time period from July 1, 2014 through the present concerning Highmark’s duty to provide updated financial documentation in anticipation of any new provider contract with UPMC and/or ¶ 22 of the UPE Approving Order.

2. All communications and documents exchanged with the OAG concerning any of the following subject matters—

- (1) UPMC;
- (2) Highmark;
- (3) UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;
- (4) consumer complaints about UPMC;
- (5) consumer complaints about Highmark;
- (6) consumer complaints about UPMC/Highmark provider contracting;
- (7) the Consent Decree and/or expiration of the Consent Decree;
- (8) the Proposed Modifications and/or the Petition;
- (9) AHN and its predecessors including their financial condition;
- (10) the Mediated Agreement or the Second Mediated Agreement;
- (11) the UPE Approving Order;

- (12) the Petition for Review that was resolved by way of the Consent Decree;
- (13) UPMC's charitable mission; tax exemptions; compensation, benefits, and perquisites; office space; or alleged diversion of charitable assets;
- (14) alleged confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark provider contracts;
- (15) tiering and steering;
- (16) assessment or evaluation of whether/how the Proposed Modifications further the public interest;
- (17) UPMC Health Plan;
- (18) insurance competition in western Pennsylvania;
- (19) provider competition in western Pennsylvania; or
- (20) the Expiration Date Litigation.

—during the relevant time period.

3. All assessments, analyses, or documents otherwise concerning any of the following subject matters—

- (1) UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;
- (2) consumer complaints about UPMC;
- (3) consumer complaints about Highmark;
- (4) consumer complaints about UPMC/Highmark provider contracting;
- (5) the Consent Decree and/or expiration of the Consent Decree;
- (6) the Proposed Modifications and/or the Petition;
- (7) AHN and its predecessors including their financial condition;
- (8) the Mediated Agreement or the Second Mediated Agreement;
- (9) the Petition for Review that was resolved by way of the Consent Decree;

(10) UPMC's charitable mission; tax exemptions; compensation, benefits, and perquisites; office space; or alleged diversion of charitable assets;

(11) alleged confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark provider contracts;

(12) tiering and steering by Highmark regarding UPMC;

(13) assessment or evaluation of whether/how the Proposed Modifications further the public interest;

(14) insurance competition in western Pennsylvania;

(15) provider competition in western Pennsylvania; or

(16) the Expiration Date Litigation.

—during the relevant time period.

4. All communications or correspondence with Highmark concerning the Proposed Modifications, AHN's financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

5. All notes, memoranda, or other documents concerning meetings, conversations, or communications with the OAG, Highmark, or UPMC concerning the Proposed Modifications, AHN's financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

6. All documents concerning ¶ 22 of the UPE Approving Order, including but not limited to, all documents that relate to Highmark's compliance or noncompliance with ¶ 22.

7. Communications with Highmark and/or the OAG regarding the PID's FAQs for End of Consent Decree Between Highmark and UPMC, available at <https://www.insurance.pa.gov/Companies/Documents/FAQ%20for%20End%20of%20Consent%20Decree%20Final.pdf>.

# **EXHIBIT**

**E**

# JONES DAY

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March 13, 2019

## VIA HAND DELIVERY

Insurance Department  
Office of Chief Counsel  
13th Floor—Strawberry Square  
Harrisburg, Pennsylvania 17120

Re: Commonwealth of Pennsylvania, By Joshua Shapiro, Attorney General, et al. v. UPMC, et al., No. 334 M.D. 2014

Dear Custodian of Records:

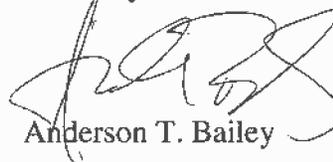
Enclosed please find a custodian of records deposition subpoena directed to you for a deposition on March 28, 2019 at 12:30 p.m. at the Office of Cozen O'Connor, 17 North Second Street, Suite 1410, Harrisburg, Pennsylvania, which directs you to produce at that time the documents identified in Addendum A to the subpoena.

If the other parties to the case consent, UPMC is willing to accept production of the documents requested in lieu of a deposition. By copy of this letter, UPMC requests that all parties consent by close of business on March 20, 2019. In light of the Attorney General's request that this matter be resolved by June 30, 2019, UPMC will presume all parties consent unless specific communication is received to the contrary.

Any deposition that may take place pursuant to this subpoena will not inquire into any of the underlying facts. UPMC will separately seek a fact deposition consistent with the Court's March 13, 2019 Order.

Please let me know if you have any questions.

Sincerely,



Anderson T. Bailey

Enclosure

March 13, 2019

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Cc: (via email; w/encl.)

James A. Donahue, III  
Mark A. Pacella  
Tracy Wright Wertz  
Joseph Betsko  
Michael T. Foerster  
Heather Vance-Rittman  
Jonathan Goldman  
Keli Neary  
Douglas E. Cameron  
Daniel I. Booker  
Kim M. Watterson  
Jeffrey M. Weimer  
Amy Daubert  
Kenneth Joel  
Victoria S. Madden  
Yvette Kostelec

No. 334 MD 20 14

COMMONWEALTH COURT  
OF PENNSYLVANIA

Commonwealth of Pennsylvania, By  
Joshua Shapiro, Attorney General,  
et al.; Petitioners,

vs.

UPMC, A Nonprofit Corp., et al.;

Respondents.

TO The Pennsylvania Insurance Dept., Custodian of Records

1. You are ordered by the Court to come to Network Deposition Services, 200 Linglestown Rd.,  
Suite 102 at Harrisburg, Pennsylvania on March 28, 2019 at 12:30 P.  
M.

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

2. And to bring with you the following: See Addendum A attached hereto

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions autho-  
rized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

Issued by: Anderson T. Bailey, Jones Day, 500 Grant St., Ste. 4500, Pittsburgh, PA

15219

(State attorney's name, address, telephone number and identification number)

Tel: 412-394-7250

PA Id# 206485

Date: March 8, 2019

BY THE COURT,

By



Chief Clerk

Seal of the Court

### Addendum A to Subpoena

You are directed to produce the documents and things identified below at the time of the custodian of records deposition. Alternatively, with the consent of all parties, the documents may be produced to all parties at an agreed time in lieu of the deposition (but only with the consent of all parties).

#### **I. INSTRUCTIONS**

1. Furnish all documents and things that are available to you, including documents in the possession of your attorney or other representative or otherwise subject to your possession and/or control.
2. If it is claimed that an answer (in whole or in part) to any document request or any part thereof is privileged or otherwise protected from discovery, identify such information by its subject matter and state with particularity the nature and basis of each such claim. Any such objection or claim of privilege must be substantiated by a privilege log.
3. The conjunctions "and" and "or" shall not be interpreted disjunctively to exclude any information otherwise within the scope of any request.
4. Unless otherwise provided, the relevant time period for these requests for production is January 1, 2011 through and including the present, which is also referred to in these requests as the "relevant time period."

#### **II. DEFINITIONS**

1. "Documents" whenever used herein is intended to be an all-inclusive term referring to any writing and/or recorded or graphic matter, including electronically-stored information, however produced or reproduced. The term "documents" includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts,

diaries, logs, proposals, printouts, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. "Documents" also include any preliminary notes and drafts of all the foregoing, in whatever form, for example: printed, typed, longhand, shorthand, on paper, paper type, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other form. "Documents" also include any document created or generated on a computer, laptop, tablet, smartphone, or personal digital assistant, including, but not limited to, any computer documents, electronic communications, notes, memoranda, internal or external emails, of any kind, in any form, in whatever manner stored, including, but not limited, information stored on a disc, network or tape. This definition covers all such documents so defined in your possession and/or control that are known by you to exist.

2. The term "concerning" means relating to, referring to, describing, evidencing, memorializing, and/or constituting.

3. The term "OAG" shall refer to the Attorney General and Office of the Attorney General, including any and all other persons or entities acting or purporting to act on either of their behalf.

4. The term "Petition" shall refer to the "Commonwealth's Petition to Modify Consent Decrees" filed by the OAG in the matter captioned *Commonwealth of Pennsylvania, by Josh Shapiro, Attorney General v. UPMC, a Nonprofit Corp.*, No. 334 MD 2014 (Pa. Commw. Ct.).

5. The term "UPMC" shall refer to UPMC and its subsidiaries and affiliates.

6. The term "Highmark" shall refer to Highmark Health and its subsidiaries and affiliates, including any and all other persons or entities acting or purporting to act on any of their behalf.

7. The term "Governor" shall refer to the Pennsylvania Governor, the Pennsylvania Governor's Office, and any and all persons or entities acting or purporting to act on his or its behalf.

8. The term "PID" shall refer to the Pennsylvania Insurance Department, including any and all other persons or entities acting or purporting to act on its behalf.

9. The term "DOH" shall refer to the Pennsylvania Department of Health, including any and all other persons or entities acting or purporting to act on its behalf.

10. The term "AHN" shall refer to Allegheny Health Network and its subsidiaries, affiliates and predecessors, including any other persons or entities acting or purporting to act on any of their behalf.

11. The term "Consent Decree" shall refer to the separate, nearly identical, reciprocal Consent Decrees entered into on June 27, 2014 between the Commonwealth and UPMC and Highmark respectively.

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

13. The term "Second Mediated Agreement" shall refer to the Agreement between UPMC and Highmark negotiated through the auspices of the Governor and entered into on or about December 20, 2017.

14. The term "Proposed Modifications" shall refer to the proposed modifications to the Consent Decree set out in ¶ 75 of the Petition and Exhibit G to Petition, including any prior iterations or versions thereof.

15. The term "UPE Approving Order" shall refer to the Pennsylvania Insurance Department's UPE Order in the Highmark/West Penn Allegheny Health System Matter, *In Re*

*Application of UPE*, No. ID-RC-13-06 (Pa. Insur. Dept. April 29, 2013) and subsequently-issued Findings of Fact and Conclusions of Law.

16. The term “Expiration Date Litigation” shall refer to the litigation concerning the expiration date of the Consent Decree that commenced with UPMC’s September 26, 2017 notice that it would terminate its provider contracts on December 31, 2018 and concluded with the Pennsylvania Supreme Court’s Opinion issued on July 18, 2018.

### **III. REQUESTS FOR PRODUCTION**

1. All documents during the time period from July 1, 2014 through the present concerning Highmark’s duty to provide updated financial documentation in anticipation of any new provider contract with UPMC and/or ¶ 22 of the UPE Approving Order.

2. All communications and documents exchanged with the OAG concerning any of the following subject matters—

- (1) UPMC;
- (2) Highmark;
- (3) UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;
- (4) consumer complaints about UPMC;
- (5) consumer complaints about Highmark;
- (6) consumer complaints about UPMC/Highmark provider contracting;
- (7) the Consent Decree and/or expiration of the Consent Decree;
- (8) the Proposed Modifications and/or the Petition;
- (9) AHN and its predecessors including their financial condition;
- (10) the Mediated Agreement or the Second Mediated Agreement;
- (11) the UPE Approving Order;

- (12) the Petition for Review that was resolved by way of the Consent Decree;
- (13) UPMC's charitable mission; tax exemptions; compensation, benefits, and perquisites; office space; or alleged diversion of charitable assets;
- (14) alleged confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark provider contracts;
- (15) tiering and steering;
- (16) assessment or evaluation of whether/how the Proposed Modifications further the public interest;
- (17) UPMC Health Plan;
- (18) insurance competition in western Pennsylvania;
- (19) provider competition in western Pennsylvania; or
- (20) the Expiration Date Litigation.

—during the relevant time period.

3. All assessments, analyses, or documents otherwise concerning any of the following subject matters—

- (1) UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;
- (2) consumer complaints about UPMC;
- (3) consumer complaints about Highmark;
- (4) consumer complaints about UPMC/Highmark provider contracting;
- (5) the Consent Decree and/or expiration of the Consent Decree;
- (6) the Proposed Modifications and/or the Petition;
- (7) AHN and its predecessors including their financial condition;
- (8) the Mediated Agreement or the Second Mediated Agreement;
- (9) the Petition for Review that was resolved by way of the Consent Decree;

- (10) UPMC's charitable mission; tax exemptions; compensation, benefits, and perquisites; office space; or alleged diversion of charitable assets;
- (11) alleged confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark provider contracts;
- (12) tiering and steering by Highmark regarding UPMC;
- (13) assessment or evaluation of whether/how the Proposed Modifications further the public interest;
- (14) insurance competition in western Pennsylvania;
- (15) provider competition in western Pennsylvania; or
- (16) the Expiration Date Litigation.

—during the relevant time period.

4. All communications or correspondence with Highmark concerning the Proposed Modifications, AHN's financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

5. All notes, memoranda, or other documents concerning meetings, conversations, or communications with the OAG, Highmark, or UPMC concerning the Proposed Modifications, AHN's financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

6. All documents concerning ¶ 22 of the UPE Approving Order, including but not limited to, all documents that relate to Highmark's compliance or noncompliance with ¶ 22.

7. Communications with Highmark and/or the OAG regarding the PID's FAQs for End of Consent Decree Between Highmark and UPMC, available at <https://www.insurance.pa.gov/Companies/Documents/FAQ%20for%20End%20of%20Consent%20Decree%20Final.pdf>.