

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Andrew N. Ferguson, Chairman
 Mark R. Meador**

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In the Matter of)	
)	
Ascension Health Alliance,)	DECISION AND ORDER
 a nonprofit corporation,)	
)	Docket No. C-4832
)	
Ambulatory Topco, LLC,)	
 a limited liability company,)	
)	
and)	
)	
AMSURG, LLC,)	
 a limited liability company.)	
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DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition by Respondent Ascension Health Alliance, a Missouri nonprofit corporation, of Respondent Ambulatory Topco, LLC and its subsidiary Respondent AMSURG, LLC (collectively “Respondents”). The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45 (collectively “Acts”).

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in

that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Ascension Health Alliance is a Missouri nonprofit corporation pursuant to section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), organized, existing, and doing business under, and by virtue of, the laws of Missouri, with its executive offices and principal place of business located at 4600 Edmundson Road, St. Louis, MO 63134.
2. Respondent Ambulatory Topco, LLC is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its executive offices and principal place of business located at 1-A Burton Hills Boulevard, Suite 300, Nashville, TN 37215.
3. Respondent AMSURG, LLC is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its executive offices and principal place of business located at 1-A Burton Hills Boulevard, Suite 300, Nashville, TN 37215.
4. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER

I. Definitions

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Ascension” means Ascension Health Alliance, a Missouri nonprofit corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Ascension Health Alliance, and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.
- B. “Ambulatory Topco” means Ambulatory Topco, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Ambulatory Topco, LLC, including AMSURG LLC, and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.

- C. “AMSURG LLC” means AMSURG, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by AMSURG LLC, and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.
- D. “AMSURG” means Ambulatory Topco and AMSURG LLC.
- E. “Panama City Doctors” means WRCC Gastro LLC, a company organized, existing, and doing business under, and by virtue of, the laws of Florida, with its executive offices and principal place of business located at 204B E 19th Street, Panama City, Florida 32405.
- F. “SC Affiliates” means SC Affiliates, LLC, a limited liability company organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its executive offices and principal place of business located at 520 Lake Cook Road, Suite 250, Birmingham, AL 35209.
- G. “Commission” means the Federal Trade Commission.
- H. “Acquirer(s)” means: (1) Panama City Doctors; (2) SC Affiliates; or (3) any other Person that acquires the AMSURG ASC Assets pursuant to this Order.
- I. “Acquisition” means the proposed acquisition described in the Equity Purchase Agreement dated June 16, 2025, between Project Bluegrass Holdco, LLC, a limited liability corporation owned by Ascension Health Alliance, and Ambulatory Topco, LLC.
- J. “Acquisition Date” means the date Respondents consummate the Acquisition.
- K. “ASC” means any outpatient department of a hospital or ambulatory surgery center (as defined by Medicare regulations in 42 CFR Part 416, as of the date this Order is issued) that operates exclusively for the purpose of providing surgical services. *Provided however*, an “ASC” does not include a doctor’s office that may include an ensuite operating room that provides outpatient surgical services.
- L. “AMSURG ASC Assets” means all of Respondent AMSURG’s rights, title, and interest in the AMSURG ASC Business of the Panama City Divestiture Location and the AMSURG ASC Business of the AMSURG ASC Divestiture Locations, respectively, including:
 - 1. All Ownership Interest;
 - 2. All the rights and responsibilities that Respondents have pursuant to the ASC Operating Agreements governing the AMSURG ASC Divestiture Locations and the Panama City Divestiture Location;

3. All rights to all of the leasehold interest in the real property at each AMSURG ASC Divestiture Location or Panama City Divestiture Location;
 4. All rights of the Respondents under any Contracts;
 5. All Intellectual Property;
 6. All Business Information;
 7. All Governmental Authorizations, permits and licenses, to the extent transferable.
- M. “AMSURG ASC Business” means all business activities conducted by Respondent AMSURG prior to the Acquisition Date, including the provision of management and support services, at the Panama City Divestiture Location and each of the AMSURG ASC Divestiture Locations, respectively.
- N. “AMSURG ASC Divestiture Locations” mean the following ASCs:
1. Waco Gastroenterology Endoscopy Center, LLC d/b/a Waco Gastroenterology Endoscopy Center, located at 364 Richland West Circle, Suite B, Waco, TX 76712
 2. Tulsa OK Endoscopy ASC, LLC d/b/a Tulsa Endoscopy Center, 4200 East Skelly Drive, Suite 100, Tulsa, OK 74135
 3. The Tulsa OK Ophthalmology ASC, LLC d/b/a Eye Surgery Center of Tulsa, 7191 South Yale Avenue, Tulsa, OK 74136
 4. The Wichita Orthopaedic ASC, LLC d/b/a Surgery Center of Kansas, 7550 West Village Circle, Suite 2, Wichita, KS 67205
 5. Hermitage TN Endoscopy ASC, LLC d/b/a Associated Endoscopy, 5653 Frist Boulevard, Suite 532, Hermitage, TN 37076
 6. The Endoscopy Center of St Thomas, LLC d/b/a St. Thomas Medical Group Endoscopy Center, 4230 Harding Road, Suite 400, Nashville, TN 37205
 7. The Endoscopy Center of St Thomas, LLC d/b/a NGS Endoscopy Center, 4230 Harding Road, Suite 309B, Nashville, TN 37205
- O. “ASC Operating Agreement(s)” means the following:
1. Agreement of Limited Partnership of the Northwest Florida ASC, L.P. dated July 26, 1996; Amendment to the Agreement of Limited Partnership dated April 1, 1998; and Second Amendment to the Agreement of Limited Partnership dated May 1, 2003;

2. Operating Agreement of the Tulsa OK Ophthalmology ASC, LLC dated July 31, 2022, and Addendum to the Operating Agreement of the Tulsa OK Ophthalmology ASC, LLC dated March 1, 2005;
 3. Amended and Restated Operating Agreement for the Tulsa Endoscopy Center, L.L.C. dated December 31, 2005, and First Amendment to the Operating Agreement of the Tulsa Endoscopy Center, LLC dated May 19, 2025;
 4. Restated Operating Agreement of Waco Gastroenterology Endoscopy Center, LLC dated July 8, 2010;
 5. Operating Agreement of the Wichita Orthopedic ASC, LLC dated November 1, 1996; First Amendment to the Operating Agreement of the Wichita Orthopedic ASC, LLC dated April 1, 2003; and the Second Amendment to the Operating Agreement of the Wichita Orthopedic ASC, LLC dated May 3, 2004;
 6. Operating Agreement of Hermitage TN Endoscopy ASC, LLC dated October 1, 2009; and
 7. Amended and Restated Operating Agreement of the Endoscopy Center of St. Thomas, LLC dated April 1, 2021.
- P. “ASC Employee” means any full-time, part-time, or contract individual employed in the AMSURG ASC Business of any AMSURG ASC Divestiture Location or at the Panama City ASC Location, including any doctor performing services at such ASC.
- Q. “Business Information” means books, records, data, and information, wherever located and however stored used in the operation of the AMSURG ASC Business relating to the AMSURG ASC Assets, including electronic medical records, documents, written information, graphic materials, and data and information in electronic format. Business Information includes records and information relating to sales, marketing, advertising, personnel, accounting, business strategy, information technology systems, customers, patients, suppliers, research and development, registrations, licenses, permits (to the extent transferable), operations, and all other information used in the operation of the AMSURG ASC Business relating to the AMSURG ASC Assets.
- R. “Confidential Business Information” means all Business Information not in the public domain, except for any information that was or becomes generally available to the public other than as a result of disclosure by Respondents.
- S. “Consent” means any approval, consent, ratification, waiver, or other authorization.
- T. “Contract” means an agreement, contract, mutual understanding, arrangement, license agreement, lease, consensual obligation, commitment, promise or undertaking with one or more third parties (whether written or oral and whether express or implied), whether or not legally binding.

- U. “Direct Cost” means the cost of labor, materials, travel, and other expenditures directly incurred. The cost of any labor included in Direct Cost shall not exceed the then-current average hourly wage rate, including benefits, for the employee providing such labor.
- V. “Divestiture Agreements” mean the SC Affiliates Divestiture Agreement, the Panama City Divestiture Agreement, or any agreement between Respondents (or a Divestiture Trustee appointed pursuant to Section XIV of this Order) and an Acquirer to purchase the AMSURG ASC Assets, and all amendments, exhibits, attachments, agreements, and schedules thereto.
- W. “Divestiture Date” means the date on which Respondents (or the Divestiture Trustee) close on a transaction to divest the AMSURG ASC Divestiture Locations and to divest the Panama City Divestiture Location, respectively, as required by this Order.
- X. “Divestiture Trustee” means the Person appointed by the Commission pursuant to Section XIV of this Order.
- Y. “Governmental Authorization” means all Consents, change of control applications or notifications, licenses, permits, approvals, registrations, certificates, rights, or other authorizations from any governmental entity necessary to effect the complete transfer and divestiture of the AMSURG ASC Assets to each Acquirer and for such Acquirer to operate the Panama City Divestiture Location and each of the AMSURG ASC Divestiture Locations.
- Z. “Intellectual Property” means intellectual property of any kind including patents, patent applications, mask works, trademarks, service marks, copyrights, trade dress, commercial names, internet web sites, internet domain names, inventions, discoveries, written and unwritten know-how, trade secrets, and proprietary information.
- AA. “Monitor” means any Person appointed by the Commission to serve as a monitor pursuant to the Orders.
- BB. “MSA” means a metropolitan statistical area defined by the Bureau of Statistics (which may cross state lines) and is a statistical area comprising a central city defined by a built-up area with a minimum population of 50,000 and a high level of social and economic integration.
- CC. “Nashville Area” means the Davidson, Sumner, Williamson, and Wilson Counties in Tennessee.
- DD. “Nashville Services” means outpatient gastroenterology procedures, surgeries, and related services.
- EE. “Orders” means this Order and the Order to Maintain Assets.

- FF. “Ownership Interest” means Respondents’ ownership interest in the AMSURG ASC Business at any Panama City Divestiture Location and each of the AMSURG ASC Divestiture Locations, including any rights conveyed by any voting securities, non-voting securities, share capital, non-corporate interest, notes convertible to any voting or non-voting stock, contractual power to designate a director of an entity, equity, or other interest in an entity or its assets.
- GG. “Panama City Area” means the Panama City, Florida MSA.
- HH. “Panama City Divestiture Agreement” means the Partnership Interest Purchase Agreement by and among AMSURG Northwest Florida, Inc., Northwest Florida Gastroenterology Center, Inc., and The Northwest Florida ASC, dated April 7, 2026, the Assignment and Assumption Agreement by and between Northwest Florida Gastroenterology Center, Inc. and WRCC Gastro LLC dated April 16, 2026, and all amendments, exhibits, attachments, agreements, and schedules thereto, attached to this Order as Nonpublic Appendix I.
- II. “Panama City Divestiture Location” means the Northwest Florida ASC, LP d/b/a Northwest Florida Gastroenterology Center, 204 B East 19th Street, Panama City, FL 32405.
- JJ. “Panama City Services” means outpatient gastroenterology procedures, surgeries, and related services.
- KK. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture, or other entity or a governmental body.
- LL. “SC Affiliates Divestiture Agreement” means the Membership Interest Purchase Agreement by and among AMSURG Holdings, LLC, SC Affiliates, LLC, and solely for purposes of Section 12.15, AMSURG, LLC, dated May 8, 2026, and all amendments, exhibits, attachments, agreements, and schedules thereto, attached to this Order as Nonpublic Appendix II.
- MM. “Transition Assistance” means technical services, personnel, assistance, training, and other logistical, administrative, and other transitional support as required by the Acquirer to facilitate the transfer of the AMSURG ASC Assets to the Acquirers, including training, personnel, and support related to: audits, finance and accounting, accounts receivable, accounts payable, employee benefits, taxes, insurance, clinical support, third-party payor agreements, coding, enrollment, billing services, training, credentialing, payroll, pensions, human resources, general medical products supply, purchasing, quality control, information technology and related systems, maintenance and repair of facilities, use of any name or brand used in the AMSURG ASC Business of the respective Panama City Divestiture Location and the AMSURG ASC Divestiture Locations for transitional purposes, operating permits and licenses, Governmental Authorization, regulatory

compliance, sales and marketing, patient services, and supply chain management and patient transfer logistics.

- NN. “Tulsa Area” means the Tulsa, Oklahoma MSA.
- OO. “Tulsa Services” means (i) outpatient gastroenterology procedures, surgeries, and related services performed at an ASC; or (ii) outpatient ophthalmology procedures, surgeries, and related services performed at an ASC.
- PP. “Waco Area” means the Waco, Texas MSA.
- QQ. “Waco Services” means outpatient gastroenterology procedures, surgeries, and related services performed at an ASC.
- RR. “Wichita Area” means the Wichita, Kansas MSA.
- SS. “Wichita Services” means outpatient orthopedic procedures, surgeries, and related services performed at an ASC.

II. Divestiture

IT IS FURTHER ORDERED that:

- A. No later than 10 days after the Acquisition Date, Respondents shall divest:
 - 1. All of their interests in the AMSURG ASC Divestiture Locations including all AMSURG ASC Assets at those locations, absolutely and in good faith, to SC Affiliates.
 - 2. All of their interests in the Panama City Divestiture Location including all AMSURG ASC Assets at that location, absolutely and in good faith, to the Panama City Doctors.
- B. If Respondents have divested the AMSURG ASC Assets to the Acquirers prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that:
 - 1. An Acquirer is not acceptable as the acquirer of the relevant AMSURG ASC Assets, then Respondents shall immediately rescind the divestiture to that Acquirer within 5 days of notification, and shall divest the AMSURG ASC Assets no later than 180 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or
 - 2. The manner in which the divestiture of the AMSURG ASC Assets to an Acquirer

was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to modify the manner of divestiture of the AMSURG ASC Assets as the Commission may determine are necessary to satisfy the requirements of this Order.

- C. Respondents shall obtain, no later than the Divestiture Date and at their sole expense, all Consents from third parties and all Governmental Authorizations that are necessary to effectuate the complete transfer and divestiture of the AMSURG ASC Assets on such Divestiture Date and for the Acquirers to operate any aspect of the relevant AMSURG ASC Business.

Provided, however, that Respondents may satisfy the requirement to obtain all Consents from third parties by certifying that the Acquirers have entered into equivalent agreements or arrangements directly with the relevant third party that are acceptable to the Commission, or has otherwise obtained all necessary Consents and waivers; and

Provided, further, however, that with respect to any Governmental Authorizations that are not transferable, Respondents shall, to the extent permitted under applicable law, allow the Acquirers to operate the AMSURG ASC Business at the relevant AMSURG ASC Divestiture Location or Panama City Divestiture Location under Respondents' Governmental Authorizations pending the Acquirers' receipt of their own Governmental Authorizations, and Respondents shall provide such assistance as the Acquirers may reasonably request in connection with their efforts to obtain such Governmental Authorizations.

- D. Respondents shall assist the Acquirers to conduct a due diligence investigation of the AMSURG ASC Assets the Acquirers seek to purchase, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process, and affording the Acquirers and their representatives (including prospective lenders and their representatives) full and free access, during regular business hours, to the personnel, assets, Contracts, Governmental Authorizations, and Business Information, with such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Respondents.

III. Divestiture Agreement

IT IS FURTHER ORDERED that:

- A. Each Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms of a Divestiture Agreement shall constitute a violation of this Order; *provided, however,* that no Divestiture Agreement shall limit, or be construed to limit, the terms of this Order. To the extent any provision in the Divestiture Agreement varies from or conflicts with any provision in the Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order.

- B. Respondents shall not modify or amend the terms of the Divestiture Agreement after the Commission issues the Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

IV. Transition Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondents have transferred all Business Information and divested all AMSURG ASC Assets to the applicable Acquirer, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the Acquirers with access to that Business Information (wherever located and however stored) that Respondents have not yet transferred to the Acquirers, and to employees who possess the records and information.
- B. At the option of the Acquirers, Respondents shall provide the Acquirer with Transition Assistance sufficient to (1) transfer efficiently the AMSURG ASC Assets to the Acquirers and (2) allow the Acquirers to operate the Panama City Divestiture Location and the AMSURG ASC Divestiture Locations in a manner that is equivalent in all material respects to the manner in which Respondents did so prior to the Acquisition.
- C. Respondents shall provide Transition Assistance:
1. As set forth in the applicable Divestiture Agreement, or as otherwise reasonably requested by the Acquirers (whether before or after the Divestiture Date);
 2. At the price set forth in the applicable Divestiture Agreement, or if no price is set forth, at no more than Direct Cost; and
 3. For a period sufficient to meet the requirements of this Section IV, which shall be, at the option of the Acquirers, for up to 12 months after the applicable Divestiture Date.
- Provided, however, an Acquirer may request from the Respondents an extension of an additional 6 months for the purpose of transitioning payor contracts in accordance with the applicable Divestiture Agreement.*
- D. Respondents shall allow the Acquirers to terminate, in whole or part, any Transition Assistance of the Divestiture Agreement upon commercially reasonable notice and without cost or penalty.
- E. Respondents shall not cease providing Transition Assistance due to a breach by the Acquirers of the Divestiture Agreement, and shall not limit any damages (including indirect, special, and consequential damages) that the Acquirers would be entitled to receive in the event of Respondents' breach of the Divestiture Agreement.

V. Employees

IT IS FURTHER ORDERED that Respondents shall not:

- A. For a period of 90 days after Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any ASC Employee at an AMSURG ASC Divestiture Location or at the Panama City Divestiture Location to terminate his or her employment; and
- B. For a period of 180 days after the Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any Person employed above the AMSURG ASC Divestiture Location level or above the Panama City Divestiture Location level to terminate his or her employment.

Provided, however, Respondents may (i) hire any such Person whose employment has been terminated by an Acquirer; (ii) advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more Person employed by an Acquirer; or (iii) hire a Person who has applied for employment with Respondent, as long as such application was not solicited or induced in violation of this Section V.

Provided, further, however, Respondents may offer part-time contract hours to a doctor at the Respondent AMSURG locations where the doctor has been working as a part-time contract doctor prior to the Acquisition Date that are not AMSURG ASC Divestiture Locations or the Panama City Divestiture Location, if the part-time contract hours offered by Respondents would not, in any way, interfere with the ASC Employee's ability to fulfill his or her responsibilities to the Acquirer.

VI. Asset Maintenance

IT IS FURTHER ORDERED that until the AMSURG ASC Assets have been fully transferred to the Acquirers, Respondents shall, subject to their obligations under the Order to Maintain Assets, ensure that the AMSURG ASC Assets, the Panama City Divestiture Location, and the AMSURG ASC Divestiture Locations are operated and maintained in the ordinary course of business consistent with past practices, and shall:

- A. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the AMSURG ASC Assets, the Panama City Divestiture Location, and the AMSURG ASC Divestiture Locations, to minimize any risk of loss of competitive potential of the AMSURG ASC Assets, the Panama City Divestiture Location, and the AMSURG ASC Divestiture Locations, to operate the AMSURG ASC Assets, the Panama City Divestiture Location, and the AMSURG ASC Divestiture Locations in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, deterioration, or impairment of the AMSURG ASC Assets, the Panama City Divestiture Location, and the AMSURG ASC Divestiture Locations, except for ordinary wear and tear. Respondents shall not sell, transfer, encumber, or otherwise impair the AMSURG ASC Assets, the Panama City Divestiture Location, and the AMSURG ASC Divestiture Locations (other than in the manner prescribed in the Orders), nor take any action that lessens the full economic viability, marketability, or competitiveness of the AMSURG ASC Assets, the Panama City Divestiture Location, and the AMSURG ASC Divestiture Locations; and

- B. Not terminate the AMSURG ASC Business of the Panama City Divestiture Location and the AMSURG ASC Divestiture Locations, and shall conduct or cause to be conducted the AMSURG ASC Business of the Panama City Divestiture Location and the AMSURG ASC Divestiture Locations in the ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and as may be necessary to preserve the full economic viability, marketability, and competitiveness of the AMSURG ASC Assets, the Panama City Divestiture Location, and the AMSURG ASC Divestiture Locations, and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Panama City Divestiture Location and the AMSURG ASC Divestiture Locations.

Provided, however, that Respondents may take actions that an Acquirer has requested or agreed to in writing and that have been approved in advance by Commission staff, in all cases to facilitate the Acquirer's acquisition of the AMSURG ASC Assets and consistent with the purposes of the Orders.

VII. Confidentiality

IT IS FURTHER ORDERED that:

- A. Respondents shall (x) not disclose (including as to Respondents' employees), and (y) not use, for any reason or purpose, any Confidential Business Information received or maintained by Respondents, *provided, however,* that Respondents may disclose or use such Confidential Business Information in the course of:
1. Performing their obligations or as permitted under the Orders or any Divestiture Agreement; or
 2. Complying with financial reporting requirements, historical record-keeping for audit purposes, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the AMSURG ASC Assets or AMSURG ASC Divestiture Locations or Panama City Divestiture Location, or as required by law, rule or regulation.
- B. Respondents shall only disclose Confidential Business Information to an employee or any other Person if disclosure is permitted in Paragraph VII.A and the employee or other Person has signed an agreement to maintain the confidentiality of such information and not violate the disclosure requirements of this Order.

Respondents shall enforce the terms of this Section VII and take necessary actions to ensure that their employees or other Persons comply with its terms, including implementing access and data controls, training of employees, and taking other actions that Respondents would take to protect their own trade secrets and proprietary information.

VIII. Monitor

IT IS FURTHER ORDERED that:

- A. The Commission appoints John P. Harris as the Monitor to observe and report on Respondents' compliance with their obligations as set forth in the Orders.
- B. The Respondents and the Monitor may enter into an agreement relating to the Monitor's services. Any such agreement:
 - 1. Shall be subject to the approval of the Commission;
 - 2. Shall not limit, and the signatories shall not construe it to limit, the terms of this Section VIII or Section IV of the Order to Maintain Assets ("Monitor Sections"), and to the extent any provision in the agreement varies from or conflicts with any provision in the Monitor Sections, Respondents and the Monitor shall comply with the Monitor Sections; and
 - 3. Shall include a provision stating that the agreement does not limit, and the signatories shall not construe it to limit the terms of the Orders in this matter, and to the extent any provision in the agreement varies from or conflicts with any provision in the Orders, Respondents and the Monitor shall comply with the Orders.
- C. The Monitor shall:
 - 1. Have the authority to monitor Respondents' compliance with the obligations set forth in the Orders;
 - 2. Act in consultation with the Commission or its staff;
 - 3. Serve as an independent third party and not as an employee or agent of Respondents or of the Commission;
 - 4. Serve without bond or other security;
 - 5. At the Monitor's option, employ such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 - 6. Enter into a non-disclosure or other confidentiality agreement with the Commission related to Commission materials and information received in connection with the performance of the Monitor's duties and require that each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall also enter into a non-disclosure or other confidentiality agreement with the Commission;

7. Notify staff of the Commission, in writing, no later than 5 days in advance of entering into any arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional or personal conflict. If the Monitor becomes aware of such a conflict only after it has arisen, the Monitor shall notify the Commission as soon as the Monitor becomes aware of the conflict;
8. Report in writing to the Commission concerning Respondents' compliance with the Orders on a schedule set by Commission staff and at any other time requested by Commission staff; and
9. Serve until Commission staff determines that Respondents have satisfied all obligations under Sections II and IV, and files a final report, unless the Commission or its staff determines otherwise.

D. Respondents shall:

1. Cooperate with and assist the Monitor in performing his or her duties for the purpose of reviewing Respondents' compliance with their obligations under the Orders, including as requested by the Monitor, (a) providing the Monitor full and complete access to personnel, information, and facilities; and (b) making such arrangements with third parties to facilitate access by the Monitor;
2. Not interfere with the ability of the Monitor to perform his or her duties pursuant to the Orders;
3. Pay the Monitor's fees and expenses as set forth in an agreement approved by the Commission, or if such agreement has not been approved, pay the Monitor's customary fees, as well as expenses the Monitor incurs performing his or her duties under the Orders, including expenses of any consultants, accountants, attorneys, and other representatives and assistants that are reasonably necessary to assist the Monitor in carrying out his or her duties and responsibilities;
4. Not require the Monitor to disclose to Respondents the substance of the Monitor's communications with the Commission or any other Person or the substance of written reports submitted to the Commission pursuant to the Orders; and
5. Indemnify and hold the Monitor harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under the Orders, unless the loss, claim, damage, liability, or expense results from gross negligence or willful misconduct by the Monitor.

E. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, so long as the agreement does not restrict the Monitor's ability

to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on the Respondents' compliance with the Orders.

- F. If the Monitor resigns or the Commission determines that the Monitor has ceased to act, has failed to act diligently, or is otherwise unable to continue serving as a Monitor due to the existence of a conflict or other reasons, the Commission may appoint a substitute Monitor. The substitute Monitor shall be afforded all rights, powers, and authorities and shall be subject to all obligations of the Monitor Sections of the Orders. The Commission shall select the substitute Monitor, subject to the consent of the Respondents.

Respondents:

1. Shall not unreasonably withhold consent to the appointment of the selected substitute Monitor;
 2. Shall be deemed to have consented to the selection of the proposed substitute Monitor if, within 10 days of notice by staff of the Commission of the identity of the proposed substitute Monitor, Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor; and
 3. May enter into an agreement with the substitute Monitor relating to the substitute Monitor's services that either (a) contains substantially the same terms as the Commission-approved agreement referenced in Paragraph [VIII.B]; or (b) receives Commission approval.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to ensure compliance with the requirements of the Orders.

IX. Divestiture Trustee

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey the Divestiture Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph XIV.A shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other

statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestitures required by this Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Section XIV, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed;
 2. The Divestiture Trustee shall have one year from the date the Commission approves the trustee trust agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission,

Provided, however, the Commission may extend the divestiture period only 2 times;
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and

shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestitures. Any delays in divestitures caused by Respondents shall extend the time for divestitures under this Section XIV in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestitures shall be made in the manner and to Acquirers that receive the prior approval of the Commission as required by this Order,

Provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring person for a divestiture, and if the Commission determines to approve more than one such acquiring person for the divestiture, the Divestiture Trustee shall divest to the acquiring person selected by Respondents from among those approved by the Commission,

Provided further, however, that Respondents shall select such person within 5 days of receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;
6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee;

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets required to be divested by this Order;
8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and
9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement,

Provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- E. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Section XIV.
- G. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

X. Prior Notice

IT IS FURTHER ORDERED that:

- A. For a period of 10 years from the date this Order is issued, Respondents shall not, without providing advance written notification to the Commission ("Notification"), acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any ASC performing the: (i) Nashville Services in the Nashville Area; (ii) Panama City Services in the Panama City Area; (iii) Tulsa Services in the Tulsa Area; (iv) Waco Services in the Waco Area; or (v) Wichita Services in the Wichita Area.
- B. The Notification required by Paragraph X.A shall:
 1. Be provided on the Notification and Report Form (the "Form") set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification;

Notification shall be filed with the Secretary of the Commission; Notification need not be made to the United States Department of Justice; and Notification is required only of Respondents and not of any other party to the transaction.

2. Include a description of the proposed acquisition and provide a map showing all relevant ASCs by ownership located within the relevant ASC area, and the number of surgical procedure rooms at each ASC.
- C. Respondents shall provide the Notification required under Paragraph X.A to the Commission at least 30 days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). Further, if, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until 30 days after submitting such additional information or documentary material. Early termination of the waiting periods in this Section X may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by this Section X for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

XI. No Reacquisition

IT IS FURTHER ORDERED that for a period of 10 years from the date this Order is issued, Respondents shall not acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any AMSURG ASC Divestiture Location or in the Panama City Divestiture Location.

XII. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondents shall:
1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date and each Divestiture Date no later than 5 days after the occurrence of each; and
 2. Submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the relevant Divestiture Date.
- B. Respondents shall submit verified written reports (“compliance reports”) in accordance with the following:
1. Respondents shall submit:

- a. Interim compliance reports 30 days after the Order is issued, and every 60 days thereafter until Respondents have fully complied with the provisions of Sections II, IV, and VI;
 - b. Annual compliance reports one year after the date this Order is issued, and annually for the next 9 years on the anniversary of that date; and
 - c. Additional compliance reports as the Commission or its staff may request.
2. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with this Order. Conclusory statements that Respondents have complied with their obligations under this Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented and plan to implement to comply with each paragraph of the Orders.
 3. For a period of 5 years after filing a Compliance Report, each Respondent shall retain all material written communications with each party identified in the compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondents' obligations under the Orders and provide copies of these documents to Commission staff upon request.
 4. Respondents shall verify each Compliance Report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall file their respective Compliance Reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov, as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a). In addition, Respondents shall provide a copy of each Compliance Report to the Monitor if the Commission has appointed one in this matter.

XIII. Change in Respondent

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least 30 days prior to:

- A. The proposed dissolution of Ascension Health Alliance;
- B. The proposed acquisition, merger, or consolidation of Ascension Health Alliance; or
- C. Any other change in Respondent Ascension Health Alliance, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XIV. Access

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon 5 days' notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of the Respondents related to compliance with this Order, which copying services shall be provided by the Respondents at their expense; and
- B. To interview officers, directors, or employees of the Respondents, who may have counsel present, regarding such matters.

XV. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and ensure the Acquirer can operate the AMSURG ASC Business related to each of the AMSURG ASC Divestiture Locations and Panama City Divestiture Location and AMSURG ASC Assets at least equivalent in all material respects to the manner in which the AMSURG ASC Business was operated prior to the Acquisition.

XVI. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED:

NONPUBLIC APPENDIX I

Panama City Divestiture Agreement

NONPUBLIC APPENDIX II
SC Affiliates Divestiture Agreement