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334 MD 2014

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 334 M.D. 2014

Commonwealth of Pennsylvania, By Josh Shapiro, Attorney General; Pennsylvania Department of Insurance, by Jessica K. Altman, Insurance Commissioner and Pennsylvania Department of Health, By Rachel Levine, Secretary of Health,

Petitioners,

v.

UPMC, A Nonprofit Corp.; UPE, a/k/a Highmark Health, A Nonprofit Corp. and Highmark, Inc., A Nonprofit Corp.,

Respondents.

HIGHMARK'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER

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HIGHMARK'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER

Highmark hereby submits these proposed findings of fact, conclusions of law, and proposed order following the June 10-11, 2019 evidentiary hearing:

FINDINGS OF FACT

1. In 2014, the Commonwealth formed a "Patients First Task Force" that included the Office of the Attorney General (the "OAG"), the Insurance Department ("PID") and the Department of Health ("DOH") to encourage UPMC and Highmark to maintain a relationship that would benefit the public. June 10-11, 2019 Hearing Transcript ("Tr."), 42:22 – 43:13.

2. Those efforts resulted in a comprehensive agreement negotiated by and among the Governor's Office (including the PID and DOH), the OAG, UPMC, and Highmark, memorialized in Consent Decrees. Tr. 166:21 – 167:4.

3. The negotiations included multiple discussions between representatives of the Patients First Task Force, exchanges of term sheets and drafts of the Consent Decrees themselves, both commented on, and marked up by, the parties. Tr. 51:15-18; 68:14-19. Highmark and UPMC negotiated through the Commonwealth, which relayed each party's positions and requested revisions, as well as their own, to the other party. Tr. 47:22 – 48:10; 167:25 – 169:1. All parties were represented by able experienced counsel. *See* Tr. 50:23 – 51:14.

4. The OAG filed a petition together with a motion to approve the Consent Decrees—one between the Commonwealth and UPMC and another between the Commonwealth and Highmark—with this Court. The Consent

Decrees, which are mirror images (Tr. 169:20-25), were entered as court orders on July 1, 2014.

5. The Consent Decrees contain a modification provision (the "Modification Provision") which states:

> If the OAG, PID, DOH or UPMC [or Highmark] believes that modification of this Consent Decree would be in the public interest, that party shall give notice to the other and the parties shall attempt to agree on a modification. If the parties agree on a modification, they shall jointly petition the Court to modify the Consent Decree. If the parties cannot agree on a modification, the party seeking modification may petition the Court for modification and shall bear the burden of persuasion that the requested modification is in the public interest.

Consent Decrees, § IV(C)(10).

6. In November 2018, the OAG proposed modifications of the Consent Decrees to both UPMC and Highmark. Highmark agreed to the proposed modifications, so long as UPMC also would be subject to them. UPMC rejected the OAG's proposed modifications. As a result, the OAG filed a petition on February 7, 2019, seeking 18 modifications to the Consent Decrees which it felt to be in the public interest, including modification of the current June 30, 2019 end-date. *See* OAG's Petition to Modify, ¶ 75, Feb. 7, 2019.

7. This Court concluded that the OAG was not barred as a matter of law from seeking 17 of the 18 proposed modifications. It concluded, however, that *Commonwealth by Shapiro v. UPMC*, 188 A.3d 1122 (Pa. 2018) precluded modification of the end-date.

8. The Supreme Court reversed, concluding that nothing on the face of the Consent Decrees indicated that the end-date could not be modified and that the

OAG and Highmark's interpretation of the Consent Decrees was reasonable. The Court also determined that UPMC's interpretation of the Consent Decrees was reasonable. Thus, the Court held that the Consent Decrees were ambiguous as to whether the end-date could be modified and remanded so that this Court could consider extrinsic evidence to aid in the interpretation of the Consent Decrees' language. *See Commonwealth by Shapiro v. UPMC*, No. 39 MAP 2019, -- A.3d --, 2019 WL 2275206, at *11-12 (Pa. May 28, 2019).

9. The Consent Decrees are to be "interpreted … to protect consumers and UPMC's [or Highmark's] charitable mission." Consent Decrees, § (I)(A).

10. James Donahue, Esq., Executive Deputy Attorney General, Public Protection Division, and the Consent Decrees' primary negotiator on behalf of the OAG, presented credible testimony that the core purpose of the Consent Decrees was to ensure that certain segments of the population had access to healthcare at a reasonable cost—and this was made known to UPMC during the Consent Decree negotiations. Tr. 48:21 – 49:12.

11. Thomas L. VanKirk, Esq., Executive Vice President, Chief Legal Officer and Secretary of Highmark Health, was a member of the Highmark team that negotiated and signed the Consent Decrees on Highmark's behalf. Mr. VanKirk presented credible testimony that the Consent Decrees' purpose "was not … to benefit Highmark, … not … to benefit UPMC. It was … to benefit patients and Highmark members." Tr. 163:17-21. Mr. VanKirk also testified that the Consent Decrees' underlying goals included ensuring access to oncology care, access for vulnerable populations, access to hospitals in rural areas, access to

emergency room services at in-network rates, and access to specialty hospitals. Tr. 162:5 – 163:4.

12. Mr. Donahue credibly testified that the OAG included the Modification Provision to effectuate the Consent Decrees' core purpose to protect the public interest. The OAG needed to "have the ability to preserve UPMC's charitable mission and to protect consumers" in light of the uncertainty of the UPMC-Highmark relationship. Tr. 86:8-23. (responding to inquiry why modification provision was important, Donahue stated, "We didn't know what the future was. We didn't know what things would be in 5 years. ... So we still had to have the ability to preserve UPMC's charitable mission and to protect consumers.").

13. Consistent with this, the Modification Provision provides that this Court may modify the Consent Decrees if the proponent of the modifications proves they are in the "public interest." Consent Decrees, § (IV)(C)(10).

14. Mr. Donahue credibly testified that the OAG intended the Modification Provision to apply to "everything" in the Consent Decrees. Tr. 86:24 – 87:7.

15. Mr. VanKirk credibly testified that while he does not recall any specific negotiations about the Modification Provision, he was aware of and read that provision before Highmark agreed to it. Tr. 184:16-24. He further credibly testified that Highmark understood the Consent Decrees could be modified in any manner so long as the party requesting the modification proved that the modification was in the public interest. Tr. 184:9-24. He said there were no other

limitations on the Consent Decree provisions that were subject to the Modification Provision. *Id.* Mr. VanKirk was aware, before Highmark signed its Consent Decree, that UPMC had not suggested any revisions to the Modification Provision or requested a carve-out for the termination date, and he therefore understood that UPMC also intended the Modification Provision to be applied as written to modify any provision of the Consent Decree. Tr. 185:11 – 188:4.

16. Highmark was aware that the Modification Provision had two limitations on its scope: first, the party seeking modification had the burden of persuasion to demonstrate to the court that the modification was in the public interest; and, second only Highmark or the Commonwealth could seek to modify the Highmark Consent Decree, and only UPMC or the Commonwealth could seek to modify the UPMC Consent Decree (that is, UPMC could not unilaterally seek to modify Highmark's Consent Decree and vice versa). Tr. 181:11-19.

17. While Thomas McGough, Esq., UPMC's Executive Vice President and Chief Legal Officer, "welcomed" inclusion of the Modification Provision in the Consent Decree, he believed it would apply only to correct drafting mistakes. Tr. 361:7-25; 280:19-21. Mr. McGough conceded he never conveyed this understanding of the scope of the provision to the OAG (or anyone else). Tr. 363:17-25; 364:17-25. Mr. McGough also testified that the Modification Provision would be "far less useful" if certain provisions were carved out from the modification provision because the parties did not known in advance "where the mistakes would be." Tr. 360:19 – 362:4.

18. Nor is there any evidence that the parties understood—or that it was implicit—that the Consent Decrees' end-date was carved out from the scope of Modification Provision. Tr. 186:25 – 187:15. Instead, the only evidence UPMC offered in this regard was Mr. McGough's assertion that the word "modification" is "self-limiting." Tr. 312:9 – 313:7.

19. During the negotiations, the OAG specifically directed UPMC's attention to three categories of additional provisions contained in the Consent Decrees that were not included in the previously-negotiated term sheets, including the addition of definitions, an arbitration provision, and the concluding paragraphs (which included the Modification Provision). Tr. 64:15 – 65:11.[1]

20. There is no evidence that UPMC requested that Section IV.C.9 ("Termination") be excluded from the scope of the Modification Provision. Both Mr. Donahue and Mr. McGough testified that UPMC did not request any revisions to the Modification Provision. Tr. 69:7-71:6; 74:24 – 75:2; 87:11-14; (Donahue); Tr. 339:14-17 (McGough); *see also* Tr. 186:25 – 187:15 (VanKirk).

21. The parties negotiated term sheets that "incorporate[d] some key terms, but the final agreement [the Consent Decrees] would encompass the entire agreement between the parties." Tr. 49:21-23; 54:9-15 (Donahue); Tr. 170:1 – 171:5 (VanKirk testifying that terms sheets were just one part of negotiation

[1] UPMC has agreed to this same Modification Provision in other consent decrees with the OAG. *See* Tr. 66:1-15; 67:2-10. For that reason, the OAG chose this provision, among others, in an effort to advance the negotiations more quickly. Tr. 64:18 – 65:3.

process that parties understood would result in the final Consent Decrees); *see also* Tr. 173:3-21; 214:10-23.

22. After execution of the term sheets, the Commonwealth circulated drafts of the consent decrees, which included the Modification Provision. Tr. 73:17-22; 345:6-22.

23. UPMC offered extensive mark-ups to those drafts, including mark-ups rejecting or revising certain terms the Commonwealth had proposed. Tr. 338:6 – 339:17; 348:25 – 349:8; 346:4 – 352:2. UPMC made changes to each of the three categories of "additional" provisions contained in the Consent Decrees but not in the term sheets. UPMC revised certain definitions. Tr. 348:25 – 349:3. UPMC also outright rejected an arbitration provision similar to one it had previously agreed to in the Children's Hospital Consent Decree—the Consent Decrees from which the OAG replicated the Modification Provision. Tr. 69:5 – 71:16. UPMC also made changes to other "concluding paragraphs" of the Consent Decree. Tr. 351:9-17 (deletion of legal exposure provision); 351:18-22 (revision to no admission of liability provision); 351:22 – 352:2 (changing term "transaction" to "matter").

24. In short, UPMC did not reject or revise the Modification Provision. Tr. 69:7 – 71:6; 74:24 –75:2; 339:1-17 (Mr. McGough: "Q: And neither you or your counsel made any change to the modification clause of this document. Correct? A: No, we didn't.").

CONCLUSIONS OF LAW

25. The parties' intent regarding the scope of the Modification Provision, and whether it permits modification of the Consent Decrees' end-date, is a question of contract interpretation, and principles of contract law apply. *Com. Ex rel. Kane v. UPMC,* 129 A.3d 441, 463 (Pa. 2015). In interpreting the Consent Decrees, the cardinal rule is to ascertain the intent of the parties. *Lesko v. Frankford Hosp.-Bucks Cnty.*, 15 A.3d 337, 342 (Pa. 2011).

26. The Pennsylvania Supreme Court has concluded that the Modification Provision is ambiguous. Thus, this Court may consider extrinsic evidence to ascertain its meaning. *Murphy v. Duquesne Univ. of the Holy Ghost*, 777 A.2d 418 (Pa. 2001).

27. When interpreting an ambiguous contract term, the court should "adopt the interpretation which, under all the circumstances, ascribes the most reasonable, probable and natural conduct of the parties, bearing in mind the objects manifestly to be accomplished." *Shaffer v. Flick*, 520 A.2d 50, 53 (Pa. Super. 1987) (citations and quotations marks omitted).

28. When a written contract is involved, the court must begin with the contract's language. *E.R. Linde Const. Corp. v. Goodwin*, 68 A.3d 346, 349 (Pa. Super. 2013). Thus, even when called upon to interpret an ambiguous contract provision and authorized to consider extrinsic evidence, a court still must give great weight to the contract's language. *Lang v. Meske*, 850 A.2d 737, 740 (Pa. Super. 2004) (affirming the trial court's reliance on "face of the agreement" when

interpreting ambiguous provision). In other words, extrinsic evidence is an aid to interpreting contract language, it does not replace or override that language.

29. Because the Consent Decrees' purpose is to serve the public interest, this Court ***must*** construe the Consent Decrees in a manner consistent with that purpose. *City of Phila. v. Phila. Transp. Co.*, 26 A.2d 909, 912 (Pa. 1942); *Pritchard v. Wick*, 178 A.2d 725, 727 (Pa. 1962); *Pocono Manor Ass'n v. Allen*, 12 A.2d 32, 35 (Pa. 1940).

30. When sophisticated parties negotiate a contract, ambiguities are generally not construed against the drafter. *Kozura v. Tulpehocken Area Sch. Dist.*, 791 A.2d 1169, 1174 n.8 (Pa. 2002).

31. When resolving an ambiguity, the fact finder may consider (1) the parties' intent when they entered into the contract, (2) the contract as a whole, so all parts make sense when read together, (3) the parties' words and conduct after they entered into the contract, (4) the words' plain and ordinary meaning (including evidence suggesting that the parties intended that they have some other meaning, or, if they are technical words, the meaning used by people in that trade or business), and (5) whether the parties intended to exclude other similar items. *Pennsylvania Suggested Standard Civil Jury Instructions* § 19.200 (4th ed. 2018).

32. Based on the evidence presented—including the language of the Consent Decrees themselves—this Court finds that a central purpose of the Consent Decrees was to promote and benefit the public interest.

33. The language of the Consent Decrees expressly states their public purpose. *See e.g.* Consent Decrees, § (I)(A). The evidence does as well. The

parties to the Consent Decrees—the Commonwealth and the charitable organizations—each are obligated to act in furtherance of the public interest. As Mr. Donahue testified, the OAG became involved in the dispute between Highmark and UPMC because they are charitable organizations and it is the OAG's responsibility to protect the public interest. Tr. 32:20 – 34:20.

34. UPMC is a charity and thus is obligated to serve the public interest, not its own competitive or business interests. Thus, it knew—or should have known based on its status as a charity and the terms of the Consent Decrees—that the Consent Decrees were intended to protect the public.

35. This Court concludes that the Consent Decrees' end-date, like all of the other Consent Decree provisions, is subject to the Modification Provision.

36. The language of Consent Decrees' themselves are compelling evidence of the parties' intent as to the scope of the Modification Provision and whether its end-date may be modified.

37. The Modification Provision reflects the Consent Decrees' public interest purpose—expressly providing that modifications may be made in the public interest. And, as this Court has found, other than the "burden of persuasion" to show a modification is in the public interest, "the Consent Decree sets forth no other constraints on the OAG's ability to seek modification." Commw. Ct. Apr. 3, 2019 Op. at 34; *Shapiro*, 2019 WL 2275206, at *9 (noting that Commonwealth Court "correctly observed" that only limitation is that modifications be in the public interest).

38. Beyond that, the Modification Provision's language does not contain any carve-out or limitations on the provisions that may be modified. Its language, therefore, does not preclude modification of the end-date.

39. Mr. McGough's testimony that the Modification Provision may be invoked only to correct "mistakes" or make "minor changes" does not align with either the Consent Decrees' express terms, its purpose (whether looking at the Modification Provision itself or the contracts as a whole), or the credible evidence regarding the parties' intent.

40. Mr. McGough's testimony is reminiscent of the "dictionary definition" argument UPMC made in the Supreme Court, which Highmark expects UPMC to make in its post-hearing submission. Tr. 287:9-17. Neither that argument nor Mr. McGough's testimony carries the day.

41. The dictionary definition argument does not withstand scrutiny in these circumstances. According to UPMC, the Consent Decrees' end-date may not be modified because dictionaries define "modification" as a "minor change." While dictionary definitions may play some role in contract interpretation, they are not the only interpretative guide and do not control when the dictionary definition does not align with the parties' intent as found in the specific contract language at issue, the contract read as a whole, or the extrinsic evidence.

42. Given the Modification Provision's language, all of the Consent Decrees' terms read as a whole, the Consent Decrees' purpose, and the extrinsic evidence, it is not reasonable or natural to construe the Modification Provision as authorizing only minor changes. The Provision contemplates judicial intervention

if the parties cannot agree on a proposed modification. This supports the conclusion that the Modification Provision can be invoked to request significant changes to the Consent Decrees—whether or not those changes are implemented to fix "mistakes"—so long as those changes are in the public interest, because judicial involvement in "minor" changes would not be necessary or worthwhile.

43. It also is relevant that Mr. McGough did not convey to anyone his view that the Modification Provision was limited to "mistakes" or "minor changes" at any time, to any party to the Consent Decrees. While it could be said that neither the OAG nor Highmark itemized the Consent Decree provisions eligible for modification pursuant to the Modification Provision, there was no reason to do so given the provisions broad language authorizing modification subject only to proof that the modification served the public interest. Without comment by UPMC, the other parties had no reason to know of any limitations, particularly since UPMC had seen and approved the modification provision in other instances.

44. Other evidence, too, supports the conclusion that the Consent Decrees' end-date may be modified pursuant to the Modification Provision. For instance, the evidence shows that UPMC did not make any revisions to the Modification Provision in its negotiations of the Consent Decrees. In fact, as Mr. Donahue testified, UPMC made extensive revisions to a draft consent decree after the Modification Provision was included, but did not make any revisions to the Modification Provision itself. Tr. 68:14-19; Tr. 69:7 – 71:6; 74:24 – 75:2. The fact that UPMC did not request a carve-out or otherwise suggest revisions to the Modification Provision further supports the conclusion that UPMC agreed that the

only limitation in the Modification Provision is the one specifically stated—namely, that the proponent of the modification must prove it is in the public interest.

45. None of UPMC's various arguments call this conclusion into question. They are either unsupported by the evidence, logically flawed, or both.

46. UPMC argues—and Mr. McGough declared—that the Consent Decrees' only purpose was to provide for a "transition," but that argument is not supported by credible evidence especially given the OAG's testimony that there would always be "unavoidable contacts between UPMC and Highmark" given their roles as insurers and providers. Tr. at 44:3 – 45:20. UPMC's argument also ignores Mr. Donahue's testimony that the OAG specifically included the Modification Provision because it did not know what might happen in the future and wanted the ability to seek necessary modifications to protect the public interest. Tr. 86:8-23.

47. Mr. McGough's testimony that it was inconceivable that the Consent Decrees could be extended beyond June 30, 2019, is contrary to the evidence presented. In fact, the Commonwealth had twice before intervened (in 2012 and then again in 2014) and sought agreements that extended the time during which UPMC and Highmark would be required to maintain a relationship despite UPMC's statements that it would refuse to contract with Highmark. Tr. 36:20 – 41:10; Tr. 352:3 – 354:3.

48. Moreover, Mr. McGough conceded that before the parties agreed on the term sheets, the OAG indicated that it had "reserve[d] the right to pursue still

outstanding issues related to the charitable nonprofit status of [UPMC]"—signaling that UPMC understood (or should have understood) that the OAG's oversight function was ongoing beyond June 30, 2019. Tr. 343:9-16.

49. UPMC argues that the term sheets control and essentially override or nullify the terms of the Consent Decrees themselves—and, thus, because the Modification Provision was not included in the term sheets, it is entitled to little weight or may be ignored entirely. That argument is both unsupported by the evidence and contrary to contract law principles.

50. As for the evidence, the credible evidence shows that all parties understood the Consent Decrees—not the term sheets alone—would represent the final agreement between the parties. Tr. 62:18 – 63:1; 49:21-23; 54:9-15; Tr. 170:1 – 171:5; 173:3-21, 214:10-23.

51. As for the law, "agreements to agree" are not enforceable under Pennsylvania law. *Behrend v. Comcast Corp.*, 2012 WL 4459582, at *7 (E.D. Pa. Sept. 25, 2012) (quoting *Trowbridge v. McCaigue*, 992 A.2d 199, 202 (Pa. Super. 2010).[2] Accordingly, the executed Consent Decrees containing the Modification Provision—not the term sheets—is the operative contract that binds the parties.

52. UPMC also plainly mischaracterizes the evidence in arguing that, through the Modification Provision, the OAG "snuck in" a term that UPMC had rejected by striking an "extension provision" from the term sheets. As Messrs.

[2] Mr. Donahue testified that the term sheet was not intended to be a final or enforceable contract, but instead was "an agreement to make an agreement." Tr. 121:12-18; 122:3-15. UPMC did not present contrary evidence.

Donahue and VanKirk credibly testified, the extension provision related ***only*** to the term sheets' arbitration clause—not the entire agreement. Tr. 53:4-21; 61:20-25 ("Q. Did the extension provision have any impact on the whole agreement? A. No. … In this version it is limited to the arbitration clause."); *id.*, 176:16 – 177:1. Mr. McGough himself conceded this point. Tr. 330:16 – 331:4. Thus, UPMC has not credibly established that, by striking an extension provision related to an entirely different matter, it demonstrated its intent that the Modification Provision did not apply to the end-date.

53. UPMC points to the language in the Consent Decrees saying that the Consent Decrees are not a "contract extension" as support for its argument that the Consent Decrees' end-date is not subject to the Modification Provision. *See* Consent Decrees, § (I)(A). But that language is not relevant to the issue before this Court. The "contract extension" language says nothing about whether the Consent Decrees' end-date may be extended, but instead conveyed that the Consent Decrees did not require UPMC and Highmark to extend their then-existing contracts. Instead, as the parties testified, the statement reinforced that the Consent Decrees themselves were not a contract between Highmark and UPMC.

54. In fact, in 2015, the Supreme Court interpreted this language and concluded that it "must be understood as only pertaining to the contracts between the parties which existed prior to the effective date of the Consent Decree … and it forecloses the automatic annual renewal of those contracts." *Com. ex rel. Kane v. UPMC*, 129 A.3d 441, 469 (Pa. 2015).

55. The evidence supports this conclusion. Both Messrs. Donahue and VanKirk testified that the "not-a-contract extension" language meant that the Consent Decrees did not extend the existing contract between UPMC and Highmark, and was not referring to the Consent Decrees themselves. Tr. 78:12-18; 175:10-21; 176:16 – 177:1.

56. Nor is the evidence that the parties publicly announced (through, for example, advertisements and transition documents) that the Consent Decrees were set to expire on June 30, 2019 probative here. The OAG and Highmark do not dispute that the parties were operating under a June 30, 2019 termination date. Tr. 75:6-18; 98:4-16; *id.*, 196:8 – 201:15. The statements about the end-date were accurate statements when made and do not negate the language in the Modification Provision, which at the time those statements were made, had not yet been invoked.

57. UPMC's argument that the end-date of the Consent Decrees is exempt from modification because it is a "fundamental term" does not alter this Court's conclusion. The express language of the Modification Provision does not exempt "fundamental terms" from its scope. The extrinsic evidence—including Mr. McGough's repeated references to "core terms"—does not support a conclusion that there was an agreement on any such limitation.

58. UPMC's contention (through argument and testimony) that it would not have signed the Consent Decree had it understood that the Modification Provision could be used to extend the five-year term, is legally flawed in light of the Consent Decrees' language and the evidence presented. While it is true that the

Consent Decrees have a five-year term, they also contain a Modification Provision that did not exempt the end-date from modification—a provision that UPMC read and did not change or try to clarify, although it had ample the opportunity to do so before signing.

Respectfully submitted,

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, By JOSH SHAPIRO, Attorney General, *et al.*;	:	
Petitioners,	:	
v.	:	No. 334 M.D. 2014
UPMC, A Nonprofit Corp., *et al.*;	:	
Respondents.	:	

ORDER

NOW, June 14, 2019, having considered the evidence presented by UPMC, A Nonprofit Corp. ("UPMC"), the Commonwealth of Pennsylvania by Josh Shapiro, Attorney General (the "Commonwealth"), and UPE, a/k/a Highmark Health, a Nonprofit Corp. and Highmark, Inc., A Nonprofit Corp. (together, "Highmark") during a two day hearing held on June 10 and June 11, 20109 and all motions and briefing submitted by the parties in connection thereto, and consistent with the findings of fact and conclusions of law set forth in the Opinion issued on this date, and for good cause shown:

The Court has weighed the evidence before it, including making an assessment of the credibility of the testifying witnesses, and determines that the most reasonable, probable and natural interpretation of the parties' intent with respect to the Modification Provision is that the end-date of the Consent Decree,

like any other provision, may be modified if the Court finds such a modification to be in the public interest.

It is hereby ORDERED that UPMC's remaining partial preliminary objection in the nature of demurer to the Commonwealth's Petition for Modification of UPMC's Consent Decree (the "Petition") is hereby OVERRULED.

A status conference will be held on _____, 2019, at _____ _____ in Courtroom _____ of the Pennsylvania Judicial Center at which time the Court will establish a case management order to set forth the steps necessary for the parties to move forward with a hearing on the Petition to determine whether modification of UPMC's Consent Decree is in the public interest.

It is FURTHER ORDERED that UPMC's and Highmark's Consent Decrees shall not terminate on June 30, 2019, but shall otherwise remain in full force and effect during the pendency of the Petition until such time as a full and fair resolution of this matter may be achieved and the appellate rights of all parties have been exhausted.

_____
ROBERT SIMPSON, Judge

CERTIFICATE OF COMPLIANCE

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.

Submitted by:	UPE, a/k/a Highmark Health and Highmark Inc.
Signature:	*/s/ Douglas E. Cameron*
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 12th day of June, 2019, a true and correct copy of the foregoing document was served upon the following counsel by electronic PACFile:

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