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ATTORNEY GENERAL



REPLY TO:
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June 20, 2023

Greg Lowe
President, North Carolina Division, HCA Health Care,
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Dear Mr. Lowe,

Thank you for your response to my letter of May 11, 2023. Although I appreciate your prompt attention to our office's questions, your response raises serious concerns about HCA's compliance with Section 7.13(a) of the Purchase Agreement at the Mission Cancer Center.¹

As you are aware, the Purchase Agreement prohibits HCA from "discontinu[ing] the provision of services set forth in Schedule 7.13(a)." *Purchase Agreement*, § 7.13(a). Among those services are oncology services, including "inpatient and outpatient cancer services, radiation therapy, surgery, chemotherapy, and infusion services." *Purchase Agreement*, Sch. 7.13(a). Your letter confirms reports our office has received that Mission's oncology practice now includes only one physician, where it once had as many as fourteen. This is an exceptionally high number of vacant positions, and it represents either a breach of the Purchase Agreement or a serious risk of a breach.

Oncology services are critical to western North Carolinians. Although the Mission Cancer Center is located in downtown Asheville, residents across the region rely on the facility for treatment. Indeed, our office has heard complaints about the Cancer Center not only from residents of Buncombe County, but also residents of nearby counties. It is inconceivable that HCA could provide the hundreds of thousands of North Carolinians who reside within this expansive geographic area with the quality of care that they need and deserve using a single oncologist. To ensure compliance with the Purchase Agreement and avoid potential litigation, it is imperative that Mission Hospital restaff the medical oncology department immediately.

¹ Because the lack of medical oncologists at Mission Cancer Center represents an urgent concern, I write today specifically in regard to that issue. However, our office continues to assess the remainder of your response and may have questions about other matters addressed in your response in the future.

I understand from your letter that HCA has struggled to fill vacancies despite robust recruiting efforts. Although several factors likely inform physicians' decisions not to work for HCA, the widespread complaints about HCA's treatment of its physicians no doubt hurt HCA's recruitment efforts. Doctors are understandably reticent to join health systems that limit physician independence. Thus, as HCA works to fill these critical positions, I urge you to consider the thoughtful criticism from physicians.

Your letter also suggests that Messino Cancer Center's oncologists can fill the gap in oncology services caused by Mission's lack of oncologists. But the fact that oncologists with Messino Cancer Center have admitting privileges at Mission does not assuage our concerns. Messino Cancer Center is an independent oncology practice with its own facilities that has not made any legally binding promises about continuity of service. Indeed, elsewhere in your letter you describe Messino Cancer Center as a competitor to Mission's oncology practice. The Purchase Agreement obligates HCA, not its local competitors, to provide oncology services at Mission Hospital.

The current level of staffing at Mission's oncology department is unacceptable. So that our office can assess HCA's compliance with the Purchase Agreement, I request that you provide me the following information no later than July 3, 2023:

- The number of oncologists employed by the Mission Medical Oncology practice for each month since February 2019.
 - For any month when the Mission Medical Oncology practice employed three or fewer oncologists, the dates of any oncologists' leave or work absence.
- The name of every oncologist employed by the Mission Medical Oncology practice since January 31, 2019, and the dates of those oncologists' first and last day employed by the Mission Medical Oncology practice.
- For each of the oncology services listed in Schedule 7.13(a) (inpatient and outpatient cancer services, radiation therapy, surgery, chemotherapy, and infusion services):
 - The number of new patients seen by an oncologist employed by the Mission Medical Oncology practice for each month since February 2019;
 - The number of days per month the service was offered by an oncologist employed by the Mission Medical Oncology practice for each month since February 2019;
 - The number of appointments with the Mission Medical Oncology practice cancelled by Mission (as opposed to the patient) for each month since February 2019;
 - The number of referrals Mission made to non-Mission oncology practices for each month since February 2019; and
 - The mean wait time for an appointment with an oncologist employed by the Mission Medical Oncology practice. The wait time should be measured from the date of referral or, where there is no referral, a patient's first inquiry with the Mission Cancer Center).

- A detailed description of the additional steps HCA will take to restaff the Mission Medical Oncology practice, including plans for recruiting and retaining oncologists.

Our office will continue to closely monitor oncology services at Mission, and we will not hesitate to enforce the Purchase Agreement and protect the public's right to care under Section 7.13(a).

Thank you for your attention to this matter.

Sincerely,

Llogan R. Walters
Assistant Attorney General
Consumer Protection Division
North Carolina Department of Justice

cc: Jason Ehrlinspiel, Senior Litigation Counsel, HCA Healthcare, Inc.
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