



**MIKE DEWINE**

★ OHIO ATTORNEY GENERAL ★

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**ATTORNEY-CLIENT PRIVILEGED**

May 6, 2015

*Via Email and Regular Mail*

Mr. David Morlock  
CEO, University of Toledo Medical Center  
The University of Toledo  
2801 W. Bancroft  
Toledo, OH 43606-3390  
[david.morlock@utoledo.edu](mailto:david.morlock@utoledo.edu)

Dear Mr. Morlock:

This letter responds to your request on behalf of our client, the University of Toledo (the "University" or "UT"), for a statement as to whether the Attorney General has any present antitrust concerns with the proposed Academic Affiliation Agreement as it is described in the attached Letter of Intent ("LOI"). Based upon the information provided solely in the LOI, the Attorney General has no present antitrust concerns regarding the proposed affiliation as it is set forth in the LOI.

We understand that the University is exploring options related to its academic medical center ("UTMC") in order to expand and enhance UT's academic mission as it relates to its health sciences learners, and in particular its medical school students and residents. UT's academic mission centers around research and education. UT owns UTMC to provide clinical learning opportunities for students and residents, material for research, and cash flow to support its academic missions. Currently, UTMC funds a portion of the University's academic mission and also provides funds toward the payment of certain University expenses. UTMC's residency programs also bring in a certain amount of federal money (per residency slot) and its health learners are placed throughout the Toledo area (including with some competitors) to complete their practical education components. The University has determined that it needs to find an appropriate partner that will provide the additional financial support that UT needs to achieve its academic mission, as well as the academic support it needs to provide residency and other learning space for students.

UT has spent a great amount of time evaluating possible affiliated relationships in order to determine what affiliation will provide the most support to fulfill its academic mission. We understand that University management will be presenting a recommendation to the Academic Affairs Committee of the UT Board on May 11th regarding its desire to enter into a non-binding LOI with ProMedica Health System ("ProMedica"), a nonprofit Toledo hospital system that currently operates multiple hospitals and commands a large share of the Toledo health care market.

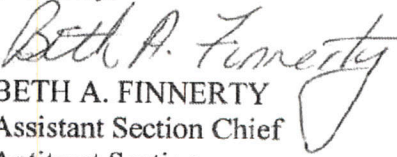
Mr. David Morlock  
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UT proposes entering into a 50-year Academic Affiliation Agreement with ProMedica, all as described in more detail in the attached LOI. As part of this arrangement, ProMedica will provide UT \$50MM annually to fund the academic mission of its health sciences programs. ProMedica will also commit to build a new medical school building/campus (up to \$250MM), and house substantially all of the clinical learning and residency slots needed to facilitate practical learning for UT students. Currently, UT medical students, residents, and other students in the College of Medicine and Life Sciences (pharmacy, allied health professionals, etc.) receive their practical learning experiences in a number of facilities other than UTMC because UTMC does not have the capacity to provide these services on-site. Under the terms of the LOI, ProMedica will provide support, placement and funding for these students, residents and fellows and fund the necessary capital improvements that UT is not currently able to fund due to its lack of scale and its size in the market.

As currently presented, we find no significant competitive concerns with the proposal as outlined in the LOI. It appears that any potential antitrust concerns would likely be by way of the parties either agreeing to limit their lines of services or engaging in joint contracting. At this time, the parties to this proposed arrangement would be UT, ProMedica, UT's physician group and ProMedica's employed physician group. The LOI specifies that UT "will retain total control and discretion to unilaterally determine the future use and operation of the UTMC hospital facilities" and it further specifies that the two physician groups will not engage in joint contracting. Thus, as currently contemplated in the LOI, the affiliation does not raise significant antitrust concerns on its face. That said, inherent in any joint venture such as this one is the danger that competitively-sensitive information (such as price) will be exchanged among participants. Such arrangements also unfortunately sometimes facilitate collusion among participants. This arrangement will obviously have to be carefully structured to minimize such risks, and this statement regarding antitrust concerns cannot be taken to address the entire proposed transaction. Once definitive agreements that more fully describe the academic affiliation are prepared, we can evaluate whether any portion of the affiliation (or the affiliation as executed) raises antitrust concerns. Therefore, this letter in no way binds the Attorney General as to any future action, should the proposed affiliation prove to be anticompetitive in purpose or effect.

On behalf of Attorney General DeWine, thank you for your inquiry.

Sincerely,

  
BETH A. FINNERTY  
Assistant Section Chief  
Antitrust Section

Cc (email only): Mary Mertz, First Assistant Attorney General  
Rebecca Albers, Section Chief, Education Section  
Julie M. Woolley, Assistant Attorney General, Transactions Counsel  
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Attachment: ProMedica Letter of Intent

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University of Toledo / ProMedica

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This Letter is intended to evidence the understandings which have been reached regarding the proposed transactions and the mutual intent of the parties to negotiate in good faith the Definitive Agreements in accordance with the terms contained in this Term Sheet. Nothing contained in this Letter or the Term Sheet constitutes an offer by either party to enter into a binding agreement with the other party of any kind, except as explicitly set forth in the Binding Provisions.

Each party recognizes that it is a party to that certain Confidentiality and Joint Defense Agreement dated as of November 21, 2014, and that such agreement remains in full force and effect.

If the terms herein and of the Term Sheet reflect your understandings as to the Non-Binding Provisions and confirm the mutual agreements set forth in the Binding Provisions, please return a signed copy to the undersigned.

Sincerely:

PROMEDICA HEALTH SYSTEM

By: \_\_\_\_\_  
[NAME]  
[TITLE]

Date: \_\_\_\_\_

ACKNOWLEDGED AND AGREED:

UNIVERSITY OF TOLEDO

By: \_\_\_\_\_  
[NAME]  
[TITLE]

Date: \_\_\_\_\_