



May 6, 2021

Office of Policy and Coordination
Room CC-5422
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave. N.W.
Washington, D.C. 20580

To whom it may concern:

For more than 30 years and five presidential administrations, the Federal Trade Commission has been steadfast in its position that the Certificate of Need laws in 35 states and the District of Columbia are anti-competitive, do not control health care costs and support monopolies.¹

It is with that knowledge that Checks & Balances Project (C&BP) is writing to request an FTC investigation of the impending merger between Sentara Healthcare and Cone Health of North Carolina.

Our research has shown that Sentara has built 87% market share in southeastern Virginia through its manipulation of Virginia's Certificate of Public Need (COPN) process.²

Sentara has succeeded in using the COPN process to weaken its remaining competitors in the Hampton Roads area – Bon Secours and Chesapeake Regional Medical Center (CRMC). In one instance, Sentara attributed some of its opposition to a Bon Secours COPN application because it would provide competition to a Sentara hospital.⁶

Just last week, competitor CRMC sued Sentara for tortious interference related to Sentara's poaching of cardiologists from CRMC while Sentara also fought its application to start an open-heart surgery unit.⁷

In one case detailed by C&BP, Sentara won a favorable ruling by a judge who had once been one of Sentara's outside counsel and who worked on Sentara's behalf with the company's current attorney.³ It is through conflicts of interest such as these that Sentara has grown its market dominance.

In another instance, Sentara's outside counsel, Jamie Martin, served on a state panel examining the COPN law without disclosing her relationship with Sentara.⁴ It was before that same panel

that the FTC submitted a statement that said the COPN law “appears to have generally failed in their intended purposes of controlling growing health care costs, increasing quality of health care, and ensuring access to care for uninsured and underinsured in urban and rural areas.”⁵

We sincerely hope the FTC will look at the proposed Sentara-Cone Health merger with the same critical eye it has cast on other proposed health care mergers. Not only does Sentara block competition, but it has also decreased the amount of care available in some of its markets. Reports in the Harrisonburg, Va., *Daily News-Record* show it has seriously curtailed services at its Rockingham Memorial Hospital, which has drawn the ire of the community there.⁸

These examples are some of the reasons why we believe a careful examination of this merger is warranted.

Thanks for your attention on this serious matter. If you have any questions, you can reach me at 202-836-7154.

Sincerely,

Ray Locker
Checks & Balances Project

¹ [Joint Statement of the Antitrust Division of the U.S. Department of Justice and the Federal Trade Commission on Certificate-of-Need Laws and Alaska Senate Bill 62](#)

² [Certificate of Public Need Workgroup – Final Report](#), Commonwealth of Virginia, Office of the Governor, Dec. 5, 2015.

³ [“Judge Who Issued Pro-Sentara Ruling Represented Sentara as Its Lawyer,”](#) Checks & Balances Project, Feb. 18, 2021.

⁴ [“Attorney Jamie B. Martin Was ‘Legal Advisor’ to COPN Reform Group — But Didn’t Publicly Disclose Sentara Connection,”](#) Checks & Balances Project, March 12, 2021.

⁵ [Certificate of Public Need Workgroup – Final Report](#), Commonwealth of Virginia, Office of the Governor, Dec. 5, 2015.

⁶ Virginia Department of Health, Office of Licensure and Certification, Division of Certificate of Public Need, [Staff Analysis](#), October 19, 2020.

⁷ ["A monopoly position is not enough – Sentara also seeks to eliminate competitors,"](#)
Checks & Balances Project, May 4, 2021.

⁸ ["Current, Ex-Employees Fault Sentara's Leadership For Issues At RMH,"](#) Ian Munro, *Daily News-Record*, Jan. 19, 2021.

Cc: Office of Virginia Attorney General Mark Herring
Office of North Carolina Attorney General Josh Stein