5:15-cv-12311-JEL-DRG Doc # 99-4 Filed 04/21/17 Pg 1 of 10 Pg ID 2273

Exhibit B

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

UNITED STATES OF AMERICA and STATE OF MICHIGAN,

Plaintiffs,

v.

HILLSDALE COMMUNITY HEALTH CENTER, W.A. FOOTE MEMORIAL HOSPITAL d/b/a ALLEGIANCE HEALTH, COMMUNITY HEALTH CENTER OF BRANCH COUNTY, and PROMEDICA HEALTH SYSTEM, INC.,

Defendants.

Case No.: 5:15-cv-12311-JEL-DRG Judge Judith E. Levy Magistrate Judge David R. Grand

<u>ALLEGIANCE HEALTH'S OBJECTIONS AND ANSWERS TO</u> <u>PLAINTIFFS' FIRST SET OF INTERROGATORIES</u>

Defendant W.A. Foote Memorial Hospital d/b/a Allegiance Health ("Allegiance"), by and through its undersigned counsel, and pursuant to Federal Rule of Civil Procedure 33, provides the following objections and answers in response to Plaintiffs' First Set of Interrogatories:

2. Describe in detail: (a) the "collection of marketing strategies" Allegiance used "to compete for patients from Hillsdale County with respect to other, typically lower acuity, services that were also offered by HCHC," including when each strategy began, when each strategy ended (if applicable), who approved each strategy, and who executed each strategy; and (b) separately, for each county having any part within Allegiance's total service area, how Allegiance's marketing strategies for that county differed from its marketing strategies for Hillsdale County. (Quoting Allegiance's Answer (Doc. # 24) at page 3.)

ANSWER

Allegiance first responds to Interrogatory No. 2 by noting that it is a multi-part interrogatory with 7 discrete subparts (given the number of counties included within Allegiance's total service area). Allegiance reserves the right to count this interrogatory as 7 interrogatories for purposes of the limitation on the number of interrogatories permitted under Fed. R. Civ. P. 33.

Allegiance objects to subpart (b) on the grounds that it is overbroad and not reasonably tailored to lead to the discovery of admissible evidence, given that Plaintiffs' claims against Allegiance are focused solely on an alleged agreement with HCHC regarding marketing in Hillsdale County. For this reason, Allegiance's marketing strategies in other counties are not relevant to any party's claim or defense in this proceeding, and certainly the burden associated with discovery on these issues is not proportional to the needs of the case.

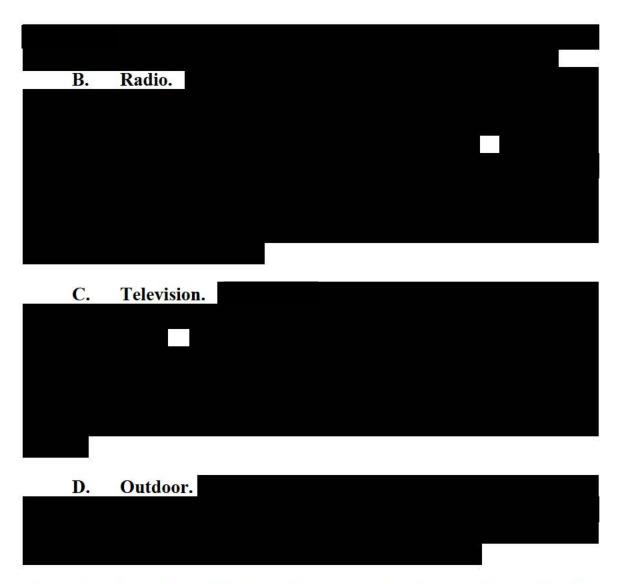
Allegiance further objects to this Interrogatory because it solicits Allegiance's confidential and proprietary information prior to the entry of a protective order in this action. Allegiance has redacted the confidential and proprietary information in its answer until an appropriate protective order has been entered by the Court. At such time, Allegiance will provide its unredacted answer to this interrogatory.

Notwithstanding and without waiving the foregoing objections, Allegiance responds that significant factual detail on Allegiance's marketing strategies for Hillsdale County has already been provided to Plaintiffs during the course of their pre-complaint investigation, including but not limited to the summary of marketing information in Allegiance's April/May 2015 submissions to Plaintiffs. Allegiance incorporates those materials into this response by reference, and further responding to this interrogatory, Allegiance states as follows:

(a) Allegiance independently created and implemented a multi-faceted business development and marketing strategy to increase demand for its services, both in Hillsdale County and elsewhere. While Allegiance chose to focus much of its direct marketing on higher acuity services in Hillsdale County, Allegiance did not eliminate all marketing as to lower acuity services, and Allegiance has been successful in increasing its market share of patients from Hillsdale County for both lower acuity and higher acuity services, including those where Allegiance and HCHC are horizontal competitors. Allegiance's results confirm that its marketing approach towards Hillsdale has been successful, benefitting Allegiance and the residents of Hillsdale County. These strategies have included the following:

i. <u>"Traditional" Media</u>. Allegiance marketed its services through several forms of "traditional" media that appeared or were published in Hillsdale County between 2009 and 2015, namely print, radio, television, and outdoor media. Allegiance's advertisements across these media typically promoted Allegiance in connection with its provision of, and excellence in, higher acuity services, which was consistent with Allegiance's successful strategy of leveraging its higher acuity services to improve the reputation and demand among Hillsdale County residents for all of its service lines, creating a "halo" effect for its lower acuity services as well. This marketing was approved by Ms. Georgia Fojtasek, and its execution was directed primarily by Mr. Anthony Gardner and Ms. Suzy Turpel.

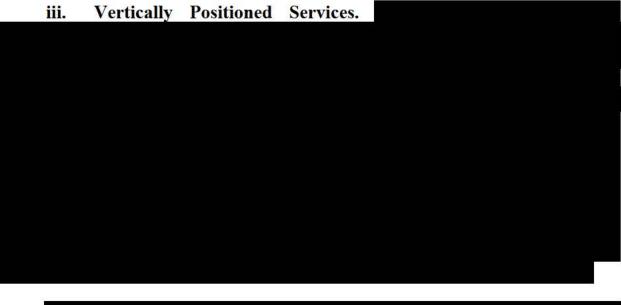




ii. <u>Digital Media</u>. Allegiance has maintained a website and active social media accounts in order to provide easily-accessible information about Allegiance and to promote Allegiance's brand everywhere, including Hillsdale County. All digital media marketing was approved by Ms. Georgia Fojtasek, and was its execution was primarily directed by Mr. Anthony Gardner and Ms. Suzy Turpel.

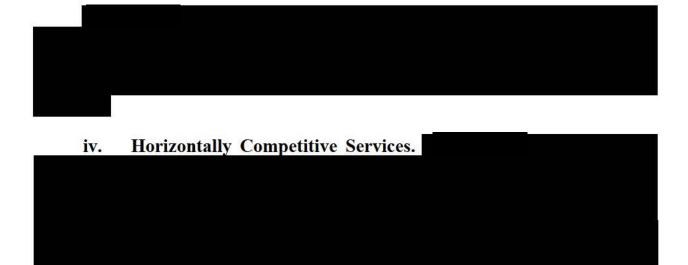
A. <u>Website</u>. Allegiance's website (www.allegiancehealth.org) has been online since at least 2009 and is regularly updated. The website publicizes the full range of services offered by Allegiance, features a comprehensive health library and free health tips and promotional wellness events, and announces awards and recognition earned by Allegiance. This website is accessible to any Hillsdale County resident with internet access.

Social Media. Allegiance established a Twitter account Β. (@AllegianceHlth) in September 2009, and has been actively posting content since around January 2012. It has regularly published promotional content Facebook on (www.facebook.com/AllegianceHealth) since at least August 2011. Allegiance also uses social media accounts on Google+ (https://plus.google.com/+AllegianceHealth/posts), LinkedIn (www.linkedin.com/company/allegiance-health), YouTube and (www.youtube.com/user/AllegianceHealth/) to engage the public. The YouTube account has been active since June 2008 and has over 100 videos posted about Allegiance's services. All of Allegiance's social media pages are publicly accessible through an Internet search and are cross-promoted from one page to another.





7



v. <u>Facilitating Physician Referrals</u>. Another significant objective of Allegiance's marketing strategy in Hillsdale County was to increase patient referrals from physicians in Hillsdale County. Allegiance adopted several strategies to achieve this objective. Each of the following marketing activities was approved by Ms. Georgia Fojtasek, and executed primarily by Ms. Karen Yacobucci, Mr. Jerry Grannan, Mr. Michael Houttekier and/or Mr. Michael List.

A. "<u>Visiting Physicians</u>". Allegiance has worked with HCHC so that physicians specializing in higher acuity services not otherwise available at HCHC would travel to Hillsdale County to see patients at HCHC. This "visiting physician" arrangement conferred several benefits on Allegiance, HCHC and the residents of Hillsdale County, including (1) it provided services and specialists that could not or would not otherwise be available in Hillsdale County; (2) it maximized the practice of local physicians who otherwise might be underutilized based on the demand for their specialized services; and (3) just as importantly, it increased the number of patients who were referred to (or who would affirmatively request a referral to) Allegiance, which routinely included Allegiance's provision of lower acuity services necessary or related to the higher acuity services.

In addition, beginning in 2010, Allegiance formed a relationship with Dr. Tariq H. Abdelkarim, a Hillsdale internist and pulmonologist whose practice expanded to include navigational bronchoscopy (a

minimally invasive procedure to locate tumors in the lungs) when Allegiance invested in this technology. Dr. Abdelkarim traditionally referred patients requiring thoracic surgery to the general surgeons at HCHC but, as a result of Allegiance's outreach, Dr. Abdelkarim now refers a significant number of patients to Dr. Mohan Kulkarni, an Allegiance physician who specializes in thoracic surgery. These referrals are *in addition to* the referrals for the navigational bronchoscopy procedures he has performed at Allegiance. The total number of referrals to Allegiance that are attributable to Dr. Abdelkarim on an annual basis has increased from 0 in 2010 to 133 in 2015.



B. Physician Liaisons.

vi. <u>Health Screenings and Events</u>. Allegiance has participated in and/or sponsored public health screenings and community-wide events in Hillsdale County during the period referenced in Plaintiffs' Complaint. Each of the following programs were approved by Ms. Georgia Fojtasek, and their execution was primarily overseen by Mr. Anthony Gardner, Ms. Suzy Turpel, Ms. Karen Yacobucci and/or Mr. Eric Barnaby.

A. <u>Co-Branded Outreach</u>. Allegiance has participated with HCHC in co-branded community outreach. For example, in October 2010, a marketing letter was sent to physicians in Hillsdale County on behalf of HCHC and Allegiance, signed by Mr. Duke Anderson and Dr. Paul J. Corcoran. Dr. Corcoran is a board-certified vascular surgeon that has been on Allegiance's staff since 2008. The letter reminded the physicians of the partnership between Allegiance and HCHC ("[HCHC] and Allegiance Health have been working together to bring comprehensive vein care to your patients in Hillsdale County"), offered free vascular screenings to the recipient physician's patients, and advertised that Dr. Corcoran was extending his weekly office hours and

surgery availability at HCHC to better serve patients in Hillsdale County. Similarly, in November 2010, a marketing letter was sent to residents of Hillsdale County on behalf of HCHC and Allegiance, again signed by Mr. Anderson and Dr. Corcoran, promoting a free community presentation on vascular health and a certain vascular outpatient procedure. In addition, Allegiance purchased advertisements in the Hillsdale Community News for 3 weeks in late November-early December 2010 to promote the presentation and screening. That free vascular screening took place in Hillsdale on December 6, 2010.

B. <u>Other Community Outreach</u>. Allegiance has offered free healthcare screenings to the citizens of Hillsdale County. On December 1, 2012, Allegiance representatives attended the Hillsdale Women's Expo to promote vascular health.



(b) Subject to the objections to Interrogatory No. 2 noted above, Allegiance responds that, in some respects, Allegiance's marketing strategies in other counties have been comparable to those in Hillsdale County, but no two counties have been exposed to precisely the same marketing strategy. As to all of Allegiance's marketing strategies throughout its service area, Ms. Georgia Fojtasek has been responsible for approving those strategies, which have been principally implemented under the oversight of Mr. Anthony Gardner, Ms. Suzy Turpel, Ms. Karen Yacobucci, and/or Mr. Jerry Grannan.

As a general matter, Allegiance marketed in other counties within its total service area using a combination of traditional media, digital media, vertically positioned services, horizontally competitive services, and physician-targeted strategies. However, its marketing efforts were customized from time to time depending on the individual county. For instance, in or around May 2009, when Allegiance learned that Chelsea Hospital was promoting a newer, stronger MRI machine, Allegiance responded by purchasing advertisements for its Open MRI in the Chelsea Standard and on billboards located at the Chelsea exit on Interstate 94.

With respect to Allegiance's strategy to try to increase referrals, while Allegiance also seeks referrals for higher acuity cases from other independent community hospital systems, such as Oaklawn Hospital, no other community presents the same opportunity or accessibility for Allegiance as Hillsdale County and HCHC. In addition, some counties had community hospitals that are affiliated with larger health systems, such as Chelsea Hospital in Washtenaw County and Herrick/Bixby in Lenawee County, and Allegiance has concluded, in light of its prior experiences trying to increase referrals in those counties, that it was unlikely that those counties would provide as great an opportunity for referrals to Allegiance as Hillsdale represents.

Allegiance also notes that its efforts to compile a comprehensive summary of all of its marketing strategies is not yet completed, and that in the event Allegiance collects additional information that may be responsive to this interrogatory, it will supplement its answer, as appropriate.