

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

In the Matter of

Cabell Huntington Hospital, Inc.
a corporation;

and

Pallottine Health Services, Inc.
a corporation;

and

St. Mary’s Medical Center, Inc.
a corporation

Docket No. 9366

Public

**JOINT MOTION TO EXTEND WITHDRAWAL OF THE
MATTER FROM ADJUDICATION**

Complaint Counsel and Respondents Cabell Huntington Hospital, Inc., Pallottine Health Services, Inc., and St. Mary’s Medical Center, Inc. (collectively “Respondents”) in the above-captioned matter hereby jointly move the Commission pursuant to Commission Rules 3.21, 3.22, and 3.41(f) to extend withdrawal of this matter from adjudication and continue the current stay of proceedings until 14 days after the West Virginia Health Care Authority issues its written decision regarding Respondent Cabell Huntington Hospital, Inc.’s (“Cabell”) Application for Approval of its Cooperative Agreement, pursuant to W. Va. Code § 16-29B-28(e)(3). In support of this Motion, the parties jointly state as follows:

1. On March 16, 2016, the parties jointly moved the Commission to withdraw this matter from adjudication and stay case proceedings for 30 days in order to provide the Commission with the opportunity to consider the impact of new West Virginia legislation (SB 597) on the Commission's ability to order relief with respect to Cabell Huntington Hospital, Inc.'s acquisition of St. Mary's Medical Center, Inc. (the "Transaction"). As a condition of filing that motion, Respondents agreed not to consummate the Transaction for 30 days after the Commission issued its decision on the motion. The Commission granted the parties' request and ordered that this matter be withdrawn from adjudication until 11:59 pm on April 25, 2016.

2. On March 16, 2016, the West Virginia Health Care Authority ("WVHCA") granted Respondents' application for a Certificate of Need.

3. On March 22, 2016, pursuant to SB 597, the WVHCA sent to Cabell notice of the requirement that Cabell submit an application for approval of the cooperative agreement underlying Cabell's acquisition of St. Mary's.¹ Cabell submitted its application to the WVHCA on March 25, 2016.

4. SB 597 provides timelines for the WVHCA's review of Cabell's application. The WVHCA may issue a certificate of approval, deny Cabell's application, or order a public hearing within 30 days of receiving the completed application. W. Va. Code § 16-29B-28(e)(2). Any public hearing must be held no later than 45 days after the WVHCA receives the application. *Id.* § 16-29B-28(e)(4). Within 75 days of receiving Cabell's application, the WVHCA must issue its written decision. *Id.* § 16-29B-28(e)(3).²

¹ SB 597 provides for review and approval of "cooperative agreements" by the WVHCA. *See* W. Va. Code § 16-29B-28(a)(2).

² If the WVHCA requests additional information, it may take an additional 15 days following receipt of that information to approve or deny the application. W. Va. Code § 16-29B-28(e)(3).

5. The WVHCA accepted as complete Cabell's Application for Approval of a Cooperative Agreement on April 8, 2016. Accordingly, within approximately the next two months, the WVHCA is likely to determine whether to approve Cabell's application and provide a written decision pursuant to the procedures set forth in SB 597.

6. The parties respectfully submit that in light of the foregoing, the Commission should extend the current stay of Part 3 adjudicative proceedings until after the WVHCA issues its written decision pursuant to W. Va. Code § 16-29B-28(e)(3). As a condition of this Motion, Respondents agree not to consummate the Transaction while this matter is withdrawn from adjudication.

For the aforementioned reasons, Complaint Counsel and Respondents respectfully request that the Commission extend withdrawal of this matter from adjudication and continue the current stay of proceedings until 14 days after the WVHCA issues its written decision regarding Respondent Cabell Huntington Hospital, Inc.'s Application for Approval of its Cooperative Agreement, pursuant to W. Va. Code § 16-29B-28(e)(3), and Respondents agree not to consummate the Transaction for the same period of time; provided, however, that 120 days after the Commission issues an order granting this Motion: (a) Respondents may close their Transaction upon providing seven days' notice to Complaint Counsel and the Commission, and (b) the Commission may return this matter to litigation upon providing seven days' notice to Respondents.³

³ For sake of clarity, Respondents agree that they will not close the Transaction during the withdrawal period even if the other closing contingencies are satisfied. Should the Commission return this matter to litigation Respondents agree to provide four days' notice to the Commission before they close the Transaction. The four days will be calculated as set forth in the parties' October 6, 2015, Timing Agreement.

Dated: April 18, 2016

Respectfully submitted,

/s/ Alexis J. Gilman

Alexis J. Gilman
Tara Reinhart
Mark D. Seidman
Michelle M. Yost
Elizabeth C. Arens
Jeanine Balbach
Thomas H. Brock
Stephanie R. Cummings
Melissa Davenport
Svetlana S. Gans
Nathaniel Hopkin
Elisa Kantor
David J. Laing
Matthew McDonald
Jeanne Nichols
Michael Perry
Amy Posner
Samuel I. Sheinberg
Steve Vieux

Complaint Counsel
600 Pennsylvania Avenue NW
Washington, DC 20580
Telephone: (202) 326-2579
Facsimile: (202) 326-2655

Counsel Supporting the Complaint

/s/ Kenneth W. Field

Kenneth W. Field
Geoffrey S. Irwin
Kerri L. Ruttenberg
Michael S. Fried
Louis K. Fisher
Tara Lynn R. Zurawski
Debra R. Belott
Douglas E. Litvack
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
Email: gsirwin@jonesday.com
Email: kruttenberg@jonesday.com

Email: kfield@jonesday.com
Email: msfried@jonesday.com
Email: lkfisher@jonesday.com
Email: tzurawski@jonesday.com
Email: dbelott@jonesday.com
Email: dlitvack@jonesday.com
Telephone: (202) 879-3939
Facsimile: (202) 626-1700

Aaron M. Healey
Sergio A. Tostado
Benjamin B. Menker
JONES DAY
325 John H. McConnell Blvd., Suite 600
Columbus, OH 43215-2673
Email: ahealey@jonesday.com
Email: stostado@jonesday.com
Email: bmenker@jonesday.com
Telephone: (614) 469-3939
Facsimile: (614) 461-4198

Lindsey Lonergan
Jessica C. Casey
Mary Ellen Robinson
JONES DAY
1420 Peachtree Street, N.E., Suite 800
Atlanta, GA 30309-3053
Email: llonergan@jonesday.com
Email: jcasey@jonesday.com
Email: merobinson@jonesday.com
Telephone: (404) 521.3939
Facsimile: (404) 581-8330

Devin A. Winklosky
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219-2514
Email: dwinklosky@jonesday.com
Telephone: (412) 391-3939
Facsimile: (412) 394-7959

Thomas L. Craig
James R. Bailes
BAILES, CRAIG & YON, PLLC
Post Office Box 1926
Huntington, WV 25720-1926
Email: tlc@bcyon.com

Email: jrb@beyond.com
Telephone: (304) 697-4700
Facsimile: (304) 697-4714

*Counsel for Respondent
Cabell Huntington Hospital, Inc.*

/s/ David W. Simon

David W. Simon
Brett H. Ludwig
H. Holden Brooks
Philip C. Babler
Timothy J. Patterson
Max S. Meckstroth
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202-5306
Tel. 414.271.2400
Fax. 414.297.4900
Email dsimon@foley.com
Email bludwig@foley.com
Email hbrooks@foley.com
Email pcbabler@foley.com
Email tjpatterson@foley.com
Email mmeckstroth@foley.com

Benjamin R. Dryden (DC Bar No. 983757)
Foley & Lardner LLP
3000 K Street, N.W.
Washington, DC 20007-5109
Tel. 202.945.6128
Fax 202.672.5399
Email bdryden@foley.com
Email mcarroll@foley.com

Emily R. Brailey (CA Bar No. 300317)
Foley & Lardner LLP
555 South Flower Street
Los Angeles, CA 90071-2411
Tel. 213.972.4500
Fax 213.486.0065
Email ebrailey@foley.com

*Counsel for Respondents
Pallottine Health Services, Inc.
and St. Mary's Medical Center, Inc.*

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Maureen K. Ohlhausen
 Terrell McSweeney

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Cabell Huntington Hospital, Inc.
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Docket No. 9366

**[PROPOSED] ORDER GRANTING JOINT MOTION
TO EXTEND WITHDRAWAL OF THE MATTER FROM ADJUDICATION**

On April 18, 2016, the parties filed a joint motion to extend withdrawal of this matter from adjudication and continue the current stay of proceedings until 14 days after the West Virginia Health Care Authority issues its written decision regarding Respondent Cabell Huntington Hospital, Inc.'s Application for Approval of its Cooperative Agreement, pursuant to W. Va. Code § 16-29B-28(e)(3) on the condition that Respondent Cabell Huntington Hospital, Inc. agrees not to consummate its proposed acquisition of St. Mary's Medical Center, Inc. (the "Transaction") for the same period of time; provided, however, that 120 days after the Commission issues an order granting this Motion, (a) Respondents may close the Transaction upon providing seven days' notice to Complaint Counsel and the Commission, and (b) the

Commission may return this matter to litigation upon providing seven days' notice to Respondents.

The joint motion is GRANTED. This matter remains withdrawn from adjudication until 14 days after the West Virginia Health Care Authority issues its written decision regarding Respondent Cabell Huntington Hospital, Inc.'s Application for Approval of its Cooperative Agreement; provided, however, that 120 days after the date of this Order: (a) Respondents may close the Transaction upon providing seven days' notice to Complaint Counsel and the Commission, and (b) the Commission may return this matter to litigation upon providing seven days' notice to Respondents. All proceedings before the Administrative Law Judge are hereby stayed.

By the Commission:

Donald S. Clark
Secretary

SEAL
ISSUED:

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2016, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

Kenneth W. Field
Geoffrey S. Irwin
Kerri L. Ruttenberg
Michael S. Fried
Louis K. Fisher
Tara Lynn R. Zurawski
Debra R. Belott
Douglas E. Litvack
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
Email: gsirwin@jonesday.com
Email: kruttenberg@jonesday.com
Email: kfield@jonesday.com
Email: msfried@jonesday.com
Email: lkfisher@jonesday.com
Email: tzurawski@jonesday.com
Email: dbelott@jonesday.com
Email: dlitvack@jonesday.com
Telephone: (202) 879-3939
Facsimile: (202) 626-1700

Thomas Craig
James Bailes
Bailes, Craig & Yon, PLLC
401 10th Street, Suite 500

Huntington, WV 25701
tlc@bcyon.com
jrb@bcyon.com
(304) 697-4700

*Counsel for Respondent Cabell
Huntington Hospital, Inc.*

David W. Simon
Brett H. Ludwig
H. Holden Brooks
FOLEY & LARDNER LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202-5306
Phone: 414-271-2400
Facsimile: 414-297-4900
Email: dsimon@foley.com
Email: bludwig@foley.com
Email: hbrooks@foley.com

Benjamin R. Dryden
FOLEY & LARDNER LLP
3000 K Street, N.W.
Washington, DC 20007-5109
Phone: 202-945-6128
Facsimile: 202-672-5399
Email: bdryden@foley.com

*Counsel for Respondent Pallottine
Health Services, Inc. and St. Mary's
Medical Center, Inc.*

Dated: April 18, 2016

/s/ Jeanine Balbach
Jeanine Balbach, Esq.
On behalf of Complaint Counsel

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: April 18, 2016

By: s/ Jeanine Balbach