

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch

In the Matter of)
Carilion Clinic)
a corporation)

Docket No. 9338

FEDERAL TRADE COMMISSION
2010 JAN 19 PM 3:20
DOCUMENT PROCESSING

**APPLICATION FOR APPROVAL OF DIVESTITURE OF THE CENTER FOR
SURGICAL EXCELLENCE**

I. INTRODUCTION

Pursuant to Section 2.41(f) of the Federal Trade Commission (“FTC”) Rules of Practice and Procedure and Paragraph II of the Decision and Order issued December 1, 2009 by the Commission in this matter, Respondent Carilion Clinic (“Carilion Clinic” or “Carilion”) respectfully submits this application for approval of divestiture of the Center for Surgical Excellence (“CSE”) in connection with the matter entitled In the Matter of Carilion Clinic, F.T.C. Docket No. 9338.

This matter arose out of Carilion’s acquisition of the Center for Advanced Imaging and CSE, on or about August 28, 2008. On September 24, 2009, Carilion Clinic executed an Agreement Containing Consent Order that included an Order to Maintain Assets and a Decision and Order, to settle the FTC’s Complaint alleging that Carilion’s acquisition of CSE violated Section 7 of the Clayton Act. On October 6, 2009, the Commission accepted the Agreement

Containing Consent Order, the Order to Maintain Assets and the Decision and Order for public comment. After the close of the public comment period, the Commission issued the Decision and Order on December 1, 2009.

In this application, Carilion seeks approval for the proposed divestiture of CSE to Fairlawn Surgery Center, LLC, ("Fairlawn") which is comprised of certain current shareholders of Physicians Care of Virginia ("PCV") who are assigned to the Valley Nephrology division of PCV. The specific terms of the proposed divestiture are described in the attached Definitive Agreement (Confidential Exhibit A). This application describes how the proposed divestiture will satisfy the terms of the Decision and Order.

II. Request for Confidential Treatment

Because this Application and Confidential Exhibits contain confidential and competitively sensitive business information relating to the divestiture of CSE, the disclosure of which may harm the ongoing competitiveness of CSE and prejudice Carilion Clinic, Carilion has redacted confidential information from the public version of this petition. Pursuant to Section 2.41(f)(4) and 4.9(c) of the Commission's Rules of Practice and Procedure, Carilion requests that the confidential portion of this Application and the confidential material contained herein, including but not limited to the Definitive Agreement and Exhibits, be afforded confidential treatment under 5 U.S.C. §552 and Section 4.10(a)(2) of the Commission's Rules of Practice and Procedures. 16 C.F.R. § 4.10(a)(2). The confidential portions of this Application and the Exhibits are exempt from disclosure under the Federal Freedom of Information Act and the Hart Scott Rodino Act. 5 U.S.C. §552; 15 U.S.C. §18a(h).

II. CARILION MARKETED CSE FOR DIVESTITURE

On September 24, 2009, Carilion signed the Agreement Containing Consent Order. After that time, entities expressed interest in the acquisition of the CSE assets. Carilion provided those entities with business information related to CSE in a timely fashion, so that those parties could better assess their interest in CSE. In initial discussions with some of those entities, we understand that the FTC staff indicated that the potential buyer would be expected to develop the CSE assets into a multi-use ambulatory surgery center.

During the divestiture process and negotiations with potential acquirers, Carilion has updated the FTC staff on progress of the negotiations and as to the identity of prospective acquirers. In addition to the required compliance reports that Carilion timely has filed, Carilion has communicated information to the FTC staff. Similarly, Carilion has encouraged the potential buyers to communicate with the FTC staff.

This divestiture application proffers one of those parties, Fairlawn, as the proposed acquirer for CSE. As described in more detail below, Fairlawn has the financial, professional and operational resources to be a strong and effective competitor in ambulatory surgery services in the Roanoke area.¹ Approval of Fairlawn as the buyer of CSE will therefore meet the purpose and objectives of the Decision and Order and be consistent with its terms.

On November 16, 2009 the Letter of Intent between Valley Nephrology Associates and Carilion was executed by both parties. Because the Letter of Intent included a relatively detailed term sheet, Carilion was able to quickly convert that term sheet into a draft Definitive Agreement, which Carilion provided to Valley Nephrology for its review and was able to receive comments on that Definitive Agreement by December 14, 2009. Carilion apprised the FTC staff of the

¹ The Roanoke Area is defined by the Paragraph I, CC of the Decision and Order.

terms and conditions of the proposed transaction. The parties worked through the final negotiations, and signed a final Definitive Agreement on January 15, 2010.

III. FAIRLAWN SURGERY CENTER, LLC IS A WELL-QUALIFIED PURCHASER AND WILL BE A VIABLE COMPETITOR FOR THE PROVISION OF SURGICAL SERVICES IN ROANOKE

A. Fairlawn Surgery Center, LLC

As noted above, certain current shareholders of PCV, who are assigned to the Valley Nephrology division of PCV, are forming a new LLC to purchase the assets of CSE. This new entity will be

Fairlawn Surgery Center, LLC
2602 Franklin Road, SW
P.O. Box 2281
Roanoke, Virginia 24009
(540) 344-1400

B. Fairlawn Surgery Center, LLC's Members

Fairlawn is a member-managed Virginia limited liability company. Its membership consists of nine members, eight of whom are licensed physicians who have a combined total of 125 years of medical practice in Roanoke. Fairlawn's members include the following persons:

- Shahram Ahmadzadeh, MD
- Fred Jackson Ballenger, MD, FACP
- James S. Cain, MD, FACP
- Clifford P. Culpepper, MD
- Edgar R. Escasinas, MD
- Ryan D. Evans, MD
- Matt Mathew, MD, FACP
- Fletcher G. Matthews, MD
- R. Devereux Jarratt, Member-Manager

C. Fairlawn's Members have Substantial Experience Owning and Operating Health Care Entities

Currently, all of Fairlawn's members are shareholders in PCV. PCV, founded in 1996, is

a Roanoke based multi-specialty group practice, which provides a full spectrum of health care services to Roanoke area residents via its various practice divisions, including family medicine, cardiology, and nephrology, among others. The eight physician-members of Fairlawn are licensed nephrologists who practice in PCV's nephrology division, Valley Nephrology Associates ("VNA").

R. Devereux Jarratt, who also is a member, manages Fairlawn. Mr. Jarratt has vast experience in the management and administration of successful health care entities. In addition to serving as the manager of Fairlawn, Mr. Jarratt has served as the Chief Executive Officer of PCV since its establishment in 1996, and he is the Executive Vice President of VNA. In his capacity as CEO of PCV, he oversees all of the administrative and management operations of all PCV practice divisions. Mr. Jarratt is a member of the Roanoke Valley Medical Group Managers Association, State of Virginia Medical Group Managers Association, and Renal Physicians Association, and he serves as the Vice Chairman of the Renal Physicians Political Action Committee. Mr. Jarratt also has substantial experience in the financial services industry, ultimately serving as Senior Vice President in various divisions of First Union National Bank (now Wachovia), and its predecessor banking institutions, in Roanoke for twenty-two years prior to his current affiliation with PCV as a shareholder and CEO.

During his fourteen-year tenure as CEO of PCV, Mr. Jarratt has developed close professional relationships with many physicians and health care organizations in Roanoke and the surrounding area, which provides Fairlawn with an established community network of physicians and providers who may utilize CSE, under Fairlawn's ownership, for the provision of outpatient surgical services in Roanoke. Because of these longstanding relationships, Fairlawn

will serve as a more viable competitor in Roanoke for the provision of outpatient surgical services than any outside purchaser who would require substantial time to develop relationships with Roanoke area physicians and providers.

Further, Fairlawn is currently in negotiations with a leading, national ambulatory surgery center management company, which will oversee the day-to-day operations of CSE by providing facility, personnel, and promotional management services and billing services.

D. The Physician-Members of Fairlawn are Experienced Practitioners with a Strong Commitment to the Roanoke Area

Fairlawn's physician-members have a combined total of 125 years of medical practice in Roanoke, and all but one of the physician-members have been practicing in Roanoke for at least ten years. In addition, by serving as professors in regional medical schools and members of the medical staffs at Roanoke area hospitals, acting as medical directors of area medical facilities, and participating in Roanoke and Virginia medical societies, Fairlawn's physician-members are actively involved in the local medical community and have strong ties to the Roanoke community as a whole. These relationships make it likely that physicians will be willing to use and refer patients to Fairlawn. A brief description of each physician-member's medical experience is provided below.

1. Fred J. Ballenger, MD, FACP

Dr. Ballenger is the President of PCV and a board certified nephrologist who practices in the VNA division of PCV. He has been practicing nephrology in the Roanoke area for thirty years, and since 1996, he has served as the medical director of several dialysis centers in Roanoke and the greater southwest Virginia region, including the North Roanoke Artificial Kidney Center, Wythe Dialysis Center, Southwest Virginia

Dialysis Center, and Franklin County Dialysis Center. Dr. Ballenger also serves as a Clinical Associate Professor of Medicine at the University of Virginia/Roanoke-Salem Program, Jefferson College of Health Sciences, and Via Osteopathic School of Medicine at Virginia Polytechnic and State University. He is a member of several professional organizations, including the Medical Society of Virginia, Roanoke Valley Academy of Medicine, and the Renal Physicians Association.

2. Clifford P. Culpepper, MD

Dr. Culpepper is a board certified nephrologist who practices in the VNA division of PCV. He has been practicing nephrology in the Roanoke area for twenty-eight years. He is a member of the Roanoke Valley Academy of Medicine, American Society of Nephrology, American College of Physicians, American Society for Artificial Internal Organs, and American Society for Apheresis.

3. Matt Mathew, MD, FACP

Dr. Mathew is a board certified nephrologist. He has been practicing nephrology in Roanoke for seventeen years as a member of the VNA division of PCV. In addition, Dr. Mathew currently serves as a Clinical Assistant Professor of Internal Medicine in the University of Virginia School of Medicine's Roanoke program. Dr. Mathew is a member of several professional organizations, including the Medical Society of Virginia, American Medical Association, National Academy of Medical Sciences in Nephrology, American College of Physicians, International Society of Nephrology, and National Kidney Foundation.

4. James S. Cain, MD, FACP

Dr. Cain is a board certified nephrologist who has been practicing in Roanoke and the southwest Virginia region for the past fifteen years. He currently serves as Clinical Assistant Professor of Internal Medicine at the Virginia College of Osteopathic Medicine, located in Blacksburg, Virginia, and Clinical Associate Professor at the Jefferson College of Health Sciences in Roanoke. Dr. Cain is a member of the Roanoke Academy of Medicine, American Society of Nephrology, International Society of Nephrology, National Kidney Foundation, American Medical Association, American College of Physicians, and the American Society of Clinical Pathologists.

5. Shahram Ahmadzadeh, MD

Dr. Ahmadzadeh has practiced nephrology in Roanoke for a total of eleven years, and has practiced exclusively in Roanoke since 2005. He has served as a member of the teaching faculty of the University of Virginia Internal Medicine Program in Roanoke since 2005, and he is a member of the American Society of Nephrology.

6. Edgar R. Escasinas, MD

Dr. Escasinas is a board certified nephrologist and has been practicing in Roanoke, as a member of the VNA division of PCV, since 1999. Prior to joining VNA, Dr. Escasinas practiced nephrology in other southwest Virginia locations, including Wise County and Norton. He is a member of the Roanoke Valley Academy of Medicine, Wise County Medical Society, American Society of Nephrology, and the American Medical Association.

7. Fletcher G. Matthews, MD

Dr. Matthews has been practicing nephrology in Roanoke for the past ten years and is board certified. He is a member in the American Society of Nephrology, American Medical Association, and American College of Physicians.

8. Ryan D. Evans, MD

Dr. Evans is a board certified nephrologist who has been practicing in Roanoke since 2006. Since his arrival in Roanoke, he successfully opened and manages, the Roanoke Vascular Access Center, a VNA facility, which is an outpatient interventional nephrology center. Dr. Evans is also a member of several professional societies, including the American Society of Nephrology, National Kidney Foundation, Renal Physicians Association, American Society of Diagnostic and Interventional Nephrology and International Society of Peritoneal Dialysis.

E. Fairlawn Has the Financial Resources to Make CSE a Viable Competitor for the Provision of Surgical Services in Roanoke

Fairlawn has spent considerable effort in connection with its decision to enter into an agreement with Carilion to purchase the assets of CSE. We understand that through its extensive due diligence regarding CSE's business, Fairlawn has concluded that its purchase of CSE's assets presents an excellent business opportunity that will provide effective competition in Roanoke for the provision of surgical services. [REDACTED]

[REDACTED]

[REDACTED]

F. CSE, Under Fairlawn's Ownership, Will Be an Active and Aggressive Competitor in the Roanoke Region

Fairlawn, through its members, has the requisite experience—administrative, management, financial and clinical—to compete aggressively on a going-forward basis after its purchase of CSE from Carilion is complete and approved by the FTC. In addition, Fairlawn's members are widely respected in both Roanoke's business and medical communities as a result of their longstanding and active involvement in the Roanoke community. Further, Fairlawn has the financial resources to ensure that CSE will be a financially viable ambulatory surgery center that will be operational and able to provide surgical services to its patients well into the future.

G. Fairlawn's Marketing Plan for the Roanoke Area

It is our understanding that Fairlawn has provided a marketing plan separately to the FTC staff.

H. As a New Entity, Fairlawn is Not a Competitor in the Ambulatory Surgery Center Market

The physician members of Fairlawn do not currently own another ambulatory surgery center in Roanoke.

IV. THE ASSETS BEING DIVESTED ARE CONSISTENT WITH THE TERMS AND PURPOSES OF THE DECISION AND ORDER

As required by the Decision and Order, to the extent allowable by law, the transaction has been structured to divest all of the assets of CSE to Fairlawn. The transaction has been structured as an asset transaction, so that, upon closing, Fairlawn will receive all title and rights to the assets of CSE. As a result, the Definitive Agreement complies with the terms of the Decision and Order, as all transferable assets associated with CSE are being divested from CSE to Fairlawn. The terms of the Definitive Agreement provide Fairlawn with all of the technical

and physical capabilities necessary to allow Fairlawn to be an effective competitor in the Roanoke area.

A. Transfer of All of the Assets of CSE

As required by the Decision and Order, the transaction will transfer title to Fairlawn of all of the property and equipment currently at CSE. To the extent allowable by law, the transfer will include (but not be limited to) certain contracts, property and equipment, patient records, licenses, computer software and hardware, manuals, books of account, personnel records (to the extent applicable), physician records, operating data, trade names, trademarks, patents, copyrights, and other intellectual property owned by and used in connection with CSE.

B. Transfer of the COPN and Licenses

CSE currently has a COPN for a single operating room. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In addition, the licenses and permits, as well as the Medicare and Medicaid provider numbers, will transfer to Fairlawn (rather than continuing to operate under CSE). Medicare and Medicaid both require notice of the change in ownership after the close of the transaction. Thus, these notifications will not delay closing. Fairlawn will need to file a change of ownership for the medical facility license held by CSE. That notification must occur 60 days before closing. It is our understanding that Fairlawn will make that notification.

C. Fairlawn's Opportunity to Hire Employees Currently Working at CSE

As required by the Decision and Order, Carilion has made the employees who are

currently staffing CSE available to Fairlawn for hiring. In addition, to allow Fairlawn ample opportunity to negotiate with any current CSE staff, and/or to hire outside staff, Carilion and Fairlawn have entered into a limited transition services agreement. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Fairlawn

may extend an offer of employment to any of these workers at any time before or during the term of the transition services agreement. Carilion will allow Fairlawn to interview and inspect the personnel records of any such individual to the extent permissible under applicable laws. Carilion will not offer any incentives to any of these individuals to decline employment with Fairlawn and Carilion will not interfere with any negotiations by Fairlawn to employ any or these individuals. [REDACTED]

[REDACTED]

[REDACTED] A complete copy of the

transition services agreement is provided as Exhibit I of the Definitive Agreement. Those transition services employees will sign a confidentiality agreement preventing the use and disclosure of confidential business information from CSE/Fairlawn except as necessary to provide the services at the center.

D. SUBLEASE

At the request of Fairlawn, and after consultation with the FTC compliance staff, the agreement includes a sublease for the current CSE site. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A full copy of the sublease is provided as Exhibit D of the Definitive Agreement.

At the request of Fairlawn, Carilion has also entered into a second sublease with Fairlawn, to provide parking and storage in a property that is next door to CSE's physical facility. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The sublease for this property will help Fairlawn continue operations at the CSE site. A full copy of the sublease is provided as Exhibit J of the Definitive Agreement.

V. Conclusion

For the reasons set forth above, the proposed divestiture will meet the goal and purposes of the Decision and Order as it relates to the divestiture of the CSE assets. The proposed acquirer, Fairlawn, has the expertise, knowledge and vital local professional relationships to meet

PUBLIC VERSION

the goal of the Decision and Order to restore competition to the Roanoke area. Accordingly, Carilion hereby requests approval of the divestiture of CSE to Fairlawn.

Respectfully Submitted



Mark E. Lutes
Epstein Becker & Green, P.C.
1227 25th Street NW,
Washington, DC 20037
(202) 861-1824
Counsel for Carilion Clinic

Date: January 19, 2010

CONFIDENTIAL
EXHIBIT A

REDACTED