

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright
 Terrell McSweeney

In the Matter of

**H.I.G. Bayside Debt & LBO Fund II, L.P.,
a partnership;**

and

**Crestview Partners, L.P.,
a partnership.**

Docket No. C-4494

APPLICATION FOR APPROVAL OF DIVESTITURE

Pursuant to Section 2.41(f) of the Federal Trade Commission (the “FTC” or “Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2012), and Paragraphs II.A of the Commission’s Decision and Order in this matter dated October 31, 2014 (the “Decision and Order”),¹ Respondent H.I.G. Bayside Debt & LBO Fund II, L.P. (“H.I.G.”) hereby petitions the Commission to approve the divestiture of the Symbion Membership Interest in the Blue Springs Surgery Center² (“the Center”) to Dr. Mark W. Hollmann.

Subject to the Commission’s approval of this Application, the Symbion Membership Interest in the Center (“Divestiture Asset”) will be sold to Dr. Hollmann pursuant to the following agreements (the “Divestiture Agreements”):

¹ Capitalized terms used, but not otherwise defined here, have the meaning set forth in the Decision and Order, *In the Matter of H.I.G. Bayside Debt & LBO Fund II, L.P.*, et al. (Oct. 31, 2014).

² As defined in the Decision and Order, Blue Springs Surgery Center means Orange City Surgical, LLC, a Delaware limited liability company, and includes the Ambulatory Surgery Center located at 1053 Medical Center Dr., Orange City, FL 32763.

- (i) Membership Interest Purchase Agreement—attached as Exhibit 1, dated November 20, 2014, between SMBIMS Orange City Surgical, LLC (a H.I.G. subsidiary) and Dr. Mark W. Hollmann (purchaser); and
- (ii) Transition Services Agreement—attached as Exhibit 2, dated November 20, 2014 between SYMBIONARC Management Services, Inc., and Orange City Surgical, LLC.

I. Relevant Background

On October 23, 2014, Respondents executed an Agreement Containing Consent Orders that included the Decision and Order and the Order to Hold Separate and Maintain Assets (collectively, the “Consent Agreement”) to settle the Commission’s allegations that the Acquisition would Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and. On October 31, 2014, the Commission accepted the Consent Agreement for public comment, and on November 3, 2014 Respondents consummated the Acquisition. Symbion is now a wholly owned subsidiary of Surgery Center Holdings, Inc., a subsidiary of H.I.G.

II. The Divestiture Agreements Satisfy the Decision and Order Requirements

Paragraph II.A of the Decision and Order requires H.I.G. to divest the Divestiture Asset within 60-days after the date on which the final order issued. Pursuant to this requirement, H.I.G. seeks to divest the Divestiture Asset to Dr. Hollmann. On November 20, 2014, H.I.G. and Dr. Hollmann entered into the Divestiture Agreements—attached as Exhibits 1 and 2—which sells the Divestiture Asset to Dr. Hollmann and provides certain transition services to the Center. In addition, H.I.G. understands that all necessary parties have agreed to an Amended and Restated Operating Agreement that will govern the operations of the Center after the sale of the Divestiture Asset to Dr. Hollmann.

The Divestiture Agreements and Operating Agreement comply with the requirements in Paragraph II.A and B of the Decision and Order. In compliance with Paragraph II.C of the

Decision and Order, the proposed divestiture of the Divestiture Asset to Dr. Hollmann will ensure the continuation of the Blue Springs Surgery Center as an ongoing viable enterprise engaged in the provision of Outpatient Surgical Services independent of H.I.G. By creating an independent competitor, the proposed divestiture will remedy any potential lessening of competition resulting from the Acquisition, as alleged in the Commission's complaint.

For these reasons, the proposed divestiture of the Divestiture Asset to Dr. Hollmann satisfies the requirements in the Decision and Order. Respondent, therefore, seeks the Commission's approval of the proposed divestiture pursuant to Paragraph IIA of the Decision and Order.

III. Dr. Hollmann Is Well-Suited to Maintain the Divestiture Asset as an Independent Effective Competitor

The Divestiture Asset sale to Dr. Hollmann will assure the ongoing independent success and vitality of the Blue Springs Surgery Center. Dr. Hollmann is an experienced, board certified orthopedic surgeon, fellowship trained in sports medicine and knee reconstruction surgery, who has been inducted into the American Association of Hip and Knee Surgeons. Dr. Hollmann performs a considerable number of his outpatient surgical cases at the Center.

In addition to being a practicing physician at the Center, Dr. Hollmann is a successful entrepreneur. Dr. Hollmann has nearly 20 years of experience with outpatient surgery and ambulatory surgery centers, including leading the development and opening of another ambulatory surgery center in Deland, Florida. Notably, Dr. Hollmann was involved in opening the Blue Springs Surgery Center in 2007, and is a current five percent owner in the Center. In addition, he is involved in numerous other business ventures including a multi-physician practice group, a clinical research venture, and investments in commercial real estate (including as an owner of the medical office building in which Blue Springs Surgery Center is located). Dr.

Hollmann is also highly regarded by his fellow physician investors in the Center who elected him to represent them on the Governing Board of the Center. In fact, Dr. Hollmann currently serves as the Chairman of the Governing Board.

Pursuant to the Divestiture Agreements, Dr. Hollmann will purchase the Divestiture Asset [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

IV. The Proposed Divestiture Will Fully Restore Competition Achieving the Remedial Purposes of the Decision and Order

In its Complaint, the Commission alleged that the Acquisition harmed competition by combining the only two multi-specialty ambulatory surgery centers in the Orange City/Deltona, Florida Area. Post-Acquisition (absent a remedy), local healthcare consumers allegedly would only have two options for Outpatient Surgical Services; not three. The Commission believed that this elimination of competition would give the combined entity increased bargaining leverage with commercial health plans and result in higher reimbursement rates. The proposed divestiture eliminates this competition concern by restoring the pre-Acquisition status quo (i.e., three competitors).

Indeed, the proposed divestiture will result in no competitive harm. Dr. Hollmann does not own a competing ambulatory surgery center in the Orange City/Deltona Area. As an

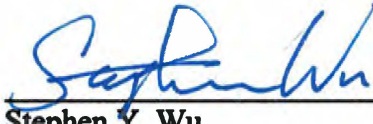
independent competitor, Blue Springs Surgery Center will effectively compete with the other providers for patients and inclusion into commercial health plans networks.

In sum, the proposed divestiture will remedy any potential anticompetitive effects that could result from the Acquisition. Importantly, the proposed divestiture to Dr. Hollmann will achieve the Commission's remedial purpose of ensuring the ongoing independent competitive vitality of the Blue Springs Surgery Center and remedying the lessening of competition as alleged in the Commission's Complaint.

V. Request for Confidential Treatment

This Application, including the enclosed Divestiture Agreements and related documents, contain certain confidential and competitively-sensitive business information relating to the sale of the Divestiture Asset. Disclosure of such confidential information may prejudice Respondents and Dr. Hollmann, and cause harm to the ongoing competitiveness of Blue Springs Surgery Center. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the FTC's Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(f)(4) and 4.9(c), H.I.G. has redacted such information from the public version of this Application, and requests confidential treatment for such information under Section 4.10(a)(2) of the FTC's Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2), and Sections 552(b)(4) and (b)(7) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4) and 552(b)(7). In the event that a determination is made that any material marked as confidential is not subject to confidential treatment, H.I.G. requests that the FTC provide immediate notice of that determination to the undersigned counsel, and an adequate opportunity to appeal such a decision.

Respectfully submitted,



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