

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLESTON AREA MEDICAL CENTER,
INC.,

Defendant.

Civil Action No. 2:06-0091

Filed:

FINAL JUDGMENT

WHEREAS, Plaintiff, the United States of America, filed its Complaint on February 6, 2006 alleging that Defendant, Charleston Area Medical Center, Inc. entered into an agreement with HCA Inc. in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Plaintiff and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against, or any admission by, any party regarding any such issue of fact or law;

AND WHEREAS, Defendant agrees to be bound by the provisions of this Final Judgment pending its approval by this Court;

AND WHEREAS, the essence of this Final Judgment is to enjoin the Defendant from entering into agreements that prevent actual or potential competitors from providing certain medical services;

AND WHEREAS, the United States requires Defendant to agree to certain procedures and prohibitions for the purpose of preventing the loss of competition alleged in the Complaint;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the Defendant and subject matter of this action. The Complaint states a claim upon which relief may be granted against Defendant under Section 1 of the Sherman Act, as amended (15 U.S.C. § 1).

II. DEFINITIONS

As used in this Final Judgment (whether or not such terms are capitalized herein):

A. "Agreement" means any kind of formal or informal agreement, arrangement, contract, understanding, memorandum of understanding, interim contract, contract appendix, addendum, attachment, amendment, waiver, or modification. Agreements that solely concern patient-treatment protocols or the transfer of patients as necessary to obtain patient care that is unavailable at the transferring health-care facility shall not be deemed an agreement within the scope of this Final Judgment.

B. "CAMC" means Defendant, Charleston Area Medical Center, Inc., a non-profit corporation organized and existing under the laws of the State of West Virginia with its headquarters in Charleston, West Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "CAMC-HCA MOU" means the document dated April 17, 2002 between CAMC and HCA entitled "Memorandum of Understanding."

D. "Cardiac Surgery" means surgery on the heart or major blood vessels of the heart (including both open and closed heart surgery) and therapeutic cardiac catheterization. This term includes any service, equipment, technology, or modality relating to the provision of cardiac surgery, but does not include any diagnostic cardiac service (including diagnostic cardiac catheterization). This term does not include any service, equipment, technology, or modality generally provided to hospital patients, such as laboratory, nursing, or social services.

E. "Certificate of Need" means certificate of need as recognized by the State of West Virginia (W. Va. Code § 16-2D-1 et seq.).

F. "HCA" means HCA Inc., a for-profit corporation organized and existing under the laws of the State of Delaware with its headquarters in Nashville, Tennessee, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

G. "Health-Care Facility" means any facility providing health-care services, including hospitals, hospital-owned or managed physician practices, ambulatory-care centers, clinics, urgent-care centers, free-standing emergency-care centers, and ambulatory-surgery centers.

H. "Right of First Offer" means an agreement in which a health-care facility grants CAMC the exclusive right, for a period not exceeding ninety days in duration, to make and negotiate an offer to provide cardiac-surgery services under a joint venture or other cooperative arrangement with such facility, provided that the health-care facility is not (a) obligated to accept

any offer from CAMC and (b) prohibited from providing cardiac-surgery services in the event it declines an offer from CAMC.

- I. The terms “and” and “or” have both conjunctive and disjunctive meanings.

III. APPLICABILITY

This Final Judgment applies to CAMC, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. PROHIBITED CONDUCT

A. CAMC is enjoined from enforcing all or any part of section 3 of the CAMC-HCA MOU, which section is entitled “Cooperative Development of Cardiac Surgery in the Southern West Virginia Region.” CAMC’s obligations under this Final Judgment supersede its obligations under section 3 of the CAMC-HCA MOU, and CAMC shall not object to the performance of its obligations under this Final Judgment on the grounds that those obligations would cause it to breach section 3 of the MOU.

B. Without prior notice to and prior written approval of the United States, which approval will not be withheld or delayed unreasonably, CAMC is enjoined from, in any manner, directly or indirectly, entering into, continuing, maintaining, or enforcing any agreement with a health-care facility that (1) allocates any cardiac-surgery service, market, territory, or customer; (2) prohibits or restricts such health-care facility from applying for a certificate of need to offer, maintain, or expand cardiac-surgery services; or (3) otherwise prohibits or restricts such health-care facility from providing cardiac surgery. Nothing in this Final Judgment, however, shall require CAMC to provide separate notice with respect to any agreement for which notice is given

to the United States pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a.

V. PERMITTED CONDUCT

Nothing in this Final Judgment shall prohibit CAMC from:

- A. Entering into, continuing, maintaining, or enforcing an agreement for a right of first offer;
- B. Agreeing to collaborate with a health-care facility to enable such facility to provide therapeutic cardiac catheterization services pursuant to a Demonstration Pilot Project, as authorized by and approved under the certificate of need standards of the State of West Virginia;
- C. Lobbying, petitioning, or otherwise seeking to influence the decisions or actions of any member or agency of the legislative or executive branches of the government of the State of West Virginia or the United States;
- D. Opposing the certificate of need application or rate filing of another health-care facility relating to the provision of cardiac-surgery services or formally challenging the decision to approve such a certificate of need or rate filing; or
- E. Making public or private statements about the provision of cardiac-surgery services.

VI. COMPLIANCE INSPECTION

- A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained or designated

thereby, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to Defendant, be permitted:

1. access during Defendant's office hours to inspect and copy, or at the United States' option, to require that Defendant provide copies of, all books, ledgers, accounts, records and documents in their possession, custody, or control relating to any matters contained in this Final Judgment; and
2. to interview, either informally or on the record, Defendant's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendant shall submit written reports and interrogatory responses, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by Plaintiff to any person other than an authorized representative of the executive branch of the United States except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time Defendant furnishes information or documents to the United States, Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give Defendant ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

VIII. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

IX. CORRESPONDENCE

CAMC shall provide notice and seek prior written approval as contemplated by this Final Judgment by sending correspondence to Chief, Litigation I, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, DC 20530, or such other address as the United States shall designate.

X. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest.

Dated:

Court approval subject to procedures
of Antitrust Procedures and Penalties
Act, 15 U.S.C. § 16

United States District Judge