

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

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

In the Matter of

CARILION CLINIC
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ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having heretofore issued its Complaint charging Carilion 6eh2.0000 419.0400 3.8TD(de Commissinicion”0 0.0060 TD(ing Ca)TjCa2.0000” or ”0 0.06)

1. Respondent Carilion Clinic is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 213 South Jefferson Street, Suite 720, Roanoke, Virginia.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Carilion” or “Respondent Carilion” means Carilion Clinic, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Carilion Clinic, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Decision and Order” means the:
 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission.
- D. “Orders” means the Decision and Order and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that from the date on which Respondent Carilion signs the Consent Agreement and until the CAI Effective Date:

- A. Respondent Carilion shall take such actions as are necessary to maintain the economic viability, marketability and competitiveness of the CAI Business to minimize any risk of loss of competitive potential for the CAI Business, and to prevent the destruction, removal,

wasting, deterioration, or impairment of the CAI Business, except for ordinary wear and tear. Respondent Carilion shall not sell, transfer, encumber or otherwise impair the CAI Business (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the economic viability, marketability or competitiveness of the CAI Business.

- B. Respondent Carilion shall retain all of Respondent Carilion's rights, title, and interest in the CAI Business.
- C. Respondent Carilion shall maintain the operations of the CAI Business in the regular and ordinary course of business and in accordance

- D. Respondent Carilion shall maintain a work force at the equivalent or larger size, and with equivalent or better training and expertise, to what has been associated with the CAI Business as of the date the Consent Agreement was signed by Respondent Carilion.
- E. Respondent Carilion shall provide all of the Designated CAI Carilion Employees with reasonable financial incentives to continue in their positions consistent with past practices and/or reasonable financial incentives as may be necessary to preserve the marketability, viability and competitiveness of the CAI Business pending divestiture. Such incentives shall include a continuation of all employee benefits offered by Respondent Carilion until the CAI Effective Date has occurred, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional reasonable financial incentives as may be necessary to prevent any diminution of the relevant CAI Business' competitiveness.
- F. Respondent Carilion shall not interfere with the hiring or employing of the Designated CAI Carilion Employees as described in Paragraph III of the proposed Decision and Order, and shall remove any impediments within the control of Respondent Carilion that may deter these employees from accepting employment with the CAI Acquirer including, but not limited to, any noncompete provisions of employment or other contracts with Respondent Carilion that would affect the ability or ince

- J. Respondent Carilion shall institute procedures and requirements to ensure that:
1. Respondent Carilion employees with access to Confidential Business Information Relating To the CAI Business do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets; and
 2. Respondent Carilion employees a

and maintenance of the assets, as necessary) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the CSE Business and shall use its best efforts to preserve the existing relationships with the following: suppliers, vendors,

- a. Assuring that Respondent Carilion expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Orders; and
 - b. Monitoring any agreements between Respondent Carilion and either the CAI Acquirer or the CSE Acquirer.
 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent Carilion's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request Related To Respondent Carilion's compliance with its obligations under the Orders. Respondent Carilion shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent Carilion's compliance with the Orders.
 4. The Monitor shall serve, without bond or other security, at the expense of Respondent Carilion on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Carilion, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
 5. Respondent Carilion shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, malfeasance, willful or wanton acts, or bad faith by the Monitor.
 6. The Monitor Agreement shall provide that within one (1) month from the date the Monitor is appointed pursuant to this paragraph, and every sixty (60) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Respondent Carilion of its obligations under the Orders.
 7. Respondent Carilion may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an

appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.

- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:
1. The Commission shall select the substitute Monitor, subject to the consent of Respondent Carilion, which consent shall not be unreasonably withheld. If Respondent Carilion has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent Carilion of the identity of any proposed Monitor, Respondent Carilion shall be deemed to have consented to the selection of the proposed Monitor.
 2. Not later than ten (10) days after appointment of the substitute Monitor, Respondent Carilion shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers nece

VIII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The latter of:
 - 1. the day after the CAI Effective Date;
 - 2. the day after the CSE Effective Date;
 - 3. the day the related Decision and Order becomes final; or
- C. The day after the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: October 6, 2009