

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman  
William E. Kovacic  
J. Thomas Rosch  
Edith Ramirez  
Julie Brill

In the Matter of

CARDINAL HEALTH, INC.  
a corporation.

Docket # 09-10136 Federal Trade Commission ("Commission")

acquisition of certain assets of Biotech by Cardinal Health, Inc. ("Cardinal Health"), and Cardinal Health having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Cardinal Health with violations of Section 7 of the Clayton Act.

days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Cardinal Health is a corporation organized, existing and doing business under and by virtue of the laws of Ohio with its office and principal place of business located at 7000 Cardinal Health Place, Dublin, OH 43017.
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, the following definitions shall apply:

- A. “Cardinal Health” means Cardinal Health, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Cardinal Health, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Biotech” means the following entities collectively and individually: Biotech Pharmacy, Inc., a New Mexico corporation, Biotech Pharmacy of Northern Arizona, LLC, an Arizona limited liability company; Biotech Nuclear, LLC, a Nevada limited liability company, Biotech Cyclotron LLC, a Nevada limited liability company, Southwest Cyclotron, LLC, a Nevada limited liability company, Biotech Cyclotron of New Mexico, LLC, a New Mexico limited liability company.

1. copyrights, patents, software; trademarks, trade dress, trade secrets, drawings, utility models, designs, design rights, techniques, inventions, practices, recipes, raw material specifications, process descriptions, quality control methods in process, methods and other confidential or proprietary technical, business, development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof;
2. rights to obtain and file for patents and copyrights and registrations thereof;
3. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing; and
4. the exclusive right to all intellectual property acquired by Cardinal Health from Biotech pursuant to the Acquisition and used by Biotech in the Nuclear Pharmacy business prior to the Acquisition, including, but not limited to, patents, licenses, risk analysis, certificates of analysis, goodwill, trade secrets, marketing information, trademarks, trade names, service marks, logos, and the modifications or improvements to such intellectual property.

*PROVIDED, HOWEVER*, that Intellectual Property shall not include intellectual property relating solely to the Cyclotron Assets.

- G. “Common Intellectual Property” means the intellectual property related to the Nuclear Pharmacies owned by Biotech prior to the Acquisition and acquired by Cardinal Health pursuant to the Acquisition, including but not limited to know-how, technology, data, technical information, protocols (including, but not limited to, operational manuals and standard operating procedures), and quality control information.
- H. “Biotech Nuclear Pharmacy” means any and all of the Nuclear Pharmacies owned and operated by Biotech as of July 30, 2009, and located at:
- 3940 S. Eastern Avenue, Las Vegas, Nevada 89119  
4030 Stockton Hill Road, Suite 8, Kingman, Arizona 86409  
116 W. Castellano, El Paso, Texas 79912  
4376 Alexander Boulevard, NE, Suite B, Albuquerque, New Mexico 87107
- I. “Branded Heart Perfusion Agent” means Cardiolite or Myoview.
- J. “Closing Date” means the Albuquerque Closing Date, the El Paso Closing Date, or the Las Vegas Closing Date.
- K. “Albuquerque Closing Date” means the date on which Cardinal Health (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey a Reconstituted Pharmacy located in Albuquerque, New Mexico to an Acquirer pursuant to this Order.

- L. “El Paso Closing Date” means the date on which Cardinal Health (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey a Reconstituted Pharmacy located in El Paso, Texas to an Acquirer pursuant to this Order.
- M. “Las Vegas Closing Date” means the date on which Cardinal Health (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey a Reconstituted Pharmacy located in Las Vegas, Nevada, to an Acquirer pursuant to this Order.
- N. “Customer” means any third party that, at any time between July 1, 2009 and the relevant Closing Date, purchased Radiopharmaceuticals from any of the F

- U. “Las Vegas Divestiture Agreement” means the agreement between Cardinal Health and the Acquirer of the Reconstituted Nuclear Pharmacy located in Las Vegas, Nevada.
- V. “Divestiture Trustee(s)” means any person or entity appointed pursuant to Paragraph VIII of this Order to act as a trustee in this matter.
- W. “Former Cardinal Health Nuclear Pharmacies” means the Nuclear Pharmacies owned and operated by Cardinal Health as of July 30, 2009, at the following locations:





unless Cardinal Health is otherwise required to terminate, amend, or waive such contracts, or portions thereof, pursuant to Paragraph IV of this Order.

- B. Cardinal Health shall, as part of the Divestiture Agreement for the Reconstituted Pharmacies in Las Vegas, NV and Albuquerque, NM, and at the Acquirer's option for those Reconstituted Pharmacies, enter into an agreement to supply F-18 fluorodeoxyglucose and other cyclotron-produced radioisotopes from Cardinal Health to the Acquirer for a period of one (1) year after the Closing Date on price terms similar to those in the contracts through which Biotech agreed to provide such radioisotopes to Cardinal Health prior to the Acquisition.

#### **IV.**

**IT IS FURTHER ORDERED** that:

- A. Cardinal Health shall, within five (5) days after each Closing Date, notify each relevant Customer of its right to terminate its Existing Customer Contract with Cardinal Health.
- B. Cardinal Health shall terminate the Existing Customer Contract within thirty (30) days of receiving a Customer's request to terminate. The Customer's right to terminate such Existing Customer Contract shall be without penalty or charge, and immediately upon request of the Customer, and shall continue for twenty-four (24) months from the relevant Closing Date. Such notification shall include notification of the existence of the relevant Reconstituted Pharmacy and be in the form of the notification attached as Exhibit C to this Order.

*PROVIDED, HOWEVER*, that, if after receiving such notification, the Existing Customer Contract is extended, renewed, or materially modified by mutual agreement between Cardinal Health and the Customer, including, but not limited to, modifications regarding the price or duration terms of such Existing Customer Contract, Cardinal Health shall not be required to terminate the Existing Customer Contract pursuant to this Paragraph;

*PROVIDED FURTHER HOWEVER*, that Cardinal Health shall include in any such extension, renewal, or material modification to such Existing Customer Contract a specific and prominent acknowledgment that if the Customer executes the extension, renewal, or material modification, Cardinal Health will not be required to terminate the Existing Customer Contract pursuant to this Paragraph.



**V.**

**IT IS FURTHER ORDERED** that:

- A. Each Divestiture Agreement, if approved by the Commission, shall be incorporated by reference into this Order and made a part hereof. Further, nothing in any Divestiture Agreement shall limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of an Acquirer or to reduce any obligations of Cardinal Health under a Divestiture Agreement. Cardinal Health shall comply with the terms of each Divestiture Agreement, and a breach by Cardinal Health of any term of a Divestiture Agreement shall constitute a violation of this Order. To the extent that any term of a Divestiture Agreement conflicts with a term of this Order such that Cardinal Health cannot fully comply with both, Cardinal Health shall comply with the term of this Order; and

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- b. cooperate with the relevant Acquirer in effecting transfer of the Designated Employee to the employ of the relevant Acquirer, if the Designated Employee accepts an offer of employment from the relevant Acquirer;
- c. eliminate any contractual provisions or other restrictions entered into or imposed by Cardinal Health (such as noncompetition agreements) that would otherwise prevent the Designated Employee from being employed by the relevant Acquirer;
- d. eliminate any confidentiality restrictions that would prevent the Designated Employee who accepts employment with the Acquirer from using or transferring to the relevant Acquirer any information relating to the operation of the relevant Reconstituted Pharmacy; and
- e. unless alternative arrangements are agreed upon with the relevant Acquirer, retain the obligation for the benefit of any Designated Employee who accepts employment with the relevant Acquirer, to pay all vested bonuses, vested pensions, and other vested benefits.

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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 Cardinal Health of its obligations under the Order.

7. Cardinal Health may require the Monitor and each of the Monitor's consu<sup>aMo</sup>





divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Cardinal Health, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Cardinal Health shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation 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 Divestiture Trustee.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
8. The Divestiture Trustee shall act in a fiduciary capacity for the benefit of the Commission.
9. The Divestiture Trustee shall report in writing to Cardinal Health and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
10. Cardinal Health may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
11. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and DivestTr

directions as may be necessary or appropriate to accomplish the obligations under Paragraphs II, III, IV, and VI of this Order.

- H. The Divestiture Trustee(s) appointed pursuant to Paragraph VIII of this Order may be the same Person appointed as the Monitor pursuant to Paragraph VII of this Order.

## **IX.**

**IT IS FURTHER ORDERED** that for a period of ten (10) years from the date this Order becomes final:

- A. Cardinal Health shall not, without providing advance written notice to the Commission, acquire, directly or indirectly, any assets divested pursuant to this Order. Said notification shall be given to the Secretary of the Federal Trade Commission.
- B. Cardinal Health shall not, without providing advance written notification to the Commission in the manner described in this Paragraph IX directly or indirectly, acquire:
1. any stock, share capital, equity, or other interest in any Person, corporate or non-corporate, that owns, operates, manages, or owns an interest in Nuclear Pharmacies in the Relevant Areas; or
  2. any assets used, at the time of the Acquisition, in the operation or business of Nuclear Pharmacies in the Relevant Areas.

Said notification shall be given to the Secretary of the Federal Trade Commission and shall include, at a minimum, the following information: (i) the name and address of the acquired entity or, in the case of an asset acquisition the name and address of the entity from which assets are being acquired; (ii) a description of the transaction, including the purchase price; and (iii) identification of the assets being acquired, including their physical location.

*PROVIDED, HOWEVER*, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 1801(a)(1) (or) 12.9600-0.0000 TD(, in



**X.**

**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after the date this Order is accepted for public comment, and every sixty (60) days thereafter until Cardinal Health has fully complied with Paragraphs II.A, II.B, II.C, IV.A and VI.A of this Order, Cardinal Health shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Cardinal Health shall submit at the same time a copy of its report concerning compliance with this Order to the Monitor or Divestiture Trustee, if any Divestiture Trustee has been appointed pursuant to this Order. Cardinal Health shall include in its report, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Cardinal Health shall include in its report copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.
- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Cardinal Health shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied, is complying, and will comply with this Order. Cardinal Health shall include in its compliance reports, among other things

**XII.**

**IT IS FURTHER ORDERED** that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Cardinal Health, Cardinal Health shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of Cardinal Health and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Cardinal Health related to compliance with this Order, which copying services shall be provided by Cardinal Health at its expense; and
- B. to interview officers, directors, or employees of Cardinal Health, who may have counsel present, regarding such matters.

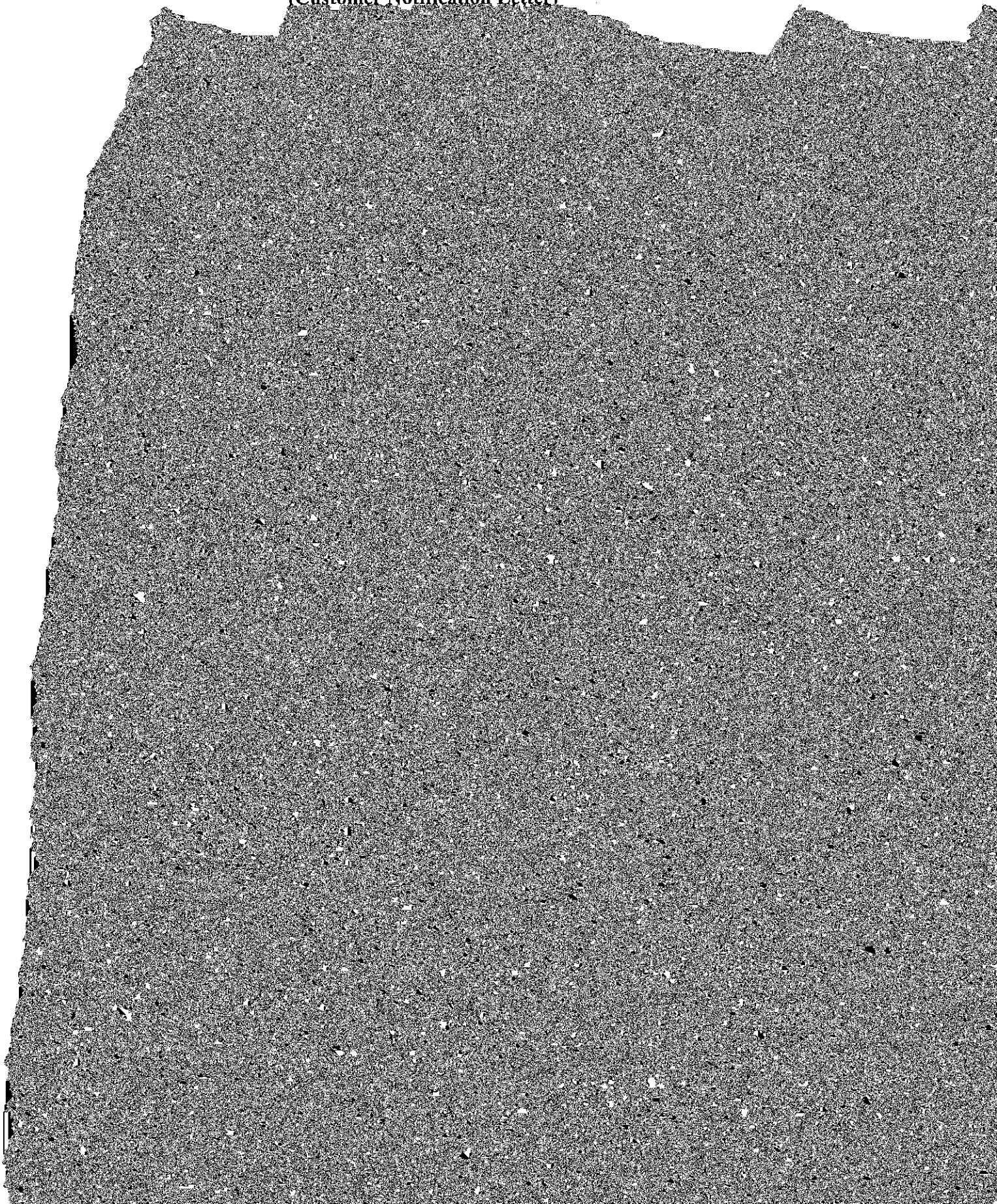
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**Confidential Exhibit A**

**[Incorporated By Reference, But Redacted From the Public Record Version]**



**EXHIBIT C**  
**(Customer Notification Letter)**





**EXHIBIT D**  
**(Monitor Agreement)**















**Confidential Exhibit D-1**

Unannotated B. Reference Not Deleted From the Public Record Version

