

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

Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act

**COMMISSIONERS:**      **Jon Leibowitz, Chairman**  
                                 **J. Thomas Rosch**  
                                 **Edith Ramirez**  
                                 **Julie Brill**

**In the Matter of**

**CARDINAL HEALTH, INC.**  
**a corporation.**

**Docket No. C-4339**

**DECISION AND ORDER**  
**[Redacted Public Version]**

The Federal Trade Commission (“Commission”), having initiated an investigation of the 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 propose

as amended, 15 U.S.C. § 45; and

Cardinal Health, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Cardinal Health of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Cardinal Health that the law has been violated as

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comments received from an interested person pursuant to Section 2.34 of its Rules, 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:



- 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 Former Cardinal Nuclear Pharmacies or the Biotech Nuclear Pharmacies located in Las Vegas, Nevada, El Paso, Texas, and Albuquerque, New Mexico acquired by Cardinal Health in the Acquisition.
- O. “Customer Contract” means any contract between Cardinal Health and any Customer for the preparation, dispensing and distribution of Radiopharmaceuticals, including, but not limited to, contracts with the Customers identified in Confidential Exhibit A to this Order.

*PROVIDED, HOWEVER,* Customer Contract shall not include any contrac

- 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:

61 Spectrum Boulevard, Las Vegas, Nevada 89119;  
 1020 Tijeras N.E., Suite 1, Albuquerque, New Mexico 87107;  
 1810 Murchison Road, #205, El Paso, Texas 79902.

- X. “Generic Heart Perfusion Agent” means Sestamibi.
- Y. “High-energy Radiopharmaceuticals” means any positron emission tomography (PET) Radiopharmaceutical.
- Z. “Low-energy Radiopharmaceuticals” means any non-PET Radiopharmaceutical, which is or can be used in diagnostic nuclear medicine studies, diagnostic nuclear medicine imaging or therapeutic nuclear medicine treatments.
- AA. “Monitor” means the person appointed pursuant to Paragraph VII of this Order.
- BB. “Nuclear Pharmacy” means a pharmacy dedicated to the preparation, dispensing, and distribution of Radiopharmaceuticals.

*PROVIDED, HOWEVER*, “Nuclear Pharmacy” shall not include Cyclotron Assets.

- CC. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiaries, divisions, groups or affiliates thereof.
- DD. “Radiopharmaceutical” means a drug containing a radioactive isotope which can be used in diagnostic nuclear medicine studies, diagnostic nuclear medicine imaging, therapeutic nuclear medicine treatments, or diagnostic molecular imaging.
- EE. “Reconstituted Pharmacies” means the Former Cardinal Health Nuclear Pharmacies as reconstituted pursuant to Paragraph II.i to Parag

HH. “Third Party Consents” means all consents from any person other than Cardinal Health,



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



**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 Hea

- 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.
- B. Cardinal Health shall not, for a period of two (2) years following each relevant Closing Date, directly or indirectly, solicit, induce, or attempt to solicit or induce any Person employed by the relevant Acquirer at the relevant Reconstituted Pharmacy to terminate his or her employment relationship with such Acquirer, unless that employment relationship has already been terminated by such Acquirer;

*PROVIDED, HOWEVER,* that Cardinal Health may make general advertisements for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the relevant Acquirer's employees;

*PROVIDED FURTHER, HOWEVER,* Cardinal Health may hire Designated Employees who apply for employment with Cardinal Health as long as such employees were not solicited by Cardinal Health in violation of this Paragraph.

## **VII.**

**IT IS FURTHER ORDERED** that:

- A. Katherine L. Seifert of Seifert and Associates, Inc. shall serve as the Monitor pursuant to the agreement executed by the Monitor and Cardinal Health and attached as Exhibits D ("Monitor Agreement") and Confidential Exhibit D-1 (Monitor compensation). The Monitor is appointed to assure that Cardinal Health expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.
- B. The Monitor Agreement shall require that, no later than one (1) day after this Order is accepted for public comment, Cardinal Health transfers to the Monitor all rights, powers,





## VIII.

**IT IS FURTHER ORDERED** that:

- A. If Cardinal Health has not fully complied with the obligations as required by Paragraphs II.A, II.B and II.C of this Order, the Commission may appoint a Divestiture Trustee to reconstitute the Former Cardinal Health Nuclear Pharmacies and divest the Reconstituted Pharmacies and enter into other agreements, assignments, and licenses, in a manner that satisfies the requirements of this Order.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Cardinal Health shall consent to the appointment of a Divestiture Trustee in such action to effectuate the divestitures and other obligations as described in Paragraphs II.A, II.B and II.C. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VIII shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Cardinal Health to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Cardinal Health, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Cardinal Health has not opposed, in writing, including the

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to reconstitute the Former Cardinal Health Nuclear Pharmacies, and to divest the Reconstituted Pharmacies and enter into all agreements, licenses and assignments as described in Paragraphs II, III, and VI of this Order, absolutely and in good faith, at no minimum price, to one or more acquirers that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period or periods may be extended by the Commission; *PROVIDED, HOWEVER*, the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Cardinal Health shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Cardinal Health shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Cardinal Health shall extend the time for divestiture under this Paragraph VIII in an amount equal to the delay, as determined by the Commission.
4. The Divestiture Trustee shall have the right to

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





**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

## **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

**Confidential Exhibit A**

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

**Confidential Exhibit B**

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