

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

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In the Matter of)	
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H.I.G. Bayside Debt & LBO Fund II, L.P.,)	
a partnership,)	
)	Docket No. C-4494
and)	B ()Tj 2nwn9 0 Td () h -0.0 33 0
)	a partnership.

ORDER TO HOLD SEPARATE AND

The Federal Trade Commission (“Commission”) is reviewing the proposed acquisition by Surgery Center Holdings, L.P. (“Surgery Center”) of Bayside Debt & LBO Fund II, L.P. (“H.I.G.”), of Surgery Center, a subsidiary of Crestview Partners, L.P. (“Crestview”) (“Respondents,” and Respondents having been furnished with a copy of Complaint that the Bureau of Competition proposed for its consideration and which, if issued by the Commission, would allege with violations of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended.

Respondents, their attorneys, and counsel for Surgery Center have executed an Agreement Containing Consent Orders (“ACCO”) in which they made an admission by Respondents of all the jurisdictional facts of the Complaint, a statement that the signing of said ACCO is for legal purposes only and does not constitute an admission by Respondents that they violated as alleged in such Complaint, or that the facts and circumstances, other than jurisdictional facts, are true, and waives all rights under the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order on the public record for a period of thirty (30) 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 Order to Hold Separate and Maintain Assets (“Hold Separate Order”):

1. Respondent H.I.G. Bayside Debt & LBO Fund II, L.P., is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 1450 Brickell Avenue, 31st Floor, Miami, Florida 33131. Surgery Center Holdings, Inc., is a subsidiary of Respondent H.I.G. Bayside Debt & LBO Fund II, LP.
2. Respondent Crestview Partners, L.P., is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 667 Madison Avenue, 10th Floor, New York, New York 10065. Symbion Holdings Corporation, is a subsidiary of Crestview Partners, L.P.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Hold Separate Order, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

- A. “Acquisition Date” means the date the Acquisition is completed.
- B. “Decision and Order” means:
 1. the Proposed Decision and Order contained in the Consent Agreement in this matter until issuance and service of a final Decision and Order by the Commission; and
 2. the Final Decision and Order issued by the Commission following issuance and service of a final Decision and Order by the Commission.

- C. “Hold Separate Business” means the ASC Business of the Blue Springs Surgery Center.
- D. “Hold Separate Employees” means all full-time employees, part-time, employees, contract employees, independent contractors, and agents of Respondents whose duties, at any time during the ninety (90) days preceding the Acquisition Date or any time after the Acquisition Date related or relates primarily to the Hold Separate Business, a complete list of whom has been submitted to and approved by the Hold Separate Monitor, in consultation with the Commission staff, no later than three (3) days after the Acquisition Date; Hold Separate Employees do not include Support Services Employees.
- E. “Hold Separate Order” means this Order to Hold Separate and Maintain Assets.
- F. “Hold Separate Period” means the period during which the Hold Separate Order is in effect, which shall begin on the date the Agreement Containing Consent Orders is executed by Respondents and terminate pursuant to Paragraph X. of this Hold Separate Order.
- G. “Hold Separate Monitor” means the Person appointed pursuant to Paragraph III. of this Hold Separate Order.
- H. “Key Employee” means each employee listed on Confidential Appendix B.
- I. “Manager” means the Person appointed pursuant to Paragraph IV. of this Hold Separate Order.
- J. “Orders” means the Decision and Order and this Hold Separate Order.
- K. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other entity or governmental body.
- L. “Support Services” means assistance with respect to the management of the, Blue Springs Surgery Center and the ASC Business of the Blue Springs Surgery Center, including, but not limited to, (i) finance and accounting services; (ii) legal and risk management services; (iii) clinical consulting support; (iv) compliance support; and (v) information technology services.
- M. “Support Services Employees” means the persons listed on Confidential Appendix C of this Hold Separate Order; at any time during the Hold Separate Period, Respondents may, in consultation with the Hold Separate Monitor and Commission staff, modify the list of Support Services Employees on Confidential Appendix C.
- N. “Transition Services Employees” means the persons listed on Confidential Appendix A of this Hold Separate Order; at any time during the Hold Separate

- B. With respect to the SP Membership Interest, the Orange City Surgery Center, and the ASC Business of the Orange City Surgery Center,

divestiture required by the Decision and Order is achieved; (4) maintain and preserve the marketability of the SP Membership Interest; (5) assure that no Confidential Business Information is exchanged between Respondents and the Hold Separate Business, except in accordance with the provisions of this Hold Separate Order; and (6) prevent interim harm to competition pending the divestiture and other relief.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement, the Commission may appoint Richard Shermer as Hold Separate Monitor to monitor and supervise the management of the Hold Separate Business and the ASC Business of the Orange City Surgery Center and ensure that Respondents comply with their obligations under the Orders and the Divestiture Agreement.
- B. Respondents shall enter into an agreement with the Hold Separate Monitor that shall become effective no later than one (1) day after the Acquisition Date, and that, subject to the prior approval of the Commission, transfers to and confers upon the Hold Separate Monitor all rights, powers, and authority necessary to permit the Hold Separate Monitor to perform his/her duties and responsibilities pursuant to this Hold Separate Order in a manner consistent with the purposes of the Orders and in consultation with Commission staff:
 1. The Hold Separate Monitor shall have the responsibility for monitoring the organization of the Hold Separate Business; supervising the management of the Hold Separate Business by the Manager; maintaining the independence of the Hold Separate Business; and monitoring Respondents' compliance with their obligations pursuant to the Orders and the Divestiture Agreement.
 2. The Hold Separate Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. Subject to all applicable laws and regulations, the Hold Separate Monitor shall have full and complete access to all personnel, books, records, documents, and facilities of the Hold Separate Business, and to any other relevant information as the Hold Separate Monitor may reasonably request including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Hold Separate Business. The Hold Separate Monitor shall have access to relevant information of the Orange City Surgery Center as is necessary to monitor Respondents' compliance with their obligations pursuant to this Hold Separate Order. Respondents shall

meeting (or exceeding) their projected goals as are reflected in operating plans, budgets, projections, or any other regularly prepared financial statements.

C. If the Hold Separate Monitor ceases to act or fails to act diligently and consistently with the purposes of this Hold Separate Order, the Commission may appoint a substitute Hold Separate Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld, as follows:

1. If Respondents have not opposed in writing, including the reasons for opposing, the selection of a substitute Hold Separate Monitor, the Commission may appoint a substitute Hold Separate Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld, as follows:

such losses, claims, damages, liabilities, or expenses result from the Manager's gross negligence or willful misconduct.

- C. The Manager shall have the authority, in consultation with the Hold Separate Monitor, to staff the Hold Separate Business w

Transition Services Employee, to perform his or her duties and responsibilities consistent with the terms of the Orders.

- B. Respondents shall provide Transition Services pursuant to the Transition Services Agreement;
- C. Respondents shall continue to provide, or offer to provide, Support Services to the Hold Separate Business consistent with those that are being provided to the Hold Separate Business by Respondents as of the date the Consent Agreement is signed by Respondents:
 - 1. For Support Services that Respondents provided to the Hold Separate Business as of the date the Consent Agreement is signed by Respondents, Respondents may charge no more than the same price, if any, charged by Respondents for such Support Services as of the date the Consent Agreement is signed by Respondents;
 - 2. For any other Support Services that Respondents may provide to the Hold Separate Business, Respondents may charge no more than Respondents' Direct Cost for the same or similar Support Services;
 - 3. Notwithstanding the above, the Hold Separate Business shall have, at the option of the Manager and in consultation with the Hold Separate Monitor and Commission staff, the ability to acquire Support Services from third parties.
- D. Respondents shall not permit:
 - 1. Any of its employees, officers, agents, or directors, other than (i) the Manager, (ii) any Hold Separate Employees, (iii) Support Services Employees, and (iv) any Transition Services Employees, to be involved in the management of the Hold Separate Business, except to the extent otherwise provided in this Hold Separate Order.
 - 2. The Manager or any Hold Separate Employee to be involved, in any way, in the operations of Respondents' businesses other than the Hold Separate Business.
- E. Respondents shall provide the Hold Separate Business and the ASC Business of the Orange City Surgery Center with sufficient financial and other resources as are appropriate in the judgment of the Hold Separate Monitor, consistent with his or her obligations and responsibilities in this Hold Separate Order, to:
 - 1. Ensure that the Hold Separate Business and the ASC Business of the Orange City Surgery Center are managed at least as they are currently

managed (including efforts to generate new business) consistent with the practices of the Hold Separate Business and the ASC Business of the Orange City Surgery Center in place prior to the Acquisition Date and consistent with the Transition Services Agreement;

2. Perform all maintenance required by the Hold Separate Business and the ASC Business of the Orange City Surgery Center in the ordinary course of business and in accordance with past practice and with current plans;
3. Carry on such capital projects, physical plant improvements, and business plans as are already under way or planned for which all necessary regulatory and legal approvals have been obtained, including, but not limited to, existing or planned renovation, remodeling, and expansion projects; and
4. Maintain the viability, competitiveness, and marketability of the Hold Separate Business and the ASC Business of the Orange City Surgery Center.

Such financial resources to be provided to the Hold Separate Business and the ASC Business of the Orange City Surgery Center shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; provided, however, that, consistent with the purposes of the Decision and Order and in consultation with the Hold Separate Monitor, the Manager may reduce in scale or pace any capital or research and development project of the Hold Separate Business, or substitute any capital or research and development project of the Hold Separate Business for another of the same cost.

- F. Respondents shall provide each Hold Separate Employee and each Orange City Employee with reasonable financial incentives to continue in his or her position consistent with past practices and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Hold Separate Business and the ASC Business of the Orange City Surgery Center pending divestiture. Such incentives shall include a continuation of all employee benefits, including funding of regularly scheduled raises and bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation, and prevent any diminution, of the viability, marketability, and competitiveness of the Hold Separate Business

- G. Respondents shall provide each Key Employee sufficient incentives to accept employment with the Commission-approved Acquirer, its agent, the Blue Springs Surgery Center (or the Orange City Surgery Center, if the SP Membership Interest is required to be divested), or the Management Company after the Closing Date.
- H. No later than ten (10) days after the Acquisition Date, Respondents shall establish and implement procedures, subject to the approval of the Hold Separate Monitor, covering the management, maintenance, and independence of the Hold Separate Business and the monitoring of the operations of the ASC Business of the Orange City Surgery Center consistent with the provisions of this Hold Separate Order.
- I. No later than ten (10) days after the Acquisition Date, Respondents shall circulate to Hold Separate Employees, Orange City Employees, their supervisors, and to persons who are employed in Respondents' businesses that compete with the Hold Separate Business, and their supervisors, a notice of this Hold Separate Order and the Consent Agreement, in a form approved by the Hold Separate Monitor in consultation with Commission staff.

VI.

IT IS FURTHER ORDERED that:

- A. After the Acquisition Date, Respondents' employees, other than employees of the Hold Separate Business, Support Services Employees, and Transition Services Employees, shall not receive, or have access to, or use or continue to use any Confidential Business Information of the Hold Separate Business, except in the course of:
 - 1. Performing their obligations or as permitted under the Orders;
 - 2. Performing their obligations under the Divestiture Agreement;
 - 3. Negotiating agreements to divest assets pursuant to the Decision and

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securities laws, and personnel reports, and to comply with this Hold Separate Order or in complying with or as permitted by the Decision and Order. Any such information that is obtained pursuant to this subparagraph A.4. shall be used only for the purposes set forth in this Order.

For purposes of this Paragraph VI.A., Respondents' employees that provide Support Services or Transition Services or with responsibilities relating to the Hold Separate Business shall be deemed to be performing obligations under this Hold Separate Order.

B. If access to or disclosure of Confidential Business Information of the Hold Separate Business to Respondents' employees

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- B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Hold Separate Order.

X.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate at the earlier of:

- A. Three (3) business 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 day after expiration of the Transition Services Agreement.

By the Commission.

Donald S. Clark
Secretary

ISSUED: October 31, 2014
SEAL:

CONFIDENTIAL APPENDIX A

[Incorporated by Reference, but Redacted from the Public Record Version]

CONFIDENTIAL APPENDIX B

CONFIDENTIAL APPENDIX C

[Incorporated by Reference, but Redacted from the Public Record Version]