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U.S. District & Bankruptcy Courts
Southern District of West Virginia

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

UNITED STATES OF AMERICA, *Plaintiff,* v. BLUEFIELD REGIONAL MEDICAL CENTER, INC. and PRINCETON COMMUNITY HOSPITAL ASSOCIATION, INC., *Defendants.*	Civil Action No. 1:05-0234 Chief Judge David A. Faber

FINAL JUDGMENT

WHEREAS, Plaintiff, the United States of America, filed its Complaint on March 21, 2005 alleging that Defendants, Bluefield Regional Medical Center, Inc. and Princeton Community Hospital Association, Inc., entered into agreements in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Plaintiff and Defendants, 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, Defendants agree 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 Defendants from allocating markets for the provision of certain medical services and to restore lost competition as alleged in the Complaint;

AND WHEREAS, the United States requires Defendants to agree to certain procedures and prohibitions for the purpose of restoring 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 subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 1 of the Sherman Act, as amended (15 U.S.C. § 1).

II. DEFINITIONS

As used in this Final Judgment:

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 necessary to render patient care that is unavailable at BRMC or PCH shall not be deemed an agreement within the scope of this Final Judgment. An agreement solely for the merger of BRMC and PCH, the acquisition by one of the other, or bringing all or substantially all of the operations or assets of BRMC and PCH under

common control shall not be deemed an agreement within the scope of this Final Judgment if BRMC and PCH give at least thirty days advance notice of such merger, acquisition, or transaction to the United States.

B. "BRMC" means Defendant Bluefield Regional Medical Center, Inc. a non-profit corporation organized and existing under the laws of the State of West Virginia with its headquarters in Bluefield, 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. "Cancer and Open-Heart Agreements" means (1) the contract dated January 30, 2003 between BRMC and PCH concerning cancer services and all amendments and other agreements ancillary to that contract and (2) the contract dated January 30, 2003 among BRMC, PCH, and Charleston Area Medical Center, Inc. concerning cardiac surgery and all amendments and other agreements ancillary to that contract.

D. "Cancer Services" means any health or other service relating to any service performed by cancer specialists such as radiation oncologists, medical oncologists, surgical oncologists, gynecological oncologists, and other oncologic physician specialists. This term includes any equipment, technology, or modality used in providing such services.

E. "Cardiac Surgery" means any health or other service relating to 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 services of an open-heart surgeon, cardiovascular surgeon, cardiovascular anesthesiologist, interventional cardiologist, or perfusionist.

F. "Certificate of Need" means certificate of need as recognized by the State of West Virginia (W. Va. Code § 16-2D-1 et seq.) and a certificate of public need as recognized in the Commonwealth of Virginia (Va. Code Ann. § 32.1-102.1 et seq.).

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. "PCH" means Defendant Princeton Community Hospital Association, Inc., a non-profit corporation organized and existing under the laws of the State of West Virginia with its headquarters in Princeton, West Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

I. The terms "and" and "or" have both conjunctive and disjunctive meanings.

III. APPLICABILITY

This Final Judgment applies to BRMC and PCH, 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. BRMC and PCH are enjoined from enforcing all or any part of the Cancer and Open-Heart Agreements. BRMC's and PCH's obligations under this Final Judgment supersede their obligations under either of these agreements, and BRMC and PCH shall not object to the performance of their obligations under this Final Judgment on the grounds that those obligations would cause them to breach either agreement.

B. BRMC and PCH are enjoined from, in any manner, directly or indirectly, entering into, continuing, maintaining, or enforcing any agreement to allocate any cancer or cardiac-surgery service, market, territory, or customer.

C. BRMC and PCH are enjoined from, in any manner, directly or indirectly, entering into, continuing, maintaining, or enforcing any other agreement that (1) prohibits or restricts a health-care facility from obtaining a certificate of need relating to cancer services or cardiac surgery or (2) otherwise prohibits or restricts a health-care facility from taking actions related to providing cancer services or cardiac surgery without prior notice to and prior written approval of the United States, which will not be withheld unreasonably.

D. BRMC and PCH are enjoined from, in any manner, directly or indirectly, entering into, continuing, maintaining, or enforcing any agreement with each other concerning cancer services or cardiac surgery without prior notice to and prior written approval of the United States, which will not be withheld unreasonably.

V. 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 Defendants, be permitted:

1. access during Defendants' office hours to inspect and copy, or at the United States' option, to require that Defendants 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, Defendants' 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 Defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports, 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 Defendants furnish information or documents to the United States, they represent and identify 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 mark 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 Defendants ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VI. 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.

VII. EXPIRATION OF FINAL JUDGMENT

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

VIII. CORRESPONDENCE

BRMC and PCH 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.

IX. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest.

Dated: 9/12/05.

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

David A. Faber
United States District Judge

ENTERED
SEP 12 2005
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