

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

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

<p>In the Matter of</p> <p>CARILION CLINIC, a corporation.</p>

Docket No. 9338

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”) having heretofore issued its Complaint charging Carilion Clinic (“Carilion” or “Respondent”) with a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Respondent having been served with a copy of that Complaint, together with a notice of contemplated relief; and

The Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having thereafter considered the matter and having thereupon accepted the executed Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following Order:

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, the following definitions 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. “Acquisition” means Respondent Carilion’s acquisition of Odyssey IV, L.L.C. d/b/a The Center for Advanced Imaging and The Center for Surgical Excellence, L.L.C., on or about August 28, 2008.
- D. “CAI” means The Center for Advanced Imaging, formerly an independent (non-hospital-owned) freestanding provider of advanced outpatient imaging services located at 2923 Franklin Road, SW, Roanoke, VA 24014, and which was acquired by Respondent Carilion.
- E. “CAI Acquirer” means the Person approved by the Commission to acquire the CAI Business. The CAI Acquirer may be the same Person as the CSE Acquirer.
- F. “CAI Affiliated Radiologists” means radiologists including, but not limited to, Dr. Robert F. O’Brien, Dr. John Mathis, and Dr. Naiyer Imam, and the Image Guided Therapeutics P.C., who, since January 1, 2008, have performed radiological procedures at CAI including, but not limited to, reading and analyzing magnetic resonance imaging (“MRI”) and computerized tomographic imaging (“CT”) scan results.
- G. “CAI Business” means the following assets Relating To the Operation Of CAI:
 1. leases for the real property of CAI;
 2. consumable or disposable inventory, including, but not limited to, janitorial, office, and medical supplies, and the normal course of business requirements of supplies and pharmaceuticals;

3. all rights, title, and interests of Respondent Carilion in any tangible property (except for consumable or disposable inventory) that has been on the premises of the CAI at any time since the Acquisition including, but not limited to, all equipment, imaging equipment, furnishings, fixtures, improvements, and appurtenances;
4. any interest (other than leases) held by Respondent Carilion in the real property of CAI;
5. books, records, files, correspondence, manuals, computer printouts, databases, and other documents Relating To the Operation Of CAI located on the premises of CAI or in the possession of Respondent Carilion employees responsible for CAI (or copies thereof where Respondent Carilion has a legal obligation to maintain the original document), including, but not limited to:
 - a. documents containing information Relating To patients (to the extent transferable under applicable law), including, but not limited to, medical records,
 - b. financial records,
 - c. personnel files,
 - d. Physician lists and other records of CAI's dealings with Physicians,
 - e. maintenance records,
 - f. promotional and advertising materials,
 - g. documents Relating To policies and procedures,
 - h. documents Relating To quality control,
 - i. documents Relating To Payors,
 - j. documents Relating To suppliers, and
 - k. copies of contracts with Payors and suppliers, unless such contracts cannot, according to their terms, be disclosed to third parties even with the permission of Respondent Carilion to make such disclosure;
6. CAI's Medicare and Medicaid provider numbers, to the extent transferable;
7. all permits and licenses, to the extent transferable including, but not limited to, Medicare certification to operate as an imaging center;
8. intangible property relating exclusively to the Operation Of CAI;

9. assets that are used in, or necessary for, the Operation Of CAI; and
10. the Certificates of Public Need associated with CAI.
- H. “CAI Divestiture Agreement” means any agreement pursuant to which Respondent Carilion divests the CAI Business pursuant to this Order and with the prior approval of the Commission.
- I. “CAI Effective Date” means the date on which Respondent Carilion divests the CAI Business to the CAI Acquirer.
- J. “COPN” means a Certificate of Public Need which is the regulatory approval required by the Commonwealth of Virginia, pursuant to 12 VAC §§ 5-220-10 *et seq.*, before any clinical health facility can create, add to, relocate or expand clinical health services or facilities, and for any capital expenditure exceeding \$15 million.
- K. “Confidential Business Information” means competitively sensitive, proprietary, and all other information that is not in the public domain owned by or pertaining to a Person or a Person’s business, and includes, but is not limited to, patient lists and information, Physician referral lists, price lists, contracts, cost information, marketing methods, patents, technologies, processes, or other trade secrets.
- L. “Confidential Referring CAI Physicians” means the Referring CAI Physician(s) or Physician practice(s) that includes a Referring CAI Physician listed in Confidential Exhibit A to this Order.
- M. “CSE” means The Center for Surgical Excellence, L.L.C., formerly an independent (non-hospital-owned) freestanding provider of outpatient surgical services located at 2107 Rosalind Ave., SW, Roanoke, VA 24014.
- N. “CSE Acquirer” means the Person the Commission approves to acquire the CSE Business. The CSE Acquirer may be the same Person as the CAI Acquirer.
- O. “CSE Business” means the following assets Relating To the Operation Of CSE:
1. leases for the real property of CSE;
 2. consumable or disposable inventory, including, but not limited to, janitorial, office, and medical supplies, and the normal course of business requirements of supplies and pharmaceuticals;
 3. all rights, title, and interest of Carilion in any tangible property (except for consumable or disposable inventory) that has been on the premises of CSE at any time since the Acquisition, including, but not limited to, all equipment, imaging equipment, furnishings, fixtures, improvements, and appurtenances;

4. any interest (other than leases) held by Carilion in the real property of CSE;
5. books, records, files, correspondence, manuals, computer printouts, databases, and other documents Relating To the Operation Of CSE located on the premises of CSE or in the possession of Respondent Carilion managers responsible for CSE (or copies thereof where Carilion has a legal obligation to maintain the original document), including, but not limited to:
 - a. documents containing information Relating To patients (to the extent transferable under applicable law), including, but not limited to, medical records,
 - b. financial records,
 - c. personnel files,
 - d. Physician lists and other records of CSE's dealings with Physicians,
 - e. maintenance records,
 - f. promotional and advertising materials,
 - g. documents Relating To policies and procedures,
 - h. documents Relating To quality control,
 - i. documents Relating To Payors,
 - j. documents Relating To suppliers, and
 - k. copies of contracts with Payors and suppliers, unless such contracts cannot, according to their terms, be disclosed to third parties even with the permission of Carilion to make such disclosure;
6. CSE's Medicare and Medicaid provider numbers, to the extent transferable;
7. all permits and licenses, to the extent transferable including, but not limited to, Medicare certification to operate as an ambulatory surgical facility;
8. intangible property relating exclusively to the Operation Of CSE;
9. assets that are used in, or necessary for, the Operation Of CSE; and
10. the Certificates of Public Need associated with CSE.

- P. "CSE Divestiture Agreement" means any agreement pursuant to which Carilion divests the CSE Business pursuant to this Order and with the prior approval of the Commission.
- Q. "CSE Effective Date" means the date on which Respondent Carilion divests the CSE Business to the CSE Acquirer.
- R. "Designated CAI Carilion Employee" means both:
1. the Persons who are working or have worked at CAI since the Acquisition and who also have been or are employed by Respondent Carilion, and
 2. the Physicians who are under service contracts with Respondent Carilion who provide radiological services at CAI including, but not limited to, the Physicians of the Image Guided Therapeutics P.C.
- S. "Designated CSE Carilion Employee" means non-Physician Persons and who are working or have worked at CSE since the Acquisition, and who also have been or are employed by Respondent Carilion.
- T. "Governmental Approvals" means any permissions or sanctions issued by any government or governmental organization, including, but not limited to, licenses, permits, accreditations, authorizations, registrations, certifications, certificates of occupancy, and certificates of need.
- U. "Operation Of CAI" means all activities Relating To the business of CAI, including, but not limited to:
1. attracting patients to CAI for outpatient advanced imaging services, providing advanced outpatient imaging services to patients of CAI, and dealing with their Physicians;
 2. providing medical products to patients of CAI;
 3. maintaining the equipment on the premises of CAI, including, but not limited to, the equipment used in providing advanced outpatient imaging services to patients;
 4. purchasing supplies and equipment for CAI;
 5. negotiating leases for the premises of CAI;
 6. dealing with Payors that pay for products or services offered by CAI, including but not limited to, negotiating contracts with such Payors and submitting claims to such Payors; and
 7. dealing with Governmental Approvals and other accreditations Relating To CAI, including private accreditation by American College of Radiology.

- V. "Operation Of CSE" means all activities Relating To the business of CSE, including, but not limited to:
1. attracting patients to CSE for outpatient surgical services, providing outpatient surgical services to patients at CSE, and dealing with their Physicians;
 2. providing medical products to patients at CSE;
 3. maintaining the equipment on the premises of CSE, including, but not limited to, the equipment used in providing outpatient surgical services to patients;
 4. purchasing supplies and equipment for CSE;
 5. negotiating leases for the premises of CSE;
 6. dealing with Payors that pay for products or services offered by CSE, including but not limited to, negotiating contracts with such Payors and submitting claims to such Payors; and
 7. dealing with Governmental Approvals Relating To CSE.
- W. "Payor" means any Person that purchases, reimburses for, or otherwise pays for medical goods or services for themselves or for any other person, including, but not limited to: health insurance companies; preferred provider organizations; point of service organizations; prepaid hospital, medical, or other health service plans; health maintenance organizations; government health benefits programs; employers or other persons providing or administering self-insured health benefits programs; and patients who purchase medical goods or services for themselves.
- X. "Person" means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, division, or department, or other business or legal entity.
- Y. "Physician" means a doctor of allopathic medicine ("M.D.") or a doctor of osteopathic medicine ("D.O.") or physician assistant.
- Z. "Referring CAI Carilion Physician" means any Physician who:
1. is employed by Carilion as of the CAI Effective Date or is otherwise under contract with Carilion on the CAI Effective Date, and
 2. since the Acquisition, referred a patient to CAI.

- AA. “Referring CAI Physician” means any Physician or Physician assistant or other Person who, since January 1, 2008, referred a patient to CAI, including, but not limited to CAI Affiliated Radiologists.
- BB. “Relating To” or “Related To” means pertaining in any way to, and is not limited to that which pertains exclusively to or primarily to.
- CC. “Roanoke Area” means the areas around Roanoke, Virginia, and Salem, Virginia, covered by the following zip codes: 24001, 24002, 24003, 24004, 24005, 24006, 24007, 24008, 24009, 24010, 24011, 24012, 24013, 24014, 24015, 24016, 24017, 24018, 24019, 24020, 24022, 24023, 24024, 24025, 24026, 24027, 24028, 24029, 24030, 24031, 24032, 24033, 24034, 24035, 24036, 24037, 24038, 24040, 24042, 24043, 24044, 24045, 24048, 24050, 24059, 24065, 24070, 24077, 24083, 24153, 24155, 24156, 24157, 24175, 24179.

II.

IT IS FURTHER ORDERED that:

- A. Respondent Carilion shall divest, within three (3) months after the date on which Respondent Carilion signs the Consent Agreement, the CAI Business absolutely and in good faith, at no minimum price, only to a CAI Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The CAI Divestiture Agreement between Respondent Carilion and the CAI Acquirer shall not vary or contradict, or be construed to vary 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 the CAI Acquirer or to reduce any obligations of Respondent Carilion under such agreements, and such agreement, if approved by the Commission as the CAI Divestiture Agreement, shall be incorporated by reference into this Order and made a part hereof. Any failure by Respondent Carilion to comply with any term of the CAI Divestiture Agreement shall constitute a failure to comply with this Order.
- B. Respondent Carilion shall divest, within three (3) months after the date on which Respondent Carilion signs the Consent Agreement, the CSE Business absolutely and in good faith, at no minimum price, only to a CSE Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The CSE Divestiture Agreement between Respondent Carilion and the CSE Acquirer shall not vary or contradict, or be construed to vary 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 the CSE Acquirer or to reduce any obligations of Respondent Carilion under such agreements, and such agreement, if approved by the Commission as the CSE Divestiture Agreement, shall be incorporated by reference into this Order and made a part hereof. Any failure by Respondent Carilion to comply with any term of the CSE divestiture agreement shall constitute a failure to comply with this Order.

- C. No later than the CAI Effective Date and the CSE Effective Date, Respondent Carilion shall secure all assignments, consents, Governmental Approvals, and waivers, including rights of approval and rights of first refusal, from all private and governmental entities that are necessary for the divestiture of the CAI Business to the CAI Acquirer and the CSE Business to the CSE Acquirer.
- D. Respondent Carilion shall:
1. at the option of the CAI Acquirer, no later than the CAI Effective Date, enter into one or more transition agreements for the short-term provision of services provided by Respondent Carilion to the CAI Acquirer. Such agreements shall be subject to the prior approval of the Commission and become a part of the CAI Divestiture Agreement; and
 2. at the option of the CSE Acquirer, no later than the CSE Effective Date, enter into one or more transition agreements for the short-term provision of services provided by Respondent Carilion to the CSE Acquirer. Such agreements shall be subject to the prior approval of the Commission and become a part of the CSE Divestiture Agreement.
- E. Until the CAI Effective Date and the CSE Effective Date, Respondent Carilion shall:
1. take such actions as are necessary to maintain the viability and marketability of the CAI Business and the CSE Business, respectively, and to prevent the destruction, removal, wasting, deterioration, or impairment of such assets, except for ordinary wear and tear; and
 2. not sell, transfer, encumber or otherwise impair the economic viability, marketability, or competitiveness of the CAI Business and CSE Business.
- F. Respondent Carilion and Respondent Carilion's employees shall not receive, have access to, or use or continue to use any Confidential Business Information Related To the CAI Business and the CSE Business except:
1. As otherwise allowed in this Order;
 2. As provided for in a transition services agreement;
 3. As consented to by the Acquirer;
 4. As required by law;
 5. To the extent that necessary information is exchanged in the course of consummating the Acquisition;

6. In negotiating agreements to divest assets pursuant to this Order and engaging in related due diligence;
 7. In complying with this Order;
 8. To the extent necessary to allow Respondent Carilion to comply with the requirements and obligations of the laws of the United States and other countries;
 9. In defending legal claims, investigations or enforcement actions threatened or brought against or related to the CAI Business and CSE Business; and
 10. In obtaining legal advice.
- G. Respondent Carilion shall require any Persons with access to Confidential Business Information Relating To the CAI Business to enter into agreements, within ten (10) days after the date Respondent Carilion signs the Consent Agreement, not to disclose any Confidential Business Information Relating To the CAI Business to Respondent Carilion or to any third party except as otherwise permitted by this Order. Copies of such agreements shall be retained by Respondent Carilion, and provided to the Commission.
- H. Respondent Carilion shall require any Persons with access to Confidential Business Information Relating To the CSE Business to enter into agreements, within ten (10) days after the date Respondent Carilion signs the Consent Agreement, not to disclose any Confidential Business Information Relating To the CSE Business to Respondent Carilion or to any third party except as otherwise permitted by this Order. Copies of such agreements shall be retained by Respondent Carilion, and provided to the Commission.
- I. The purposes of this Paragraph II are (1) to ensure the continuation of CAI Business and CSE Business as going concerns in the same manner in which each conducted business as of the date the Consent Agreement is signed, and (2) to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. For a period of one (1) year after the date on which Respondent Carilion signs the Consent Agreement, Respondent Carilion shall not change, modify or alter any policy, protocol or care pathway that permitted a Referring CAI Carilion Physician, in the exercise of his or her professional judgment, or in respect to patient choice or a third party payor requirement of general application to imaging providers, to refer any person to CAI prior to the date on which Respondent Carilion signed the Consent Agreement. *PROVIDED, HOWEVER*, this Paragraph III.A. does not prohibit Respondent Carilion and its employees from discussing

any individual patient's case, or engaging in quality improvement and peer review activities.

- B. For a period of six (6) months after the date on which Respondent Carilion signs the Consent Agreement, Respondent Carilion shall not directly or indirectly, solicit or attempt to solicit a Referring CAI Physician or a Physician practice that includes a Referring CAI Physician to be employed by, or exclusively under contract with, Respondent Carilion. *PROVIDED, HOWEVER*, this Paragraph III.B does not prohibit Respondent Carilion and its employees from discussing any individual patient's case, or engaging in quality improvement and peer review activities. *PROVIDED, FURTHER, HOWEVER*, this Paragraph III.B. does not prohibit Respondent Carilion from placing general advertisements for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the particular Referring CAI Physician or a Physician practice that includes a Referring CAI Physician; *PROVIDED FURTHER, HOWEVER*, Respondent Carilion may hire such Referring CAI Physician or a Physician practice that includes a Referring CAI Physician who seek out Respondent Carilion for employment as long as such Persons were not solicited by Respondent Carilion in violation of this Paragraph. *PROVIDED, FURTHER, HOWEVER*, this Paragraph III.B. does not prohibit Respondent Carilion from continuing discussions with the Confidential Referring CAI Physicians that began before the date Respondent signed the Consent Agreement in which Respondent Carilion is attempting to hire a Referring CAI Physician or a Physician practice that includes a Referring CAI Physician.
- C. Within ten (10) days after the date the Consent Agreement is accepted for public comment, Respondent Carilion shall:
1. notify any Referring CAI Physician or a Physician practice that includes a Referring CAI Physician with whom it is discussing the possible acquisition of the practice or the possible hiring of Referring CAI Physicians that they are under no continuing obligation to continue such discussions with Respondent Carilion; and
 2. provide such Referring CAI Physician and such Physician practice that includes a Referring CAI Physician with a copy of this Order together with the Analysis to Aid Public Comment that accompanies the Consent Agreement.
- D. At any time after Respondent Carilion has signed the Consent Agreement and up to ninety (90) days after the CAI Effective Date, Respondent Carilion shall facilitate the hiring of any Designated CAI Carilion Employee by the CAI Acquirer by:
1. Allowing the CAI Acquirer an opportunity to interview each Designated CAI Carilion Employee before they are hired pursuant to this paragraph;
 2. Allowing the CAI Acquirer to inspect the personnel files and other documentation relating to the Designated CAI Carilion Employee, to the extent permissible under applicable laws, before they are hired pursuant to this paragraph;

3. Not offering any incentive to the Designated CAI Carilion Employee to decline employment with the CAI Acquirer; and
 4. Not interfering with any negotiations by the CAI Acquirer to employ any Designated CAI Carilion Employee.
- E. At any time after Respondent Carilion has signed the Consent Agreement and up to ninety (90) days after the CSE Effective Date, Respondent Carilion shall facilitate the hiring of any Designated CSE Carilion Employee by the CSE Acquirer by:
1. Allowing the CSE Acquirer an opportunity to interview each Designated Carilion CSE Employee before they are hired pursuant to this paragraph;
 2. Allowing the CSE Acquirer to inspect the personnel files and other documentation relating to the Designated CSE Carilion Employee, to the extent permissible under applicable laws, before they are hired pursuant to this paragraph;
 3. Not offering any incentive to the Designated CSE Carilion Employee to decline employment with the CSE Acquirer; and
 4. Not interfering with any negotiations by the CSE Acquirer to employ any Designated CSE Carilion Employee.
- F. Respondent Carilion shall:
1. Allow the Image Guided Therapeutics P.C. to terminate its contract with Respondent Carilion with no penalty or delay.
 2. Remove any contractual impediments that may deter any Designated CAI Carilion Employee and Designated Carilion CSE Employee from accepting employment with the CAI Acquirer and CSE Acquirer, respectively, working for such acquirer, and assigning any confidentiality agreements or restrictions, except as to information related solely to products or businesses not transferred to such CAI Acquirer or CSE Acquirer, respectively.

IV.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent Carilion signs the Consent Agreement in this matter, the Commission may appoint a Monitor to assure that Respondent Carilion expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.

- B. The Commission shall select the 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.
- C. Not later than ten (10) days after appointment of the 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 necessary to permit the Monitor to monitor Respondent Carilion's compliance with the relevant terms of the Orders in a manner consistent with the purposes of the Orders.
- D. Respondent Carilion shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondent Carilion's compliance with the terms of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission including, but not limited to:
 - 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 necessary to permit the Monitor to monitor Respondent Carilion's compliance with the relevant terms of the Orders in a manner consistent with the purposes of the Orders.
- G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

- H. A Monitor appointed pursuant to the Asset Maintenance Order may be the same person appointed as the Monitor pursuant to this Decision and Order, and the Divestiture Trustee pursuant to the relevant provisions of this Decision and Order.

V.

IT IS FURTHER ORDERED that:

- A. If Respondent Carilion has not fully complied with the obligations as required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the CAI Business and the CSE Business in a manner that satisfies the requirements of this Order.

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, Respondent Carilion shall consent to the appointment of a Divestiture Trustee in such action to effectuate the divestitures and other obligations as described in Paragraph II. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph V 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 Respondent Carilion to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Carilion, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Carilion has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent Carilion of the identity of any proposed Divestiture Trustee, Respondent Carilion shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent Carilion shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestitures required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph V, Respondent Carilion shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the CAI Business and the CSE Business as described in Paragraph II of this Order.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to divest the CAI Business and the CSE Business as described in Paragraph II 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. Respondent Carilion shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent Carilion shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent Carilion shall extend the time for divestiture under this Paragraph V in an amount equal to the delay, as determined by the Commission.
4. The Divestiture Trustee shall use best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Carilion's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order;

PROVIDED, HOWEVER, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity for assets to be divested pursuant to Paragraph II, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent Carilion from among those approved by the Commission;

PROVIDED FURTHER, HOWEVER, that Respondent Carilion shall select such entity within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent Carilion, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent Carilion, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the 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 Respondent Carilion, 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. Respondent Carilion 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, 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 Respondent Carilion and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 10. Respondent Carilion 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 other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph V.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the obligations under Paragraphs II and III of this Order.

VI.

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

- A. Respondent Carilion shall not, without the prior approval of the Commission, acquire, directly or indirectly, any assets divested pursuant to this Order; and
- B. Respondent Carilion shall not, without providing advance written notification to the Commission in the manner described in this Paragraph VI.B., directly or indirectly, acquire all or any part of:
 - 1. an advanced outpatient imaging services center with a COPN that provides, among other things, MRI and CT scanning services, in the Roanoke Area.
 - 2. an ambulatory outpatient surgical center with a COPN in the Roanoke Area.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only by Respondent Carilion and not by any other party to the transaction. Respondent Carilion shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent Carilion shall not consummate the transaction until thirty days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

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. § 18a.

PROVIDED, FURTHER, HOWEVER, that prior notification shall not be required by this Paragraph VI.B. for an acquisition, if (1) Respondent Carilion acquires no more than one percent of the outstanding securities or other equity interest in an entity described in this Paragraph VI.B, or (2) Respondent Carilion acquires any additional ownership interest in the Roanoke Ambulatory Surgery Center, a center Respondent Carilion operates as a joint venture with Physicians.

VII.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondent Carilion has fully complied with Paragraphs II and III of this Order, Respondent Carilion 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. Respondent Carilion 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. Respondent Carilion 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. Respondent Carilion 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, Respondent Carilion 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. Respondent Carilion shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order and copies of all written communications to and from all persons relating to this Order. Additionally, Respondent Carilion shall include in its compliance report whether or not it made any notifiable acquisitions pursuant to Paragraph VI. Respondent Carilion shall include a description of such acquisitions including, but not limited to, the identity of the Person or assets acquired, the location of the Person or assets, and a detailed description of the assets or Person.

VIII.

IT IS FURTHER ORDERED that Respondent Carilion shall notify the Commission at least thirty (30) days prior to any proposed:

- A. dissolution of the Respondent Carilion;
- B. acquisition, merger or consolidation of Respondent Carilion; or
- C. other change in the Respondent Carilion, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

IX.

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 Respondent Carilion, Respondent Carilion shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of Respondent Carilion 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 Respondent Carilion related to compliance with this Order, which copying services shall be provided by Respondent Carilion at its expense; and
- B. to interview officers, directors, or employees of Respondent Carilion, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years after the date on which this Order becomes final.

By the Commission.

Donald S. Clark

Secretary

SEAL
ISSUED:

CONFIDENTIAL EXHIBIT A

Confidential CAI Referring Physician

[Redacted From Public Record Version But Incorporated by Reference]