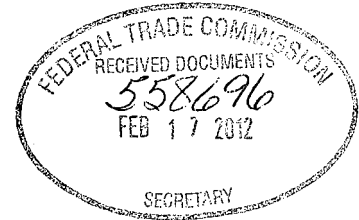


UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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

ORIGINAL



In the Matter of

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

File No. 0910136, *C4339*

**PETITION OF CARDINAL HEALTH, INC. FOR  
APPROVAL OF PROPOSED DIVESTITURE**

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission” or “FTC”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f), and Paragraph II.A. of the Decision and Order (“the Order”) contained in the Agreement Containing Consent Order approved by the Commission in the above-captioned matter, Cardinal Health, Inc. (“Cardinal Health”) hereby files this Petition for Approval of Proposed Divestiture (“Petition”) requesting the Commission’s approval of the divestiture of the Former Cardinal Health Nuclear Pharmacies<sup>1</sup> to Patient Care Infusion, LLC (“PCI”).

**I. INTRODUCTION**

On July 31, 2009, Cardinal Health acquired nuclear pharmacies and related intellectual property owned by Biotech in Las Vegas, Nevada, Albuquerque, New Mexico, and El Paso, Texas. After Cardinal Health completed the acquisition, it closed its own pharmacies in each of

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<sup>1</sup> Capitalized terms that are not herein defined have the same meaning as those defined in the Order.

the three cities and ran the combined business from the former Biotech facilities. The Commission later opened an investigation into whether the acquisition reduced competition for low-energy radiopharmaceuticals in the three locations, and, on June 13, 2011, Cardinal Health and the Commission entered into the Order to resolve the matter. On July 21, 2011, the Commission accepted the proposed Order for public comment. On October 21, 2011, the Commission approved the final Order.

Paragraph II.A. of the Order requires Cardinal Health to reconstitute the Former Cardinal Health Nuclear Pharmacies in Las Vegas, Nevada, Albuquerque, New Mexico, and El Paso, Texas that it had previously closed down and to divest them – along with certain associated intellectual property – to an approved acquirer within six months of the date the Order was accepted for public comment, or by January 21, 2012.

Cardinal Health immediately took a number of steps to find an acquirer for the reconstituted Former Cardinal Health Nuclear Pharmacies (the “Reconstituted Pharmacies”). Cardinal Health placed advertisements in the relevant trade press to attract potential buyers; separately, Cardinal Health identified a list of likely interested parties based on business operations and geographic proximity and initiated contact with those parties. Cardinal Health also pursued leads identified by the FTC Monitor, Katherine Seifert. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Cardinal Health

moved as quickly as possible to negotiate a deal with PCI, and on December 23, 2011, Cardinal

Health and PCI executed an Asset Sale and Purchase Agreement (including attachments, exhibits, annexes, and schedules) for the sale of the Reconstituted Pharmacies. On February 10, 2012, Cardinal Health and PCI also executed an Amendment to the Asset Purchase Agreement that makes several minor modifications to Schedule 2.1 of the original agreement. The Asset Sale and Purchase Agreement, along with the Amendment to the Asset Purchase Agreement are collectively referred to herein as the “Agreement.”

Cardinal Health desires to complete the proposed divestiture of the Reconstituted Pharmacies as soon as possible following Commission approval and satisfaction of the closing conditions in the Agreement with PCI. Prompt consummation will further the purposes of the Order and is in the interests of the Commission, the public, Cardinal Health and PCI because it will allow PCI to move forward with its plans for the competitive operation of the Reconstituted Pharmacies, and it will allow Cardinal to fulfill its obligations under the Order. Cardinal Health accordingly requests that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f), limit the public comment period to the customary 30-day period, and grant this Petition by approving the divestiture of the Reconstituted Pharmacies to PCI pursuant to the proposed Agreement as soon as practicable after the close of the public comment period.

This Petition describes the Reconstituted Pharmacies, PCI, and the principal terms of the Agreement by which Cardinal Health proposes to divest the Reconstituted Pharmacies, and explains why the Agreement satisfies the objectives and requirements of the Order.

## **II. REQUEST FOR CONFIDENTIAL TREATMENT**

Because this Petition and its attachments contain confidential and competitively sensitive business information relating to the divestiture of the Reconstituted Pharmacies, Cardinal Health has redacted such confidential information from the public version of this Petition and its attachments.<sup>2</sup> The public disclosure of this information would prejudice Cardinal Health and PCI, could cause harm to the ongoing competitiveness of the Reconstituted Pharmacies, and could impair Cardinal Health's ability to comply with its obligations under the Order.

Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(f)(4), 4.9(c), Cardinal Health requests, on its own behalf and on behalf of PCI, that the confidential version of this Petition and its attachments and the information contained therein be accorded confidential treatment under all applicable statutes and regulations, including 5 U.S.C. § 552 and section 4.10(a)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2). The confidential version of this Petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4), b(7)(A)-(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h).

## **III. THE RECONSTITUTED CARDINAL HEALTH NUCLEAR PHARMACIES**

Under Section II.A.1. of the Order, Cardinal must reconstitute, in conjunction with the proposed Acquirer, the Former Cardinal Health Nuclear Pharmacies, which includes the

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<sup>2</sup> For the purpose of maintaining the public record, Cardinal Health is submitting two versions of this Petition: a confidential version that contains confidential and proprietary information and documents necessary for the Commission to assess this Petition, and a redacted version that excludes confidential and proprietary information for placement in the public record.

following three former nuclear pharmacy locations owned by Cardinal Health as of July 30, 2009: 61 Spectrum Boulevard, Las Vegas, Nevada; 1020 Tijeras N.E., Suite 1, Albuquerque, New Mexico; and 1810 Murchison Road, #205, El Paso, Texas. According to the Order, this reconstitution must result in these pharmacies becoming fully functional, stand-alone pharmacies engaged in all aspects of the nuclear pharmacy business. They must also be compliant with the USP 797 regulation developed by U.S. Pharmacopeia.

Once PCI was identified as the acquirer, Cardinal Health sought PCI's input on the reconstitution process, including whether it wanted to make use of all three Former Cardinal Health locations, what assets PCI would contribute to the process, and how the pharmacies should be laid out to fit PCI's business plan. As a result of these conversations, Cardinal Health agreed to reconstitute the pharmacies [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] these reconstitution efforts will, as mandated by Section II.A.1. of the Order, have created three separate, stand-alone nuclear pharmacies that are fully engaged in all aspects of the business and that are compliant with USP 797 regulations.

**IV. THE PROPOSED ACQUIRER**

The Bureau of Competition’s 1999 “Study of the Commission’s Divestiture Process” (the “Divestiture Study”) notes the importance of an acquirer’s experience in the relevant industry to the analysis of whether the Commission should approve that acquirer’s purchase of the divestiture assets. Further, according to the 2003 Statement of the Federal Trade Commission’s Bureau of Competition on Negotiating Merger Remedies (the “Merger Remedies Statement”), to be an acceptable buyer, a divestiture acquirer must be financially and competitively viable. The acquirer must be able – with the package of assets to be divested, along with its own assets– to maintain or restore competition to the market. Thus, key factors for the Commission to consider in its analysis are whether the proposed acquirer has: (1) experience in the relevant business; (2) the financial capability and incentives to acquire and operate the package of assets; and (3) the competitive ability to maintain or restore competition in the marketplace.

As discussed in greater detail below, PCI has: (1) significant experience in the Nuclear Pharmacy business and the southwest United States, in particular; (2) the financial capability and incentives to acquire and operate the Reconstituted Pharmacies and (3) the competitive

ability to maintain or restore competition in the Nuclear Pharmacy business in Las Vegas, Albuquerque and El Paso. Accordingly, PCI is a suitable acquirer and the Commission should approve its acquisition of the Reconstituted Pharmacies.

**A. PCI Will Be A Strong And Effective Competitor**

**1. PCI Has An Established Nuclear Pharmacy Business And Knows the Industry.**

PCI first began operations in 1995, providing home infusion services in the Phoenix, Arizona area. PCI, along with its parent company, Arizona Home Care, steadily expanded the business to include a constellation of health care services in Arizona and Nevada that, in addition to home infusion services, included private nursing, home medical equipment and Medicare-certified home health care. In 2007, PCI decided to expand further, by adding nuclear pharmacy services to the business. These services were a natural fit with PCI's existing business because they required similar expertise and resources, including specialty pharmacists, delivery routes, 24-hour operations and inventory management.

Today, PCI is a leading provider of unit dose radiopharmaceuticals, custom compounding and ancillary products in Arizona, primarily Phoenix and Tucson. PCI is a full service nuclear pharmacy and operates 24-hours a day, seven days a week. [REDACTED]

[REDACTED] PCI is a member of United Pharmacy Partners (UPPI). UPPI is a nationwide purchasing cooperative for independent pharmacies. The UPPI network includes over 90 nuclear pharmacies and assists its members in obtaining certain supply contracts, including contracts for heart perfusion agents.

PCI is managed by Ridge Smidt, a board-certified pharmacist who has worked in the nuclear pharmacy industry for well over 20 years. Mr. Smidt graduated from the University of Nebraska in 1988, with a Doctor of Pharmacy degree and specialty training in both infusion therapy and radiopharmacy services. In 2005, Mr. Smidt was appointed for a five-year term to the Arizona State Board of Pharmacy and served as President of the Board from 2009-10.

According to the Divestiture Study, “[t]he most successful buyers appear to be the ones that know the most about what they were buying.” Accordingly, PCI’s and Mr. Smidt’s familiarity with the operation of a nuclear pharmacy in the southwestern United States will make PCI well-situated to operate additional nuclear pharmacies in Las Vegas, Albuquerque and El Paso.

**2. PCI Has The Financial Ability to Successfully Complete The Transaction and Invest in the Reconstituted Pharmacies On A Going-Forward Basis**

PCI is a financially sound company with a proven track record of success in the nuclear pharmacy business and other healthcare services. As described above, PCI began operations in 1995, principally as a home infusion business in the Phoenix area. It has since then expanded into other related healthcare services, including a nuclear pharmacy business. In only a few short years, PCI grew the nuclear pharmacy business [REDACTED]

PCI’s acquisition of the Reconstituted Pharmacies is a natural fit with its current business and its business plan. PCI has successfully run a combined home infusion and nuclear pharmacy business in the Phoenix area for almost five years. [REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] PCI already has a successful home infusion business in Las Vegas and is a Medicare-certified home health agency in the area. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PCI's business plan and experience in the nuclear pharmacy make it an ideal acquirer of the Reconstituted Pharmacies and demonstrate its commitment to invest in these markets going forward.

**3. PCI Has The Competitive Ability to Maintain or Restore Competition In The Marketplace**

Finally, PCI has the assets and business plan to restore competition in Las Vegas, Albuquerque, and El Paso. PCI intends to create and operate separate, stand-alone nuclear pharmacies at each of the Reconstituted Pharmacies and has the requisite capacity to do so competitively. To that end, we understand that PCI has:

- Contracts for the supply of Tech-99 [REDACTED]  
[REDACTED] that are independent of Cardinal

Health and will provide PCI with a supply of Tech-99 sufficient to operate the Reconstituted Pharmacies at a competitive level;

- Access to both a Branded [REDACTED] and Generic (sestamibi) Heart Perfusion Agent in the Las Vegas, Nevada; Albuquerque, New Mexico, and El Paso, Texas areas, [REDACTED]
- Intellectual property sufficient to operate the Reconstituted Pharmacies; and
- All regulatory approvals, licenses, qualification, permits and clearances necessary to operate the Reconstituted Pharmacies that could be reasonably obtained prior to closing; other necessary licenses will be obtained as soon as possible.

Based on PCI's business plan and expertise, it has the intention and ability to prepare and distribute Radiopharmaceuticals for use in nuclear medicine procedures, independent of Cardinal Health and in a way that is similar to Cardinal Health's business prior to its acquisition of Biotech.

## **V. THE AGREEMENT**

According to the Merger Remedies Statement, the divestiture agreement must convey all assets required to be divested and must not contain any provisions inconsistent with the terms of the Commission's Order or with the remedial objectives of the Order. The Merger Remedies Statement also provides that, in evaluating the terms of the divestiture agreement, the Commission staff will rely, in large part, on the acquirer.

Pursuant to the Agreement, Cardinal Health has agreed to sell, and PCI has agreed to purchase, all rights, title, and interest to the Reconstituted Pharmacies [REDACTED]

[REDACTED] The Agreement conveys all assets required to be divested and does not contain any provisions inconsistent with the terms of the Order or its remedial objectives.

**A. The Agreement Provides for the Reconstitution And Divestiture of the Former Cardinal Health Nuclear Pharmacies And Biotech Intellectual Property**

**1. Reconstitute the Former Cardinal Health Nuclear Pharmacies**

Pursuant to Section II.A.I. of the Order, and as discussed in greater detail in section III *supra*, Cardinal Health, in consultation with PCI has taken a number of steps to begin reconstituting the Former Cardinal Health Nuclear Pharmacies. Notably, Schedule 7.2(c) to the Agreement identifies several reconstitution actions that Cardinal Health must take, the completion of which is a condition precedent to closing. [REDACTED]

**2. Divest Reconstituted Pharmacies and Biotech Intellectual Property**

The Agreement satisfies Section II.A.2. of the Order, which requires Cardinal Health to divest the Reconstituted Pharmacies and the Biotech Intellectual Property to a suitable Acquirer. Section 2.1 of the Agreement provides for the sale from Cardinal Health to PCI of the Reconstituted Pharmacies and associated assets, set forth in detail in Schedule 2.1 to the Agreement. These assets constitute all of the assets that the Order requires Cardinal Health to divest. The Agreement also addresses the requirements in Section II.A.2. that the acquirer has access to a suitable supply of Tech-99, as well as access to both Branded and Generic Heart Perfusion Agents in the relevant area. As discussed above, and as set forth in Section 3.4 of the

Agreement, PCI has a supply contract for Tech-99 that is wholly independent of Cardinal Health. Section 3.4 also notes that PCI has access to both Branded and Generic Heart Perfusion Agents in the Las Vegas, Nevada; Albuquerque, New Mexico, and El Paso, Texas areas.

**B. The Agreement Fulfills Cardinal Health's Other Obligations To Ensure The Viability of the Reconstituted Pharmacies**

The Order outlines a number of additional obligations that Cardinal Health must fulfill beyond reconstituting and divesting the Reconstituted Pharmacies; these obligations generally relate to steps Cardinal Health must take to assist the acquirer to operate the Reconstituted Pharmacies in a competitive manner on an on-going basis. Cardinal Health has fulfilled these obligations by, among others:

- Offering PCI a supply agreement for F-18 fleurodeoxyglucose; [REDACTED]  
[REDACTED]  
[REDACTED]
- Maintaining the lease at each of the Reconstituted Pharmacies [REDACTED]  
[REDACTED]  
[REDACTED]
- Agreeing to facilitate, and not to otherwise interfere with, interviews between Designated Employees (listed at Schedule 4.6 in the Agreement) and PCI for a period of 90 days after the closing, pursuant to Section 5.4(a) of the Agreement, and agreeing not to directly or indirectly solicit anyone employed by PCI at the Reconstituted Pharmacies for a period of two years, pursuant to Section 5.4(b) of the Agreement.

**VI. CONCLUSION**

The proposed divestiture of the Reconstituted Pharmacies to PCI will accomplish the goal of the Order by creating separate, stand-alone Nuclear Pharmacies, each fully engaged in all aspects of the Nuclear Pharmacy business and sufficient to remedy the lessening of competition resulting from the Acquisition, as alleged in the Commission's Complaint.

If the Commission approves its acquisition of the Reconstituted Pharmacies, PCI will be a strong, independent competitor in the supply of low-energy radiopharmaceuticals in Las Vegas, NV, Albuquerque, NM, and El Paso, TX. PCI has the financial ability to successfully complete the transaction and invest in the Reconstituted Pharmacies on a going-forward basis. Further, as an established participant in the supply of low-energy radiopharmaceuticals, PCI has the relevant industry experience and customer relationships necessary to compete in the marketplace. Accordingly, Cardinal Health respectfully requests that the Commission approve the proposed divestiture and acquirer.

Dated: February 17, 2012

Respectfully submitted,

CARDINAL HEALTH, INC.

By: David P. Wales /s/

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**LIST OF EXHIBITS**

- Exhibit 1      Asset Purchase Agreement Between Patient Care Infusion, LLC and Cardinal Health 414, LLC for the sale of the Reconstituted Pharmacies (*Confidential*)
- Exhibit 2      Amendment to Asset Purchase Agreement (*Confidential*)

**CONFIDENTIAL EXHIBIT 1**

**Asset Purchase Agreement Between Patient Care Infusion, LLC and Cardinal Health 414, LLC for the sale of the Reconstituted Pharmacies**

*(Accorded confidential treatment under 5 U.S.C. § 552 and section 4.10(a)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2).)*

**[Redacted]**

**CONFIDENTIAL EXHIBIT 2**

**Amendment to Asset Purchase Agreement Between Patient Care Infusion, LLC and  
Cardinal Health 414, LLC for the sale of the Reconstituted Pharmacies**

*(Accorded confidential treatment under 5 U.S.C. § 552 and section 4.10(a)(2) of the  
Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2).)*

**[Redacted]**