

2013

L. EDWARD BRYANT, JR.
NATIONAL HEALTH LAW
TRANSACTIONAL COMPETITION

OFFICIAL PROBLEM

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The L. Edward Bryant Jr.
National Health Law Transactional Competition
2013

To: Attorney

Re: Family Health, S.C.

Our client, Family Health, S.C., a relatively large medical practice in Gotham Heights, has approached us for advice about future options and opportunities. It finds itself at a crossroads with respect to its future.

Acute Care Market Background

Gotham Heights is an urban city with a population of approximately 800,000 people. It has six acute care hospitals, including a state university health system (Green State University Medical Center) and a private university medical center (Lexis Health). A national for-profit health system (Health America) has recently entered the Gotham market through acquisition of two hospitals in Gotham, both located in more financially challenged portions of the city: People's Community Hospital and Gotham Central Hospital. Of the remaining two hospitals, the Catholic hospital (St. Peter's) is part of a large, multi-state Catholic health system and the other, Memorial Health, is a freestanding institution.

The two academic systems are strong financially and have excellent reputations, although each is pursuing a markedly different strategic approach. Green is generally considered the market leader in quaternary care, with a strong academic research focus. Its medical staff is closed to anyone other than members of its faculty practice plan. Green has aggressively moved to establish a network of owned clinic sites, staffed by members of its medical staff, designed to draw patients throughout Gotham and outlying suburban communities to Green.

Lexis is in the early stages of developing its network, but is doing so in a more collaborative fashion with community providers. Its medical staff is open to faculty as well as independent physicians. It has a signed letter of intent to acquire Memorial Health and has been quoted in the local newspaper as indicating an interest in aligning with institutions outside of Gotham proper. It has -also been ramping up its partnerships with community-based physicians, offering a wide range of partnership options, including employment, MSO and Physician Hospital Organization/ACO contract options.

It is too early to discern Health America's market strategy, as its acquisition of the two hospitals only recently closed. In other markets, however, Health America has developed a reputation as a strong, financially-centric hospital operator. It is expected that under its

ownership People's and Gotham Central will scale back unprofitable service lines and move aggressively to grow market share. Health America is also known as a very physician friendly system, skilled at developing tight bonds with area physicians. No one doubts that Health America's influence—and dollars—will not be felt in Gotham, significantly ramping up the competition for physicians and their patients.

Finally, St. Peter's is also an important force in the acute care market. Generally considered the #3 hospital by reputation, it has found itself falling behind the two larger university systems as its physician network has been slow to develop and questions have arisen as to the desire of its parent organization to remain in Gotham, as St. Peter's is its only holding in the state.

Family Health, S.C.

Family Health is a fifteen-physician practice dedicated to serving the general health care needs of women and children, as well as the infertility needs of couples. It is composed of board certified OB/GYNs (including sub-specialties in reproductive endocrinology and infertility), urologists and family practice physicians. The practice is controlled by two shareholders: Dr. Naim Ivy (age 57) and Dr. Ida Jones (age 42). Dr. Ivy founded the practice almost 20 years ago and is largely responsible for its growth. About 8 years ago she elevated one of her employed physicians, Dr. Jones, to shareholder status. At this point both doctors are equal shareholders in the practice, together controlling 60% of the shares. The rest of the physicians are minority shareholders, with no physician holding more than a 5% interest.

Family Health enjoys a strong reputation within Gotham. The practice is financially successful, and currently operates three locations throughout the City. It runs its own centralized lab for routine testing as well as for fertility-related procedures. It also operates CT, ultrasound, x-ray and MRI services. Finally, it owns an ambulatory surgery center, focused exclusively on surgeries related to fertility issues.

Most of the practice's deliveries occur at St. Peter's, although its other admissions are scattered fairly evenly amongst St. Peter's, Green and Lexis and, to a lesser extent, Memorial.

The passage of the Patient Protection and Affordable Care Act has spurred the physician integration wave in the Gotham market. Family Health finds itself sought after by all six hospitals (although Health America's institutions have jointly expressed interest), each of which has indicated a desire to "partner" with Family Health. In certain instances, such as with Green, partnership is clearly indicated to involve a practice acquisition with the Family Health physicians joining the Green faculty practice plan. The remaining hospitals/systems, on the other hand, have been more vague in their interest. Several have spoken about offering to purchase only a portion of Family Health's practice, to joint venture an expanded infertility treatment-focused practice and/or to use Family Health as the hub of an ACO model and/or physician integration strategy.

The rapidly changing health care environment, coupled with the sudden unsolicited interest in Family Health, has caused confusion amongst Family Health physicians.

Dr. Ivy, while enjoying the freedom of essentially being her own boss, believes that long-term the practice will need a strong partner to truly thrive. She is concerned about future pressure on reimbursement. Further, she is worried that if ACOs truly take off with private insurers, Family Health could be left out if the hospitals are able to control contracting. In addition, she believes that this may be an opportune time to “cash out” while there are many potential purchasers of the practice.

Alternatively, Dr. Jones sees a different future. She believes that ACOs are just rehashed Physician Hospital Organizations, unlikely to have a significant impact in the market. Further, she believes that Family Health has significant growth opportunities and that over the next five years will be able to “scale up” to the extent that a hospital partner will be unnecessary. She is also convinced that independent practice is more professionally—and financially—rewarding than being employed by a hospital.

The remaining physicians are evenly split about possible future directions, with some attracted to aligning with a hospital and still others interested in assuming a larger percentage ownership in the practice and retaining their independence.

Assignment

Family Health has asked our counsel on opportunities available to it. Please prepare a memorandum, not in excess of 40 double-spaced pages, advising Family Health of its options, along with your recommendations pertaining to those options. Be sure to thoroughly analyze the legal and business issues associated with options that you review. If your analysis is dependent upon facts of which you are unaware, please explain how your analysis would be impacted by those facts. There is no need to address specific issues of state or local law, but indicate, where appropriate, when they should reasonably be considered. The memorandum is due on **February 22, 2013**.

We have arranged a 40-minute meeting with the Family Health physicians on **March 22, 2013**, during which you will present your recommendations and answer any questions they may have. If you choose to use a PowerPoint presentation, you must submit the presentation by **March 15, 2013**.