2022

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

OFFICIAL PROBLEM

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A. Introduction

Your firm represents a client, Virtual Wellness, Inc. ("VW") which is a leading provider of virtual healthcare services. It provides access to high-quality care and expertise, with a portfolio of services and solutions covering a vast array of sub-specialties, from non-urgent medical needs like upper respiratory infections to chronic complicated medical conditions, like cancer and congestive heart failure.

Because the services are virtual, VW can deliver services on a business-to-business basis to countries around the world. VW has a variety of private practitioners working for it on a contract basis. It enters into provider agreements with those providers. It also employs physicians and other allied health professionals on a full-time basis so it can be medically responsive to its patients. VW accepts medical insurance from all the major health care insurers, as well as government programs like Medicare and Medicaid. It is one of the top three virtual healthcare service providers in the U.S.

To its knowledge, VW is not currently under investigation for any violations of the Anti-Kickback Statute (42 U.S.C. Sec. 1320a-7(b)), the civil False Claims Act (31 U.S.C. Sec.3729 et seq.), the administrative False Claims Law (42 U.S.C. Sec. 1320a-7(b)(a), the Civil Monetary Penalties Law (42 U.S.C. Sec. 1320a-7b(a)), the exclusion laws (42 U.S.C. Sec. 1320a-7) and/or the Medicare and Medicaid statutes (Title XVIII and Title XIX of the Social Security Act). VW's policies and procedures are currently compliant the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its related Rules and Regulations for privacy and security, as well as the data protection rules provided in the General Data Protection Regulation ("the GDPR") for patients it serves in countries governed by the GDPR. VW's physicians and allied health professionals comply with state licensure laws and telemedicine interstate compacts within the U.S.

VW's principal executive offices are located in the city of Pearson, State of Loyola. VW is a public company listed on the New York Stock Exchange ("NYSE") and is registered under the Securities Act of 1933 with the United States Securities and Exchange Commission (the "SEC"). It is organized under the laws of the State of Delaware.

VW has contacted your firm to advise it about a potential merger with another public company, High Tech Health, Inc ("HTH"). HTH is a digital health management company that has created a unified digital platform that allows patients to use their cellular-connected devices to manage chronic health conditions like diabetes, heart disease, arthritis, and cancer. HTH's digital platform connects patients with coaching, data science-enabled insights, and health tracking tools that collect data that the patients can share with medical providers if they choose to. Patients can purchase the HTH platform on their own and pay an annual fee for access to all its services. HTH also contracts with several large employers who provide the platform to employees as part of their health and wellness programs. While there are several companies providing similar services on the market, HTH is known for its high member satisfaction; it has proven measurable, sustainable health outcomes; and it has shown to be cost-effective for its users.

HTH's general counsel has previously advised the company that it is not subject to the regulatory requirements of HIPAA, and is unlikely to be subject to the FDA's regulatory authority. Because it does not currently facilitate payments through Medicare and Medicaid, its services do not implicate federal health regulations.

HTH is listed on the NYSE and registered with the SEC. HTH has its principal executive offices in the city of Ignatius, State of Loyola. It is organized under the laws of the State of Delaware.

VW has been wooing HTH to merge on the basis that the merger would represent one of the largest deals in the health care sector at a time when demand for virtual care is soaring as a result of the Covid-19 pandemic. If the merger is successful, it would create a digital health behemoth that would combine one of the largest virtual healthcare companies with a virtual platform for managing chronic conditions. VW plans to expand the

HTH platform so that virtual providers can use it directly, integrating the data-tracking features with patients' electronic medical records, and facilitating access to prescriptions and medical supplies. The combined company would be called Virtual Wellness Health, Inc. ("VWH"). You have been advised that the Board may ask if there are antitrust implications because of the size of the market share of the combined company. You understand that there are laws and rules regulating mergers and acquisitions, one of which is Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976. You also know that the Federal Trade Commission, ("FTC") offers guidance. The Board is likely to ask if VW must provide notice of the merger to the FTC.

Your Senior Partner acts as General Counsel to VW. She has asked you to look into the antitrust implications noted above and to do due diligence on VW, which includes a check to see if it has any undisclosed sanctions by a federal health care program before your firm began serving as its counsel. She has also asked you to run a general litigation search on HTH and to review the publicly available information on its financial health, like its annual reports and credit ratings. You understand that each company will provide selected historical consolidated financial data. You also understand that each party will have tax counsel. VW's tax counsel will provide your team with the necessary opinions together with financial reports and audits it has reviewed and opined on from VW's accounting department.

B. Proposed Terms of the Merger

The Boards of the companies have been negotiating about stock ownership of the combined company. If approved by the shareholders of each company, each HTH share will be exchanged for a percentage share of VW and possibly additional cash consideration. The share issuance proposal contemplates that existing VW shareholders will own about 58% of the combined entity, with existing HTH shareholders owning the remaining 42%. Based on recent share prices, it is estimated that the valuation of VWH after the merger will be in the $30 million to $32 million range.

Neither company currently pays dividends. Prior to the effective date of the merger, HTH will pay a cash dividend per share of HTH common stock equal to $3.03, referred to as a special dividend per share amount. As part of the merger, all shares of HTH common stock will be converted into shares of VW common stock.

After the merger, each company will file Form 8937, where required, with the Department of the Treasury, which is a report of organizational actions affecting basis of securities. You have been told by VW's outside tax counsel that for U.S. federal income tax purposes, the merger is intended to be treated as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code. It is a condition of completion of the merger that HTH will secure an opinion from its counsel that the merger will qualify as a reorganization within the meaning of Section 368(a). Neither company intends to request a ruling from the IRS as to the U.S. federal income tax consequences of the merger.

If the companies proceed with the merger, the team of attorneys will collaboratively agree upon on the terms and conditions of the merger and draft the Joint Agreement and Plan of Merger.

C. Board Meeting and Client Deliverables

VW's Board will be holding a special meeting to consider the proposed merger. The board has asked your legal team to give a presentation outlining the risks and benefits of the merger as it considers whether to recommend the merger to its shareholders. Specific issues to be addressed are as follows:

1. A discussion of any corporate and tax law issues raised by the proposed merger; any impediments to negotiating or closing the transaction raised by these issues; and your recommendations regarding issue resolution.

2. A discussion of the legal and regulatory issues raised by the proposed merger of a virtual healthcare services provider that is currently subject to federal and state health care regulations, and a digital technology company that has not faced scrutiny by health care regulators; any impediments to negotiating or closing the transaction raised by these issues; and your recommendations regarding issue resolution.

3. A discussion of the business and strategic issues that Board should consider when making their recommendation.

4. An explanation of process for approval of the proposed merger, and a brief description of the documents that your team of attorneys (in collaboration with opposing counsel) will need to draft in advance of the Special Meeting of Shareholders to vote on the merger.

You have been asked to prepare a memorandum addressing the above issues. Please limit your written response to 25 double-spaced pages.