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GOVERNOR EDWARDS MEDIATES DISPUTE

In 2013, the State and Louisiana State University (LSU) asked BRF Hospital Holdings, formerly known as “Biomedical Research Foundation,” to save their two north Louisiana hospitals from closure. In October 2013, the hospitals came under private management by BRF. The privatization of these two hospitals in Shreveport and Monroe, newly renamed University Health and University Health Conway, respectively, is part of a larger effort under LSU Health Care Services Division to cut costs across the 10 state-owned charity hospitals. After deep cuts in state funding were enacted in 2012, the Louisiana Legislature hoped this plan would save the state \$100 million annually. Helen Adamopoulos, “Louisiana Panel Approves Privatization of LSU Hospitals,” <http://www.beckershospitalreview.com/hospital-transactions-and-valuation/louisiana-panel-approves-privatization-of-lsu-hospitals.html> (*Becker’s Hospital Review*, Sept. 26, 2013). This deal turned over patient care previously handled by LSU at its hospitals and clinics to outside managers. Yet, this privatization process has been anything but easy.

In July 2015, LSU alleged that BRF failed to live up to its contract responsibilities as a breach of public purpose and, therefore, should withdraw as the parent company of the University Health System. “LSU Cuts Ties with BRF as Operating Partner of University Health Hospitals,” <http://www.ksla.com/story/30108684/l-su-cuts-ties-with-brf-as-operating-partner-of-university-health-hospitals> (KSLA 12 News, Sept. 24, 2015). BRF denied these claims and refused to budge. Supporters of BRF said that the State asked more from them than from the State’s other partners; however, the Governor said that the hospital’s relationship with LSU’s Shreveport medical school presented different circumstances. BRF is the only private partner required to increase payments of \$37 million to be paid to LSU without assurances of supplemental payments from the State. No other private partner was asked to give LSU millions of dollars for electronic-health-records software and licensing without compensation. Seth Dickerson, “BRF: State Offers Raw Deal to Run University Health,” <http://www.citizen-times.com/story/news/2016/09/22/brf-state-offers-raw-deal-run-university-health/90856854/> (*Citizen Times*, Asheville, N.C., Sept. 23, 2016).

As a response to LSU’s complaint, BRF asserted it would prefer that LSU withdraw its breach notice and allow third-party mediation to resolve any disputes. LSU had wanted to oust BRF since it was chosen as the hospital operator under former Gov. Bobby Jindal’s privatization plan. LSU felt that BRF had failed as operator and did not have enough resources to run the hospitals. In September 2015, LSU announced it would begin cutting ties with BRF and formed a new non-profit to take over.

When BRF refused to withdraw, LSU sued for breach of contract, asking the court to remove the foundation. After a hearing in November 2015, Judge Hernandez in Baton Rouge ruled that LSU failed to negotiate the contract in good faith because it should work collaboratively with the defendant to remedy the alleged public-purpose breach. LSU’s case was effectively dismissed because the university had filed its suit too early. “The [agreement] is replete with provisions that require the parties to exhaust all possible remedies to a breach in advance of termination,” Judge Hernandez said. Greg Hilburn, “Judge Rules Against LSU in Biomed Case,” <http://www.shreveporttimes.com/story/news/local/2015/11/19/judge-rules-lsu-biomed-case/76064922/> (*The Times*, Shreveport, La., Nov. 19, 2015). “These provisions obligate each party to collaborate towards curing any alleged or perceived breach, including a breach of the public interest as alleged in [LSU’s] petition.” John Kennedy, “LSU’s Bid to Oust Hospital Operator Premature, Judge Rules,”

<https://www.law360.com/articles/729717/lsu-s-bid-to-oust-hospital-operator-premature-judge-rules> (Law360, Nov. 20, 2015).

Since taking office in January 2016, Gov. John Bel Edwards has been involved in this dispute at every milestone. When the parties could not reach an agreement regarding the operation of the two hospitals in Shreveport and Monroe, the State began the process of terminating its contract with BRF in September 2016. Edwards said, “When I set out to renegotiate these contracts, I did so in an effort to provide quality health care to our citizens while ensuring that the agreements were in the best interests of the taxpayers.” During the 45 days it was supposed to take to terminate the contract, the negotiations continued. Greg Hilburn, “State to BRF: You’re out . . . maybe,” <http://www.azcentral.com/story/news/2016/09/22/state-brf-youre-out/90844882/> (*AZ Central*, Sept. 22, 2016).

The biggest dispute between the two concerned how much BRF would pay for physician services provided by medical students. Once the dispute escalated to the point that neither side expressed confidence in the other, Gov. Edwards stepped in to mediate the renegotiation of the contract. The parties were able to reach an agreement in October 2016, thanks to mediation efforts by Gov. Edwards. “Resolution for Conway,” <http://www.thenewsstar.com/story/opinion/2016/10/11/resolution-conway/91917928/> (*The News Star*, Monroe, La., Oct. 12, 2016). Ultimately, BRF agreed to pay \$37 million to LSU medical school in exchange for the state government’s agreement to reimburse BRF the same amount. The parties also agreed to participate in arbitration to settle all remaining disputes over the amounts that LSU says BRF owes. Both parties were satisfied with the agreement. The utilization of the ADR techniques of mediation and arbitration in combination led to both sides obtaining what they needed to satisfy their respective interests.

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