

Sale of St. Luke's faces obstacle

By Todd Ackerman

The Texas Heart Institute, the St. Luke's Episcopal Health System's most valuable asset, is asking a Harris County court to declare it a free agent, a potentially huge wrinkle in the pending sale of the system to Catholic Health Initiatives. Heart institute lawyers filed a motion Thursday asking 152nd District Court Judge Robert K. Schaffer to declare a contract that governs the center's relationship with St. Luke's "non-binding and unenforceable." The institute is housed at St. Luke's.

"Recent events have demonstrated that the informal understandings the parties have reached in years past to sustain their relationship are not feasible going forward," says the motion by lawyer Richard Mithoff. He told the Chronicle the heart institute wants "a declaration clarifying its rights and obligations."

The motion argues that St. Luke's has deprived the heart institute of the funding necessary to achieve its mission, slashing its support from 40 percent of the center's annual expenses in 2004-2005 to just 10 percent currently. It says the decrease has "starved THI of the central benefit of the affiliation."

Though the heart institute is independently owned and governed, its affiliation with St. Luke's was part of last month's more than \$1 billion sale, which had been expected to close soon.

Could go either way

David Grimes, acting chair of the Texas Heart board of trustees, said in a statement that "THI must ensure a more sound and certain future to continue its life-changing, life-saving mission." He acknowledged in an interview that the ruling could render the heart institute a free agent, but added it also could confirm the contract.

Grimes sidestepped questions on Texas Heart's ultimate purpose in filing the

motion. He said the heart institute has had productive meetings with Catholic Health Initiatives and that the motion had nothing to do with the faith-based chain.

In a statement following a Thursday night meeting of St. Luke's committee on strategic positioning, St. Luke's CEO David Fine touted the longstanding St. Luke's-Texas Heart Institute relationship and downplayed any conflict.

"St. Luke's remains committed to the exclusive, long-term relationship it enjoys with Texas Heart Institute," wrote Fine.

"We are confident any perceived shortcomings in the affiliation agreement can be resolved by active communication between the parties."

Observers said the obvious inference from the motion is that the heart institute still wants to keep its partnering options open, something its spokesman said before the sale.

In April, founder Dr. Denton Cooley said that his preference was for the heart institute to affiliate with Methodist Hospital, a sentimental choice to many in Houston because it would reunite the heart programs of Cooley and the late Michael DeBakey. Their collaborations and then rivalry brought Houston fame from the 1950s through 1970s.

Cooley and Dr. James Willerson, president of the heart institute, would not comment on the motion.

Although the observers said they thought a continuing preference for Methodist was the reason behind the heart institute's legal action, they acknowledged it might be an attempt to leverage a better contract with Catholic Health, which has more than \$15 billion in assets and annual revenues of more than \$10.7 billion.

Effect is unknown

What effect the motion will have on the sale is unclear. A St. Luke's spokesman said earlier this week that the deal would

close within 72 hours of approval expected soon from regulatory agencies. He suggested then officials thought that could be coming in the next 10 days.

Vivian Ho, a Rice University health economist, said a ruling in the institute's favor could change the deal's price tag.

"If the Texas Heart Institute is not included, the value should drop significantly," said Ho. "I'd have to believe having such a world-renowned heart center was one of things that most interested Catholic Health Initiatives in the system."

Ho added that Texas Heart's action likely didn't surprise Catholic Health. She also said her impression is that they are firmly committed to the deal, no matter what happens with the heart institute.

Buyer not talking

A Catholic Health Initiatives spokesman said Thursday it would be inappropriate for the system to comment about the motion at this time. Kevin Lofton, the system's CEO, said at a media session the day of the sale that it was made with the understanding the St. Luke's-Texas Heart Institute affiliation agreement would come with the deal.

St. Luke's and the heart institute have collaborated for more than 50 years, but only formalized the relationship in an affiliation agreement in 1988.

The motion says the agreement is "purposefully indefinite," imposing no definite and enforceable support obligations, though it adds that the parties agreed that if St. Luke's financial support "materially decreased in any fiscal year after 1989, St. Luke's was obligated to give THI at least six months' written notice." It says THI then had the right to terminate the affiliation agreement upon six months' notice.

The motion says the heart institute's repeated attempts to clarify the funding obligation have been futile.