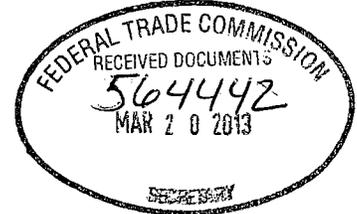


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright



_____)
In the Matter of)
)
)
Alan B. Miller,)
a natural person;)
)
and)
)
Universal Health Services, Inc.,)
a corporation.)
_____)

Dkt No. C-4372

APPLICATION FOR APPROVAL OF DIVESTITURE OF THE PEAK
BEHAVIORAL HEALTH ASSETS

CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000
*Attorneys for Alan B. Miller and Universal
Health Services, Inc.*

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- Exhibit A Asset Purchase Agreement, dated March 14, 2013 (Confidential)
- Exhibit B Disclosure Schedules to Asset Purchase Agreement, dated March 14, 2013
(Confidential)
- Exhibit C Commitment Letter by Dobbs Management Service, LLC, dated March 8,
2013 (Confidential)

Introduction

Pursuant to Section 2.41(f) of the Federal Trade Commission (the “Commission”), Rules of Practice and Paragraph II of the Decision and Order issued by the Commission on November 27, 2012 (the “Decision and Order”), Respondents Alan B. Miller and Universal Health Services, Inc. (“UHS”), respectfully submit this Application for Approval of Divestiture of the Peak Behavioral Health Assets (the “Application”), in connection with the matter entitled *In the Matter of Alan B. Miller, a natural person; and Universal Health Services, Inc., a corporation*, Docket No. C-4372.

This matter arose out of UHS’s acquisition of Ascend Health Corp. (“Ascend”), which closed on October 10, 2012. On September 24, 2012, Alan B. Miller and UHS executed an Agreement Containing Consent Orders that included a Decision and Order, which required UHS to divest the Peak Behavioral Health Assets¹, and an Order to Hold Separate and Maintain Assets. On October 5, 2012, the Commission accepted the Agreement Containing Consent Orders, the Decision and Order, and the Order to Hold Separate and Maintain Assets for public comment.

In this Application, UHS seeks approval of the proposed divestiture of the Peak Behavioral Health Assets to Strategic Behavioral Health, LLC (“SBH”), as described in the following agreements: (i) the Asset Purchase Agreement between UHS and SBH attached hereto as Confidential Exhibit A, (ii) Disclosure Schedules to the Asset Purchase Agreement, dated March 14, 2013, attached hereto as Confidential Exhibit B, and (iii) a financing commitment letter from Dobbs Management Service, LLC, dated

¹ Capitalized terms have the definitions given to them in the Decision and Order and the Order to Hold Separate and Maintain Assets.

March 8, 2013, attached hereto as Confidential Exhibit C (together, the “Peak Behavioral Divestiture Agreements”). The remainder of this Application further describes how the proposed divestiture will satisfy the terms and purposes of the Decision and Order.²

The proposed divestiture of the Peak Behavioral Health Assets would accomplish the Decision and Order’s purposes by “ensur[ing] the continuation of the Peak Behavioral Health Assets . . . as an ongoing, viable Psychiatric Hospital Facility” and by “remedy[ing] the lessening of competition resulting from the Acquisition as alleged in the Commission’s Complaint”. (Decision and Order, ¶ II.D.) Specifically, by divesting the Peak Behavioral Health Assets as contemplated by the Decision and Order, the Peak Behavioral Health Assets will continue operating under the competent and capable direction of SBH and the Relevant Area will have the benefit of another significant competitor fully capable of and engaged in the provision of Acute Inpatient Psychiatric Services. As described in detail below, SBH has the financial, professional and operational resources to be a strong and effective competitive force in the Relevant Area for the provision of Acute Inpatient Psychiatric Services.

² Because this Application and accompanying Confidential Exhibits contain confidential and competitively-sensitive commercial and financial information relating to the Peak Behavioral Health Assets that neither UHS nor SBH discloses in the ordinary course of business, the disclosure of which may harm the ongoing competitiveness of Peak Behavioral Health Services and thereby prejudice UHS and/or SBH, UHS has redacted confidential information from the public version of this Application. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission’s Rules of Practice, UHS requests that the confidential portion of this Application and the confidential material contained herein be afforded confidential treatment under Section 4.10(a)(2) of the Commission’s Rules of Practice. See 16 C.F.R. § 4.10(a)(2); see also 15 U.S.C. §§ 46(f), 57b-2(c). Further, the confidential portions of this Application and accompanying Confidential Exhibits are exempt from disclosure under the Freedom of Information Act and the Hart Scott Rodino Act. See 5 U.S.C. § 552; 15 U.S.C. § 18a(h).

Redacted

Redacted

Redacted

II. **SBH IS WELL-QUALIFIED AND IS READY, WILLING AND ABLE TO COMPETE FOR THE PROVISION OF ACUTE INPATIENT PSYCHIATRIC SERVICES IN THE RELEVANT AREA.**

A. Name and Address.

Strategic Behavioral Health, LLC
SBH – El Paso, LLC
8295 Tournament Drive, Suite 201
Memphis, Tennessee 38125
(901) 969-3100

B. SBH's Corporate Officers Have Significant Experience in Operating Inpatient Psychiatric Services.

SBH's corporate team is well-qualified and experienced in operating Acute and Residential Inpatient Psychiatric Services. Members of the SBH executive team include:

- Jim Shaheen, President. Prior to forming Strategic Behavioral Health, LLC, Mr. Shaheen served as Chief Executive Officer of Compass Intervention Center, a 108 bed Psychiatric Residential Treatment Center based in Memphis, Tennessee, a subsidiary of Keystone Education and Youth Services. He also served as Chief Executive Officer of Coastal Harbor Treatment Center, a 113 bed Psychiatric Hospital in Savannah, Georgia. Mr. Shaheen has over 20 years of psychiatric healthcare experience in a variety of settings such as acute, residential, and outpatient services. He has successfully led multiple behavioral healthcare systems to increased quality and profitability.

As founder and President of SBH, Mr. Shaheen has developed three de novo facilities totaling 256 beds in Wilmington, North Carolina; Raleigh, North Carolina and Colorado Springs, Colorado. All three facilities are providing services in markets that have historically been underserved. These facilities have achieved high census and utilization rates as a result of the quality care being given.

Additionally, these high utilization figures are indicative of SBH's ability to locate and provide services to markets which have significant unmet demand for inpatient psychiatric services. Each facility enjoys a strong reputation clinically and has excellent relationships with the relevant regulatory bodies due to the quality of the clinical services provided as well as the strong compliance programs established by Mr. Shaheen and his executive team.

The Company, under Mr. Shaheen's direction, has also been successful in the acquisition of two of UHS's Las Vegas facilities. One of the Las Vegas facilities has added 10 beds and further growth is planned through greenfield expansions of 72 beds at that same facility. Additionally, SBH will soon be adding 20 beds to its Wilmington, North Carolina facility as well as building a new 72 bed hospital in College Station, Texas. These facilities will service unmet needs in those respective communities and are expected to open late in 2013 and early in 2014.

In February 2013, the Company purchased an existing facility in Charlotte, North Carolina from UHS. After renovations, the Company plans to re-open the facility in the third quarter of 2013 as a 60 bed psychiatric residential treatment facility.

Mr. Shaheen holds a Masters Degree in Organizational Communications from Murray State University and a Bachelors Degree in Therapeutic Recreation also from Murray State University.

- Doug Ginn, Executive Vice-President of Operations. Mr. Ginn, LCSW, joined SBH as Vice President of Clinical Services and Compliance in 2009. He was subsequently promoted to Executive Vice-President of Operations. Mr. Ginn began his career in behavioral health in 1985 as a community counselor at Lakeside Behavioral Health System in Memphis, Tennessee. He worked at Lakeside for over 10 years in various clinical positions including Administrator of Child and Adolescent Services. Mr. Ginn was in private practice for twelve years with Ginn & Associates in Germantown, Tennessee. After private practice Mr. Ginn returned to Lakeside as the Chief Clinical Officer with clinical oversight of the 305 bed multi-facility Behavioral Health System as well as a full continuum of care.

Mr. Ginn graduated from the University of Memphis with a Bachelor of Fine Arts in 1987 and the University of Tennessee with a Master's of Science in Social Work in 1994. He is licensed in Tennessee as a Clinical Social Worker. Mr. Ginn has vast experience in program development including Acute Care Hospitalization, Residential Treatment, Partial Hospitalization, In-Home Crisis Intervention, Intensive Outpatient and Respite Care programs. Mr. Ginn oversees all of the clinical programs at SBH.

- Gina Alexander – Chief Financial Officer. Gina Alexander joined Strategic Behavioral Health in 2012 with over eight years of experience in healthcare. She has held CFO and Vice President of

Operations positions with behavioral health companies involved in residential treatment facilities and disease & wellness management. Gina also has extensive finance leadership experience working with Fortune 500 companies in manufacturing, retail and telecommunications as well as middle market and private equity.

Ms. Alexander received her B.A. from Cornell University in Ithaca, NY and received her M.B.A. from The Stephen M. Ross School of Business, University of Michigan Graduate Business School.

- Mike Orians, Secretary. Mr. Orians serves as the key shareholder liaison to SBH and directs its activities across strategic and financial matters including but not limited to its strategy, budgeting, planning and capital investment processes, reviews and oversight of financial and regulatory matters as well as its compensation, benefits and risk management programs.

Since 1994, Mr. Orians has overseen the accounting infrastructure for numerous privately-held businesses as an executive at Dobbs Management Services (DMS). Additionally, Mr. Orians has been the lead shareholder liaison to three companies while working at DMS including a large beverage distribution business, a Dental Practice Management Company and one of the largest privately owned Health Management Organizations in the U.S. whose revenues exceeded one billion dollars.

Prior to joining DMS, Mr. Orians practiced accounting for nine (9) years at Reynolds, Bone & Griesbeck, a Memphis, Tennessee accounting firm with concentration in accounting and auditing for wholesale distribution, financial services firms, and manufacturers; and consulting, design, and implementation of accounting information systems. Mr. Orians graduated with a B.B.A. from Memphis State University.

- Chris Crosby, Vice President. Mr. Crosby works to support SBH's strategic initiatives including development, acquisition and growth initiatives as well as provide analytical support and manage SBH's relationships with its commercial banks.

Since 2005, as Vice President of Dobbs Management Services, LLC, Mr. Crosby has overseen the private equity acquisition, development and investment efforts at DMS across a number of different companies and industries, including SBH.

Prior to joining DMS, Mr. Crosby had 14 years of experience through a combination of investment banking, strategy consulting and

operations experience. Mr. Crosby worked in the M&A group at Lehman Brothers and as a Principal at The Parthenon Group, a strategic advisory firm. He has served as VP of Operations at Thomas & Betts and VP of Supply Chain at Mueller Industries. Mr. Crosby earned a B.B.A. degree in business from Millsaps College and an M.B.A. from the Tuck School at Dartmouth College.

- Alan McClurg, Controller. Mr. McClurg is the Controller for SBH. Mr. McClurg's experience with healthcare facilities started in 1988 while working for a national CPA firm in Memphis, Tennessee. During that time he was the lead auditor for several Medicaid funded nursing homes and a hospital in Missouri.

Mr. McClurg served the behavioral health community in a financial capacity from 1997 to 2005 as either a controller or chief financial officer for two other companies. Most recently, he served the Memphis Health Center as both the Controller, and then the interim Chief Financial Officer. He holds a Bachelor of Science degree from Arkansas State University and passed the Uniform Examination for Certified Public Accountants in 1991. Mr. McClurg oversees all of the day-to-day financial operations for all the Strategic Behavioral Health facilities.

- Clyde Peete, Director of Milieu Management. Before joining SBH, Mr. Peete had worked for over 25 years in the psychiatric healthcare field. Most recently Mr. Peete was the Director of Milieu Management for Lakeside Behavioral Health System in Memphis, Tennessee. Mr. Peete has specialized throughout his career on developing staff's understanding in managing a therapeutic environment.

Mr. Peete has held various positions in the past including: Principal of Alternative School, Director of Milieu Management, Program Coordinator for Child and Adolescent Services, Dual Diagnosis Counselor, Shift Coordinator and Recreational Therapist. He has also been responsible for staff development and training of a 305 bed multi-facility behavioral health system.

Mr. Peete graduated from Rust College in 1979 with Bachelor of Science in Health and Physical Education. He has been a licensed trainer in CPI, PMAB, and HWC.

- Tammy Walk, Director of Compliance, MSHL. Ms. Walk has over 10 years of experience in design, implementation and maintenance of health care compliance programs. Prior to joining SBH, Ms. Walk served as Compliance and Quality Assurance Manager for Meharry

Medical College where she managed the daily operational activities of the Corporate Compliance Program. She ensured that the institution complied with state and federal regulatory requirements and mandates and made certain that internal controls were in place to reduce risk and liability. She has also served as Compliance Specialist at ZLB Plasma Services, Inc. and as a Compliance Officer for Delta Health Center, Inc., where she was responsible for overall leadership, direction, and implementation of compliance and quality programs.

Ms. Walk has a Master of Science degree in Health Law, Legal Regulatory Compliance from Nova Southeastern University, and a Bachelor of Science degree in Health Care Administration and Planning from Tennessee State University and Meharry Medical College.

C. SBH is in the Business of Operating Psychiatric Service Facilities.

SBH is a national healthcare company formed in January 2006, which, through wholly owned subsidiaries, provides psychiatric services to individuals who have a variety of behavioral health disorders, including alcohol and drug dependency. SBH is privately held and has headquarters in Memphis, Tennessee. As of December 31, 2012, SBH had consolidated net annualized revenue of approximately **Redacted** and approximately 745 employees.

SBH, through its subsidiaries, operates 5 psychiatric treatment hospitals in the states of Colorado, Nevada and North Carolina. Currently, SBH has no operating facilities, including any Psychiatric Hospital Facilities, in the States of New Mexico or Texas. A planned facility in College Station, Texas is in the very early stages of construction.

SBH's services include behavioral health services in acute and residential psychiatric treatment and the treatment of substance abuse. As such, SBH already has the capabilities to operate and manage Psychiatric Hospital Facilities providing services such as specialized treatment to patients who suffer from substance abuse as well as inpatient

psychiatric care, intensive outpatient psychiatric treatment and partial hospitalization programs.

Further information about SBH is available on the company's website, <http://www.strategicbh.com>.

UHS does not have any current business relationship with SBH, except that UHS continues to provide transition services to SBH in connection with the purchase by SBH of two hospitals in Las Vegas, Nevada from UHS. SBH also purchased a psychiatric residential treatment facility from UHS in Charlotte, North Carolina in February 2013.

D. SBH Has the Financial Resources to Ensure that the Peak Behavioral Health Assets Continue as a Viable Competitor in the Relevant Area.

As of December 31, 2012, SBH had consolidated annual net revenue of approximately **Redacted** and approximately 745 employees. In addition, inter alia, Dobbs Management Service, LLC, the owners of which represent a majority ownership of SBH, has entered into a commitment letter to provide or cause the provision of financing to SBH for approximately **Redacted** which is intended to finance the acquisition of the Peak Behavioral Health Assets. A copy of the Dobbs commitment letter is attached hereto as Confidential Exhibit C. This letter is supported by the commitment of a majority of shareholders of SBH which, individually and collectively, have the financial resources required to fund this investment without regard to bank or other financing sources. Additionally, the Board of Managers of SBH has formally approved this transaction.

E. SBH Has Developed a Comprehensive Business Plan to Compete for the Provision of Acute Inpatient Psychiatric Services in the Relevant Area.

Mr. Shaheen, as the President of SBH, has spent considerable effort in connection with SBH's decision to enter into the Peak Divestiture Agreements, having made the determination that he sees an excellent business opportunity in the Peak Behavioral Health Assets. SBH has developed a business plan setting forth how it plans to compete aggressively on a going-forward basis, consistent with the Commission's desire to ensure the continuation of the Peak Behavioral Health Assets as an ongoing, viable Psychiatric Hospital Facility. (See Decision and Order, ¶ II.D.) SBH has determined that it intends to retain the existing staff at Peak Behavioral Health Services under SBH management. SBH expects that over the coming years, it will be able to grow the total number of beds utilized in the Relevant Area. SBH will submit a business/marketing plan to the Commission staff under separate cover.

SBH has the requisite experience, administrative, management, financial and clinical resources to compete aggressively on a going-forward basis after its purchase of the Peak Behavioral Health Assets from UHS is complete and approved by the Commission. Furthermore, SBH, through its shareholder base, has the financial resources to ensure that the Peak Behavioral Health Assets will be financially and competitively viable and that it will be able to provide its patients with Acute Inpatient Psychiatric Services well into the future.

Recent evidence of this capability can be found in SBH's integration and management of the two previously mentioned Las Vegas hospitals which were purchased from UHS in 2011. The combined facilities are experiencing sustained increases in the total patient days provided. Additionally, SBH added 10 beds to accommodate its growth

and expand its programs. Finally, SBH is currently developing an additional 72 beds on the Las Vegas property to allow it to both expand its services as well as accommodate additional demand in the market.

III. THE PEAK BEHAVIORAL HEALTH ASSETS BEING DIVESTED ARE CONSISTENT WITH THE TERMS AND PURPOSES OF THE DECISION AND ORDER.

As required by the Decision and Order, to the extent allowable by law, the transaction has been structured to divest all of the Peak Behavioral Health Assets. The transaction has been structured as an asset transaction, such that, upon closing, SBH will generally receive all transferable rights, title and interest to the Peak Behavioral Health Assets and will be the sole operator of the Peak Behavioral Health Assets. As a result, the Peak Behavioral Health Assets being divested are consistent with the terms and purposes of the Decision and Order. In addition, the related Transition Services Agreement will further enable SBH to ensure the continuation of the Peak Behavioral Health Assets as ongoing, viable Psychiatric Hospital Facility.

A. Transfer of the Peak Behavioral Health Assets.

As required by the Decision and Order, the transaction will transfer the Peak Behavioral Health Assets, absolutely and in good faith, as an on-going business that is a financially and competitively viable Psychiatric Hospital Facility providing Acute Inpatient Psychiatric Services. To the extent permitted by law, and subject to certain exceptions, the transfer will include, but not be limited to, (i) real property interests; (ii) tangible personal property; (iii) contracts and agreements; (iv) intellectual property; (v) intangible rights other than intellectual property; (vi) approvals, consents, licenses, certificates, registrations, permits, waivers or other authorizations by any governmental body or pursuant to any legal requirement and all pending applications or renewals

thereof; (vi) inventories, stores and supplies; (vii) accounts receivables; (viii) rights under warranties and guaranties; (ix) books, records, files, and other business records; and (x) patient deposits. To the extent permitted by law, UHS also will cooperate as necessary to ensure that all governmental approvals needed to operate the Peak Behavioral Health Assets are obtained.

The Excluded Assets (as defined in the Asset Purchase Agreement), will not be transferred. Such Excluded Assets include, but are not limited to, (i) cash; (ii) certain rights, claims and credits of UHS and its subsidiaries to assets other than those acquired by SBH (such as insurance policies and certain guarantees, warranties, and indemnities); (iii) certain trademarks and names; (iv) rights of UHS under the Asset Purchase Agreement; (v) business records prepared in connection with the sale of the Peak Behavioral Health Assets and all other business records required to be retained to comply with applicable laws, regulations and other legal requirements; (vi) all assets of or relating to any seller benefit plan or seller benefit agreement; (vii) financial and tax records that constitute part of UHS's or one of its subsidiaries' general ledger; (viii) credits and related rights and claims from any taxing authority with respect to certain taxes; (ix) certain rights, claims and credits relating to third party payor reimbursements or insurance policies prior to the Closing Date; and (x) certain properties and assets used in or relating to the operation or conduct of a business other than Peak Behavioral Health Services that are not primarily used in or do not primarily relate to Peak Behavioral Health Services.

B. Securing Third Party Consents and Waivers.

The parties have agreed to use their commercially reasonable efforts to secure all material consents, waivers and licenses from all third parties necessary to

permit the transfer of the Peak Behavioral Health Assets (to the extent permitted by law). If a permit necessary to operate the Peak Behavioral Health Assets prior to the Closing Date is not obtained, UHS has agreed to provide such lawful assistance as may reasonably be requested to obtain comparable authorization.

C. SBH's Opportunity to Hire Relevant Employees Currently Working at Peak Behavioral Health Services.

As required by the Decision and Order, UHS will make the Relevant Employees who are currently staffing Peak Behavioral Health Services available to SBH for hire. SBH has agreed to extend an offer of employment before the Closing Date to at least ninety percent of UHS employees whose duties relate primarily to the Peak Behavioral Health Assets. UHS will allow SBH to interview and inspect the personnel records of any Relevant Employee to the extent permissible under applicable laws. UHS will not (1) interfere, directly or indirectly, with the hiring or employment by SBH of any of these individuals, (2) offer any incentives to any of these individuals to decline employment with SBH, or (3) otherwise interfere with the recruitment of these individuals by SBH. UHS will also provide all such individuals with reasonable financial incentives to continue in their positions until the Closing Date of the divestiture and to the extent necessary, remove any impediments within UHS's control that may deter Relevant Employees from accepting employment with SBH.

D. Transition Services to Be Provided to SBH.

The parties have prepared a Transition Services Agreement (the "TSA"), to be dated and entered into on the Closing Date, a draft of the agreed-upon form is attached hereto as Exhibit A to the Asset Purchase Agreement (Confidential Exhibit A of this Application). Upon execution of the TSA, UHS will provide, at SBH's option,

administrative assistance, clinical assistance and support services with respect to the operation of Peak Behavioral Health Services and the provision of Acute Inpatient Psychiatric Services, including assistance relating to billing, accounting, governmental regulation, human resources management, information systems, managed care contracting and purchasing, as well as assistance with respect to acquiring, obtaining access and customizing all software used in the provision of such services. UHS shall perform such services, to the extent necessary, at substantially the same level and quality as such services were provided by UHS to Peak Behavioral Health Services prior to the Closing Date. The fee payable by SBH for services provided under the TSA will be equal to the cost directly incurred by UHS to provide such services.

E. The Proposed Divestiture Will Achieve the Remedial Purposes of the Decision and Order.

The proposed divestiture will ensure the continuation of the Peak Behavioral Health Assets as an ongoing, viable Psychiatric Hospital Facility by giving control of the Peak Behavioral Health Assets to SBH, an established national healthcare company experienced in the operation of Psychiatric Hospital Facilities and the provision of Acute Inpatient Psychiatric Services. In addition, UHS believes that the TSA provides any transitional support necessary to ensure that Peak Behavioral Health Services continue to remain a viable competitor for the provision of Acute Inpatient Psychiatric Services in the Relevant Area. The TSA was purposefully designed to enable SBH to request essentially any transition assistance that SBH may need. In addition, SBH's existing behavioral health service capabilities provide the Commission additional assurances that SBH is well-poised to be a viable competitor for the provision of Acute Inpatient Psychiatric Services in the Relevant Area. As set forth more fully above in

Section II, SBH is a national healthcare company already providing behavioral health services in Colorado, North Carolina and Nevada.

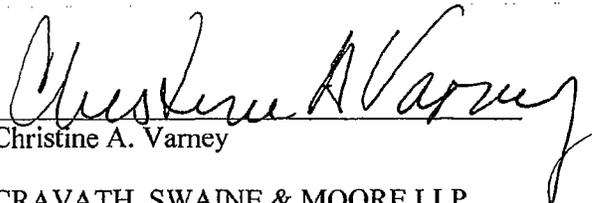
SBH, through its subsidiaries, operates five psychiatric treatment hospitals in the states of Colorado, North Carolina and Nevada. Currently, SBH has no facilities, including any Psychiatric Hospital Facilities, in the Relevant Area. With this established presence, SBH is an ideal candidate to acquire the Peak Behavioral Health Assets in light of the purposes of the Decision and Order. The Peak Behavioral Health Assets will strengthen SBH's competitive position nationally and provide a solid foothold to create a strong new competitor for the operation of Psychiatric Hospital Facilities and the provision of Acute Inpatient Psychiatric Services in the Relevant Area.

CONCLUSION

Because the proposed divestiture of the Peak Behavioral Health Assets is pro-competitive, in the public interest and addresses the competitive concerns raised in the Decision and Order, and for the additional reasons set forth above, UHS respectfully requests that the Commission approve the divestiture of the Peak Behavioral Health Assets to Strategic Behavioral Health, LLC, as detailed in the Divestiture Agreements.

Dated: March 14, 2013

Respectfully submitted,


Christine A. Varney

CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000

*Attorneys for Alan B. Miller and Universal
Health Services, Inc.*