

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



ORIGINAL

Docket No. 9366

In the Matter of)
)
)
 Cabell Huntington Hospital, Inc.)
 a corporation;)
)
 Pallottine Health Services, Inc.)
 a corporation;)
)
 and)
)
 St. Mary's Medical Center, Inc.)
 a corporation.)

**COMPLAINT COUNSEL'S UNOPPOSED MOTION FOR ISSUANCE OF
SUBPOENAS AD TESTIFICANDUM TO MARSHALL UNIVERSITY PERSONNEL
UNDER RULE OF PRACTICE 3.36**

INTRODUCTION

Complaint Counsel brings this motion pursuant to Federal Trade Commission (“Commission”) Rule of Practice 3.36 for the issuance of Subpoenas *Ad Testificandum* to officials of and personnel associated with Marshall University (the “Marshall University Personnel”). Complaint Counsel requests authorization to issue the attached subpoena under Rule 3.36, as Marshall University is a public university of the State of West Virginia, a government agency described in Rule 3.36(a). The Marshall University Personnel for which Complaint Counsel requests issuance of Subpoenas *Ad Testificandum* are:

- (1) Joseph I. Shapiro, Dean, Joan C. Edwards School of Medicine, Marshall University;
- (2) Kevin W. Yingling, Dean, Marshall University School of Pharmacy;

- (3) Ali Oliashirazi, Vice Dean for Business Development and External Affairs, Joan C. Edwards School of Medicine, Marshall University; and
- (4) Gary White, Interim President, Marshall University.

Respondents do not oppose Complaint Counsel's motion for the issuance of subpoenas to the Marshall University Personnel. Because the testimony sought from the Marshall University Personnel meets the requirements set out in Rule 3.36, Complaint Counsel respectfully requests that the Motion be granted and that the attached subpoenas be issued. Unsigned Subpoenas *Ad Testificandum* for the Marshall University Personnel are attached.

ARGUMENT

Rule 3.36(b) of the Commission's Rules of Practice requires a party seeking issuance of a subpoena for the appearance of an official or employee of a governmental agency to make a specific showing regarding the requested subpoena. With respect to subpoenas *ad testificandum* to be served within the United States, the party must show that:

- (1) the information sought from the official or employee of the governmental agency is reasonable in scope;
- (2) for discovery, the appearance of the official or employee of the governmental agency falls within the limits of discovery under Rule 3.31(c)(1); and
- (3) for discovery, the information sought from the official or employee of the governmental agency cannot reasonably be obtained by other means.

The proposed Subpoenas *Ad Testificandum* to the Marshall University Personnel meet all requirements of Rule 3.36(b).

Respondents have identified the Marshall University Personnel as potential witnesses in this matter. Marshall University and its School of Medicine are located in Huntington, West Virginia. Students from the School of Medicine receive residency training at both St. Mary's

Medical Center (“St. Mary’s”) and Cabell Huntington Hospital (“Cabell”). Marshall University faculty practice as physicians in both hospitals. Marshall University is a major employer in Huntington.

The scope of the testimony sought from the Marshall University Personnel will relate to Cabell Huntington Hospital’s proposed acquisition of St. Mary’s (the “Proposed Acquisition”), the impact of the Proposed Acquisition on Marshall University and its School of Medicine and residency programs, and competition among hospitals in the Huntington area. Respondents have stated that they expect the Marshall University Personnel to testify about information relating to the lack of anticompetitive effects from the transaction, efficiencies, market definition, healthcare costs to employers, and benefits from the transaction to the community. The scope of the testimony sought is limited to these and related topics, which is reasonable in scope relative to the Respondents’ naming of the Marshall University Personnel as potential witnesses in this matter.

As Respondents have named the Marshall University Personnel as potential witnesses expected to testify about Respondents’ defenses, and the Marshall University Personnel are knowledgeable about the competitive effects of the Proposed Transaction alleged in the Complaint, the testimony sought from the Marshall University Personnel falls within the limits of discovery under Rule 3.31(c)1), which requires that discovery be “reasonably expected to yield information relevant to the allegations of the complaint . . . or to the defenses of any respondent.”

As Respondents have named the Marshall University Personnel as potential witnesses expected to testify about Respondents’ defenses, the testimony sought from the Marshall University Personnel cannot be reasonably obtained by other means.

CONCLUSION

This Court has recognized that issuance of a subpoena to a governmental agency is appropriate if the moving party meets the criteria under Rule 3.36. *In the Matter of Intel Corporation*, FTC Docket No. 9341 (Order dated Jun. 9, 2010), available at <https://www.ftc.gov/sites/default/files/documents/cases/2010/06/100609intelorder.pdf>. For the reasons stated above, therefore, Complaint Counsel respectfully requests that the Court grant the Motion and issue the attached Subpoenas *Ad Testificandum* to the Marshall University Personnel.

Respectfully submitted,

Dated: January 13, 2016

/s/ David J. Laing
Alexis J. Gilman
Tara Reinhart
Thomas H. Brock
Mark D. Seidman
Michelle M. Yost
Elizabeth C. Arens
Jeanine Balbach
Stephanie R. Cummings
Melissa Davenport
Svetlana S. Gans
Nathaniel Hopkin
Elisa Kantor
David Laing
Michael Perry
Marc Schneider
Samuel I. Sheinberg
Steve Vieux

Complaint Counsel
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Telephone: (202) 326-3674
Facsimile: (202) 326-2655

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

<hr/>)
In the Matter of)
)
Cabell Huntington Hospital, Inc.)
a corporation;	Docket No. 9366)
)
Pallottine Health Services, Inc.)
a corporation;)
)
and)
)
St. Mary's Medical Center, Inc.)
a corporation.)
<hr/>)

COMPLAINT COUNSEL'S MEET AND CONFER STATEMENT

Pursuant to the Scheduling Order issued on December 4, 2015, Complaint Counsel submits this statement in support of its Motion for Issuance of Subpoenas *Ad Testificandum* to Marshall University Personnel Under Rule of Practice 3.36.

On January 12, 2016, Complaint Counsel provided Respondents via electronic mail with a copy of Complaint Counsel's proposed Motion for Issuance of Subpoenas *Ad Testificandum* to Marshall University Personnel. On January 12, 2016, Respondents advised Complaint Counsel via email that they do not oppose Complaint Counsel's request for the issuance of subpoena.

Respectfully submitted,

Date: January 13, 2016

/s/ Jeanine Balbach
Jeanine Balbach
On behalf of Complaint Counsel

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)	
)	
Cabell Huntington Hospital, Inc. a corporation;)	Docket No. 9366
)	
Pallottine Health Services, Inc. a corporation;)	
)	
and)	
)	
St. Mary's Medical Center, Inc. a corporation.)	
)	

**[PROPOSED] ORDER GRANTING COMPLAINT COUNSEL'S MOTION FOR
ISSUANCE OF SUBPOENAS AD TESTIFICANDUM
TO MARSHALL UNIVERSITY PERSONNEL**

On January 13, 2016, pursuant to Rule 3.36 of the Federal Trade Commission's Rules of Practice, Federal Trade Commission Complaint Counsel filed a motion for an order authorizing the Secretary of the Commission to issue four Subpoenas *Ad Testificandum* to officials of and personnel associated with Marshall University, a public university of the State of West Virginia, a government agency described in Rule 3.36(a). The four individuals affiliated with Marshall University (the "Marshall University Personnel") for which Complaint Counsel requests issuance of Subpoenas *Ad Testificandum* are:

- (1) Joseph I. Shapiro, Dean, Joan C. Edwards School of Medicine, Marshall University;
- (2) Kevin W. Yingling, Dean, Marshall University School of Pharmacy;
- (3) Ali Oliashirazi, Vice Dean for Business Development and External Affairs, Joan C. Edwards School of Medicine, Marshall University; and

(4) Gary White, Interim President, Marshall University.

Complaint Counsel represents that Respondents do not oppose the request to issue a subpoena *duces tecum*.

Rule 3.36(b) requires the party seeking issuance of a subpoena for the deposition testimony of an official or employee of another government agency to make a showing that: the material sought is reasonable in scope; the material is within the limits of discovery under Rule 3.31(c)(1); and the information or material sought cannot reasonably be obtained by other means. Complaint Counsel's motion meets the requirements of Rule 3.36 and is therefore GRANTED.

Pursuant to Rule 3.34, in the event that any of the Marshall University Personnel seek to limit or quash a subpoena, they shall have the earlier of ten days after service of the subpoena or the time for compliance therewith to file any such motion. 16 C.F.R. § 3.34(c).

Pursuant to Rule 3.36(c), Complaint Counsel may forward to the Secretary a request for the authorized subpoenas, with a copy of this authorizing order attached. Complaint Counsel shall serve a copy of this order on the Marshall University Personnel at the time Complaint Counsel serves the subpoenas. 16 C.F.R. § 3.36(c).

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

EXHIBIT A



SUBPOENA AD TESTIFICANDUM PUBLIC DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO
Joseph I. Shapiro, Dean
Joan C. Edwards School of Medicine, Marshall University
c/o Layton Cottrill, General Counsel
216 Old Main
One John Marshall Drive
Huntington, WV 25755

2. FROM

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION

Place to be determined.
Huntington, West Virginia

4. YOUR APPEARANCE WILL BE BEFORE
Jeanine Balbach, or designee
Complaint Counsel

5. DATE AND TIME OF DEPOSITION
January 29, 2016; 9:00 am

6. SUBJECT OF PROCEEDING

In the Matter of Cabell Huntington, Inc., Pallottine Health Services, Inc., and St. Mary's Medical Center, Inc.,
Docket No. 6366

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL AND PARTY ISSUING SUBPOENA
Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

DATE SIGNED

SIGNATURE OF COUNSEL ISSUING SUBPOENA

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCsRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1995.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

via FedEx

on the person named herein on:

January __, 2016

(Month, day, and year)

David J. Laing

(Name of person making service)

Senior Trial Counsel

(Official title)

CERTIFICATE OF SERVICE

I hereby certify that on January [xx], 2016, I served via FedEx delivery a copy of the attached Subpoena *Ad Testificandum* to Dr. Joseph I. Shapiro of Marshall University, a copy of the Administrative Law Judge's order authorizing the subpoena, and a copy of the Protective Order governing this matter to:

Dr. Joseph I. Shapiro
Marshall University
c/o Layton Cottrill, General Counsel
216 Old Main
One John Marshall Drive
Huntington, WV 25755-1000
cottrill@marshall.edu

I further certify that I served the foregoing on the following counsel via electronic mail:

Geoff Irwin
Kenneth W. Field
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001
(202) 879-3963
cabell_service@jonesday.com
*Counsel for Respondent Cabell
Huntington Hospital, Inc.*

James Bailes
Thomas Craig
Bailes, Craig & Yon, PLLC
401 10th Street, Suite 500
Huntington, WV 25701
(304) 697-4700
tlc@bcyon.com
jrb@bcyon.com
*Counsel for Respondent Cabell
Huntington Hospital, Inc.*

David Simon
H. Holden Brooks
Foley & Lardner LLP
3000 K Street, N.W., Suite 600
Washington, DC 20007
(202) 945-6033
dsimon@foley.com
hbrooks@foley.com
*Counsel for Respondent Pallottine
Health Services, Inc. and St. Mary's
Medical Center, Inc.*

Dated: January [xx], 2016

/s/ Jeanine Balbach
Jeanine Balbach, Esq.
On behalf of Complaint Counsel



SUBPOENA AD TESTIFICANDUM PUBLIC DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO
Kevin W. Yingling, Dean
Marshall University School of Pharmacy
c/o Layton Cottrill, General Counsel
216 Old Main
One John Marshall Drive
Huntington, WV 25755

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION

Place to be determined.
Huntington, West Virginia

4. YOUR APPEARANCE WILL BE BEFORE
Jeanine Balbach, or designee
Complaint Counsel

5. DATE AND TIME OF DEPOSITION
January 27, 2016; 9:00 am

6. SUBJECT OF PROCEEDING

In the Matter of Cabell Huntington, Inc., Pallottine Health Services, Inc., and St. Mary's Medical Center, Inc.,
Docket No. 6366

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL AND PARTY ISSUING SUBPOENA
Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

DATE SIGNED

SIGNATURE OF COUNSEL ISSUING SUBPOENA

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCsRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1995.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

via FedEx

on the person named herein on:

January __, 2016

(Month, day, and year)

David J. Laing

(Name of person making service)

Senior Trial Counsel

(Official title)

CERTIFICATE OF SERVICE

I hereby certify that on January [xx], 2016, I served via FedEx delivery a copy of the attached Subpoena *Ad Testificandum* to Dr. Kevin W. Yingling of Marshall University, a copy of the Administrative Law Judge's order authorizing the subpoena, and a copy of the Protective Order governing this matter to:

Dr. Kevin W. Yingling
Marshall University
c/o Layton Cottrill, General Counsel
216 Old Main
One John Marshall Drive
Huntington, WV 25755-1000
cottrill@marshall.edu

I further certify that I served the foregoing on the following counsel via electronic mail:

Geoff Irwin
Kenneth W. Field
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001
(202) 879-3963
cabell_service@jonesday.com
*Counsel for Respondent Cabell
Huntington Hospital, Inc.*

James Bailes
Thomas Craig
Bailes, Craig & Yon, PLLC
401 10th Street, Suite 500
Huntington, WV 25701
(304) 697-4700
tlc@bcyon.com
jrb@bcyon.com
*Counsel for Respondent Cabell
Huntington Hospital, Inc.*

David Simon
H. Holden Brooks
Foley & Lardner LLP
3000 K Street, N.W., Suite 600
Washington, DC 20007
(202) 945-6033
dsimon@foley.com
hbrooks@foley.com
*Counsel for Respondent Pallottine
Health Services, Inc. and St. Mary's
Medical Center, Inc.*

Dated: January [xx], 2016

/s/ Jeanine Balbach
Jeanine Balbach, Esq.
On behalf of Complaint Counsel



SUBPOENA AD TESTIFICANDUM PUBLIC DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO
Ali Oliashirazi, Vice Dean for Business Development
Joan C. Edwards School of Medicine, Marshall University
c/o Layton Cottrill, General Counsel
216 Old Main
One John Marshall Drive
Huntington, WV 25755

2. FROM

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION

Place to be determined.
Huntington, West Virginia

4. YOUR APPEARANCE WILL BE BEFORE
Nate Hopkin, or designee
Complaint Counsel

5. DATE AND TIME OF DEPOSITION
January 28, 2016; 9:00 am

6. SUBJECT OF PROCEEDING

In the Matter of Cabell Huntington, Inc., Pallottine Health Services, Inc., and St. Mary's Medical Center, Inc.,
Docket No. 6366

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL AND PARTY ISSUING SUBPOENA

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

DATE SIGNED

SIGNATURE OF COUNSEL ISSUING SUBPOENA

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCsRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1995.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

via FedEx

on the person named herein on:

January __, 2016

(Month, day, and year)

David J. Laing

(Name of person making service)

Senior Trial Counsel

(Official title)

CERTIFICATE OF SERVICE

I hereby certify that on January [xx], 2016, I served via FedEx delivery a copy of the attached Subpoena *Ad Testificandum* to Dr. Ali Oliashirazi of Marshall University, a copy of the Administrative Law Judge's order authorizing the subpoena, and a copy of the Protective Order governing this matter to:

Dr. Ali Oliashirazi
Marshall University
c/o Layton Cottrill, General Counsel
216 Old Main
One John Marshall Drive
Huntington, WV 25755-1000
cottrill@marshall.edu

I further certify that I served the foregoing on the following counsel via electronic mail:

Geoff Irwin
Kenneth W. Field
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001
(202) 879-3963
cabell_service@jonesday.com
*Counsel for Respondent Cabell
Huntington Hospital, Inc.*

James Bailes
Thomas Craig
Bailes, Craig & Yon, PLLC
401 10th Street, Suite 500
Huntington, WV 25701
(304) 697-4700
tlc@bcyon.com
jrb@bcyon.com
*Counsel for Respondent Cabell
Huntington Hospital, Inc.*

David Simon
H. Holden Brooks
Foley & Lardner LLP
3000 K Street, N.W., Suite 600
Washington, DC 20007
(202) 945-6033
dsimon@foley.com
hbrooks@foley.com
*Counsel for Respondent Pallottine
Health Services, Inc. and St. Mary's
Medical Center, Inc.*

Dated: January [xx], 2016

/s/ Jeanine Balbach
Jeanine Balbach, Esq.
On behalf of Complaint Counsel



SUBPOENA AD TESTIFICANDUM PUBLIC DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO
Gary White
Interim President, Marshall University
c/o Layton Cottrill, General Counsel
216 Old Main
One John Marshall Drive
Huntington, WV 25755

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION

Place to be determined.
Huntington, West Virginia

4. YOUR APPEARANCE WILL BE BEFORE
Alexis Gilman, or designee
Complaint Counsel

5. DATE AND TIME OF DEPOSITION
January 28, 2016; 9:00 am

6. SUBJECT OF PROCEEDING

In the Matter of Cabell Huntington, Inc., Pallottine Health Services, Inc., and St. Mary's Medical Center, Inc.,
Docket No. 6366

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL AND PARTY ISSUING SUBPOENA

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

DATE SIGNED

SIGNATURE OF COUNSEL ISSUING SUBPOENA

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCsRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1995.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

via FedEx

on the person named herein on:

January __, 2016

(Month, day, and year)

David J. Laing

(Name of person making service)

Senior Trial Counsel

(Official title)

CERTIFICATE OF SERVICE

I hereby certify that on January [xx], 2016, I served via FedEx delivery a copy of the attached Subpoena *Ad Testificandum* to Gary White of Marshall University, a copy of the Administrative Law Judge's order authorizing the subpoena, and a copy of the Protective Order governing this matter to:

Gary White
Marshall University
c/o Layton Cottrill, General Counsel
216 Old Main
One John Marshall Drive
Huntington, WV 25755-1000
cottrill@marshall.edu

I further certify that I served the foregoing on the following counsel via electronic mail:

Geoff Irwin
Kenneth W. Field
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001
(202) 879-3963
cabell_service@jonesday.com
*Counsel for Respondent Cabell
Huntington Hospital, Inc.*

James Bailes
Thomas Craig
Bailes, Craig & Yon, PLLC
401 10th Street, Suite 500
Huntington, WV 25701
(304) 697-4700
tlc@bcyon.com
jrb@bcyon.com
*Counsel for Respondent Cabell
Huntington Hospital, Inc.*

David Simon
H. Holden Brooks
Foley & Lardner LLP
3000 K Street, N.W., Suite 600
Washington, DC 20007
(202) 945-6033
dsimon@foley.com
hbrooks@foley.com
*Counsel for Respondent Pallottine
Health Services, Inc. and St. Mary's
Medical Center, Inc.*

Dated: January [xx], 2016

/s/ Jeanine Balbach
Jeanine Balbach, Esq.
On behalf of Complaint Counsel

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2016, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing document to:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I served, via electronic mail, the accompanying Complaint Counsel's Unopposed Motion for Issuance of Subpoenas *Ad Testificandum* to Marshall University Personnel under Rule of Practice 3.36, on the following counsel:

Geoff Irwin
Kenneth W. Field
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001
(202) 879-3963
cabell_service@jonesday.com
*Counsel for Respondent Cabell Huntington
Hospital, Inc.*

Thomas Craig
James Bailes
Bailes, Craig & Yon, PLLC
401 10th Street, Suite 500
Huntington, WV 25701
(304) 697-4700
tlc@bcyon.com
jrb@bcyon.com
*Counsel for Respondent Cabell Huntington
Hospital, Inc.*

David Simon
H. Holden Brooks
Foley & Lardner LLP
3000 K Street, N.W., Suite 600
Washington, DC 20007
(202) 945-6033
MILW-SMMCSERVICE@foley.com
*Counsel for Respondent Pallottine Health
Services, Inc. and
St. Mary's Medical Center, Inc.*

Layton Cottrill, General Counsel
Marshall University
216 Old Main
One John Marshall Drive
Huntington, WV 25755-1000
cottrill@marshall.edu
Counsel for Marshall University

Dated: January 13, 2016

/s/ Jeanine Balbach
Jeanine Balbach
On behalf of Complaint Counsel

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Date: January 13, 2016

/s/ Jeanine Balbach
Jeanine Balbach
On behalf of Complaint Counsel