

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



In the Matter of

Cabell Huntington Hospital, Inc.
a corporation;

and

Pallottine Health Services, Inc.
a corporation;

and

St. Mary's Medical Center, Inc.
a corporation

Docket No. 9366

**RESPONDENT CABELL HUNTINGTON HOSPITAL, INC.'S
UNOPPOSED MOTION FOR ISSUANCE OF DEPOSITION SUBPOENAS AD
TESTIFICANDUM TO MARSHALL UNIVERSITY PERSONNEL DR. JOSEPH
SHAPIRO, DR. KEVIN YINGLING, DR. ALI OLIASHIRAZI AND GARY WHITE
UNDER RULE OF PRACTICE 3.36**

Respondent Cabell Huntington Hospital, Inc. ("Respondent") brings this motion pursuant to Federal Trade Commission ("Commission") Rule of Practice 3.36, 16 C.F.R. § 3.36, to request the issuance of subpoenas ad testificandum to four personnel of Marshall University, a public university in West Virginia: (1) Dr. Joseph Shapiro, Dean of the School of Medicine ("Dr. Shapiro"); (2) Dr. Kevin Yingling, Dean of the School of Pharmacy ("Dr. Yingling"); (3) Dr. Ali Oliashirazi, Residency Program Director at the School of Medicine ("Dr. Oliashirazi"); and (4) Mr. Gary White ("Mr. White") insofar as he is questioned in his capacity as Marshall University's Interim President.

All four are listed on Respondent's amended preliminary witness list, and Complaint Counsel has also requested the issuance of subpoenas ad testificandum to these same individuals.

Unsigned versions of Respondent's requested subpoenas are attached as **Exhibits A-D**. Complaint Counsel does not oppose Respondent's request to issue these subpoenas ad testificandum, but takes no position on the contents of this motion or the scope of the subpoenas.

ARGUMENT

By this motion, Respondent requests that the Court issue subpoenas ad testificandum to Dr. Shapiro, Dr. Yingling, Dr. Oliashirazi and Mr. White, all of whom Respondent listed on its amended preliminary witness list. Complaint Counsel recently moved the Court to issue subpoenas ad testificandum to these same individuals, and the requested subpoenas are necessary to ensure that Respondent has an equal opportunity to obtain testimony from them.

Pursuant to Rule 3.36(b) of the Commission's Rules of Practice, a party seeking the issuance of a subpoena for the appearance of a governmental employee must show that:

- (1) the information sought is reasonable in scope;
- (2) if for purposes of discovery, the material falls within the limits of discovery under § 3.31(b)(1), or if for an adjudicative hearing, the material is reasonably relevant; and
- (3) the material cannot reasonably be obtained by other means.

16 C.F.R. § 3.36(b). All three requirements are met here.

First, the scope of the testimony requested in the subpoenas ad testificandum is reasonable. Complaint Counsel has stated in its motion for subpoenas to be issued to these individuals that "[t]he 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."

Respondent seeks testimony related to these same issues, and any other matters about which Complaint Counsel questions these individuals.

Second, the material sought is both “may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent” (16 C.F.R. § 3.31(c)(1)), and also is reasonably relevant. Marshall University and its School of Medicine are located in Huntington, West Virginia, where both are major employers. Students from the School of Medicine receive residency training at St. Mary’s Medical Center and Cabell Huntington Hospital, the respondents in this action. Marshall University faculty members also practice as physicians in both hospitals.

As stated on Respondent’s amended preliminary witness list, Dr. Shapiro, Dr. Yingling and Dr. Oliashirazi are expected to testify about the lack of anticompetitive effects from the transaction, efficiencies, market definition, healthcare costs to employers, and benefits from the transaction to the community. Mr. White serves both as Interim President of Marshall University, as well as a member of Respondent’s Board of Directors. Respondent’s amended preliminary witness list states that he is expected to testify as to the same topics as Dr. Shapiro, Dr. Yingling and Dr. Oliashirazi, in addition to the “transaction rationale” and the “relationship with Marshall University Medical School, . . . and Marshall University’s support for the transaction.” Insofar as Complaint Counsel questions him in his capacity as Marshall University’s Interim President, Respondent seeks a subpoena to ensure that it has the right to question him as to the aforementioned topics and any other matter about which Complaint Counsel inquires.

Third, the testimony cannot be reasonably obtained by other means. Each witness is the sole repository of his own personal knowledge relating to the effects of the transaction.

In sum, the requested subpoenas ad testificandum meets all three requirements of Rule 3.36(b) of the Commission's Rules of Practice.

CONCLUSION

For the reasons stated above, therefore, Respondent respectfully requests that the Court issue the attached subpoenas to Dr. Shapiro, Dr. Yingling, Dr. Oliashirazi and Mr. White.

Dated: January 14, 2016

Respectfully submitted,

/s/ Geoffrey S. Irwin

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*Counsel for Respondent
Cabell Huntington Hospital, Inc.*

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Docket No. 9366

RESPONDENT'S MEET AND CONFER STATEMENT

Pursuant to the Scheduling Order issued on December 4, 2015, Respondent submits this statement in support of its motion for subpoenas ad testificandum under Rule of Practice 3.36 to Dr. Shapiro, Dr. Yingling, Dr. Oliashirazi and Mr. White. On January 14, 2016, Respondent's counsel provided Complaint Counsel via electronic mail notice of its intent to file the instant motion. That same day, Complaint Counsel advised Respondent's counsel that they do not oppose this motion.

Dated: January 14, 2016

Respectfully submitted,

/s/ Geoffrey S. Irwin

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Kenneth W. Field
Michael S. Fried
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*Counsel for Respondent
Cabell Huntington Hospital, Inc.*

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Docket No. 9366

**[PROPOSED] ORDER ON RESPONDENT'S MOTION FOR ISSUANCE OF
SUBPOENAS AD TESTIFICANDUM TO PERSONNEL OF MARSHALL UNIVERSITY**

On January 14, 2016, pursuant to Rule 3.36 of the Commission's Rules of Practice, Respondent filed a motion for the issuance of subpoenas ad testificandum to Dr. Joseph Shapiro, Dr. Kevin Yingling, Dr. Ali Oliashirazi and Mr. White, all Marshall University personnel. Complaint Counsel does not oppose Respondent's motion.

The testimony sought meets the requirements of Rules of Practice § 3.36(b).

Accordingly, Respondent's motion is **GRANTED**.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

EXHIBIT A



SUBPOENA AD TESTIFICANDUM DEPOSITION

PUBLIC

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)

<p>1. TO</p> <p>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</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	---

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.

<p>3. PLACE OF DEPOSITION</p> <p>To Be Determined Huntington, West Virginia</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Lindsey Lonergan, or designee</p> <hr/> <p>5. DATE AND TIME OF DEPOSITION</p> <p>TBD</p>
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6. SUBJECT OF PROCEEDING
In the Matter of Cabell Huntington Hospital, Inc., Pallottine Health Services, Inc., and St. Mary's Medical Center, Inc., Docket No. 9366

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell</p> <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Lindsey Lonergan, or designee Attorney for Respondent Cabell Huntington Hospital, Inc. Jones Day 1420 Peachtree Street, N.E., Suite 800 Atlanta, GA 30309 404-521-3939</p>
--	--

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/FTCRulesofPractice>. Paper copies are available upon request.

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

EXHIBIT B



SUBPOENA AD TESTIFICANDUM DEPOSITION

PUBLIC

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)

<p>1. TO</p> <p>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</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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6. SUBJECT OF PROCEEDING
In the Matter of Cabell Huntington Hospital, Inc., Pallottine Health Services, Inc., and St. Mary's Medical Center, Inc., Docket No. 9366

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell</p> <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Lindsey Lonergan, or designee Attorney for Respondent Cabell Huntington Hospital, Inc. Jones Day 1420 Peachtree Street, N.E., Suite 800 Atlanta, GA 30309 404-521-3939</p>
---	--

DATE SIGNED	SIGNATURE OF COUNSEL ISSUING SUBPOENA
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EXHIBIT C



SUBPOENA AD TESTIFICANDUM DEPOSITION

PUBLIC

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 & External Affairs
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

To Be Determined
Huntington, West Virginia

4. YOUR APPEARANCE WILL BE BEFORE

Lindsey Lonergan, or designee

5. DATE AND TIME OF DEPOSITION

TBD

6. SUBJECT OF PROCEEDING
In the Matter of Cabell Huntington Hospital, Inc., Pallottine Health Services, Inc., and St. Mary's Medical Center, Inc., Docket No. 9366

7. ADMINISTRATIVE LAW JUDGE
The Honorable D. Michael Chappell

**Federal Trade Commission
Washington, D.C. 20580**

8. COUNSEL AND PARTY ISSUING SUBPOENA
Lindsey Lonergan, or designee
Attorney for Respondent Cabell Huntington Hospital, Inc.
Jones Day
1420 Peachtree Street, N.E., Suite 800
Atlanta, GA 30309
404-521-3939

DATE SIGNED

SIGNATURE OF COUNSEL ISSUING SUBPOENA

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EXHIBIT D



SUBPOENA AD TESTIFICANDUM DEPOSITION

PUBLIC

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)

<p>1. TO</p> <p>Gary White Interim President, Marshall University c/o Layton Cottrill, General Counsel 216 Old Main One John Marshall Drive Huntington, WV 25755</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell</p> <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Lindsey Lonergan, or designee Attorney for Respondent Cabell Huntington Hospital, Inc. Jones Day 1420 Peachtree Street, N.E., Suite 800 Atlanta, GA 30309 404-521-3939</p>
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DATE SIGNED	SIGNATURE OF COUNSEL ISSUING SUBPOENA
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This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1995.

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 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, Rm. H-113
Washington, DC 20580

I further 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

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Counsel for Marshall University

/s/ Geoffrey S. Irwin

*Counsel for Respondent
Cabell Huntington Hospital, Inc.*

Notice of Electronic Service

I hereby certify that on January 14, 2016, I filed an electronic copy of the foregoing CHHI's Unopposed Motion for Issuance of Subpoenas Ad Testificandum to Marshall University Personnel, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on January 14, 2016, I served via E-Service an electronic copy of the foregoing CHHI's Unopposed Motion for Issuance of Subpoenas Ad Testificandum to Marshall University Personnel, upon:

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