

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill**

_____)
In the Matter of)
)
Alan B. Miller,)
a natural person;)
)
Universal Health Services, Inc.,)
a corporation;)
)
and) **Docket No. C-4309**
) **File No. 101 0142**
)
Psychiatric Solutions, Inc.,)
a corporation.)
_____)

**APPLICATION FOR APPROVAL OF DIVESTITURE OF THE LAS VEGAS
DIVESTITURE ASSETS**

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TABLE OF CONTENTS

INTRODUCTION1

I. UHS CONDUCTED A ROBUST DIVESTITURE PROCESS FOR THE LAS VEGAS DIVESTITURE ASSETS.4

II. SBH IS WELL-QUALIFIED AND IS READY, WILLING AND ABLE TO COMPETE FOR THE PROVISION OF ACUTE INPATIENT PSYCHIATRIC SERVICES IN THE STATE OF NEVADA.7

 A. Name and Address.7

 B. SBH’s Corporate Officers Have Significant Experience in Operating Inpatient Psychiatric Services.7

 C. SBH Is in the Business of Operating Psychiatric Service Facilities.11

 D. SBH Has the Financial Resources to Ensure that the Las Vegas Divestiture Assets Continue as Viable Competitors in the State of Nevada.12

 E. SBH Has Developed a Comprehensive Business Plan to Compete for the Provision of Acute Inpatient Psychiatric Services in the State of Nevada.12

III. THE LAS VEGAS DIVESTITURE ASSETS BEING DIVESTED ARE CONSISTENT WITH THE TERMS AND PURPOSES OF THE DECISION AND ORDER.13

 A. Transfer of the Las Vegas Divestiture Assets.14

 B. Securing Third Party Consents and Waivers.15

 C. SBH’s Opportunity to Hire Relevant Employees Currently Working at Montevista Hospital and Red Rock Behavioral Health Hospital.15

 D. Transition Services to Be Provided to SBH.16

 E. The Proposed Divestiture Will Achieve the Remedial Purposes of the Decision and Order.17

CONCLUSION18

INDEX OF EXHIBITS

- Exhibit A Asset Purchase Agreement, dated November 1, 2011, including, *inter alia*, a Form of Transition Services Agreement as Exhibit A thereto and a Form of Cash Management Agreement as Exhibit B thereto (Confidential)
- Exhibit B Disclosure Schedules to Asset Purchase Agreement, dated November 1, 2011 (Confidential)
- Exhibit C Commitment Letter by Dobbs Management Service, LLC, dated November 1, 2011 (Confidential)

Introduction

Pursuant to Section 2.41(f) of the Federal Trade Commission (the “Commission”), Rules of Practice and Paragraph III of the Decision and Order, Respondents Alan B. Miller and Universal Health Services, Inc. (“UHS”), respectfully submit this Application for Approval of Divestiture of the Las Vegas Divestiture Assets (the “Application”), in connection with the matter entitled *In the Matter of Alan B. Miller, a natural person; Universal Health Services, Inc., a corporation; and Psychiatric Solutions, Inc., a corporation*, Docket No. C-4309, FTC File No. 101 0142.

This matter arose out of UHS’s acquisition of Psychiatric Solutions, Inc. (“PSI”), on or about November 15, 2010. On October 26, 2010, Alan B. Miller and UHS executed an Agreement Containing Consent Orders that included a Decision and Order and an Order to Hold Separate and Maintain Assets. On November 15, 2010, the Commission accepted the Agreement Containing Consent Orders, the Decision and Order, and the Order to Hold Separate and Maintain Assets for public comment. On April 19, 2011, the Commission approved a slightly modified final Decision and Order¹ and on April 22, 2011, placed it on the public record. Pursuant to Commission Rule 2.34(c), the Decision and Order became final on April 29, 2011.

In this Application, UHS seeks approval of the proposed divestiture of the divestiture assets used in or primarily relating to Montevista Hospital and Red Rock

¹ Certain provisions relating to the parties’ notice and confidentiality obligations were slightly modified to remove unnecessary language. (See Decision and Order, at Paragraphs V.B, V.C.1.)

Behavioral Health Hospital (the “Las Vegas Divestiture Assets”),² to Strategic Behavioral Health, LLC (“SBH”), SBH – Montevista, LLC (“SBH Montevista”) and SBH – Red Rock, LLC (“SBH Red Rock”), the latter two being newly-formed entities for purposes of the transaction. SBH Montevista and SBH Red Rock are wholly-owned and controlled by SBH.

Pursuant to the terms of an Asset Purchase Agreement entered into between UHS, SBH, SBH Montevista and SBH Red Rock on November 1, 2011 (the “Asset Purchase Agreement”), SBH Montevista and SBH Red Rock will acquire the Las Vegas Divestiture Assets and SBH Red Rock will become the assignee of the lease for Red Rock Behavioral Health Hospital. SBH, through its two wholly-owned subsidiaries, will be the sole operator of the Las Vegas Divestiture Assets.

The specific terms of the transaction are described in the following agreements (collectively, the “Las Vegas Divestiture Agreements”): (i) the Asset Purchase Agreement described above and attached hereto as Confidential Exhibit A, which includes a Form of Transition Services Agreement to be dated and entered into on the Closing Date (Exhibit A to the Asset Purchase Agreement), and a Form of Cash Management Agreement (Exhibit B to the Asset Purchase Agreement), (ii) Disclosure Schedules to the Asset Purchase Agreement, dated November 1, 2011, attached hereto as Confidential Exhibit B, and (iii) a financing commitment letter from Dobbs Management Service, LLC, dated November 1, 2011, attached hereto as Confidential Exhibit C. The

² Capitalized terms have the definitions given to them in the Decision and Order and the Order to Hold Separate and Maintain Assets.

remainder of this Application further describes how the proposed divestiture will satisfy the terms and purposes of the Decision and Order.³

The proposed divestiture of the Las Vegas Divestiture Assets would accomplish the Decision and Order's purposes by "ensur[ing] the continuation of the Las Vegas Divestiture Assets as ongoing, viable Psychiatric Hospital Facilities" and by "remedy[ing] the lessening of the competition resulting from the Acquisition alleged in the Commission's complaint". (Decision and Order, ¶ III.D.) Specifically, by divesting the Las Vegas Divestiture Assets as contemplated by the Decision and Order and the Las Vegas Divestiture Agreements, the Las Vegas Divestiture Assets will continue operating under the competent and capable direction of SBH and the State of Nevada 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 State of Nevada for the provision of Acute Inpatient Psychiatric Services.

³ Because this Application and accompanying Confidential Exhibits contain confidential and competitively-sensitive commercial and financial information relating to the Las Vegas Divestiture Assets that neither UHS nor SBH discloses in the ordinary course of business, the disclosure of which may harm the ongoing competitiveness of Montevista Hospital and Red Rock Behavioral Health Hospital 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, including but not limited to the Las Vegas Divestiture Agreements, 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).

Indeed, UHS informed the Commission staff of the execution of the Las Vegas Divestiture Agreements on November 1, 2011—the same day the Asset Purchase Agreement was executed—and previously had discussions with the Commission staff about certain provisions of the Asset Purchase Agreement to ensure that they comported with the terms and purposes of the Decision and Order and Order to Hold Separate and Maintain Assets.

As described below, the Las Vegas Divestiture Agreements are structured to meet the requirements of the Decision and Order. The contemplated divestiture of the Las Vegas Divestiture Assets meets the purposes and requirements of the Decision and Order by adding a viable competitive force with the financial, professional and operational resources to provide Acute Inpatient Psychiatric Services in the State of Nevada.

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

A. Name and Address.

Strategic Behavioral Health, LLC
SBH – Montevista, LLC
SBH – Red Rock, 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 Inpatient Psychiatric Services. Members of the SBH’s Executive team include:

- Jim Shaheen, President. Prior to forming SBH, 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 a new 72-bed Psychiatric Residential Treatment Center from inception to completion in Wilmington, North Carolina, as well as a 21-bed geriatric acute facility in Colorado Springs, Colorado. Both facilities are approaching full utilization due to Mr. Shaheen's leadership and management skills and experience.

The Company, under Mr. Shaheen's direction, has been successful and continues to seek growth opportunities through the expansion of its Colorado Springs facility through the construction of a new 90-bed facility and a new 72-bed hospital in Raleigh, North Carolina.

Mr. Shaheen holds a Master's Degree in Organizational Communications and a Bachelor's Degree in Therapeutic Recreation from Murray State University.

- Doug Ginn, Executive Vice-President of Operations. Mr. Ginn, LCSW, joined SBH as Vice President of Clinical Services and Compliance. He has since been 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. He worked at Lakeside for over 10 years in various clinical positions including Administrator of Child and Adolescent Services. Mr. Ginn then left Lakeside and was in private practice for twelve years and opened Ginn & Associates in Germantown, Tennessee. After private practice, Mr. Ginn returned to Lakeside as the Chief Clinical Officer with clinical oversight of a 305-bed 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. As Vice President of Clinical Services, Mr. Ginn oversees all of the clinical programs at SBH.

- 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 United States whose revenues exceeded one billion dollars.

Prior to joining DMS, Mr. Orians practiced accounting for 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 SBH 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 has worked as 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 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.

Health Hospital under SBH management. SBH expects that it will be able to grow the total number of beds in the Las Vegas market. SBH intends to 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 Las Vegas Divestiture Assets from UHS is complete and if the transaction is approved by the Commission. Furthermore, SBH, through its shareholder base, has the financial resources to ensure that the Las Vegas Divestiture 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.

III. THE LAS VEGAS DIVESTITURE 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 Las Vegas Divestiture Assets. The transaction has been structured as an asset transaction, such that, upon closing, SBH, through its wholly owned subsidiaries, SBH Montevista and SBH Red Rock, will generally receive all transferable rights, title and interest to the Las Vegas Divestiture Assets and will be the sole operator of the Las Vegas Divestiture Assets. As a result, the Las Vegas Divestiture 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 Las Vegas Divestiture Assets as ongoing, viable Psychiatric Hospital Facilities.

A. Transfer of the Las Vegas Divestiture Assets.

As required by the Decision and Order, the transaction will transfer the Las Vegas Divestiture Assets, absolutely and in good faith, as on-going businesses that are financially and competitively viable Psychiatric Hospital Facilities 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 Las Vegas Divestiture 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 Las Vegas Divestiture 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 Montevista Hospital and Red Rock Behavioral Health Hospital that are not primarily used in or do not primarily relate to Montevista Hospital and Red Rock Behavioral Health Hospital.

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 Las Vegas Divestiture Assets (to the extent permitted by law). If a permit necessary to operate the Las Vegas Divestiture 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 Montevista Hospital and Red Rock Behavioral Health Hospital.

As required by the Decision and Order, UHS will make the Relevant Employees who are currently staffing Montevista Hospital and Red Rock Behavioral Health Hospital 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 Las Vegas Divestiture 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 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 Montevista Hospital and Red Rock Behavioral Health Hospital 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 Montevista Hospital and Red Rock Behavioral Health Hospital 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 Las Vegas Divestiture Assets as ongoing, viable Psychiatric Hospital Facilities by giving control of the Divestiture Businesses 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 Montevista Hospital and Red Rock Behavioral Health Hospital continue to remain viable competitors for the provision of Acute Inpatient Psychiatric Services in the State of Nevada. 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 State of Nevada. As set forth more fully above in Section II, SBH is a national healthcare company already providing behavioral health services in Colorado and North Carolina.

SBH, through its subsidiaries, operates two psychiatric treatment hospitals in the states of Colorado and North Carolina. Currently, SBH has no facilities, including any Psychiatric Hospital Facilities, in the State of Nevada. With this established presence, SBH is an ideal candidate to acquire the Las Vegas Divestiture Assets in light of the purposes of the Decision and Order. The Las Vegas Divestiture 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 State of Nevada.

Dated: November 4, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Belelieu', written over a horizontal line.

Christopher D. Belelieu

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