

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

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| _____) | |
| In the Matter of) | |
|) | |
|) | |
| Alan B. Miller,) | |
| a natural person;) | |
|) | Docket No. C-4372 |
| and) | |
|) | |
| Universal Health Services, Inc.,) | |
| a corporation.) | |
|) | |
| _____) | |

DECISION AND ORDER
[Redacted Public Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of voting securities of Ascend Health Corporation (“Ascend”) by Universal Health Services, Inc. (“UHS”), an entity controlled by Alan B. Miller (UHS and Alan B. Miller hereinafter referred to as Respondents), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Hold Separate and Maintain Assets and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Alan B. Miller is a natural person with his offices and principal place of business located at 367 South Gulph Road, PO Box 61558, King of Prussia, PA 19406-0958.
2. Respondent Universal Health Services, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head offices and principal place of business located at 367 South Gulph Road, PO Box 61558, King of Prussia, PA 19406-0958.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Acquisition” means the proposed acquisition described in and contemplated by the Agreement and Plan of Merger by and among UHS and Ascend dated as of June 3, 2012.
- B. “Acute Inpatient Psychiatric Services” means the provision of inpatient psychiatric services for the diagnosis, treatment, and care of patients deemed, due to an acute psychiatric condition, to be a threat to themselves or others or unable to perform basic life functions.
- C. “Alan B. Miller” means Alan B. Miller, a natural person, and all partnerships, joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Alan B. Miller, and the respective partners, directors, officers, employees, agents, attorneys, representatives, successors, and assigns of each.

- D. “Ascend” means Ascend Health Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head offices and principal place of business located at 32 E. 57th Street, 17th Floor, New York, NY 10022.
- E. “Business Records” means all information, documents, and records, including all electronic records wherever stored, including without limitation, client and customer lists, patient and payor information, referral sources, research and development reports, production reports, service and warranty records, equipment logs, operating guides and manuals, financial and accounting documents, creative materials, advertising materials, promotional materials, studies, reports, correspondence, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists, salaries and benefits information, and, subject to legal requirements, copies of all personnel files.
- F. “Closing Date” means the date on which Respondents (or a Divestiture Trustee, if the New Mexico Psychiatric Hospital Assets are required to be divested) consummate a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey the Peak Behavioral Health Assets (or the New Mexico Psychiatric Hospital Assets, if required to be divested) to the Commission-approved Acquirer.
- G. “Commission” means the Federal Trade Commission.
- H. “Commission-approved Acquirer” means the Person approved by the Commission to acquire the Peak Behavioral Health Assets (or the New Mexico Psychiatric Hospital Assets, if required to be divested) pursuant to this Order.
- I. “Confidential Business Information” means information not in the public domain that is primarily related to or primarily used in connection with the Psychiatric Hospital Business, except for any information that was or becomes generally available to the public other than as a result of disclosure by Respondents, and includes, but is not limited to, pricing information, marketing methods, market intelligence, competitor information, commercial information, management system information, business processes and practices, payor and provider communications, bidding practices and information, procurement practices and information, supplier qualification and approval practices and information, and training practices.
- J. “Direct Cost” means cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide Transitional Services. “Direct Cost” to a Commission-approved Acquirer for its use of any of Respondents’ employees’ labor shall not exceed the then-

current average wage rate for such employee, including benefits.

- K. “Divestiture Agreement” means the agreement(s) between Respondents and the Commission-approved Acquirer (or between a Divestiture Trustee and the Commission-approved Acquirer, if the New Mexico Psychiatric Hospital Assets are required to be divested), and all amendments, exhibits, attachments, agreements, and schedules thereto, related to divestiture of the Peak Behavioral Hospital Assets (or the New Mexico Psychiatric Hospital Assets, if required to be divested) that have been approved by the Commission to accomplish the requirements of this Order.
- L. “Hold Separate Order” means the Order to Hold Separate and Maintain Assets issued by the Commission in this matter.
- M. “Intellectual Property” means, without limitation:
1. all patents, patent applications, and inventions and discoveries that may be patentable;
 2. all know-how, trade secrets, software, technical information, data, registrations, applications for governmental approvals, inventions, processes, best practices (including clinical pathways), formulae, protocols, standards, methods, techniques, designs, quality control practices and information, research and test procedures and information, and safety, environmental and health practices and information;
 3. all confidential or proprietary information, commercial information, management systems, business processes and practices, customer lists, customer information, customer records and files, customer communications, procurement practices and information, supplier qualification and approval practices and information, training materials, sales and marketing materials, customer support materials, advertising and promotional materials; and
 4. all rights in any jurisdiction to limit the use or disclosure of any of the foregoing, and rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation, or breach of any of the foregoing.
- N. “Mesilla Valley Hospital Assets” means the Psychiatric Hospital Assets associated with and the Psychiatric Hospital Business conducted at the Psychiatric Hospital Facility, doing business as Mesilla Valley Hospital located at 3751 Del Rey Boulevard, Las Cruces, New Mexico 88012.
- O. “New Mexico Psychiatric Hospital Assets” means:
1. Peak Behavioral Health Assets; and
 2. Mesilla Valley Hospital Assets.

- P. “Peak Behavioral Health Assets” means the Psychiatric Hospital Assets associated with and the Psychiatric Hospital Business conducted at the Psychiatric Hospital Facility, doing business as Peak Behavioral Health Services, LLC, located at 5055 McNutt Road, Santa Teresa, New Mexico 88088.
- Q. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other entity or governmental body.
- R. “Prospective Acquirer” means a Person that Respondents (or the Divestiture Trustee, if the New Mexico Psychiatric Hospital Assets are required to be divested) intend to submit to the Commission for its prior approval pursuant to Paragraph II.A. (or Paragraph VI. if applicable) of this Order.
- S. “Psychiatric Hospital Assets” means all of Respondents’ rights, title, and interest in all property and assets, tangible or intangible, of whatever nature and wherever located, relating to or used in connection with the Psychiatric Hospital Business, including, without limitation, the following:
1. all real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee) to the extent transferable, including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
 2. all Tangible Personal Property, including, without limitation, any Tangible Personal Property removed from and not replaced at the specific Psychiatric Hospital Facility, if such property was used by or in connection with the Psychiatric Hospital Business conducted at such facility on or after the date Respondents execute the Consent Agreement;
 3. all rights under any and all contracts and agreements (e.g., leases, service agreements such as dietary and housekeeping services, supply agreements, procurement contracts) to the extent assignable, including but not limited to contracts and agreements with physicians, other health care providers, unions, third-party payors, HMOs, customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, cosigners, and consignees;
 4. all rights and title in and to use the name of each of the hospitals on a permanent and exclusive basis (even as to Respondents);
 5. all Intellectual Property;
 6. all intangible rights and property other than Intellectual Property, including, going concern value, goodwill, internet, telephone, telecopy and telephone numbers, domain names, listings, and web sites;

7. all approvals, consents, licenses, certificates, registrations, permits, waivers, or other authorizations issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefore or renewals thereof, to the extent assignable;
8. all inventories, stores, and supplies;
9. all accounts receivable;
10. all rights under warranties and guarantees, express or implied;
11. all books, records, and files (electronic and hard copy); and
12. all Business Records;

provided, however, that the Psychiatric Hospital Assets shall not include Respondents' rights, title, and interest to or in property and assets, tangible or intangible, that are not primarily related to or primarily used in connection with the Psychiatric Hospital Business conducted at the specified Psychiatric Hospital Facility;

provided, however, at the option of the Commission-approved Acquirer, that the Psychiatric Hospital Assets need not include any property or assets that the Commission-approved Acquirer determines it does not need or want, if the Commission approves the Divestiture Agreement without such property or assets; and

provided, however, that Respondents may retain a copy of all books, records, files, and Business Records to the extent necessary to comply with applicable law, regulations, and other legal requirements.

- T. "Psychiatric Hospital" means a health care facility, licensed or certified as a psychiatric hospital (except for a facility limited by its license or certificate to residential treatment or other long-term care), that provides Acute Inpatient Psychiatric Services.
- U. "Psychiatric Hospital Business" means the operation of a Psychiatric Hospital Facility and includes but is not limited to the provision of Acute Inpatient Psychiatric Services, whether provided or performed at the facility or in a different location within the Relevant Area, and also includes all other services, businesses, and operations primarily related to the specified Psychiatric Hospital Facility.
- V. "Psychiatric Hospital Facility" means a Psychiatric Hospital or a Psychiatric Unit.
- W. "Psychiatric Unit" means a department, unit, or other organizational subdivision of a hospital, licensed or certified as a provider of inpatient psychiatric care (except for a facility limited by its license or certificate to residential treatment or other long-term care), that provides Acute Inpatient

Psychiatric Services.

- X. “Relevant Area” means the El Paso Metropolitan Statistical Area, as defined by the US Office of Management and Budget, and the Las Cruces Metropolitan Statistical Area, as defined by the US Office of Management and Budget.
- Y. “Relevant Employees” means any and all full-time employees, part-time employees, contract employees, or independent contractors whose duties, at any time during the ninety (90) days preceding the Acquisition Date or at any time after the Acquisition Date, related or relate primarily to the Peak Behavioral Health Business (or the New Mexico Psychiatric Hospital Assets, if required to be divested); *provided, however*, that the persons listed in the Confidential Appendix shall not be considered Relevant Employees.
- Z. “Respondents” means Alan B. Miller and UHS, collectively or individually.
- AA. “Tangible Personal Property” means all machinery, equipment, tools, fixtures, vehicles, furniture, inventories, computer hardware, and all other items of tangible personal property of every kind owned or leased by Respondents, wherever located, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- BB. “Third Parties” means Persons other than Respondents or the Commission-approved Acquirer.
- CC. “Transitional Administrative Services” means administrative assistance with respect to the operation of a Psychiatric Hospital Facility or the provision of Acute Inpatient Psychiatric Services, including but not limited to assistance relating to billing, accounting, governmental regulation, human resources management, information systems, managed care contracting, and purchasing, as well as providing assistance in acquiring, obtaining access, and customizing all software used in the provision of such services.
- DD. “Transitional Clinical Services” means clinical assistance and support services with respect to the operation of a Psychiatric Hospital Facility or the provision of Acute Inpatient Psychiatric Services.
- EE. “Transitional Services” means Transitional Administrative Services and Transitional Clinical Services.
- FF. “UHS” means Universal Health Services, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by UHS, and the respective directors, officers, employees, agents,

representatives, successors, and assigns of each; after the Acquisition, UHS includes Ascend.

II.

IT IS FURTHER ORDERED that:

- A. No later than six (6) months after the Order is issued, Respondents shall divest the Peak Behavioral Health Assets, absolutely and in good faith and at no minimum price, as an on-going business, only to a single acquirer that receives the prior approval of the Commission, and only in a manner (including an executed Divestiture Agreement) that receives the prior approval of the Commission.
- B. Respondents shall cooperate with the Commission-approved Acquirer to ensure that the Peak Behavioral Health Assets are transferred to the Commission-approved Acquirer as a financially and competitively viable Psychiatric Hospital Facility, operating as an ongoing business providing Acute Inpatient Psychiatric Services, including but not limited to providing assistance necessary to transfer to the Commission-approved Acquirer all governmental approvals needed to operate the Peak Behavioral Health Assets.
- C. Prior to the Closing Date, Respondents shall:
 - 1. secure all consents and waivers from all Third Parties that are necessary for Respondents to divest the Peak Behavioral Health Assets and/or to grant any license(s) to the Commission-approved Acquirer to permit the Commission-approved Acquirer to operate the Peak Behavioral Health Assets; *provided, however*, that Respondents may satisfy this requirement by certifying that such Commission-approved Acquirer has executed all such agreements directly with each of the relevant Third Parties; and
 - 2. take all actions necessary to ensure that the Peak Behavioral Health Assets meet federal, state, local, and municipal requirements necessary to allow the transfer of the Peak Behavioral Health Assets to the Commission-approved Acquirer.
- D. The purpose of the divestiture is to ensure the continuation of the Peak Behavioral Health Assets (or the New Mexico Psychiatric Hospital Assets, if required to be divested) as an ongoing, viable Psychiatric Hospital Facility and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. After the Closing Date, Respondents shall not use, solicit, or access, directly or indirectly, any Confidential Business Information of the Peak Behavioral Health Assets (or of the New Mexico Psychiatric Hospital Assets, if required to be divested), and shall not disclose, provide, discuss, exchange, circulate, convey, or otherwise furnish such Confidential Business Information, directly or indirectly, to or with any Person other than:
1. as necessary to comply with the requirements of this Order or the Hold Separate Order;
 2. pursuant to a Divestiture Agreement;
 3. to enforce the terms of a Divestiture Agreement or prosecute or defend against any dispute or legal proceeding; or
 4. to comply with applicable law, regulations and other legal requirements.
- B. No later than five (5) days after the Acquisition Date, Respondents shall provide written notification of the restrictions, prohibitions, and requirements of this Paragraph III. to all of Respondents' employees, agents, and representatives employed at, or with responsibilities relating to, a Psychiatric Hospital Facility located in the Relevant Area or who had or have access to or possession, custody or control of any Confidential Business Information of the Peak Behavioral Health Assets (or of the New Mexico Psychiatric Hospital Assets, if required to be divested).
1. such notification shall include a plain language explanation of the requirements of this Order and a description of the consequences of failing to comply with the requirements.
 2. Respondents shall provide such notification by US mail or by e-mail, with return receipt requested acknowledging receipt of the notification or similar transmission.
 3. Respondents shall maintain complete records of all such notifications at Respondents' corporate headquarters and keep a file of all receipts and acknowledgments for one (1) year after the Closing Date.
 4. Respondents shall provide the Commission-approved Acquirer (and the Hold Separate Trustee, if one is appointed) with a copy of such

notification and with copies of all other certifications, notifications, and reminders sent to Respondents' personnel.

C. Respondents shall:

1. no later than thirty (30) days after the Closing Date, obtain, as a condition of continued employment post-divestiture, from each of Respondents' employees, agents, and representatives employed at or with responsibilities relating to a Psychiatric Hospital Facility located in the Relevant Area or who had or have access to or possession, custody or control of any Confidential Business Information of the Peak Behavioral Health Assets (or of the New Mexico Psychiatric Hospital Assets, if required to be divested) an executed confidentiality agreement that complies with the restrictions, prohibitions and requirements of this Order and the Hold Separate Order; and
2. no later than thirty (30) days after the Closing Date, institute procedures and requirements and take such actions as are necessary to ensure that Respondents' personnel comply with the restrictions, prohibitions and requirements of this Paragraph III., including all actions that Respondents would take to protect their own trade secrets and confidential information.

IV.

IT IS FURTHER ORDERED that Respondents shall:

- A. No later than ten (10) days after a request from a Prospective Acquirer, provide the Prospective Acquirer with the following information for each Relevant Employee, as and to the extent permitted by law:
1. name, job title or position, date of hire, and effective service date;
 2. a specific description of the employee's responsibilities;
 3. the base salary or current wages;
 4. the most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year, and current target or guaranteed bonus, if any;
 5. employment status (i.e., active or on leave or disability; full-time or part-time);
 6. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 7. at the Prospective Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Relevant Employee.

- B. Within a reasonable time after a request from a Prospective Acquirer, provide to the Prospective Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of any Respondent, with any one or more of the Relevant Employees, and to make offers of employment to any one or more of the Relevant Employees;
- C. Not interfere, directly or indirectly, with the hiring or employing by the Prospective Acquirer of any Relevant Employees, not offer any incentive to such employees to decline employment with the Prospective Acquirer, and not otherwise interfere with the recruitment of any Relevant Employee by the Prospective Acquirer;
- D. Remove any impediments within the control of Respondents that may deter Relevant Employees from accepting employment with the Prospective Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Prospective Acquirer, and shall not make any counteroffer to a Relevant Employee who receives a written offer of employment from the Prospective Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;
- E. Provide all Relevant Employees with reasonable financial incentives to continue in their positions until the Closing Date. Such incentives shall include, but are not limited to, a continuation, until the Closing Date, of all employee benefits, including the funding of regularly scheduled raises and bonuses, and the vesting of pension benefits (as permitted by law and for those Relevant Employees covered by a pension plan), offered by Respondents;
- F. Not, for a period of one (1) year following the Closing Date, directly or indirectly, solicit or otherwise attempt to induce any of the Relevant Employees who have accepted offers of employment with the Commission-approved Acquirer to terminate his or her employment with the Commission-approved Acquirer; *provided, however*, that Respondents may:
 - 1. advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or
 - 2. hire Relevant Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph; *provided further, however*,

that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any Relevant Employee if the Commission-approved Acquirer has notified Respondents in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Commission-approved Acquirer.

V.

IT IS FURTHER ORDERED that, at the request of a Commission-approved Acquirer, for a period not to exceed twelve (12) months, or as otherwise approved by the Commission, and in a manner (including pursuant to an agreement) that receives the prior approval of the Commission:

- A. Respondents shall provide Transitional Services to the Commission-approved Acquirer sufficient to enable the Commission-approved Acquirer to operate each of the Psychiatric Hospital Facilities to be divested and to provide Acute Inpatient Psychiatric Services in substantially the same manner that Respondents have operated such facilities and provided such services at each of the Psychiatric Hospital Facilities to be divested; and
- B. Respondents shall provide the Transitional Services required by this Paragraph at substantially the same level and quality as such services are provided by Respondents in connection with the operation of each of the Psychiatric Hospital Facilities to be divested.

Provided, however, that Respondents shall not (i) require the Commission-approved Acquirer to pay compensation for Transitional Services that exceeds the Direct Cost of providing such goods and services, or (ii) terminate its obligation to provide Transitional Services because of a material breach by the Commission-approved Acquirer of any agreement to provide such assistance unless Respondents are unable to provide such services due to such material breach.

VI.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations imposed by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the New Mexico Psychiatric Hospital Assets and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission,

Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VI.A. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, and stated in writing their reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
1. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestiture required by, and satisfy the additional obligations imposed by, this Order.
 2. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - a. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestiture required by, and satisfy the additional obligations imposed by, this Order.
 - b. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan to satisfy the obligations of Paragraph II. of this Order, or believes that such obligations can be achieved within a reasonable time, the period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, that the Commission

may extend the period only two (2) times.

- c. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondents shall extend the time under this Paragraph VI. for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
- d. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such entity within five (5) days after receiving notification of the Commission's approval.
- e. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents,

and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

- f. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, malfeasance, willful or wanton acts, or bad faith by the Divestiture Trustee.
 - g. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 - h. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 - i. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- C. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VI.
- D. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.
- E. The Divestiture Trustee appointed pursuant to this Paragraph VI. may be the same person appointed as Hold Separate Trustee pursuant to the relevant provisions of the Hold Separate Order.

VII.

IT IS FURTHER ORDERED that:

- A. No Divestiture Agreement shall limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of any Commission-approved Acquirer or to reduce any obligations of Respondents under such agreements.
- B. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof.
- C. Respondents shall comply with all terms of the Divestiture Agreement, and any breach by Respondents of any term of the Divestiture Agreement shall constitute a failure to comply with this Order. If any term of the Divestiture Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents’ obligations under this Order.

VIII.

IT IS FURTHER ORDERED that:

- A. For a period of ten (10) years from the date this Order is issued, Respondents shall not, without providing advance written notification to the Commission in the manner described in this Paragraph, directly or indirectly:
 - 1. Acquire any stock, share capital, equity, or other interest in any Person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in or is engaged in providing Acute Inpatient Psychiatric Services in the Relevant Area; or
 - 2. Enter into any agreement or other arrangement to manage or otherwise control a Third Party Psychiatric Facility which, during the twelve (12) months immediately preceding such agreement or arrangement, was engaged or is engaged in providing Acute Inpatient Psychiatric Services in the Relevant Area.

Nothing herein shall be construed to require advance written notification if Respondents seek to open a new Psychiatric Hospital Facility or expand existing Acute Inpatient Psychiatric Services at one of Respondents’ Psychiatric Hospital Facilities in the Relevant Area.

B. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as “the Notification”), 16 C.F.R. § 803 App., and shall be prepared and transmitted in accordance with the requirements of that Part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however*, that prior notification shall not be required by this Paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a. *Provided further, however*, that prior notification shall not be required by this Paragraph for Respondents’ continued ownership, management, or operation of the assets required to be divested (i) pursuant to Paragraphs II. or VI. of this Order pending such divestiture; and (ii) pursuant to the Divestiture Agreement.

IX.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order is issued, and every sixty (60) days thereafter until Respondents have complied with their obligations in Paragraph II. (or Paragraph VI. of this Order, if the New Mexico Psychiatric Hospital Assets are required to be divested) of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraph II. (or Paragraph VI. of this Order, if the New Mexico Psychiatric Hospital Assets are required to be divested) of this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraph II. (or Paragraph VI. of this Order, if the New Mexico Psychiatric Hospital Assets are required to be divested) of this Order, including a description of all substantive contacts or negotiations for the divestitures and the identity

of all parties contacted. Respondents shall include in their compliance reports copies of all written communication to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.

- B. One (1) year after this Order is issued, annually for the next nine (9) years on the anniversary of that date, and at other times as the Commission may require, Respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

X.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of such Respondent;
- B. Any proposed acquisition, merger, or consolidation of such Respondent; and
- C. Any other change in such Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to the applicable Respondent made to their principal United States offices, registered office of their United States subsidiaries, or headquarters addresses, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and

- B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Order.

XII.

IT IS FURTHER ORDERED that this Order shall terminate on November 27, 2022.

By the Commission.

Donald S. Clark
Secretary

ISSUED: November 27, 2012

Confidential Appendix

Exceptions To Relevant Employees Definition

[Redacted From the Public Record Version, But Incorporated By Reference]