

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



ORIGINAL

Docket No. 9366

In the Matter of)
)
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 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
SUBPOENA DUCES TECUM TO MARSHALL UNIVERSITY
UNDER RULE OF PRACTICE 3.36**

INTRODUCTION

Complaint Counsel brings this motion pursuant to Federal Trade Commission (“Commission”) Rule of Practice 3.36, 16 C.F.R. § 3.36, for the issuance of a Subpoena *Duces Tecum* for the production of documents, as defined in Rule of Practice 3.34(b), 16 C.F.R. § 3.34(b), to Marshall University, a public university in the State of West Virginia. Respondents do not oppose Complaint Counsel’s request for the issuance of a subpoena but take no position on the contents of this motion or the scope of the subpoena. Because the material sought meets the requirements set out in Rule 3.36, we respectfully ask that the Motion be granted and that the subpoena be issued as requested. An unsigned Subpoena *Duces Tecum* for Marshall University is attached at Exhibit A.

ARGUMENT

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

- (1) the material sought is reasonable in scope;
- (2) if for an adjudicative hearing, the material is reasonably relevant;
- (3) the material cannot reasonably be obtained by other means;
- (4) the material meets the requirements of Rule of Practice § 3.37.

The material sought is reasonable in scope. 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 and Cabell Huntington Hospital. Marshall University faculty also practice as physicians in both hospitals. Marshall University is a major employer in Huntington. Respondents have identified Marshall University as a potential witness in this matter. The subpoena requests production of documents relating to Cabell Huntington Hospital's proposed acquisition of St. Mary's, any other potential acquisitions of St. Mary's, and the impact of this acquisition or other acquisitions on Marshall University and its School of Medicine and residency programs. The subpoena also requests documents sufficient to show the health insurance coverage that Marshall provides to its employees and where its employees seek health care. The scope of the materials sought here is limited and reasonable in scope relative to requests for documents sought from other employers and affected third parties.

The material sought is highly relevant to Complaint Counsel's allegations in the Complaint and Respondents' defenses. Respondents have identified representatives of Marshall

University in both their Initial Disclosures and Preliminary Witness List. Respondents have stated that they expect representatives of Marshall University 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. Documents sought through this subpoena are relevant to these topics. Documents relating to Marshall University's residency programs are relevant to possible effects of the transaction on Marshall University. Information on Marshall University's health insurance programs for its employees is relevant to issues of market definition and competitive effects of the transaction.

The material cannot be reasonably obtained by other means. Marshall University is the sole repository of documents and information relating to the effects of the transaction on Marshall University and its School of Medicine.

The material requested meets the requirements of Rule of Practice 3.37(a). The subpoena requests documents, as defined in Rule of Practice 3.34(b), including electronically stored information in the possession or control of Marshall University.

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 subpoena to Marshall University.

Respectfully submitted,

Dated: January 4, 2016

/s/ Alexis J. Gilman

Alexis J. Gilman

Tara Reinhart

Thomas H. Brock

Mark D. Seidman

Michelle M. Yost

Elizabeth C. Arens

Jeanine Balbach

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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 Subpoena *Duces Tecum* Under Rule of Practice 3.36 to Marshall University.

On December 31, 2015, Complaint Counsel provided Respondents via electronic mail with a copy of Complaint Counsel's proposed Motion for Subpoena *Duces Tecum* and subpoena to Marshall University. On January 4, 2016, Respondents advised Complaint Counsel via email that they do not oppose Complaint Counsel's request for the issuance of subpoena, but take no position on the contents of the motion or the scope of the subpoena.

Respectfully submitted,

Date: January 4, 2016

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

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**[PROPOSED] ORDER ON COMPLAINT COUNSEL'S MOTION FOR
ISSUANCE OF SUBPOENA *DUCES TECUM* TO MARSHALL UNIVERSITY**

On January 4, 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 a subpoena *duces tecum* to Marshall University, a public university in the State of West Virginia. 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 to an official or employee of another government agency for the production of documents 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); the information or material sought cannot reasonably be obtained by other means; and the subpoena meets the requirements of Rule § 3.37. Complaint Counsel's motion meets the requirements of Rule 3.36 and is therefore GRANTED.

Pursuant to Rule 3.34, in the event that Marshall University seeks to limit or quash the subpoena, Marshall University 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 subpoena, with a copy of this authorizing order attached. Complaint Counsel shall serve a copy of this order on Marshall University at the time it serves the subpoena.

16 C.F.R. § 3.36(c).

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

EXHIBIT A



SUBPOENA DUCES TECUM

PUBLIC

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

1. TO
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 produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION

Federal Trade Commission
C/O Jeanine Balbach, CC-5506
400 7th Street, SW
Washington, DC 20024

4. MATERIAL WILL BE PRODUCED TO

Jeanine Balbach, Esq.

5. DATE AND TIME OF PRODUCTION

January 20, 2016

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. MATERIAL TO BE PRODUCED

Documents & materials responsive to the attached Subpoena Duces Tecum Requests for Production

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

9. 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 9, 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 9 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 9.

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.

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 X, 2016

(Month, day, and year)

Jeanine Balbach

(Name of person making service)

Attorney

(Official title)

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**COMPLAINT COUNSEL'S SUBPOENA DUCES TECUM ATTACHMENT
TO MARSHALL UNIVERSITY**

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. §§ 3.31 and 3.34, and the Scheduling Order entered by Chief Administrative Law Judge Chappell on December 4, 2015, Complaint Counsel hereby requests that Marshall University produce the following in accordance with the Definitions and Instructions set forth below:

1. Submit all documents sent to, received from, or that relate to the Entity's communications with Cabell Huntington, Pallottine Health Services, St. Mary's, or their attorneys or agents regarding the Relevant Transaction.
2. Submit all documents relating to the Relevant Transaction, including, but not limited to, all copies and drafts of any actual, proposed, or contemplated affidavit, letter, statement, declaration, resolution, testimony, notes, or communications with any person relating to the Relevant Transaction.
3. Submit all documents relating to the impact on the Entity of the Relevant Transaction.
4. Submit all documents relating to any plans of, interest in or efforts undertaken by any person for any acquisition, divestiture, joint venture, merger, or collaboration of or with St. Mary's of any kind other than the acquisition of St. Mary's by Cabell Huntington.
5. Submit all documents relating to the impact on the Entity of any acquisition, divestiture, joint venture, merger, or collaboration of any kind other than the acquisition of St. Mary's by Cabell Huntington.

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6. Submit documents sufficient to show, or if no such documents exist, state:
 - a. the date, time, and location of each meeting at which an officer, employee, or agent of the Entity was present, at which discussions were held relating to the acquisition of St. Mary's by Cabell Huntington.
 - b. the name, title, and business affiliation of each person present at each meeting described above in subpart (a).
 - c. the date, time, and location of each meeting at which an officer, employee or agent of the Entity was present, at which discussions were held relating to any plans of, interest in or efforts undertaken by any person for any acquisition, divestiture, joint venture, merger, or collaboration of any kind other than the acquisition of St. Mary's by Cabell Huntington.
 - d. the name, title, and business affiliation of each person present at each meeting described above in subpart (c).
7. Submit all documents relating to the basis for the statements in the Entity's letter of support of the Relevant Transaction (Appendix 1).
8. Submit documents sufficient to show:
 - a. The total number of Entity employees, and their location, by county;
 - b. The identity and type of health plan(s) (e.g., self-insured or fully insured; PPO, HMO, etc.) that the Entity offers to its employees, the carrier or administrator of each such health plan, and the total annual healthcare costs incurred by the Entity;
 - c. The identity of each in-network healthcare provider (e.g., hospital, outpatient facility) included in each health plan offered to the Entity's employees; and,
 - d. The number of employees who received inpatient hospital services and outpatient services, respectively, the particular hospital at which those services were received, and the specific services received by the employees.
9. Submit all contracts or agreements with health plans, third-party administrators, or administrative services-only companies that administer healthcare benefits on the Entity's behalf for its employees.
10. Submit all documents relating to healthcare-provider charges, reimbursement rates, and other costs, including, but not limited to, any comparison of the costs or prices of particular healthcare providers.
11. Submit all documents relating to the impact of healthcare costs on the Entity and its employees.

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12. Submit all documents relating to the Entity's employees' preference for particular healthcare providers on the Entity's health plan choice or provider network.
13. Submit documents sufficient to show the placement of Marshall University School of Medicine's students in residencies and internships, including fields of study.
14. Submit documents sufficient to show what teaching affiliations Marshall has with other hospitals, not including Cabell Huntington and St. Mary's.
15. Submit documents sufficient to show the Entity's support of Cabell Huntington, St. Mary's, and/or any other hospital, including any financial support and employees of the Entity that work at Cabell Huntington, St. Mary's, or any other hospital.
16. Submit documents sufficient to show how much and what types of support, financial, teaching, or otherwise, St. Mary's, Cabell Huntington, or any other hospital each provide to Marshall University and its School of Medicine.
17. Submit all documents relating to competition between Cabell Huntington and St. Mary's and between Cabell Huntington or St. Mary's and other hospitals.
18. Submit documents sufficient to show the Entity's relationship with University Physicians and Surgeons, Inc., also known as Marshall Health.

DEFINITIONS

- A. The terms "and" and "or" have both conjunctive and disjunctive meanings.
- B. The term "Cabell Huntington" means Cabell Huntington Hospital, Inc.; its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing.
- C. The terms "Commission" or "FTC" mean the Federal Trade Commission.
- D. The term "the Entity," "Marshall University," or "the University" means Marshall University, the Marshall University School of Medicine, the Marshall University School of Pharmacy, and all schools, divisions, programs, directors, officers, employees, agents, and representatives of the foregoing.
- E. The terms "each," "any," and "all" mean "each and every."
- F. The term "general acute care inpatient services" refers to the provision of inpatient services (including any physician services that may be provided on an inpatient basis) for medical diagnosis, treatment, and care of physically injured or sick persons with short-

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term or episodic health problems or infirmities, excluding non-acute long-term services (e.g., skilled nursing care) and the treatment of mental illness or substance abuse.

- G. The term “healthcare provider” means any entity that provides the Relevant Service. The term “healthcare provider” includes but is not limited to hospitals, freestanding outpatient facilities, physician groups, individual physicians, and other healthcare facilities.
- H. The term “health plan” means any health maintenance organization, preferred provider arrangement or organization, managed health care plan of any kind, self-insured health benefit plan, other employer or union health benefit plan, Medicare, Medicaid, TRICARE, or private or governmental health care plan or insurance of any kind.
- I. The term “hospital” means a healthcare provider that provides general acute care inpatient services, collectively or individually.
- J. The term “inpatient services” refers to the provision of medical services that require at least one overnight stay at a healthcare provider or at least 24-hour nursing care, including any physician services rendered as part of the inpatient treatment.
- K. The term “person” includes the Entity and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- L. The term “outpatient services” refers to the provision of medical services, including physician services, that do not require an overnight stay at a healthcare provider or 24-hour nursing care.
- M. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
- N. The term “Relevant Service” means and information shall be provided separately for (1) general acute care inpatient services (as defined herein), collectively and individually; and (2) outpatient services (as defined herein), collectively and individually.
- O. The term “Relevant Transaction” means the proposed acquisition of St. Mary’s Medical Center, Inc., by Cabell Huntington Hospital, Inc., pursuant to the Agreement entered into on November 7, 2014, between and among Pallottine Health Services, Inc., St. Mary’s Medical Center, Inc., and Cabell Huntington Hospital, Inc., and any amendments thereto; or pursuant to any other agreements and any amendments thereto.
- P. The term “St. Mary’s” means St. Mary’s Medical Center, Inc.; Pallottine Health Services, Inc.; their domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing.
- Q. Any word or term that the Entity considers vague or insufficiently defined has the meaning most frequently assigned to it by the Entity in the ordinary course of business.

INSTRUCTIONS

- A. All references to year refer to calendar year. Unless otherwise specified or required, each of the Specifications calls for documents and/or information for each of the years from January 1, 2013, to the present. Where information is requested, provide it separately for each year. Where yearly data is not yet available, provide data for the calendar year to date. If calendar-year information is not available, supply the Entity's fiscal-year data indicating the 12-month period covered, and provide the Entity's best estimate of calendar-year data.
- B. This Subpoena shall be deemed continuing in nature so as to require production of all documents responsive to any Specification included in this Subpoena produced or obtained by the Entity up to thirty (30) calendar days prior to the date of the Entity's full compliance with this Subpoena.
- C. Unless modified by agreement with Complaint Counsel, these document requests require a complete search of all the files of the Entity. The Entity shall produce all responsive documents, wherever located, that are in the actual or constructive possession, custody, or control of the Entity and its representatives, attorneys, and other agents, including, but not limited to, consultants, accountants, lawyers, or any other person retained by, consulted by, or working on behalf or under the direction of the Entity.
- D. These document requests are continuing in nature and shall be supplemented in the event that additional documents responsive to this request are created, prepared, or received between the time of the Entity's initial response and trial.
- E. All documents responsive to this document request, regardless of format or form and regardless of whether submitted in hard copy or electronic format:
- a) Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Entity's files.
 - b) Shall be marked on each page with corporate identification and consecutive document control numbers;
 - c) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;
 - d) Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (e.g., a chart or graph), makes any substantive information contained in the document unintelligible, the Entity must submit the original document, a like-colored photocopy, or a JPEG format image;

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- e) Shall be accompanied by an affidavit of an officer of the Entity stating that the copies are true, correct, and complete copies of the original documents; and
- f) Shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. The Complaint Counsel representative will provide a sample index upon request.
- F. Forms of Production: The Entity shall submit all documents as instructed below absent written consent signed by Complaint Counsel.
- (a) Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in the following electronic format provided that such copies are true, correct, and complete copies of the original documents:
- (i) Submit Microsoft Excel, Access, and PowerPoint files in native format with extracted text and applicable metadata and information as described in subparts (a)(ii), (a)(iii) and (a)(iv).
- (ii) Submit emails in image format with extracted text and the following metadata and information:

Metadata/Document Information	Description
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the original custodian of the file.
To	Recipient(s) of the email.
From	The person who authored the email.
CC	Person(s) copied on the email.
BCC	Person(s) blind copied on the email.
Subject	Subject line of the email.
Date Sent	Date the email was sent.
Time Sent	Time the email was sent.

Metadata/Document Information	Description
Date Received	Date the email was received.
Time Received	Time the email was received.
Attachments	The Document ID of attachment(s).
Mail Folder Path	Location of email in personal folders, subfolders, deleted items or sent items.
Message ID	Microsoft Outlook Message ID or similar value in other message systems.

- (iii) Submit email attachments in image format other than those identified in subpart (a)(i) with extracted text and the following metadata and information:

Metadata/Document Information	Description
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the original custodian of the file.
Parent Email	The Document ID of the parent email.
Modified Date	The date the file was last changed and saved.
Modified Time	The time the file was last changed and saved.
Filename with extension	The name of the file including the extension denoting the application in which the file was created.
Production Link	Relative file path to production media of submitted native files. Example: FTC-001\NATIVE\001\FTC-00003090.xls.
Hash	The Secure Hash Algorithm (SHA) value for the original native file.

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- (iv) Submit all other electronic documents other than those described in subpart (a)(i) in image format accompanied by extracted text and the following metadata and information:

Metadata/Document Information	Description
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the original custodian of the file.
Modified Date	The date the file was last changed and saved.
Modified Time	The time the file was last changed and saved.
Filename with extension	The name of the file including the extension denoting the application in which the file was created.
Originating Path	File path of the file as it resided in its original environment.
Production Link	Relative file path to production media of submitted native files. Example: FTC-001\NATIVE\001\FTC-00003090.xls.
Hash	The Secure Hash Algorithm (SHA) value for the original native file.

- (v) Submit documents stored in hard copy in image format accompanied by OCR with the following information:

Metadata/Document Information	Description
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.

Metadata/Document Information	Description
Custodian	The name of the original custodian of the file.

- (vi) Submit redacted documents in PDF format accompanied by OCR with the metadata and information required by relevant document type described in subparts (a)(i) through (a)(v) above. For example, if the redacted file was originally an attachment to an email, provide the metadata and information specified in subpart (a)(iii) above.
- (b) Submit data compilations in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact.
- (c) If the Entity intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in its computer systems or electronic storage media, or if the Entity's computer systems contain or utilize such software, the Entity must contact the Complaint Counsel representative to determine, with the assistance of the appropriate Complaint Counsel representative, whether and in what manner the Entity may use such software or services when producing materials in response to these document requests.
- (d) Produce electronic file and image submissions as follows:
- (i) For productions over 10 gigabytes, use IDE, EIDE, and SATA hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in a USB 2.0 external enclosure;
 - (ii) For productions under 10 gigabytes, CD-R CD-ROM optical disks formatted to ISO 9660 specifications, DVD-ROM optical disks for Windows-compatible personal computers, and USB 2.0 Flash Drives are acceptable storage formats;
 - (iii) All documents produced in electronic format shall be scanned for and free of viruses prior to submission. Complaint Counsel will return any infected media for replacement, which may affect the timing of the Entity's compliance with these Document Requests; and
 - (iv) Encryption of productions using NIST FIPS-Compliant cryptographic hardware or software modules, with passwords sent under separate cover, is strongly encouraged.
 - (v) Each production shall be submitted with a transmittal letter that includes the Docket Number (No. 9366); production volume name;

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encryption method/software used; passwords for any password protected files; list of custodians and document identification number range for each; total number of documents; and a list of load-file fields in the order in which they are organized in the load file.

- G. If any documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a searchable and sortable log that includes each document's authors, addresses, date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient; state the person's full name, title, and employer or firm; and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Complaint Counsel or a court to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Entity asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Entity that were not directly or indirectly furnished to the Entity or any third-party, such as internal firm memoranda, may be omitted from the log.
- H. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Entity's document retention policy, but the Entity has reason to believe such documents have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the request(s) to which they are responsive, and identify persons having knowledge of the content of such documents.
- I. Whenever necessary to bring within the scope of a request a response that might otherwise be construed to be outside its scope, the following construction should be applied:
- (a) Construing the terms "and" and "or" in the disjunctive or conjunctive, as necessary, to make the request more inclusive;
 - (b) Construing the singular form of any word to include the plural and plural form to include the singular;
 - (c) Construing the past tense of the verb to include the present tense and present tense to include the past tense;
 - (d) Construing the masculine form to include the feminine form; and

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- (e) Construing the term “date” to mean the exact day, month, and year if ascertainable; if not, the closest approximation that can be made by means of relationship to other events, locations, or matters.
- J. Unless otherwise stated, construe each request independently and without reference to any other purpose of limitation.
- K. In order for the Entity’s response to these document requests to be complete, the attached certification form must be executed by the official supervising compliance with this request, notarized, and submitted along with the responsive materials.
- L. Any questions relating to the scope or meaning of anything in this subpoena or suggestions for possible modifications should be directed to Svetlana Gans at (202) 326-3708 or sgans@ftc.gov.
- M. The Entity’s response to these document requests shall be delivered to the attention of Jeanine Balbach, between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission, 400 7th Street SW, Washington, DC 20024. For courier or other delivery, please contact Jeanine Balbach, at 202-326-2568 or jbalbach@ftc.gov.

CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Subpoena *Duces Tecum* is complete and correct to the best of my knowledge and belief.

(Signature of Official)

(Title/Entity)

(Typed Name of Above Official)

(Office Telephone)

APPENDIX I



Office of the President
October 29, 2014

Mr. Brent Marsteller
President & CEO
Cabell Huntington Hospital
1340 Hal Greer Blvd
Huntington, WV 25701

Michael G. Sellards
President & CEO
St. Mary's Medical Center
2900 First Avenue
Huntington, WV 25702

Dear Brent and Mike:

This letter is written on behalf of Marshall University to convey my emphatic support for the acquisition of St. Mary's Medical Center by Cabell Huntington Hospital. Collectively, Marshall University, its Joan C. Edwards School of Medicine and its Research Corporation represent the largest employer in the Greater Huntington and Tri-State Region. The University and its School of Medicine have enjoyed a longstanding and highly effective working relationship with these two local hospitals. Together we have provided critically important, state-of-the-art healthcare services to our region's residents.

As a locally owned and locally governed healthcare entity, Cabell Huntington Hospital expresses values rooted in its beginnings as a community hospital. The anticipation is that the joint healthcare enterprise resulting from the acquisition of St. Mary's Medical Center will preserve the shared values of the two organizations, while embracing the local control and community-engagement that has endeared both healthcare organizations to our community. The synergy between the missions of our respective organizations will continue to serve as a driving force for extending high quality medical care to the underserved populations of rural West Virginia and central Appalachia and to advancing the training of primary care physicians for our region and nation.

Having lived for three decades in a highly populated metropolitan area and experienced high-quality medical care services more common to such areas of our country, my family and I have been very gratified by the remarkable quality of medical care provided to residents of this community and region. The medical education and postgraduate medical education programs accredited through the Joan C. Edwards Medical School, in vibrant partnership with the two hospitals and the resulting physicians choosing to practice within the region, have been the predominant reason. Huntington is a rising healthcare destination locale for the best physicians, and for patients and their families desiring the highest level of care. The combination of the two health systems' complementary strengths will enable the merged systems to provide a higher quality of care. The envisioned transaction will also create a combined entity well-positioned and responsive to the changing landscape of health care in the post-Affordable Care Act environment. The long-term success of this newly formed healthcare entity will be crucial to the future economic viability and growth of our community and region.

Slowing the rate of rising healthcare costs is of paramount importance to employers, including Marshall University. Constraining these costs will be important to ensuring that Huntington can maintain a vibrant and prosperous business environment that attracts new employers and encourages existing

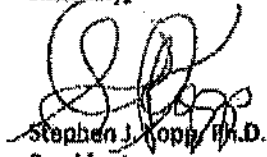
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employers to remain and expand in our community. A very real potential exists through this acquisition that over time unnecessary duplications of services, facilities and equipment can be either reduced or eliminated. Their contribution to increasing healthcare costs is well-documented. It's reasonable to expect that as unnecessary duplicative services are either eliminated or consolidated, the resultant cost savings will lead to enhanced patient care services.

Overall, the acquisition of St. Mary's Medical Center by Cabell Huntington Hospital has been endorsed strongly by various Marshall University employee groups and the Marshall University Board of Governors. This letter echoes those strong sentiments.

Sincerely,



Stephen J. Kopp, M.D.
President

Subpoena *Duces Tecum* Issued to Marshall University (Docket 9366)

CERTIFICATE OF SERVICE

I hereby certify that on [January xx, 2016], I served via FedEx delivery a copy of the attached Subpoena *Duces Tecum* to 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:

Layton Cottrill, General Counsel
Marshall University
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
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*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 4, 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 Motion for Subpoena *Duces Tecum* to Marshall University under Rule of Practice 3.36, on the following counsel:

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Counsel for Marshall University

Dated: January 4, 2016

/s/ Jeanine Balbach
Jeanine Balbach, Esq.
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 4, 2016

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