

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-
)	
Psychiatric Solutions, Inc.,)	
a corporation.)	
)	
_____)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of Psychiatric Solutions, Inc. (“PSI”), by Universal Health Services, Inc. (“UHS”), an entity controlled by 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,

- 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.
- C. “PSI” means Psychiatric Solutions, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by PSI, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Respondents” means Alan B. Miller, UHS, and PSI, collectively or individually.
- E. “Acquisition” means the proposed acquisition described in and contemplated by the Agreement and Plan of Merger by and among UHS and PSI dated as of May 16, 2010.
- F. “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.
- G. “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.
- H. “Closing Date” means the date on which Respondents consummate a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey to a Commission-approved Acquirer one or more of the Divestiture Businesses.
- I. “Commission” means the Federal Trade Commission.
- J. “Commission-approved Acquirer” means the Person or Persons approved by the Commission to acquire Divestiture Assets pursuant to this Order.
- K. “Confidential Business Information” means information not in the public domain that is primarily related to or primarily used in connection with the

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.

Capestrano, Carretera Estatal 877, Km. 1.6, Camino Las Lomas, Rio Piedras, PR 00926; Clinica del Norte Hatillo, Carretera #2, Km. 81.7 Bo., Carrizales, Edif. Galeria del Norte 3rd Floor, Hatillo, PR 00659; Condado Integrated Healthcare System, Calle Washington #30 Suite #3, San Juan, PR 00907; Manati Integrated Healthcare System, Carretera 149, Km. 7.5, Expresso Manati-Ciales, Manti, PR 00674; Clinica del Oeste Mayaguez, Office Park Building Suite 104, Hostos Ave., Mayaguez, PR 00680; Clinica del Este Caguas, Ave. Jose Mercado Esq. Ruiz Belvis, Edif. Gatsby, Piso 2, Caguas, PR 00725; Clinica del Este Humacao, Carretera 128 Font Martelo Esq. Ramon Gomez, Telephone Co. Old Building, Humacao, PR 00791; Clinica de Servicios Ambulatorios Ponce, 2000 Calle Flamboyanes, Coto Laurel, PR

- V. “Montevista Hospital” means the Psychiatric Hospital Facility owned by PSI, located at 5900 West Rochelle Avenue, Las Vegas, NV 89103.
- W. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity or governmental body.
- X. “Prospective Acquirer” means a Person that Respondents intend to submit to the Commission for its prior approval pursuant to Paragraphs II.A, III.A., or IV.A. of this Order.
- Y. “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.
- Z. “Psychiatric Hospital Facility” means a Psychiatric Hospital or a Psychiatric Unit.
- AA. “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.
- BB. “Puerto Rico Divestiture Assets” means all Divestiture Assets primarily used in connection with or primarily relating to Hospital San Juan Capistrano.
- CC. “Red Rock Behavioral Health Hospital” means the Psychiatric Hospital Facility owned by PSI located at 5975 W. Twain Avenue, Las Vegas, NV 89103.
- DD. “Relevant Area” means each of
1. the State of Delaware;
 2. Las Vegas, NV, MSA; and
 3. the Commc2/P5L Tw 16.025 0 Td(Psychiatric Hospital or a Psychiatrif5raMCID)02 Tc Tc - DD.

wherever located, together with any express or implied warranty by the

and/or to grant any license(s) to a Commission-approved Acquirer to permit the Commission-approved Acquirer to operate the Delaware Divestiture 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 Delaware Divestiture Assets meet federal, state, local, and municipal requirements necessary to allow the transfer of the Delaware Divestiture Assets to the Commission-approved Acquirer.

- D. The purpose of the divestiture is to ensure the continuation of the Delaware Divestiture Assets 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. No later than six (6) months after the date this Order becomes final, Respondents shall divest the Las Vegas Divestiture 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 that receives the prior approval of the Commission.
- B. Respondents shall cooperate with the Commission-approved Acquirer to ensure that the Las Vegas Divestiture Assets are transferred to the Commission-approved Acquirer as financially and competitively viable Psychiatric Hospitals operating as ongoing businesses 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 Las Vegas Divestiture 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 Las Vegas Divestiture Assets and/or to grant any license(s) to a Commission-approved Acquirer to permit the Commission-approved Acquirer to operate the Las Vegas Divestiture 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 Las Vegas Divestiture Assets meet federal, state, local, and municipal requirements necessary to allow the transfer of the Las Vegas Divestiture Assets to the Commission-approved Acquirer.
- D. The purpose of the divestiture is to ensure the continuation of the Las Vegas Divestiture Assets as ongoing, viable Psychiatric Hospital Facilities and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

IV.

IT IS FURTHER ORDERED that:

- A. No later than nine (9) months after the date this Order becomes final, Respondents shall divest the Puerto Rico Divestiture 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 that receives the prior approval of the Commission.
- B. Respondents shall cooperate with the Commission-approved Acquirer to ensure that the Puerto Rico Divestiture Assets are transferred to the

remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

V.

IT IS FURTHER ORDERED that:

- A. Respondents shall not use, solicit, or access, directly or indirectly, any Confidential Business Information, 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. subject to an appropriate confidentiality agreement, a Person that has shown an interest in acquiring one or more of the Divestiture Businesses and that UHS has reason to believe may be qualified to acquire one or more of the Divestiture Businesses;
 3. a Prospective Acquirer or Commission-approved Acquirer, or other Persons specifically authorized by such Prospective Acquirer or Commission-approved Acquirer to receive such information, regarding a particular Divestiture Business;
 4. pursuant to a Divestiture Agreement;
 5. to enforce the terms of a Divestiture Agreement or prosecute or defend against any dispute or legal proceeding; or
 6. to comply with applicable law, regulations and other legal requirements.
- B. No later than five (5) days after the Acquisition, Respondents shall provide written notification of the restrictions, prohibitions and requirements of this Paragraph V. and Paragraph III. of the Hold Separate Order to all of Respondents' employees, agents, and representatives located in the Relevant Areas or, even if located outside the Relevant Areas, to Respondents' employees, agents, and representatives who had or have responsibilities in or relating to the Relevant Areas or who had or have access to or possession, custody or control of any Confidential Business Information. Respondents may provide such notification by e-mail with return receipt requested or similar transmission, and shall keep a file of any receipts or acknowledgments for one (1) year after the respective Closing Date. Respondents shall provide a copy of such notification to the Commission-approved Acquirer. Respondents shall maintain complete records of all such notifications at

plans and summary plan description

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 VIII.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

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 VIII. 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, 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 VIII.
- 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 VIII. may be the same person appointed as Hold Separate Trustee pursuant to the relevant provisions of the Hold Separate Order.

IX.

IT IS FURTHER ORDERED that:

- A. No Divestiture Agreement shall limit or contradict, or be construed to limit 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 any of the Relevant Areas.

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 any of the Relevant Areas.

- 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., III., or IV. of this Order pending such divestiture; and (ii) pursuant to the Divestiture Agreement.

XI.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after this Order becomes final, and every sixty (60) days thereafter until Respondents have complied with their obligations in Paragraphs II., III., or IV. 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 Paragraphs II., III., and IV. 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 Paragraphs II., III., and IV. 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 becomes final, 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.

XII.

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.

XIII.

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.

XIV.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date this Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: