

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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

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<b>In the Matter of</b>	)	
	)	
	)	
<b>Alan B. Miller,</b>	)	
<b>a natural person;</b>	)	
	)	
<b>Universal Health Services, Inc.,</b>	)	
<b>a corporation;</b>	)	
	)	
<b>and</b>	)	<b>Docket No. C-4309</b>
	)	
<b>Psychiatric Solutions, Inc.,</b>	)	
<b>a corporation.</b>	)	
	)	
	)	

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**ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS**

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, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter cons

2. the Final Decision and Order issued by the Commission following issuance and service of a final Decision and Order by the Commission.

C. "Hold Separate Business" means the Delaware Divestiture Assets, the Las Vegas Divestiture Assets, and the Puerto Rico Divestiture Assets.

D. "Hold Separate Employees" means all full-time employees, part-time, employees, contract employees, and independent contractors, whose duties, at any time during the ninety (90) days preceding the Acquisition or any time after the Acquisition related or relates primarily to at least one of the Divestiture Businesses, a complete list of whom has been submitted to and approved by the Hold Separate Trustee and each respective Manager, in accordance with the Commission staff, on or before the 60th day after the Acquisition.

H.

E. "Hold Separate Order" means this Order to Hold Separate and Maintain Assets.

F. "Hold Separate Period" means the period during which the Hold Separate Order is in effect, which shall begin on the Acquisition Date and terminate pursuant to Paragraph VIII. of this Hold Separate Order.

G. "Hold Separate Trustee" means the Person appointed pursuant to Paragraph II. of this Hold Separate Order.

H. "Manager" means the Person or Persons

## II.

**IT IS FURTHER ORDERED** that during the Hold Separate Period:

A. Respondents shall:

1. Hold the Hold Separate Business separate, apart, and independent of Respondents' other businesses and assets as required by this Hold Separate Order and shall vest the Hold Separate Business with all rights, powers, and authority necessary to conduct its business; and
2. Not exercise direction or control over, or influence directly or indirectly, the Hold Separate Business or any of its operations, the Managers, or the Hold Separate Trustee, except to the extent that Respondents must exercise direction and control over the Hold Separate Business as is necessary to ensure compliance with this Hold Separate Order, the Consent Agreement, the Decision and Order, and all applicable laws.

B. Respondents shall take all actions necessary to maintain and ensure the continued maintenance of the viability, marketability and competitiveness of the Hold Separate Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, and shall not sell, transfer, encumber or otherwise impair the Hold Separate Business (except as required by the Decision and Order).

C. Respondents shall hold the Hold Separate Business separate, apart, and independent of its other operations on the following terms and conditions:

1. At any time after Respondents sign the Consent Agreement, the Commission may appoint Robert H. Osburn as Hold Separate Trustee to monitor the operations of the Hold Separate Business and ensure that Respondents comply with their obligations as required by this Hold Separate Order and the Decision and Order:
  - a. The Commission shall select the Hold Separate Trustee, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) business days after notice by the staff of the Commission to Respondents of the identity of any proposed Hold Separate Trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

- b. The Hold Separate Trustee shall have the responsibility for monitoring the organization of the Hold Separate Business; supervising the management of the Hold Separate Business by the Manager or Managers; maintaining the independence of the Hold Separate Business; and monitoring Respondents' compliance with their obligations pursuant to the Hold Separate Order, including, without limitation, maintaining the viability, marketability and competitiveness of the Hold Separate Business pending divestiture.
- c. No later than three (3) days after appointment of the Hold Separate Trustee, Respondents shall execute an agreement that, subject to the prior approval of the Commission, transfers to and confers upon the Hold Separate Trustee all rights, powers, and authority necessary to permit the Hold Separate Trustee to perform his or her duties and responsibilities pursuant to this Hold Separate Order, in a manner consistent with the purposes of the Orders, and shall require that the Hold Separate Trustee shall act in a fiduciary capacity for the benefit of the Commission.
- d. Subject to all applicable laws and regulations, the Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Hold Separate Business, and to any other relevant information as the Hold Separate Trustee may reasonably request including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Hold Separate Business. Respondents shall develop such financial or other information as the Hold Separate Trustee may reasonably request and shall cooperate with the Hold Separate Trustee.
- e. Respondents shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Respondents' compliance with this Hold Separate Order, the Consent Agreement or the Decision and Order or otherwise to perform his or her duties and responsibilities consistent with the terms of this Hold Separate Order.
- f. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.

- g. The Commission may require the Hold Separate Trustee and each of the Hold Separate Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information received from the Commission in connection with

1. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Hold Separate Trustee consistent with the terms of this Hold Separate Order.
  - m. The Hold Separate Trustee shall serve until the day after the last of the Closing Dates; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
2. No later than five (5) days after the Acquisition Date, Respondents shall appoint a Manager or Managers, approved by the Hold Separate Trustee in consultation with Commission staff, from among the current employees of the Hold Separate Business to manage and maintain the operations of the Hold Separate Business in the regular and ordinary course of business and in accordance with past practice:
  - a. Each Manager shall report direc

d. No Manager shall make material changes in the ongoing operations of the Hold Separate Business except with the approval of the Hold Separate Trustee, in consultation with the Commission staff.

e. Each Manager shall have the authority, in consultation with the Hold Separate Trustee, to remove Hold Separate Employees and replace them with others of similar experience or skills. If any Hold Separate Employee ceases to act or fails to act diligently and consistent with the purposes of this Hold pos havsth the

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- j. Respondents shall indemnify each Manager and hold him or her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Manager'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 liabilities, losses, damages, claims, or expenses result from gross negligence or willful

capital losses, or other losses; *provided, however*, that, consistent with the purposes of the Decision and Order and in consultation with the Hold Separate Trustee, the Manager may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

5. In connection with Support Services not included within the Hold Separate Business:
  - a. Respondents shall continue to provide, or offer to provide, the same Support Services to the Hold Separate Business as are being provided to the Hold Separate Business by Respondents as of the date the Consent Agreement is signed by Respondents;
  - b. For Support Services that Respondents provided to the Hold Separate Business as of the date the Consent Agreement is signed by Respondents, Respondents may charge no more than the same price, if any, charged by Respondents for such Support Services as of the date the Consent Agreement is signed by Respondents;
  - c. For any other Support Services that Respondents may provide to the Hold Separate Business, Respondents may charge no more than Respondents' Direct Cost for the same or similar Support Services;
  - d. Support Service Employees must retain and maintain all Confidential Business Information of the Hold Separate Business on a confidential basis, and, except as is permitted by the Orders, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves the management or operation of any of Respondents' businesses or activities other than the Hold Separate Business. As required by II.C.6., below, Support Service Employees shall also execute confidentiality agreements prohibiting the disclosure of any Confidential Business Information of the Hold Separate Business, except as permitted by the Orders; and
  - e. Notwithstanding the above, the Hold Separate Business shall have, at the option of the Manager and in consultation with the Hold Separate Trustee, the ability to acquire Support Services from Third Parties.

6. Respondents shall cause the Hold Separate Trustee, each Manager, and each of Respondents' employees (excluding those employed in the Hold Separate Business) having access to Confidential Business Information of or pertaining to the Hold Separate Business to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate Order. These individuals must retain and maintain all Confidential Business Information of or pertaining to the Hold Separate Business on a confidential basis and, except as is permitted by this Hold Separate Order or the Decision and Order, such Persons shall be prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other Person whose employment involves the management or operations of any of Respondents' businesses or activities other than the Hold Separate Business.
7. Except for the Managers and Hold Separate Employees, and except to the extent provided in this Hold Separate Order, Respondents shall not permit any other of its employees, officers, or directors to be involved in the operations of the Hold Separate Business.
8. Respondents' employees (excluding the Hold Separate Employees and Support Service Employees) shall not receive, or have access to, or use or continue to use any Confidential Business Information except:
  - a. as required by law; and
  - b. to the extent that necessary information is exchanged:
    - (1) in the course of consummating the Acquisition;
    - (2) in negotiating agreements to divest assets pursuant to the Decision and Order and engaging in related due diligence;
    - (3) in complying with or as permitted by this Hold Separate Order or the Decision and Order;
    - (4) in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Hold Separate Business and the integrity of the financial controls of the Hold Separate Business;
    - (5) in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Hold Separate Business; or
    - (6) in obtaining legal advice.

Nor shall any Manager or any Hold Separate Employees receive or have access to, or use or continue to use, any confidential business information relating to Respondents' businesses (not subject to the

Hold Separate Order), except such information as is necessary to maintain and operate the Hold Separate Business. Notwithstanding the above, Respondents may receive aggregate financial and operational information relating to the Hold Sepa

Separate Order.

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 must 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.

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





## **VII.**

**IT IS FURTHER ORDERED** that, for purposes of determining or securing compliance with this Hold Separate Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to the applicable Respondent made to its principal United States offices, registered office of its United States subsidiary, or headquarters address, 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 Hold Separate 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 Hold Separate Order.

## **VIII.**

**IT IS FURTHER ORDERED** that this Hold Separate Order shall terminate at

**Confidential Appendix A**

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