



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, and having modified the Decision and Order in certain respects, 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

- B. “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.
  
- C. “PSI” means Psychiatric Solutions, Inc., its directis, Inc

- K. “Confidential Business Information” means information not in the public domain that is primarily related to or primarily used in connection with the Divestiture 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.
- L. “Delaware Divestiture Assets” means all Divestiture Assets primarily used in connection with or primarily relating to MeadowWood Behavioral Health.
- M. “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.
- N. “Divestiture Agreement” means any agreement(s) between Respondents and a Commission-approved Acquirer (or between a Divestiture Trustee and a Commission-approved Acquirer), and all amendments, exhibits, attachments, agreements, and schedules thereto, related to divestiture of the Divestiture Assets that have been approved by the Commission to accomplish the requirements of this Order.
- O. “Divestiture 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 Divestiture 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), 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 and not replaced from the Divestiture Assets, if such property was used by the Divestiture Assets 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) 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 Divestiture 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 Divestiture Businesses;

provided, however, at the option of the Commission-approved Acquirer, that the Divestiture Assets need not include any property or assets that the Commission-approved Acquirer determines it does not need, 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.

- P. "Divestiture Business" means the operation of a Psychiatric Hospital Facility and includes but is not limited to the provision of Acute Care Psychiatric Services, whether provided or performed at the facility or in a different location within the Relevant Areas, and also includes al

owned by UHS located at Carretera Estatal 877, Km. 1.6, Camino Las Lomas, Rio Piedras, PR 00926; and the following: PHP Hospital San Juan 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 3<sup>rd</sup> 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 00780-1320; Clinica de Servicios Ambulatorios Carolina, Iturregui Plaza Shopping Center Suite #17, 1135 Ave. 65 Infanteria, Rio Piedras, PR 00924; Clinica de Ninos y Adolescentes, Urb. Munoz Rivera, #9 Call Acuarela, Guaynabo, PR 00966; Clinica de Servicios Ambulatorios Bayamon, Calle 2, #146, Hermanas Davila 5ta Ext., Bayamon, PR 00959.

- S. “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.
- T. “Las Vegas Divestiture Assets” means all Divestiture Assets primarily used in connection with or primarily relating to Montevista Hospital and Red Rock Behavioral Health Hospital.

- U. “MeadowWood Behavioral Health” means the Psychiatric Hospital Facility owned by PSI, located at 575 South DuPont Highway, New Castle, DE 19720.
- 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

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.

GG.



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 Delaware Divestiture Assets 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 th

to allow the transfer of the Puerto Rico Divestiture Assets to the Commission-approved Acquirer.

- D. The purpose of the divestiture is to ensure the continuation of the Puerto Rico 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.

**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

related outpatient centers, clinics, and offices in 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 Respondents' corporate headquarters and shall provide an officer's certification to the Commission, stating that such acknowledgment program has been implemented and is being complied with. Respondents shall provide the Commission-approved Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

C. Respondents shall:

1. no later than fourteen (14) days after the Acquisition – with Paragraph III.C.1. of the Hold Separate Order

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 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.

## VII.

**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 Psychiatric Hospital Facilities and to provide Acute Inpatient Psychiatric Services in substantially the same manner that Respondents have operated such facilities and provided such services at 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 its operation 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 except if Respondents are unable to provide such services due to such material breach.

## VIII.

**IT IS FURTHER ORDERED** that:

- A. If Respondents have not fully complied with the obligations imposed by Paragraphs II., III., or IV. of this Order, the Commission may appoint a trustee (“Divestiture Trustee”) to divest the required Divestiture 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 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 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 Paragraphs II., III., or IV. 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 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 consu

confidentiality agreement; provided, however, such agreement

documents containing the modification, such notice to include the specific language of the modification, the need for the modification, and a description of the effect, if any, on Respondents' obligations under the Order; and, if the Commission rejects the modification, Respondents shall rescind it.

**X.**

**IT IS FURTHER ORDERED** that:

- A. For a period of ten (10) years from the date this Order becomes final, 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 any of the Relevant Areas; 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.



### **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**