

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

Docket No. C-4309
File No. 101 0142

APPLICATION FOR APPROVAL OF DI VESTITURE OF THE PUERTO RICO
DIVESTITURE ASSETS

CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000
Attorneys for Alan B. Miller and Universal
Health Services, Inc.

Introduction

Pursuant to Section 2.41(f) of the Federal Trade Commission (the “Commission”), Rules of Practice and Procedure IV of the Decision and Order approved for issuance by the Commission on April 29, 2011, Respondents Alan B. Miller and Universal Health Services, Inc. (“UHS”), respectfully submit this Application for Approval of Divestiture of the Puerto Rico Divestiture Assets (the “Application”), in connection with the matter entitled the Matter of Alan B. Miller, a natural person;

Decision and Order (the “PuerRico Divestiture Assets”) to Donald R. Dizney and David A. Dizney through two companies, ~~Co~~strano Realty Company, Inc. and San Juan CP Hospital, Inc., both of which are mbers of the UnitedMedical Corporation

For over a year, UHS has in good faith engaged in the divestiture process as contemplated by Paragraph IV of the Decision and Order in order to divest the Puerto Rico Divestiture Assets. As a result of that divestiture process, which involved discussions and negotiations with over twenty parties, UHS entered into the Asset Purchase Agreement with Donald R. Disney and David A. Disney, principal shareholders of UMC, a leading provider of inpatient and outpatient behavioral health services, headquartered in Windermere, Florida. Throughout the process, UHS has kept the Commission staff informed of the manner in which UHS was conducting the divestiture process and the parties that expressed an interest in the Puerto Rico Divestiture Assets. In addition to the required compliance reports that UHS has filed, UHS has communicated additional information to the Commission staff regarding the divestiture process.

The proposed divestiture to UMC would accomplish the Decision and Order's purposes by "ensur[ing] the continuation of the Puerto Rico Divestiture Assets as an ongoing, viable Psychiatric Hospital Facility and by "remedy[ing] the lessening of the competition resulting from the Acquisition alleged in the Commission's complaint".

Commonwealth of Puerto Rico will have the benefit of another significant competitor

fully capable of and engaged in the provision of Acute Inpatient Psychiatric Services

described in detail below. The Dignys and UMC family of companies have the finan-

cial, professional and operational resources to be strong and effective competitors in the

Commonwealth of Puerto Rico for the provision of Acute Inpatient Psychiatric Services.

THE CONDITIONAL ACUTE INPATIENT PSYCHIATRIC SERVICES TO BE

BE ASSETS

PUERTO RICO DIVESTIT

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the Disney's eliminated in the Prior Service Agreements. During the

the Commission's ongoing session, it adopted the General Order of 2014

requirements of its Director and those of the Director of Health Services

and the Department of Health Services, and the Department of Health Services

Services in the operational resources to provide Acute Inpatient Psychiatric

Commonwealth of Puerto Rico

II. THE DIZNEYS, THROUGH UMC, ARE WELL-QUALIFIED PROSPECTIVE ACQUIRERS AND ARE READY, WILLING AND ABLE TO COMPETE FOR THE PROVISION OF ACUTE INPATIENT PSYCHIATRIC SERVICES IN THE COMMONWEALTH OF PUERTO RICO.

A. Prospective Acquirers' Name and Address.

Donald R. Dizney and David A. Dizney
Capestrano Realty Company, Inc. and San Juan CP Hospital, Inc.
Both members of the UMC family of companies controlled by Donald R. Dizney and David A. Dizney
603 Main Street
Windermere, Florida
(407) 876-2200

B. UMC's Corporate Officers Have Significant Experience in Operating Inpatient Psychiatric Services.

UMC's corporate team is well-qualified and experienced in operating Psychiatric Hospitals including Acute Inpatient Psychiatric Services and has substantial experience in operating hospitals in the Commonwealth of Puerto Rico. Members of the UMC executive team include:

David A. Dizney, President and Chief Executive Officer.

Mr. Dizney has been President, Chief Executive Officer and a Director of the Company since 2001 and has served in various key capacities since 1993. Mr. Dizney is currently on the Florida Board of Managers of the Nemours Foundation and has served on the Board of Trustees of the National Association of Psychiatric Health Systems. Mr. Dizney received an M.B.A. from the Kellogg School of Management at Northwestern University and a B.S. in Finance from the University of South Florida. Since 2008, Mr. Dizney has been a member of the Board of Directors of XHale, Inc., an advanced biotech products company which develops intellectual property from the University of Florida.

Kevin Barkman, Executive Vice President.

Mr. Barkman has served as Executive Vice President of the Company since 1994 and in various key roles with the Company since 1981. Mr. Barkman served as the Administrator of the Company's Ten Broeck Louisville behavioral hospital. Mr. Barkman is principally involved with the Company's deve

hospitals located in Puerto Rico, including numerous behavioral operations which have since been sold to a strategic buyer. Mr. Colon heads up the Company's Puerto Rico Regional Office which provides all strategic services to the Company's Puerto Rico hospitals and clinic operations. He has previously been responsible for the financial aspects of the Company's large-scale reference laboratory. Mr. Colon received his B.S. degree in accounting from the University of Puerto Rico in 1984.

C. UMC Is in the Business of Operating Psychiatric Hospital Facilities.

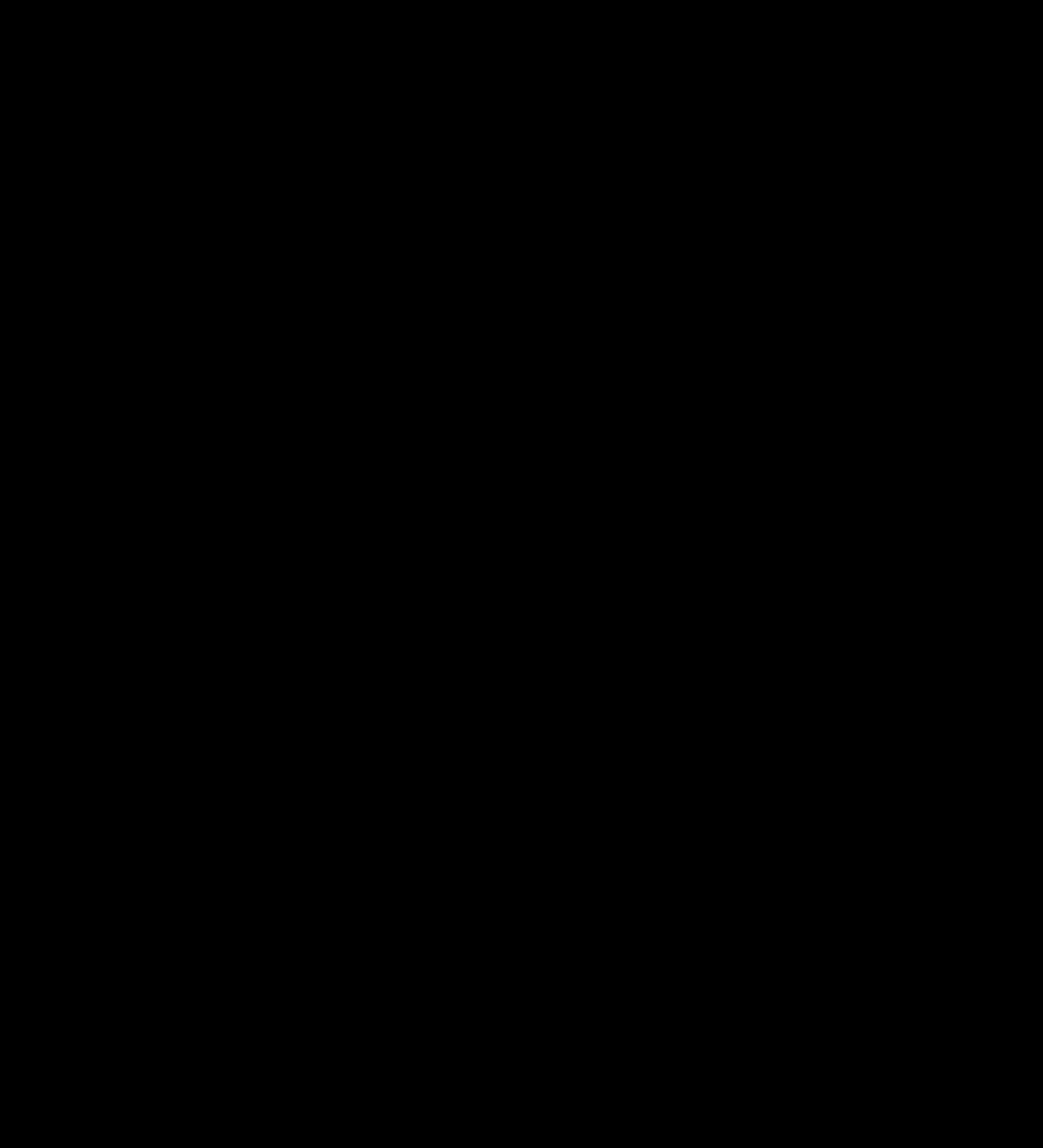
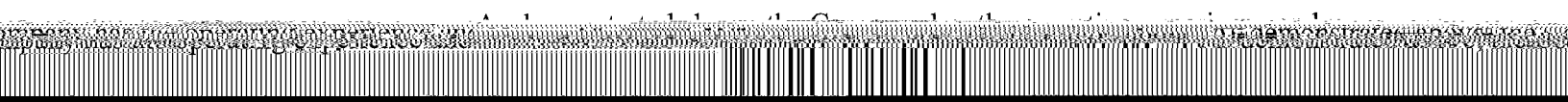
UMC is a national healthcare company incorporated in 1974, which, through affiliated entities and subsidiaries, provides Acute Inpatient Psychiatric Services to individuals who have a variety of behavioral health disorders and is recognized as a quality provider of healthcare services in Puerto Rico. UMC is privately held and maintains its corporate headquarters in Windermere, Florida. It also has regional offices in Houston, Texas and San Juan, Puerto Rico.

The Company, through its PaviaHealth affiliate, was the original consolidator of healthcare services in Puerto Rico commencing with its acquisition of Hospital Pavia in 1985. Over the next twelve years, the Company became the largest single provider of healthcare services in Puerto Rico with a peak of 819 acute care and behavioral beds which accounted for 18% of private hospital beds in Puerto Rico with over 1,607 active physicians (including psychiatrists). The Company has developed behavioral beds for its own operation and has been contracted by the Commonwealth of Puerto Rico to manage behavioral beds at a government-owned hospital. After 20 years of operations, UMC sold all of its adult acute care and behavioral beds in a single transaction to Metropolitan Systems, Inc., which has now become the island's largest healthcare provider, while retaining Sarge Children's Hospital. The company continues to be committed to healthcare services in Puerto Rico. Indeed, a 64,000 square

foot, \$31,000,000 expansion is currently under construction at San Jorge Children's Hospital and UMC is also in the process of commencing construction on a new children's behavioral inpatient facility on the same campus.

UMC, through its affiliate Ten Broeck Hospitals, Inc., has also overseen the development, construction and operation of freestanding inpatient behavioral hospitals in Kentucky and Florida. The Company, in 1986, converted the former 94 acre site of the Kentucky Military Institute, located in Louisville, Kentucky, into an inpatient behavioral hospital known as Ten Broeck KMI that is nationally recognized. The Company operated a second behavioral hospital in Louisville known as Ten Broeck Dupont (specialty children's behavioral services) as well as Ten Broeck Jacksonville and Wekiva Springs (a specialty women's behavioral hospital), both located in Jacksonville, Florida and Ten Broeck Ocala, a 26-bed freestanding behavioral hospital in Ocala, Florida.

The Company, through Ten Broeck Hospitals, provided the full continuum of behavioral services, including inpatient, involuntary admissions, partial hospitalization, intensive outpatient, residential, substance abuse, ECT, group counseling and mobile assessments. The Company has operated behavioral services for all age groups, including children as young as five years old, adolescents, adults and seniors. UMC, through its Management Services Division PremierCare, Inc. currently operates behavioral services at eight locations in six states (i.e., Florida, Kentucky, South Carolina, Tennessee, Illinois and Oklahoma). The company provides a full spectrum of services including inpatient and outpatient services. The company also provides acute care hospitals with turnkey operation of memory disorder and diagnostic clinics.



exStug@siaa (Sawita) <stug@siaa.com> - Management

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A. Transfer of the Puerto Rico Divestiture Assets.

As required by the Decision and Order, the transaction will transfer the Puerto Rico Divestiture Assets, absolutely and in good faith, as an on-going business, that are financially and competitively viable Psychiatric Hospital Facilities operating as ongoing businesses providing Acute Inpatient Psychiatric Services. To the extent permitted by law, and subject to certain exceptions, the transfer will include, but not be limited to, (i) real property interests; (ii) tangible personal property; (iii) contracts and agreements; (iv) intellectual property; (v) intangible rights other than intellectual property; (vi) approvals, consents, licenses, certificates, registrations, permits, waivers or other authorizations by any governmental body pursuant to any legal requirement and all pending applications or renewals thereof; (vii) inventories, stores and supplies; (viii) accounts receivables (other than receivables from Medicare and Medicaid cost reports for pre-closing periods); (ix) rights under warranties and guaranties; (x) books, records, files, and other business records, rights with respect to Medicare provider number 40-4005 and Medicaid provider number 12569505 accruing to or arising after the closing; and (xi) all depository accounts. To the extent permitted by law, UHS also will cooperate as necessary to ensure that UMC obtains all governmental approvals needed to operate the Puerto Rico Divestiture Assets.

The Excluded Assets (as defined in the Asset Purchase Agreement), will not be transferred to UMC. Such Excluded Assets include, but are not limited to, (i) cash; (ii) certain rights, claims and credits of UHS and its subsidiaries (such as insurance policies and certain guarantees, warranties, and indemnities); (iii) certain trademarks and names; (iv) rights of UHS under the Asset Purchase Agreement; (v) financial and tax records that constitute part of UHS's or one of its subsidiaries'

general ledger; (vi) credits and related rights and claims of any taxing authority with respect to certain taxes; (vii) certain assets of or relating to any seller benefit plan; (viii) certain rights, claims and credits relating to third party payor reimbursements; (ix) receivables from Medicare and Medicaid cost reports for pre-closing periods; and (x) certain properties and assets used relating to the operation or conduct of a business other than Hospital San Juan Capestrano and its affiliated outpatient centers that are not primarily used in or do not primarily relate to Hospital San Juan Capestrano and its affiliated outpatient centers. UHS will also retain a copy of all business records to be transferred to UHS to the extent necessary to comply with applicable laws, regulations and other legal requirements.

B. Securing Third Party Consents and Waivers.

UHS and UMC have agreed to use their reasonable best efforts to secure all material consents and waivers from all third parties necessary to permit the transfer of the Puerto Rico Divestiture Assets (to the extent permitted by law), including such consents and waivers to grant licenses to UMC. In the event UMC is unable to obtain any permit necessary to operate the Puerto Rico Divestiture Assets prior to the Closing Date, UHS has agreed to provide lawful assistance to UMC as UMC may reasonably request in connection with its efforts to obtain comparable authorization.

C. UMC's Opportunity to Hire Relevant Employees Currently Working at Hospital San Juan Capestrano and Its Affiliated Outpatient Centers.

As required by the Decision and Order, UHS has made the Relevant Employees who are currently staffing Hospital San Juan Capestrano and its affiliated outpatient centers available to UMC for hire. UMC has agreed to extend an offer of employment before the Closing Date to employees of UHS whose duties relate

primarily to the Divestiture Business. UHS will allow UMC to interview and inspect the personnel records of any Relevant Employee to the extent permissible under applicable laws. UHS will not (1) interfere, directly or indirectly, with the hiring or employment by UMC of any of these individuals, (2) offer any incentives to any of these individuals to decline employment with UMC, or (3) otherwise interfere with the recruitment of these individuals by UMC. UHS will also provide all such individuals with reasonable financial incentives to continue in their positions until the Closing Date of the divestiture and to the extent necessary, remove any impediments within UHS's control that may deter Relevant Employees from accepting employment with UMC.

D. Transition Services to Be Provided to UMC.

The parties have prepared a Transition Services Agreement (the "TSA"), to be dated and entered into on the Closing Date, a draft of the agreed-upon form is attached hereto as Confidential Exhibit C. Upon execution of the TSA, UHS will provide, at UMC's option, administrative assistance, clinical assistance and support services with respect to the operation of Hospital San Joaquin and its affiliated outpatient centers and the provision of Acute Inpatient Psychiatric Services, including assistance relating to billing, accounting, governmental

schedule attached to the TSA which sets forth the direct costs to UHS, including labor costs, for providing certain services).

E. The Proposed Divestiture Will Achieve the Remedial Purposes of the Decision and Order.

The proposed divestiture will ensure the continuation of the Puerto Rico Divestiture Assets as ongoing viable Psychiatric Hospital Facilities by giving control of the Divestiture Businesses to UMC, who owns and operates established national healthcare companies experienced in the operation of Psychiatric Hospital Facilities and the provision of Acute Inpatient Psychiatric Services. In addition, UHS believes that the TSA provides any transitional support necessary to ensure that Hospital San Juan Capestrano and its affiliated outpatient centers continue to remain viable competitors for the provision of Acute Inpatient Psychiatric Services in Puerto Rico. The TSA was purposefully designed to enable UMC to request essentially any transition assistance that it may need. In addition, UMC's considerable existing behavioral health service capabilities provide the Commission additional assurances that UMC is well-poised to be a viable competitor for the pr

