

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL**

01 05 2016
580491

ORIGINAL

ARGUMENT

By this motion, Respondent requests that

material information”). Therefore, the scope of the materials sought here is limited and reasonable.

Second, the material sought is relevant to the allegations in the Complaint. Marshall University and its School of Medicine are located in Huntington, where both are major employers. Students from the School of Medicine receive residency training at St. Mary’s Medical Center and Cabell Hunti

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*Counsel for Respondent
Cabell Huntington Hospital, Inc.*

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

Cabell Huntington Hospital, Inc.
a corporation;

and

Pallottine Health Services, Inc.
a corporation;

and

~~St~~ Mary's Medica

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In the Matter of

Cabell Huntington Hospital, Inc.
a corporation;

and

Pallottine Health Services, Inc.
a corporation;

and

St. Mary's Medical Center, Inc.
a corporation

Docket No. 9366

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

On January 5, 2016, pursuant to Rule 3.36 of the Commission's Rules of Practice, Respondent filed a motion for the issuance of a subpoena duces tecum to Marshall University, a public university in the State of West Virginia, for documents and information provided by Marshall University to Complaint Counsel, as well as communications between Marshall University and Complaint Counsel. Complaint Counsel does not oppose Respondent's motion.

The requirements of Rule of Practice § 3.36(b) are met. Accordingly, Respondent's motion is **GRANTED**.

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

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

4. MATERIAL WILL BE PRODUCED TO

5. DATE AND TIME OF PRODUCTION

6. SUBJECT OF PROCEEDING

7. MATERIAL TO BE PRODUCED

8. ADMINISTRATIVE LAW JUDGE

9. COUNSEL AND PARTY ISSUING SUBPOENA

Federal Trade Commission
Washington, D.C. 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.

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

In the Matter of

Cabell Huntington Hospital, Inc.
a corporation;

and

Pallottine Health Services, Inc.
a corporation;

and

St. Mary's Medical Center, Inc.
a corporation

Docket No. 9366

**RESPONDENT CABELL HUNTINGTON HOSPITAL, INC.'S
SUBPOENA DUCES TECUM ATTACHMENT**

In accordance with the Rules of Practice for Adjudicative Practice (16 C.F.R. 3.1 *et seq.*), Respondent Cabell Huntington Hospital, Inc. requests the following documents and things be produced in accordance with the Definitions and Instructions below, on the date and location indicated in the accompanying *Subpoena Duces Tecum*, or at such other time and place as you and counsel for Respondents Cabell Huntington Hospital shall mutually agree.

I. REQUESTS FOR PRODUCTION

1. All documents responsive to the Federal Trade Commission's Subpoena *Duces Tecum*

acquisition, or *In the Matter of Cabell Huntington Hospital, Pallottine Health Services, Inc. , and St. Mary's Medical Center*, No. 9366 currently pending before the Federal Trade Commission, Office of Administrative Law Judges.

I. DEFINITIONS

These requests incorporate the following definitions and instructions:

1. "You," or "your" shall each mean and refer to Marshall University, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms "subsidiary," "affiliate" and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between Marshall University and any other person.
2. The singular form of a word should be interpreted in the plural, and the plural form of a word shall be interpreted as singular, whenever appropriate, in order to bring within the scope of the request any information that might otherwise be considered beyond its scope. Any pronoun shall be construed to refer to the masculine, feminine, or neutral gender as in each case is most appropriate.
3. The use of the present tense shall be construed to include the past tense, and vice versa, so as to make the request inclusive rather than exclusive.
4. As used herein, "and" and "or" shall be construed conjunctively and disjunctively so as to acquire the broadest meaning possible.
5. As used herein, "any" and "all" shall each be construed to mean "each and every," so as to acquire the broadest meaning possible.
6. The term "communication" means any transmittal of information in the form of facts, ideas, inquiries, or otherwise, including without limitation any transmission of information by one or more persons and/or between two or more persons by any means such as, but not limited to, telephone conversations, voicemails, letters, telegrams, teletypes, telexes, telecopies,

electronic mail, other computer linkups, metadata, written memoranda, and face-to-face conversations, including without

9.

communication (e.g., telephone call, meeting, letter, etc.); and (e) each document memorializing or referring to the communication.

13. The terms “identify” and “identification” when used with reference to an event means to provide a description of the event, the date of the event, the location of the event, and the individual and organizational entities participating in the event.

14. The terms “identify” and “identification” when used with reference to factual or legal basis, means to state in detail each and every fact, and each and every legal proposition or interpretation, upon which a belief, claim, assertion, allegation, or contention is based, and identify all documents, persons, and events that support that belief, claim, assertion, allegation, or contention.

15. Where an instruction or request below names a corporation or other legal entity, the instruction or request includes within its scope any parent, predecessors-in-interest, subsidiaries, affiliates, directors, officers, employees, agents, and representatives thereof, including attorneys, consultants, and accountants.

II. INSTRUCTIONS

1. These requests shall apply to all documents in your possession, custody or control at the present time or coming into your possession, custody, or control prior to the date of the production. If you know of the existence, past or present, of any documents or things requested below, but are unable to produce such documents or things because they are not presently in your possession, custody or control, you shall so state and shall identify such documents or things, and the person who has possession, custody or control of the documents or things. “Documents within your control” shall apply to documents or things in the possession, custody or control of a third party over which you have control or who has agreed to cooperate or provide assistance relating to the subject matter of This Litigation.

2. If no documents are responsive to a particular request, you are to state that no responsive documents exist.

1. provide sufficient further information concerning the document and circumstances thereof to explain the claim of privilege or immunity and permit the adjudication of the propriety of that claim.
5. If an attorney work product claim is asserted, in addition to the information specified in Instruction 4 above, identify each

10. No information shall be withheld on the asserted grounds that such information therein is not relevant unless (i) the burden of responding is fully described and (ii) persons familiar with the information requested are identified.

11. These requests are submitted for the purpose of discovery and are not to be taken as waiving any objections which may be made at trial or any hearing to the introduction of evidence on subjects covered by these requests or as an admission of the relevance or materiality at trial of any of the matters covered by these requests.

12. If, after responding, you obtain or become aware of any further information responsive to these Requests for Production, you are required to supplement the responses and provide the Respondents with such additional information as required under 16 C.F.R. § 3.31.

13. Where identified documents are not in your possession, custody or control, state

18. No request for production shall be construed with reference to any other request for production for purposes of limitation.

19. Documents that are in paper form or that constitute other physical objects from which recorded information may be visually read, as well as audio or video tapes and similar recordings, shall be produced in their original form or in copies that are exact duplicates of the originals.

20. All documents shall be produced with Bates numbers that shall be unique for each page. Bates numbers shall contain a prefix that can be readily attributed to you. Bates numbering shall be sequential and consist of not less than seven (7) digits with zero fill as necessary to maintain the seven-digit sequence. If a Bates number is skipped, you must provide information identifying and explaining the missing Bates numbers.

21. All documents are to be produced in accordance with any agreements between you and Respondent regarding the production of electronically stored information and any protective order entered by the Court. In the absence of any agreement, all documents shall be produced in the following manner:

- a. All electronically stored documents shall be produced as single-page TIFF Group IV images with an OPT load file; images for individual documents must be contained in a single folder; and extracted or OCR text shall be provided as document level files, in the same folder as the images for the document.
- b. Parent-child relationships (association between an attachment and its parent document) shall be preserved. The attachment(s) shall be produced immediately after the parent document.
- c. Metadata, if available, shall be produced with a DAT load file as follows:
 - (1) For email, the metadata fields will include: Beginning Bates Number, Ending Bates Number, Attachment Beginning Bates, Page Count, Custodian, To, From, CC, BCC, Subject, Date and Time Sent

(MMDDYYYY HH:MM), Date and Time Received (MMDDYYYY HH:MM), and MD5 Hash.

(2) For email attachments, the metadata fields will include: Beginning Bates Number, Ending Bates Number, Title, Author, Page Count, Parent Beginning Bates, Custodian, Creation Date and Time (MMDDYYYY HH:MM), Last Modified Date and Time (MMDDYYYY HH:MM), Size, Location or Path, Original File Name, File Extension, Native DocLink, and MD5 Hash.

(3) For loose files other than email, the metadata fields will include: Beginning Bates Number, Ending Bates Number, Title, Author, Page Count, Custodian, Creation Date and Time (MMDDYYYY HH:MM), Last Modified Date and Time (MMDDYYYY HH:MM), Size, Location or Path, Original File Name, File Extension, Native DocLink, and MD5 Hash.

- d. Excel, Access, and PowerPoint files shall be produced in native format and with a corresponding TIFF Group IV image placeholder and document level extracted text files.
- e. All documents originating in hard copy form shall be produced as TIFF Group IV images with an OPT load file; images for individual documents must be contained in a single folder; and OCR text shall be provided as document level files, in the same folder as the images for the document. To the extent that metadata is available, it shall be produced as set forth in Instruction 21(c)(3) above.

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 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, Rm. H-113
Washington, DC 20580

I further 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

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600 Pennsylvania Avenue, NW
Washington, DC 20580
Phone: 202-326-2638

Notice of Electronic Service

I hereby certify that on January 05, 2016, I filed an electronic copy of the foregoing CHHI's Unopposed Motion for Issuance of Subpoena Duces Tecum to Marshall University, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
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I hereby certify that on January 05, 2016, I served via E-Service an electronic copy of the foregoing CHHI's Unopposed Motion for Issuance of Subpoena Duces Tecum to Marshall University, upon:

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