

Complaint

**IN THE MATTER OF
ALAN B. MILLER, UNIVERSAL HEALTH SERVICES,
INC., AND PSYCHIATRIC SOLUTIONS, INC.**

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

*Docket No. C-4309; File No. 101 0142
Filed November 15, 2010 – Decision April 19, 2011*

This consent order addresses allegations that the proposed \$2 billion acquisition by Universal Health Services of Psychiatric Solutions, Inc. would substantially lessen competition in the markets for acute inpatient psychiatric care in the State of Delaware; the Las Vegas, Nevada metropolitan statistical area; and the Commonwealth of Puerto Rico. The consent order requires UHS to divest several acute inpatient psychiatric care facilities, as well as related outpatient clinics, contracts, commercial trade names, and real property in each of the relevant markets, within six months to a Commission-approved buyer. Pending the transfer of these assets, both UHS and PSI are required to maintain the competitive viability of the assets and protect the confidentiality of any sensitive business information.

Participants

For the *Commission*: Ken Field, Janelle Filson, Naomi Licker,
and Andrea Zach.

For the *Respondents*: Katherine B. Forrest and Peter T.
Barbur, Cravath, Swaine & Moore LLP; Kenneth S. Prince and
Lisl J. Dunlop, Shearman & Sterling LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Universal Health Services, Inc. (“UHS”),

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a corporation controlled by Alan B. Miller and subject to the jurisdiction of the Commission, has agreed to acquire Respondent Psychiatric Solutions, Inc. (“PSI”), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Alan B. Miller is a natural person with his offices and principal place of business located at 367 South Gulph Road, PO Box 51448, King of Prussia, PA 19406-0958.

2. Respondent UHS is controlled by Respondent Alan B. Miller and is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 367 South Gulph Road, PO Box 61588, King of Prussia, PA 19406-0958. UHS is, among other things, engaged in the sale and provision of acute inpatient psychiatric services.

3. UHS owns or operates 25 general acute care hospitals and 102 behavioral health facilities located in 32 states, Washington, D.C., and Puerto Rico. UHS’s revenues from all operations totaled approximately \$5.2 billion in 2009. UHS’s 102 behavioral health facilities generated approximately \$1.3 billion in revenue (25% of total revenues) from nearly 8,000 licensed beds and over 2 million patient days.

4. Respondent PSI operates 94 inpatient behavioral health facilities in 32 states, Puerto Rico, and the U.S. Virgin Islands. The company also manages behavioral health programs for 109 general acute care hospitals owned by third parties. PSI’s revenue for the twelve months ending December 31, 2009 was approximately \$1.8

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billion. Behavioral health facilities and residential treatment centers generated 93% of PSI's 2009 revenues; the contract management business accounted for the remaining 7%.

II. JURISDICTION

5. Respondent Alan B. Miller is and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Respondent UHS is and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

7. Respondent PSI is and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

III. THE PROPOSED ACQUISITION

8. Pursuant to an Agreement and Plan of Merger dated May 16, 2010, UHS proposes to purchase all of the outstanding voting securities of PSI ("the Acquisition").

9. The Acquisition would combine two of the largest providers of acute inpatient psychiatric services in three geographic markets: the Las Vegas, Nevada Metropolitan Statistical Area; the State of Delaware; and the Commonwealth of Puerto Rico. Respondents UHS and PSI both own and operate psychiatric facilities in these areas and compete and promote their businesses based on name recognition, reputation, location, price, range of available services, quality of service, associated product offerings, and the appearance of facilities.

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IV. THE RELEVANT PRODUCT MARKET

10. The relevant line of commerce in which to analyze the Acquisition is the provision and sale of acute inpatient psychiatric services, meaning 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.

V. THE RELEVANT GEOGRAPHIC MARKETS

11. The relevant geographic markets in which to assess the competitive effects of the Acquisition are: the Las Vegas, Nevada, Metropolitan Statistical Area; the State of Delaware; and the Commonwealth of Puerto Rico.

VI. CONCENTRATION

12. Each of the three affected local markets for the provision and sale of acute inpatient psychiatric services already is highly concentrated, and the Acquisition will substantially increase concentration in each market as measured by the Herfindahl-Hirschman Index (“HHI”).

13. The combined market share of UHS and PSI – based on bed counts, analysis of discharge data, and other information obtained by the Commission – is 60 percent or more in each of the relevant geographic markets.

14. Post-acquisition, UHS would have a market share of about 66 percent based on beds in the Las Vegas market for acute inpatient psychiatric services. The Acquisition would increase the HHI by 2610 points, from 2782 to 4942, leaving only two meaningful competitors to UHS and eliminating substantial and close competition between the Respondents.

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15. UHS would have a post-merger market share of approximately 60 percent based on beds in the market for acute inpatient psychiatric services in the State of Delaware. The Acquisition would increase the HHI by 1428 points, from 2488 to 3916, and reduce from three to two the number of meaningful competitors in the State of Delaware.

16. In the Commonwealth of Puerto Rico, UHS would control at least 62 percent of the acute inpatient psychiatric beds post-Acquisition. The Acquisition would increase the HHI by 1641 points, from 2275 to 3916, and combine the two largest providers of acute inpatient psychiatric services in Puerto Rico.

VII. ENTRY CONDITIONS

17. Entry into the relevant markets would not be timely, likely, or sufficient to prevent or deter the likely anticompetitive effects of the Acquisition. Significant entry barriers include the time and cost associated with constructing or expanding an acute care psychiatric services facility, as well as the need to satisfy regulatory and licensing requirements that govern such services.

VIII. EFFECTS OF THE ACQUISITION

18. The Acquisition, if consummated, may substantially lessen competition for acute inpatient psychiatric services in the three geographic markets, identified in Paragraph 9, in the following ways, among others:

- a. by eliminating direct and substantial competition between UHS and PSI;
- b. by increasing the likelihood that Respondent UHS will unilaterally exercise market power; or

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- c. by increasing the likelihood of, or facilitating, coordinated interaction between or among participants in the relevant markets.

IX. VIOLATIONS CHARGED

19. The agreement described in Paragraph 8 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and the Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, Federal Trade Commission on this fifteenth day of November, 2010, issues its Complaint against said Respondents.

By the Commission.

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

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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 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, 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 Decision and Order (“Order”):

1. Respondent Alan B. Miller is a natural person with his offices and principal place of business located at 367 South Gulph Road, PO Box 61558, King of Prussia, PA 19406-0958.
2. Respondent Universal Health Services, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head offices and principal place of business located at 367 South Gulph Road, PO Box 61558, King of Prussia, PA 19406-0958.

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3. Respondent Psychiatric Solutions, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head offices and principal place of business located at 6640 Carothers Parkway, Suite 500, Franklin, TN 37067.
4. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “UHS” means Universal Health Services, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by UHS, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each; after the Acquisition, UHS includes PSI.
- 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 directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by PSI, and

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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-

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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 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.

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- 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,

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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);
 1. all Intellectual Property;
 2. 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;
 3. 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;
 4. all inventories, stores, and supplies;
 5. all accounts receivable;
 6. all rights under warranties and guarantees, express or implied;
 7. all books, records, and files (electronic and hard copy); and
 8. all Business Records;

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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 all other services, businesses, and operations primarily related to the Las Vegas Divestiture Assets, the Delaware Divestiture Assets, and the Puerto Rico Divestiture Assets.
- Q. "Hold Separate Order" means the Order to Hold Separate and Maintain Assets issued by the Commission in this matter.
- R. "Hospital San Juan Capestrano" means the Psychiatric Hospital Facility 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

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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 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;

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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 the Commission for its prior approval pursuant to Paragraphs II.A, III.A., or IV.A. of this Order.

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- 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 Capestrano.
- 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
- 0. the State of Delaware;
 - 0. Las Vegas, NV, MSA; and
 - 0. the Commonwealth of Puerto Rico.
- A. “Relevant Employees” means any and all full-time employees, part-time employees, contract employees, or independent contractors whose duties, at any time during the ninety (90) days preceding the Acquisition or at any

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time after the Acquisition, related or relate primarily to the Divestiture Business.

- B. “Tangible Personal Property” means all machinery, equipment, tools, fixtures, 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.
- C. “Third Parties” means Persons other than Respondents or Commission-approved Acquirers.
- D. “Transitional Administrative Services” means administrative assistance with respect to the operation of a Psychiatric Hospital Facility or the provision of Acute Inpatient Psychiatric Services, including but not limited to assistance relating to billing, accounting, governmental regulation, human resources management, information systems, managed care contracting, and purchasing, as well as providing assistance in acquiring, obtaining access, and customizing all software used in the provision of such services.
- E. “Transitional Clinical Services” means clinical assistance and support services with respect to the operation of a Psychiatric Hospital Facility or the provision of Acute Inpatient Psychiatric Services.
- F. “Transitional Services” means Transitional Administrative Services and Transitional Clinical Services.

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II.**IT IS FURTHER ORDERED** that:

- A. No later than six (6) months after the date this Order becomes final, Respondents shall divest the Delaware 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 (including an executed Divestiture Agreement) that receives the prior approval of the Commission.
- B. Respondents shall cooperate with the Commission-approved Acquirer to ensure that the Delaware Divestiture Assets are transferred to the Commission-approved Acquirer as a financially and competitively viable Psychiatric Hospital operating as an ongoing business 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 Delaware 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 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

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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:

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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

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Divestiture Assets are transferred to the Commission-approved Acquirer as a financially and competitively viable Psychiatric Hospital operating as an ongoing business 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 Puerto Rico 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 Puerto Rico Divestiture Assets and/or to grant any license(s) to a Commission-approved Acquirer to permit the Commission-approved Acquirer to operate the Puerto Rico 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 Puerto Rico Divestiture Assets meet federal, state, local, and municipal requirements necessary 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.

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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:
 - 0. 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.
- A. No later than five (5) days after the Acquisition, Respondents shall provide written notification of the

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restrictions, prohibitions and requirements of this Paragraph V. – with Paragraph III.B of the Hold Separate Order being hereby superseded – to all of Respondents’ employees, agents, and representatives of any Psychiatric Hospital facility or related outpatient centers, clinics, and offices in the Relevant Areas or, even if located outside the Relevant Areas, all other of Respondents’ employees, agents, and representatives who had or have responsibilities in or relating to any Psychiatric Hospital Facility 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.

B. Respondents shall:

0. no later than fourteen (14) days after the Acquisition – with Paragraph III.C.1. of the Hold Separate Order being hereby superseded – obtain, as a condition of continued employment post-divestiture, from each of Respondents’ employees, agents, and representatives of any Psychiatric Hospital Facility or related outpatient centers, clinics, and offices in the Relevant

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Areas or, even if located outside the Relevant Areas, from each of Respondents' employees, agents, and representatives who had, since completion of the Acquisition, or have responsibilities in or relating to any Psychiatric Hospital Facility or related outpatient centers, clinics, and offices in the Relevant Areas and who had, since completion of the Acquisition, or have access to or possession, custody or control of any Confidential Business Information an executed confidentiality agreement that complies with the restrictions, prohibitions and requirements of this Order and the Hold Separate Order; and

0. no later than thirty (30) days after the Acquisition, institute procedures and requirements and take such actions as are necessary to ensure that Respondents' personnel comply with the restrictions, prohibitions and requirements of this Paragraph V., including all actions that Respondents would take to protect their own trade secrets and confidential information.

VI.

IT IS FURTHER ORDERED that Respondents shall:

- A. No later than ten (10) days after a request from a Prospective Acquirer, provide the Prospective Acquirer with the following information for each Relevant Employee, as and to the extent permitted by law:
 0. name, job title or position, date of hire and effective service date;
 0. a specific description of the employee's responsibilities;
 0. the base salary or current wages;

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0. the most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year and current target or guaranteed bonus, if any;
 0. employment status (i.e., active or on leave or disability; full-time or part-time);
 0. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 0. at the Prospective Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Relevant Employee.
- A. 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;
 - B. 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;
 - C. 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

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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;

- D. 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;
- E. 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

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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

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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

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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.

0. 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.
0. 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

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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

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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

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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.
- B. 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.
- C. 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

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appropriate to accomplish the divestitures required by this Order.

- D. 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 contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of any Commission-approved Acquirer or to reduce any obligations of Respondents under such agreements.
- B. Each Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof.
- C. Respondents shall comply with all terms of each Divestiture Agreement, and any breach by Respondents of any term of a Divestiture Agreement shall constitute a failure to comply with this Order. If any term of any Divestiture Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents’ obligations under this Order.
- D. Respondents shall not modify or amend any material term of any Divestiture Agreement between the date the Commission approves the Divestiture Agreement and the Closing Date, without the prior approval of the Commission. Notwithstanding any paragraph, section, or

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other provision of any Divestiture Agreement, for a period of five (5) years after the respective Closing Date, any modification of the relevant Divestiture Agreement, without the approval of the Commission, shall constitute a failure to comply with this Order. Respondents shall provide written notice to the Commission of the modification no later than five (5) days following execution of the 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:
 - 0. 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
 - 0. 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.

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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.

- A. 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

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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.

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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

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- 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.

**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

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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 determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order to Hold Separate and Maintain Assets ("Hold Separate Order"):

1. Respondent Alan B. Miller is a natural person with his offices and principal place of business located at 367 South Gulph Road, PO Box 51448, King of Prussia, PA 19406-0958.
2. Respondent Universal Health Services, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head offices and principal place of business located at 367 South Gulph Road, PO Box 61558, King of Prussia, PA 19406-0958.
3. Respondent Psychiatric Solutions, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head offices and principal place of business located at 6640 Carothers Parkway, Suite 500, Franklin, TN 37067.

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4. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Hold Separate Order, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

- A. “Acquisition Date” means the date on which Respondent Universal Health Services, Inc., directly or indirectly, acquires a controlling interest in Respondent Psychiatric Solutions, Inc.
- B. “Decision and Order” means
 0. the Proposed Decision and Order contained in the Consent Agreement in this matter until issuance and service of a final Decision and Order by the Commission; and
 0. the Final Decision and Order issued by the Commission following issuance and service of a final Decision and Order by the Commission.
- A. “Hold Separate Business” means the Delaware Divestiture Assets, the Las Vegas Divestiture Assets, and the Puerto Rico Divestiture Assets.
- B. “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

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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 consultation with the Commission staff, no later than three (3) days after the Acquisition.

- C. “Hold Separate Order” means this Order to Hold Separate and Maintain Assets.
- D. “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.
- E. “Hold Separate Trustee” means the Person appointed pursuant to Paragraph II. of this Hold Separate Order.
- F. “Manager” means the Person or Persons appointed pursuant to Paragraph II. of this Hold Separate Order.
- G. “Orders” means the Decision and Order and this Hold Separate Order.
- H. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity or governmental body.
- I. “Support Service Employees” means the persons listed on Confidential Appendix A of the Hold Separate Order; at any time during the Hold Separate Period, Respondents may, in consultation with the Hold Separate Trustee, modify the list of Support Service Employees on Confidential Appendix A.
- J. “Support Services” means assistance with respect to the operation of the Hold Separate Business, including, but not limited to, (i) human resources and administrative

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services such as payroll processing and employee benefits; (ii) financial accounting services; (iii) reimbursement department support (i.e., Medicare cost reports); (iv) tax-related support; (v) treasury support; (vi) insurance support; (vii) clinical information systems support; (viii) information technology software and support services; (ix) participation in group purchasing arrangements; (x) online training programs; (xi) legal services; and (xii) federal and state regulatory compliance support.

II.

IT IS FURTHER ORDERED that during the Hold Separate Period:

- A. Respondents shall:
 - 0. 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
 - 0. 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.
- A. Respondents shall take all actions necessary to maintain and ensure the continued maintenance of the viability,

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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).

- B. Respondents shall hold the Hold Separate Business separate, apart, and independent of its other operations on the following terms and conditions:
0. 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

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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

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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 performance of the Hold Separate Trustee's duties.
- h. Respondents 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; *provided, however,* that such agreement shall not restrict the Hold Separate Trustee from providing any information to the Commission.
- i. The Hold Separate Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities.

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- j. Respondents shall indemnify the Hold Separate Trustee 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 Hold Separate 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 liabilities, losses, damages, claims, or expenses result from gross negligence or willful misconduct by the Hold Separate Trustee.
- k. Thirty (30) days after the Acquisition Date, and every thirty (30) days thereafter until the Hold Separate Order terminates, the Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order and Respondents' compliance with their obligations under the Hold Separate Order and the Decision and Order. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the Hold Separate Business is meeting (or exceeding) its projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.
- l. 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.

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- 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.
0. 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 directly and exclusively to the Hold Separate Trustee and shall manage the Hold Separate Business independently of the management of Respondents and their other businesses. No Manager shall be involved, in any way, in the operations of the other businesses of Respondents during the term of this Hold Separate Order.
 - b. Each Manager 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 Manager's duties and responsibilities. Nothing contained herein shall preclude any of the Managers from contacting or communicating directly with the staff of the Commission either at the request of the staff of the Commission or in the discretion of the Manager.

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- c. No later than three (3) days after appointment of a Manager, Respondents shall enter into a management agreement with that Manager that, subject to the prior approval of the Hold Separate Trustee, in consultation with the Commission staff, transfers all rights, powers, and authority necessary to permit that Manager to perform his or her duties and responsibilities pursuant to this Hold Separate Order, in a manner consistent with the purposes of the Orders.
- 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 Separate Order, the Manager, in consultation with the Hold Separate Trustee, may request Respondents to, and Respondents shall, appoint a substitute Person, which Person the Manager shall have the right to approve.
- f. In addition to Hold Separate Employees, each Manager may, in consultation with the Hold Separate Trustee, employ such Persons as are reasonably necessary to assist the Manager in managing the Hold Separate Business.
- g. Respondent shall provide each Manager with reasonable financial incentives to undertake this

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position. Such incentives shall include a continuation of all employee benefits, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation and prevent any diminution of the Hold Separate Business's viability, marketability and competitiveness until the Closing Date, and as may otherwise be necessary to achieve the purposes of these Orders.

- h. The Hold Separate Trustee shall be permitted, in consultation with the Commission staff, to remove a Manager for cause. Within three (3) days of such removal, Respondents shall appoint a replacement Manager on the same terms and conditions as provided in this Hold Separate Order. In the event that a Manager voluntarily ceases to act as a Manager, then Respondents shall appoint a substitute Manager within three (3) days on the same terms and conditions as provided in this Hold Separate Order.
- i. Each Manager shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities.
- 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

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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 misconduct by the Manager.

0. The Hold Separate Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Hold Separate Business. To the extent that such employees leave or have left the Hold Separate Business prior to the Closing Date of the respective Divestiture Assets, the Manager, in consultation with the Hold Separate Trustee, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.
0. Respondents shall provide the Hold Separate Business with sufficient financial and other resources as are appropriate in the judgment of the Hold Separate Trustee:
 - a. to operate the Hold Separate Business at least as it is currently operated (including efforts to generate new business) consistent with the practices of the Hold Separate Business in place prior to the Acquisition Date;
 - b. to perform all maintenance to, and replacements or remodeling of, the assets of the Hold Separate Business in the ordinary course of business and in accordance with past practice and with current plans;
 - c. to carry on during the Hold Separate Period such capital projects and physical plant improvements as are already under way for which all necessary

Order to Hold Separate

regulatory and legal approvals have been obtained, including but not limited to existing or planned renovation, remodeling, and expansion projects; and

- d. to maintain the viability, competitiveness, and marketability of the Hold Separate Business.

Such financial resources to be provided to the Hold Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, 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.

- 0. 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;

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- 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.
0. 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

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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.

0. 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.
0. 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;

Order to Hold Separate

- (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 Separate Business only to the extent necessary to allow Respondents to comply with the requirements and obligations of the laws and regulations of the United States and other countries, to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports, and to comply

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with this Hold Separate Order or in complying with or as permitted by the Decision and Order. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

0. Respondents and the Hold Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Hold Separate Trustee, of access and data controls to prevent unauthorized access to or dissemination of Confidential Business Information of the Hold Separate Business, including, but not limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Respondents, to audit Respondents' networks and systems to verify compliance with this Hold Separate Order.
 10. No later than ten (10) days after the Acquisition Date, Respondents shall establish written procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and independence of the Hold Separate Business consistent with the provisions of this Hold Separate Order.
 11. No later than ten (10) days after the Acquisition Date, Respondents shall circulate to Hold Separate Employees, and to persons who are employed in Respondents' businesses that compete with the Hold Separate Business, a notice of this Hold Separate Order and the Consent Agreement, in a form approved by the Hold Separate Trustee in consultation with Commission staff.
- A. Respondents shall provide each Hold Separate Employee with reasonable financial incentives to continue in his or

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her position consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Divestiture Assets pending divestiture. Such incentives shall include a continuation of all employee benefits, including funding of regularly scheduled raises and bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation and prevent any diminution of the viability, marketability and competitiveness of the Divestiture Assets until the applicable Divestiture Date, and as may otherwise be necessary to achieve the purposes of this Hold Separate Order.

- B. The purpose of this Hold Separate Order is to: (1) preserve the assets and businesses within the Hold Separate Business as viable, competitive, and ongoing businesses independent of Respondents until the divestitures required by the Decision and Order are achieved; (2) assure that no Confidential Business Information is exchanged between Respondents and the Hold Separate Business, except in accordance with the provisions of this Hold Separate Order and the Decision and Order; (3) prevent interim harm to competition pending the divestiture and other relief; and (4) maintain the full economic viability, marketability and competitiveness of the Divestiture Assets, and prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall not use, solicit, or access, directly or indirectly, any Confidential Business Information, and

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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:

- 0. as necessary to comply with the requirements of these Orders;
 - 0. 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;
 - 0. 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;
 - 0. pursuant to a Divestiture Agreement;
 - 0. to enforce the terms of a Divestiture Agreement or prosecute or defend against any dispute or legal proceeding; or
 - 0. to comply with applicable law, regulations and other legal requirements.
- A. No later than five (5) days after the Acquisition, Respondents shall provide written notification of the restrictions, prohibitions and requirements of this Paragraph III. and Paragraph V. of the Decision and 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

Order to Hold Separate

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. 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.

B. Respondents shall:

0. no later than fourteen (14) days after the Acquisition, obtain, as a condition of continued employment post-divestiture, from each of Respondents' employees, agents, and representatives located in the Relevant Areas or, even if located outside the Relevant Areas, from each of 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 an executed confidentiality agreement that complies with the restrictions, prohibitions and requirements of these Orders; and
0. no later than thirty (30) days after the Acquisition, institute procedures and requirements and take such actions as are necessary to ensure that Respondents'

Order to Hold Separate

personnel comply with the restrictions, prohibitions and requirements of this Paragraph III., including all actions that Respondents would take to protect their own trade secrets and confidential information.

IV.

IT IS FURTHER ORDERED that Respondents shall:

- A. No later than ten (10) days after a request from a Prospective Acquirer, provide the Prospective Acquirer with the following information for each Relevant Employee, as and to the extent permitted by law:
 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

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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

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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.

V.

IT IS FURTHER ORDERED that, within thirty (30) days after this Hold Separate Order becomes final, and every thirty (30) days thereafter until this Hold Separate Order terminates, Respondents

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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 all provisions of this Hold Separate Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Hold Separate Order.

VI.

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 Hold Separate Order.

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

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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 the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. the day after the last of the divestitures required by the Decision and Order is completed; *provided, however*, that when the Divestiture Assets that are included within the Hold Separate Business are divested pursuant to the applicable paragraphs in the Decision and Order, those Divestiture Assets shall cease to be covered by this Hold Separate Order.

By the Commission.

Order to Hold Separate

CONFIDENTIAL APPENDIX A

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

Analysis to Aid Public Comment

**ANALYSIS OF AGREEMENT CONTAINING CONSENT
ORDERS TO AID PUBLIC COMMENT****Introduction**

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Alan B. Miller and Universal Health Services, Inc. (collectively, “UHS”) and Psychiatric Solutions, Inc. (“PSI”). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would otherwise result from UHS’s acquisition of PSI. Under the terms of the proposed Consent Agreement, UHS is required to divest four psychiatric facilities and eleven affiliated clinics operating in three local acute inpatient psychiatric care markets to acquirers who receive the approval of the Commission. The proposed Consent Agreement also requires UHS to divest all related assets and real property necessary to ensure that the buyer(s) of the divested facilities will be able to quickly and fully replicate the competition that would have otherwise been eliminated by the acquisition. Finally, UHS and PSI have agreed to an Order to Hold Separate and Maintain Assets (“Hold Separate Order”) that requires UHS to maintain and hold separate the facilities to be divested pending their final divestiture pursuant to the Consent Agreement.

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission again will review the proposed Consent Agreement and comments received, and decide whether it should withdraw the Consent Agreement, modify the Consent Agreement, or make it final.

On May 16, 2010, UHS and PSI entered into a merger agreement under which UHS proposes to acquire all of the outstanding voting securities of PSI for approximately \$2.0 billion in cash, and to assume approximately \$1.1 billion of PSI debt. The Commission’s complaint

alleges that the proposed acquisition, if consummated, would violate 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, by removing an actual, direct, and substantial competitor from three local markets for acute inpatient psychiatric care. The proposed Consent Agreement would remedy the alleged violations by requiring complete divestitures in each of the three markets. These divestitures will replace the competition that otherwise would be lost in these markets as a result of the proposed acquisition.

The Parties

UHS, headquartered in King of Prussia, Pennsylvania, owns or operates 25 general acute care hospitals and 102 behavioral health facilities located in 32 states, Washington, D.C., and Puerto Rico. It is one of the nation's largest hospital management companies, with 2009 revenues totaling approximately \$5.2 billion. In 2009, UHS's 102 behavioral health facilities generated approximately \$1.3 billion in revenue (25% of total revenues) from nearly 8,000 licensed beds and over 2 million patient days.

PSI, headquartered in Franklin, Tennessee, operates 94 inpatient behavioral health facilities in 32 states, Puerto Rico, and the U.S. Virgin Islands. The 11,000 licensed beds at these facilities accounted for 2.8 million patient days in 2009. The company also manages the behavioral health programs for 109 general acute care hospitals owned by third parties. PSI's revenue for the twelve months ending December 31, 2009 was approximately \$1.8 billion. Behavioral health facilities and residential treatment centers generated 93% of 2009 revenues and the contract management business accounted for the remaining 7%.

Acute Inpatient Psychiatric Services

UHS's proposed acquisition of PSI poses substantial antitrust concerns in the relevant product market of acute inpatient psychiatric

Analysis to Aid Public Comment

services. Acute inpatient psychiatric services are those provided for the diagnosis, treatment, and care of patients deemed to be a threat to themselves or others or unable to perform basic life functions, due to an acute psychiatric condition.

The three acute inpatient psychiatric services markets are local in nature. Analysis of patient flow data and evidence gathered from market participants indicate that patients and their families prefer to find care close to home in order to facilitate visits or participation in family therapy. Also, emergency responders typically transport patients in acute psychiatric distress to the nearest emergency room for treatment or placement. The three acute inpatient psychiatric services markets affected by the proposed acquisition are: the State of Delaware; the Las Vegas, Nevada metropolitan statistical area; and the Commonwealth of Puerto Rico.

The proposed acquisition would dramatically increase market concentration in each of the relevant acute inpatient psychiatric markets. The markets already range from moderately to highly concentrated prior to the acquisition. In each market, the proposed acquisition would significantly increase market concentration and eliminate substantial, direct competition between two significant acute inpatient psychiatric care providers. Under the 2010 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, an acquisition is presumed to enhance market power or facilitate its exercise if it increases the Herfindahl-Hirschman Index (“HHI”) by more than 200 points and results in a post-acquisition HHI that exceeds 2,500 points. The proposed acquisition far exceeds these thresholds: the post-acquisition HHIs range from 3916 to 4942, and HHI levels would increase by 1428 to 2610 points above pre-acquisition levels. The proposed acquisition also would result in UHS controlling approximately 60 percent or more of the acute inpatient psychiatric beds in each of the affected markets.

The presumption of anticompetitive harm created by the steep increases in market concentration is further supported by evidence of

the intense rivalry between UHS- and PSI-owned facilities that would be eliminated by the proposed acquisition. In each of the local markets, consumers have benefitted from the head-to-head competition in the form of lower health care costs, higher quality of care, and improved service offerings. Left unremedied, the proposed acquisition likely would cause anticompetitive harm by enabling UHS to profit by unilaterally raising the reimbursement rates negotiated with commercial health plans. These costs are ultimately passed on to consumers in the form of higher premiums, co-pays, and other out-of-pocket costs. The loss of competition also reduces UHS's incentive to improve quality and provide better service.

New entry is unlikely to deter or counteract the anticompetitive effects of the proposed acquisition. Among other entry barriers, regulatory requirements pose substantial barriers to entrants attempting to establish new psychiatric facilities or to expand their offerings in the relevant markets. In particular, Delaware and Puerto Rico require Certificates of Need in order to enter or significantly expand the number of beds provided in the market. The availability of suitable land, local zoning regulations, and Medicare and Medicaid certifications also impact significantly the ability of firms to enter or expand. As a result, new entry sufficient to achieve a significant market impact is unlikely to occur in a timely manner in these markets.

The Proposed Consent Agreement

The proposed Consent Agreement wholly remedies the anticompetitive effects of the acquisition by requiring the divestiture of all of the PSI or UHS assets to a Commission-approved buyer (or buyers) within six months of the date the Consent Agreement becomes final in Delaware and Las Vegas, and within nine months in Puerto Rico. Specifically, the proposed Consent Agreement requires the divestiture of four facilities that provide acute inpatient psychiatric care, as well as related outpatient clinics, contracts, commercial trade names, and real property, in the three geographic markets. *See* Appendix A for a complete list of the divestiture assets.

Analysis to Aid Public Comment

Each psychiatric facility and its associated clinics to be divested in Delaware and Puerto Rico is a stand-alone business, and includes all of the assets necessary for a Commission-approved buyer to independently and effectively operate each facility. The two facilities in Las Vegas are closely related and complementary businesses and were jointly managed within PSI; as such, the two facilities together constitute a stand-alone business, and include all of the assets necessary for a Commission-approved buyer to independently and effectively operate the business.

The proposed Consent Agreement contains several provisions designed to ensure that the divestitures are successful. First, the Commission will evaluate the suitability of possible purchasers of the divested assets to ensure that the competitive environment that would have existed but for the transaction is replicated by the required divestitures. If UHS fails to divest the assets within the required time period to a Commission-approved buyer, the Consent Agreement permits the Commission to appoint a trustee to divest the assets. Second, UHS is required to provide transitional services to the Commission-approved buyer. These services will facilitate a smooth transition of the assets to the acquirer, and ensure continued and uninterrupted operation of the assets during the transition. Third, the Consent Agreement requires UHS to remove any contractual impediments that may deter the current managers of the facilities to be divested from accepting offers of employment from any Commission-approved acquirer and to obtain all consents necessary to transfer the required assets. Finally, to ensure that the Commission will have an opportunity to review any future attempt by UHS to acquire any acute inpatient psychiatric services provider in any of the three geographic markets at issue, the proposed Consent Agreement contains a ten-year prior notice provision.

The Hold Separate Order requires the parties to maintain the viability of the divestiture assets as competitive operations until each facility is transferred to a Commission-approved buyer. Specifically, the parties must maintain the confidentiality of sensitive business information, and take all actions necessary to prevent the destruction

Analysis to Aid Public Comment

or wasting of the divestiture assets. After UHS acquires PSI, the Hold Separate Order requires that UHS separately hold and maintain the divestiture assets and appoint a Hold Separate Manager to operate these assets pending their divestiture.

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement. This analysis does not constitute an official interpretation of the Consent Agreement or modify its terms in any way.

Complaint

**IN THE MATTER OF
ORECK CORPORATION**

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5(A) AND SEC. 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4321; File No. 102 3033
Filed May 19, 2011 – Decision May 19, 2011*

This consent order relates to Oreck Corporation's ("Oreck") advertising, marketing, and sale of its Oreck Halo vacuum cleaner and Oreck ProShield Plus portable air cleaner. The complaint alleges that Oreck misrepresented that its Oreck Halo and Oreck ProShield Plus (1) substantially reduces the risk of or prevents the flu; (2) substantially reduces the risk of or prevents other illnesses or ailments caused by bacteria, viruses, molds, and allergens, such as the common cold, diarrhea, upset stomachs, asthma, and allergy symptoms; and (3) will eliminate all or virtually all common germs and allergens found on the floors in users' homes. The consent order prohibits Oreck from making misleading representations that the Oreck Halo or any other vacuum cleaner (1) reduces the risk of or prevents the flu; (2) reduces the risk of or prevents illnesses or ailments caused by bacteria, viruses, molds, or allergens, such as the common cold, diarrhea, upset stomachs, asthma and allergy symptoms; (3) will eliminate all or virtually all germs, bacteria, dust mites, molds, viruses or allergens from a user's floor; and (4) will eliminate any percent or numerical quantity of germs, bacteria, dust mites, molds, viruses or allergens from a user's floor. The consent order also requires Oreck to pay \$750,000 in consumer redress.

Participants

For the *Commission*: *Matthew D. Gold* and *Kerry O'Brien*.

For the *Respondent*: *John G. Arena, Oreck Corporation;*
Michael L. Sibarium, Pillsbury Winthrop Shaw Pittman LLP; and
Brian D. Fergemann, Winston & Strawn LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Oreck Corporation, a corporation ("respondent"), has violated the