

Complaint

IN THE MATTER OF

ALAN B. MILLER
AND
UNIVERSAL HEALTH SERVICES, INC.

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

Docket No. C-4372; File No. 121 0157
Complaint, October 5, 2012 – Decision, November 27, 2012

This consent order addresses the \$517 million acquisition by Alan B. Miller and Universal Health Services, Inc. of certain assets of Ascend Health Corporation. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by removing an actual, direct, and substantial competitor from one local market for acute inpatient psychiatric services. The consent order requires UHS to divest its Peak Behavioral Health Services facility, and all relevant assets and real property in the local market encompassing El Paso, Texas and its suburb, Santa Teresa, New Mexico.

Participants

For the *Commission*: *Chester Choi, Michelle Fettehnan, Janelle Filson, Jeanne Nichols, and Nancy Park.*

For the *Respondents*: *Robin Landis and Christine Varney, Cravath, Swaine & Moore 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”), a corporation controlled by Alan B. Miller and subject to the jurisdiction of the Commission, has agreed to acquire Ascend Health Corp. (“Ascend”), 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

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a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

Respondents

1. Respondent Alan B. Miller is a natural person with his offices and principal place of business located at 367 South Gulph Road, P.O. Box 61558, King of Prussia, PA 19406-0958. Alan B. Miller is the ultimate parent entity of Respondent UHS.

2. Respondent UHS 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, P.O. Box 61558, King of Prussia, PA 19406-0958. UHS is controlled by Respondent Alan B. Miller.

3. UHS owns or operates 25 general acute care hospitals and 198 behavioral health facilities located in 36 states, Washington, D.C., Puerto Rico, and the U.S. Virgin Islands. UHS's revenues from all operations totaled approximately \$7.5 billion in 2011. UHS's 198 behavioral health facilities generated approximately \$3.4 billion in revenue (45% of total revenues) from over 19,000 licensed beds and over five million patient days. UHS is, and at all times relevant herein has been, engaged in the sale and provision of acute inpatient psychiatric services.

The Acquired Company

4. Ascend 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 32 E. 57th Street, 17th Floor, New York, NY 10022.

5. Ascend operates eight inpatient behavioral health facilities located in four states, namely, Texas, Oregon, Arizona, and Utah, as well as an addiction treatment center in Seattle, Washington. Ascend's revenues for the 12 months ending December 31, 2011 were approximately \$159 million. Ascend is, and at all times relevant herein has been, engaged in the sale and provision of acute inpatient psychiatric services.

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The Proposed Merger

6. Pursuant to an Agreement and Plan of Merger dated June 3, 2012, UHS proposes to purchase all of the outstanding voting securities of Ascend (“the Merger”).

7. The Merger would combine the only two significant providers of acute inpatient psychiatric services to commercially insured patients in the relevant geographic market of El Paso, Texas/Santa Teresa, New Mexico. Respondent UHS and Ascend each own and operate a psychiatric facility in this area 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 the facilities.

Jurisdiction

8. Respondents, and each of their relevant operating subsidiaries and parent entities, are, and at all times relevant herein have 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.

9. The Merger constitutes an acquisition under Section 7 of the Clayton Act.

The Relevant Product Market

10. The relevant line of commerce in which to analyze the Merger is the provision and sale of acute inpatient psychiatric services to commercially insured patients, 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.

11. Acute inpatient psychiatric care is distinct from other psychiatric services such as partial hospitalization, intensive outpatient programs, outpatient care, and residential treatment. Other, less intensive, psychiatric services are not substitutes for acute inpatient psychiatric services.

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The Relevant Geographic Market

12. The relevant geographic market in which to assess the competitive effects of the Merger is El Paso, Texas/Santa Teresa, New Mexico. Santa Teresa is a northwestern suburb of El Paso.

13. In general, patients prefer to be treated for acute inpatient psychiatric services close to home or work. Accordingly, most residents of El Paso and Santa Teresa obtain acute inpatient psychiatric services from providers located in El Paso or Santa Teresa.

Concentration

14. The affected local market for the provision and sale of acute inpatient psychiatric services already is highly concentrated, and the Merger will substantially increase concentration in this market as measured by the Herfindahl-Hirschman Index (“HHI”).

15. Post-merger, UHS would have a post-merger market share of nearly 100 percent in the relevant line of commerce, based on beds in the El Paso/Santa Teresa market and other information obtained by the Commission. The Merger would increase the HHI by approximately 3806 points, from 6194 to 10,000, combining the only two significant providers of acute inpatient psychiatric services to commercially insured patients.

16. Even if El Paso Psychiatric Hospital, a state-run hospital located in El Paso, Texas that primarily serves indigent, forensic, and long-term patients, competes in the relevant line of commerce, UHS would have a post-merger market share of approximately 75%, based on bed counts. Under this assumption, the Merger would increase the HHI by approximately 2127 points, from 4098 to 6225.

Entry Conditions

17. Entry into the relevant market would not be timely, likely, or sufficient to prevent or deter the likely anticompetitive effects of the Merger. Significant entry barriers include the time and costs 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.

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Effects of the Acquisition

18. The Merger, if consummated, may substantially lessen competition for acute inpatient psychiatric services in the relevant geographic market, identified in Paragraph 12, in the following ways, among others:

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

19. The ultimate effect of the Merger would be to increase the likelihood that prices of acute inpatient psychiatric services would rise above competitive levels, or that there would be a decrease in the quality or availability of acute inpatient psychiatric services, in the relevant geographic market.

Violations Charged

20. The agreement described in Paragraph 6 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and the Merger, 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, the Federal Trade Commission on this fifth day of October, 2012, issues its Complaint against said Respondents.

By the Commission.

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**ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS
[Redacted Public Version]**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of voting securities of Ascend Health Corporation (“Ascend”), by Universal Health Services, Inc. (“UHS”), an entity controlled by Alan B. Miller (UHS and Alan B. Miller hereinafter referred to as Respondents), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter 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

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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. 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 Ascend.
- B. “Decision and Order” means
 1. 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
 2. the Final Decision and Order issued by the Commission following issuance and service of a final Decision and Order by the Commission.
- C. “Hold Separate Business” means the Peak Behavioral Health Assets.
- D. “Hold Separate Employees” means all full-time employees, part-time, employees, contract employees,

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and independent contractors, whose duties, at any time during the ninety (90) days preceding the Acquisition Date or any time after the Acquisition Date related or relates primarily to the Peak Behavioral Health Assets, a complete list of whom has been submitted to and approved by the Hold Separate Trustee, in consultation with the Commission staff, no later than three (3) days after the Acquisition Date; *provided, however*, that the persons listed in Confidential Appendix B shall not be considered Hold Separate Employees, as long as the Hold Separate Business is staffed with a chief executive officer and a military liaison with the necessary skills, expertise, and experience to perform those positions.

- E. “Hold Separate Order” means this Order to Hold Separate and Maintain Assets.
- F. “Hold Separate Period” means the period during which the Hold Separate Order is in effect, which shall begin on the Acquisition Date and terminate pursuant to Paragraph XI. of this Hold Separate Order.
- G. “Hold Separate Trustee” means the Person appointed pursuant to Paragraph II. of this Hold Separate Order.
- H. “Manager” means the Person appointed pursuant to Paragraph IV. of this Hold Separate Order.
- I. “Mesilla Valley Hospital 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 Date or any time after the Acquisition Date related or relates primarily to the Mesilla Valley Hospital Assets.
- J. “Orders” means the Decision and Order and this Hold Separate Order.

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- K. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other entity or governmental body.
- L. “Support Service Employees” means the persons listed on Confidential Appendix A of this 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.
- M. “Support Services” means assistance with respect to the operation of the Psychiatric Hospital Business, including, but not limited to, (i) human resources and administrative 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. With respect to the Hold Separate Business, Respondents shall:
 - 1. Hold the Hold Separate Business separate, apart, and independent of Respondents’ other businesses and assets as required by this Hold Separate Order and shall vest the Hold Separate Business with all rights, powers, and authority necessary to conduct its business;
 - 2. Not exercise direction or control over, or influence directly or indirectly, the Hold Separate Business

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or any of its operations, the Manager, 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 assure compliance with this Hold Separate Order, the Consent Agreement, the Decision and Order, and all applicable laws; and

3. Take all actions necessary to maintain and assure the continued viability, marketability, and competitiveness of the Hold Separate Business, and prevent the destruction, removal, wasting, deterioration, or impairment of any of the Peak Behavioral Health 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. With respect to the Mesilla Valley Hospital Assets, Respondents shall:
1. Maintain the operations of the Mesilla Valley Hospital Assets, in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such Business) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Mesilla Valley Hospital Assets and minimize any risk of loss of competitive potential of the Mesilla Valley Hospital Assets;
 2. Use their best efforts, in a manner consistent with past practices, to preserve the existing relationships with third parties, including payors, providers, suppliers, and others having business relations with the Mesilla Valley Hospital Assets; and
 3. Take all actions necessary to maintain the continued viability, marketability, and competitiveness of the Mesilla Valley Hospital Assets, and prevent the destruction, removal,

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wasting, deterioration, or impairment of any of the Mesilla Valley Hospital Assets, except for ordinary wear and tear, and shall not sell, transfer, encumber, or otherwise impair the Mesilla Valley Hospital Assets (except as required by the Decision and Order), and take no action that lessens the viability, marketability, or competitiveness of the Mesilla Valley Hospital Assets.

- C. The purpose of this Hold Separate Order is to (1) maintain and preserve the Hold Separate Business as a viable, competitive, and ongoing business independent of Respondents until the divestiture required by the Decision and Order is achieved; (2) maintain and preserve the viability, marketability, and competitiveness of the Mesilla Valley Hospital Assets and to minimize any risk to the competitive potential of the Mesilla Valley Hospital Assets during the Hold Separate Period; (3) 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 (4) prevent interim harm to competition pending the divestiture and other relief.

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

- A. At any time after Respondents sign the Consent Agreement, the Commission may appoint Michael Krupa as Hold Separate Trustee to monitor and supervise the management of the Hold Separate Business and ensure that Respondents comply with their obligations under this Hold Separate Order and the Decision and Order.
- B. Respondents shall enter into an agreement with the Hold Separate Trustee that shall become effective no later than one (1) day after the Acquisition Date, and that, subject to the prior approval of the Commission, transfers to and confers upon the Hold Separate

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Trustee all rights, powers, and authority necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities pursuant to this Hold Separate Order in a manner consistent with the purposes of this Hold Separate Order and the Decision and Order and in consultation with Commission staff; and shall require that the Hold Separate Trustee act in a fiduciary capacity for the benefit of the Commission:

1. 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; maintaining the independence of the Hold Separate Business; and monitoring Respondents' compliance with their obligations pursuant to this Hold Separate Order and the Decision and Order.
2. The Hold Separate Trustee shall act in a fiduciary capacity for the benefit of the Commission.
3. 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. The Hold Separate Trustee shall have access to relevant information of the Mesilla Valley Hospital Assets as is necessary to monitor Respondents' compliance with their obligations pursuant to this Hold Separate Order. Respondents shall develop such financial or other information as the Hold Separate Trustee may reasonably request.
4. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other

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representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.

5. 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.
6. 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.
7. 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.
8. Respondents shall indemnify the Hold Separate Trustee and hold him/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 losses, claims, damages, liabilities, or expenses result from the Hold Separate Trustee's gross negligence or willful misconduct.

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9. 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 each report shall be the assessment of the Hold Separate Trustee, consistent with his responsibilities and obligations in this Hold Separate Order, of the extent to which the Hold Separate Business and the Mesilla Valley Hospital Assets are meeting (or exceeding) their projected goals as are reflected in operating plans, budgets, projections, or any other regularly prepared financial statements.
- C. 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, subject to the consent of Respondents, which consent shall not be unreasonably withheld, as follows:
1. If Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Hold Separate Trustee within five (5) business days after notice by the staff of the Commission to Respondents of the identity of the proposed substitute Hold Separate Trustee, then Respondents shall be deemed to have consented to the selection of the proposed substitute trustee.
 2. Respondents shall, no later than five (5) days after the Commission appoints a substitute Hold Separate Trustee, enter into an agreement with the substitute Hold Separate Trustee that, subject to the approval of the Commission, confers on the substitute Hold Separate Trustee all the rights, powers, and authority necessary to permit the

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substitute Hold Separate Trustee to perform his or her duties and responsibilities on the same terms and conditions as provided in Paragraph III. of this Hold Separate Order.

- D. The Hold Separate Trustee shall serve through the Hold Separate Period; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
- E. The Commission may on its own initiative or at the request of the Hold Separate Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Hold Separate Order.

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

- A. No later than three (3) days after the Acquisition Date, Respondents shall appoint Matthew J. Winchester as the Manager 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.
- B. Respondents shall enter into a management agreement with the Manager that shall become effective no later than three (3) days after the Acquisition Date, and that, subject to the 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/her duties and responsibilities pursuant to this Hold Separate Order:
 - 1. The Manager shall be responsible for managing the operations of the Hold Separate Business and shall report directly and exclusively to the Hold Separate Trustee and shall manage the Hold Separate

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Business independently of the management of Respondents and their other businesses.

2. The Manager shall make no 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.
3. The Manager, in consultation with the Hold Separate Trustee, shall have the authority to employ such Persons as are reasonably necessary to assist the Manager in managing the Hold Separate Business, including consultants, accountants, attorneys, and other representatives and assistants. Nothing contained herein shall preclude the Manager 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.
4. Respondents shall provide the Manager with reasonable financial incentives to undertake this 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, and as may otherwise be necessary to achieve the purposes of this Hold Separate Order.
5. The 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.
6. Respondents shall indemnify the Manager and hold him or her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or

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in connection with, the performance of the Manager's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense, of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Manager's gross negligence or willful misconduct.

- C. The Manager shall have the authority, in consultation with the Hold Separate Trustee, to staff the Hold Separate Business with sufficient employees to maintain the viability and competitiveness of the Hold Separate Business, including:
1. Replacing any departing or departed employee with a person who has similar experience and expertise or determine not to replace such departing or departed employees;
 2. Removing any Hold Separate Employee who ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, and replacing such employee with another person of similar experience or skills;
 3. Ensuring that no Hold Separate Employee shall (i) be involved in any way in the operations of Respondents' other businesses, and (ii) receive or have access to, or use or continue to use, any Confidential Business Information pertaining to Respondents' other businesses;
 4. Providing each Hold Separate Employee with reasonable financial incentives, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the Peak Behavioral Health Assets (and the Mesilla Valley Hospital Assets, if the New Mexico Psychiatric Hospital Assets are required to be divested) .

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- D. The Manager may be removed for cause by the Hold Separate Trustee, in consultation with the Commission staff. If the Manager is removed, resigns, or otherwise ceases to act as Manager, Respondents shall, within three (3) days of such action, subject to the approval of the Hold Separate Trustee and in consultation with Commission staff, on the same terms and conditions as provided in this Hold Separate Order, (i) appoint a substitute Manager, and (ii) enter into an agreement with the substitute Manager.

V.

IT IS FURTHER ORDERED that:

- A. Respondents shall cooperate with, and take no action to interfere with or impede the ability of: (i) the Hold Separate Trustee, (ii) the Manager, (iii) any Hold Separate Employee, or (iv) any Support Services Employee, to perform his or her duties and responsibilities consistent with the terms of this Hold Separate Order and the Decision and Order.
- B. Respondents shall continue to provide, or offer to provide, Support Services and goods to the Hold Separate Business and to the Mesilla Valley Hospital Assets as are being provided to the Hold Separate Business and the Mesilla Valley Hospital Assets by Respondents as of the date the Consent Agreement is signed by Respondents;
1. For Support Services and goods that Respondents provided to the Hold Separate Business or the Mesilla Valley Hospital Assets 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 and goods as of the date the Consent Agreement is signed by Respondents;
 2. For any other Support Services and goods that Respondents may provide to the Hold Separate

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Business or the Mesilla Valley Hospital Assets, Respondents may charge no more than Respondents' Direct Cost for the same or similar Support Services;

3. 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.

C. Respondents shall not permit:

1. Any of its employees, officers, agents, or directors, other than (i) the Manager, (ii) any Hold Separate Employees, and (iii) any Support Services Employees, to be involved in the operations of the Hold Separate Business, except to the extent otherwise provided in this Hold Separate Order.
2. The Manager or any Hold Separate Employee to be involved, in any way, in the operations of Respondents' businesses other than the Hold Separate Business.

D. Respondents shall provide the Hold Separate Business and the Mesilla Valley Hospital Assets with sufficient financial and other resources as are appropriate in the judgment of the Hold Separate Trustee, consistent with his obligations and responsibilities in this Hold Separate Order, to:

1. Operate the Hold Separate Business and the Mesilla Valley Hospital Assets at least as they are currently operated (including efforts to generate new business) consistent with the practices of the Hold Separate Business and the Mesilla Valley Hospital Assets in place prior to the Acquisition Date;
2. Perform all maintenance to, and replacements or remodeling of, the assets of the Hold Separate

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Business and the Mesilla Valley Hospital Assets in the ordinary course of business and in accordance with past practice and with current plans;

3. Carry on such capital projects, physical plant improvements, and business plans as are already under way or planned for which all necessary regulatory and legal approvals have been obtained, including but not limited to existing or planned renovation, remodeling, and expansion projects; and
4. Maintain the viability, competitiveness, and marketability of the Hold Separate Business and the Mesilla Valley Hospital Assets.

Such financial resources to be provided to the Hold Separate Business and the Mesilla Valley Hospital Assets 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 of the Hold Separate Business, or substitute any capital or research and development project of the Hold Separate Business for another of the same cost.

- E. Respondents shall provide each Hold Separate Employee and each Mesilla Valley Hospital Employee with reasonable financial incentives to continue in his or her position consistent with past practices and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Peak Behavioral Health Assets and the Mesilla Valley Hospital 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

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continuation, and prevent any diminution, of the viability, marketability, and competitiveness of the Hold Separate Business and the Mesilla Valley Hospital Assets until the Closing Date, and as may otherwise be necessary to achieve the purposes of this Hold Separate Order.

- F. No later than ten (10) days after the Acquisition Date, Respondents shall establish and implement procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and independence of the Hold Separate Business and the monitoring of the operations of the Mesilla Valley Hospital Assets consistent with the provisions of this Hold Separate Order.
- G. No later than ten (10) days after the Acquisition Date, Respondents shall circulate to Hold Separate Employees, Mesilla Valley Hospital Employees, and to persons who are employed in Respondents' businesses that compete with the Hold Separate Business in the Relevant Area, 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.

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

- A. After the Acquisition Date, Respondents' employees, other than employees of the Hold Separate Business and Support Services Employees, shall not receive, or have access to, or use or continue to use any Confidential Business Information of the Hold Separate Business except in the course of:
 - 1. Performing their obligations or as permitted under this Hold Separate Order or the Decision and Order;

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2. Performing their obligations under the Divestiture Agreement;
3. Negotiating agreements to divest assets pursuant to the Decision and Order and engaging in related due diligence; and
4. Complying with financial reporting requirements, obtaining legal advice, defending legal claims, conducting investigations, or enforcing actions threatened or brought against the Hold Separate Business, or as required by law. 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 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 Order.

For purposes of this Paragraph VI.A., Respondents' employees that provide Support Services or staff the Hold Separate Business shall be deemed to be performing obligations under this Hold Separate Order.

- B. If access to or disclosure of Confidential Business Information of the Hold Separate Business to Respondents' employees is necessary and permitted under Paragraph VI.A. of this Hold Separate Order, Respondents shall:
 1. Implement and maintain a process and procedures, as approved by the Hold Separate Trustee, such approval not to be unreasonably withheld, pursuant

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to which Confidential Business Information of the Hold Separate Business may be disclosed or used only:

- a. to or by those employees who require such information;
 - b. to the extent such Confidential Business Information is required; and
 - c. after such employees have signed an appropriate agreement in writing to maintain the confidentiality of such information.
2. Enforce the terms of this Paragraph VI. as to any of Respondents' employees and take such action as is necessary to cause each such employee to comply with the terms of this Paragraph VI., including training of Respondents' employees and all other actions that Respondents would take to protect their own trade secrets and proprietary information.
- C. Respondents shall implement, and 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 Respondent, to audit Respondents' networks and systems to verify compliance with this Hold Separate Order.
- D. Neither the Manager nor any Hold Separate Employees shall 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.

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VII.

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 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;

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- 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. 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 who have accepted offers of employment with the Commission-approved Acquirer 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*,

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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.

VIII.

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 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.

IX.

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.

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X.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Hold Separate Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to the applicable Respondent made to its principal United States offices, registered office of its United States subsidiary, or headquarters address, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of such Respondent related to compliance with this Hold Separate Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and
- B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Hold Separate Order.

XI.

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 Closing Date.

By the Commission.

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Confidential Appendix A**List of Respondents' Support Service Employees****[Redacted From the Public Record Version, But Incorporated
By Reference]****Confidential Appendix B****Exceptions To Hold Separate Employees Definition****[Redacted From the Public Record Version, But Incorporated
By Reference]****DECISION AND ORDER**

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of voting securities of Ascend Health Corporation ("Ascend") by Universal Health Services, Inc. ("UHS"), an entity controlled by Alan B. Miller (UHS and 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

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

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ORDER**I.**

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

- A. “Acquisition” means the proposed acquisition described in and contemplated by the Agreement and Plan of Merger by and among UHS and Ascend dated as of June 3, 2012.
- B. “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.
- C. “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.
- D. “Ascend” means Ascend Health Corporation, 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 32 E. 57th Street, 17th Floor, New York, NY 10022.
- E. “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,

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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.

- F. “Closing Date” means the date on which Respondents (or a Divestiture Trustee, if the New Mexico Psychiatric Hospital Assets are required to be divested) consummate a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey the Peak Behavioral Health Assets (or the New Mexico Psychiatric Hospital Assets, if required to be divested) to the Commission-approved Acquirer.
- G. “Commission” means the Federal Trade Commission.
- H. “Commission-approved Acquirer” means the Person approved by the Commission to acquire the Peak Behavioral Health Assets (or the New Mexico Psychiatric Hospital Assets, if required to be divested) pursuant to this Order.
- I. “Confidential Business Information” means information not in the public domain that is primarily related to or primarily used in connection with the Psychiatric Hospital 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.
- J. “Direct Cost” means cost not to exceed the cost of labor, material, travel, and other expenditures to the

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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.

- K. “Divestiture Agreement” means the agreement(s) between Respondents and the Commission-approved Acquirer (or between a Divestiture Trustee and the Commission-approved Acquirer, if the New Mexico Psychiatric Hospital Assets are required to be divested), and all amendments, exhibits, attachments, agreements, and schedules thereto, related to divestiture of the Peak Behavioral Hospital Assets (or the New Mexico Psychiatric Hospital Assets, if required to be divested) that have been approved by the Commission to accomplish the requirements of this Order.
- L. “Hold Separate Order” means the Order to Hold Separate and Maintain Assets issued by the Commission in this matter.
- M. “Intellectual Property” means, without limitation:
 - 1. all patents, patent applications, and inventions and discoveries that may be patentable;
 - 2. all know-how, trade secrets, software, technical information, data, registrations, applications for governmental approvals, inventions, processes, best practices (including clinical pathways), formulae, protocols, standards, methods, techniques, designs, quality control practices and information, research and test procedures and information, and safety, environmental and health practices and information;
 - 3. all confidential or proprietary information, commercial information, management systems, business processes and practices, customer lists,

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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.
- N. “Mesilla Valley Hospital Assets” means the Psychiatric Hospital Assets associated with and the Psychiatric Hospital Business conducted at the Psychiatric Hospital Facility, doing business as Mesilla Valley Hospital located at 3751 Del Rey Boulevard, Las Cruces, New Mexico 88012.
- O. “New Mexico Psychiatric Hospital Assets” means:
1. Peak Behavioral Health Assets; and
 2. Mesilla Valley Hospital Assets.
- P. “Peak Behavioral Health Assets” means the Psychiatric Hospital Assets associated with and the Psychiatric Hospital Business conducted at the Psychiatric Hospital Facility, doing business as Peak Behavioral Health Services, LLC, located at 5055 McNutt Road, Santa Teresa, New Mexico 88088.
- Q. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other entity or governmental body.
- R. “Prospective Acquirer” means a Person that Respondents (or the Divestiture Trustee, if the New Mexico Psychiatric Hospital Assets are required to be divested) intend to submit to the Commission for its

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prior approval pursuant to Paragraph II.A. (or Paragraph VI. if applicable) of this Order.

- S. “Psychiatric Hospital 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 Psychiatric Hospital 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) to the extent transferable, 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 from and not replaced at the specific Psychiatric Hospital Facility, if such property was used by or in connection with the Psychiatric Hospital Business conducted at such facility 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) to the extent assignable, including but not limited to contracts and agreements with physicians, other health care providers, unions, third-party payors, HMOs, customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, cosigners, and consignees;

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4. all rights and title in and to use the name of each of the hospitals on a permanent and exclusive basis (even as to Respondents);
5. all Intellectual Property;
6. all intangible rights and property other than Intellectual Property, including, going concern value, goodwill, internet, telephone, telecopy and telephone numbers, domain names, listings, and web sites;
7. all approvals, consents, licenses, certificates, registrations, permits, waivers, or other authorizations issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefore or renewals thereof, to the extent assignable;
8. all inventories, stores, and supplies;
9. all accounts receivable;
10. all rights under warranties and guarantees, express or implied;
11. all books, records, and files (electronic and hard copy); and
12. all Business Records;

provided, however, that the Psychiatric Hospital 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 Psychiatric Hospital Business conducted at the specified Psychiatric Hospital Facility;

provided, however, at the option of the Commission-approved Acquirer, that the Psychiatric Hospital Assets need not include any property or assets that the

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Commission-approved Acquirer determines it does not need or want, 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.

- T. “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.
- U. “Psychiatric Hospital Business” means the operation of a Psychiatric Hospital Facility and includes but is not limited to the provision of Acute Inpatient Psychiatric Services, whether provided or performed at the facility or in a different location within the Relevant Area, and also includes all other services, businesses, and operations primarily related to the specified Psychiatric Hospital Facility.
- V. “Psychiatric Hospital Facility” means a Psychiatric Hospital or a Psychiatric Unit.
- W. “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.
- X. “Relevant Area” means the El Paso Metropolitan Statistical Area, as defined by the US Office of Management and Budget, and the Las Cruces Metropolitan Statistical Area, as defined by the US Office of Management and Budget.

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- Y. “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 Date or at any time after the Acquisition Date, related or relate primarily to the Peak Behavioral Health Business (or the New Mexico Psychiatric Hospital Assets, if required to be divested); *provided, however*, that the persons listed in the Confidential Appendix shall not be considered Relevant Employees.
- Z. “Respondents” means Alan B. Miller and UHS, collectively or individually.
- AA. “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.
- BB. “Third Parties” means Persons other than Respondents or the Commission-approved Acquirer.
- CC. “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.
- DD. “Transitional Clinical Services” means clinical assistance and support services with respect to the

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operation of a Psychiatric Hospital Facility or the provision of Acute Inpatient Psychiatric Services.

- EE. “Transitional Services” means Transitional Administrative Services and Transitional Clinical Services.
- FF. “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 Ascend.

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

- A. No later than six (6) months after the Order is issued, Respondents shall divest the Peak Behavioral Health 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 Peak Behavioral Health Assets are transferred to the Commission-approved Acquirer as a financially and competitively viable Psychiatric Hospital Facility, 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 Peak Behavioral Health Assets.

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- 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 Peak Behavioral Health Assets and/or to grant any license(s) to the Commission-approved Acquirer to permit the Commission-approved Acquirer to operate the Peak Behavioral Health 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 Peak Behavioral Health Assets meet federal, state, local, and municipal requirements necessary to allow the transfer of the Peak Behavioral Health Assets to the Commission-approved Acquirer.
- D. The purpose of the divestiture is to ensure the continuation of the Peak Behavioral Health Assets (or the New Mexico Psychiatric Hospital Assets, if required to be divested) 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. After the Closing Date, Respondents shall not use, solicit, or access, directly or indirectly, any Confidential Business Information of the Peak Behavioral Health Assets (or of the New Mexico Psychiatric Hospital Assets, if required to be divested), 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:

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1. as necessary to comply with the requirements of this Order or the Hold Separate Order;
 2. pursuant to a Divestiture Agreement;
 3. to enforce the terms of a Divestiture Agreement or prosecute or defend against any dispute or legal proceeding; or
 4. to comply with applicable law, regulations and other legal requirements.
- B. No later than five (5) days after the Acquisition Date, Respondents shall provide written notification of the restrictions, prohibitions, and requirements of this Paragraph III. to all of Respondents' employees, agents, and representatives employed at, or with responsibilities relating to, a Psychiatric Hospital Facility located in the Relevant Area or who had or have access to or possession, custody or control of any Confidential Business Information of the Peak Behavioral Health Assets (or of the New Mexico Psychiatric Hospital Assets, if required to be divested).
1. such notification shall include a plain language explanation of the requirements of this Order and a description of the consequences of failing to comply with the requirements.
 2. Respondents shall provide such notification by US mail or by e-mail, with return receipt requested acknowledging receipt of the notification or similar transmission.
 3. Respondents shall maintain complete records of all such notifications at Respondents' corporate headquarters and keep a file of all receipts and acknowledgments for one (1) year after the Closing Date.
 4. Respondents shall provide the Commission-approved Acquirer (and the Hold Separate Trustee,

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if one is appointed) with a copy of such notification and with copies of all other certifications, notifications, and reminders sent to Respondents' personnel.

C. Respondents shall:

1. no later than thirty (30) days after the Closing Date, obtain, as a condition of continued employment post-divestiture, from each of Respondents' employees, agents, and representatives employed at or with responsibilities relating to a Psychiatric Hospital Facility located in the Relevant Area or who had or have access to or possession, custody or control of any Confidential Business Information of the Peak Behavioral Health Assets (or of the New Mexico Psychiatric Hospital Assets, if required to be divested) an executed confidentiality agreement that complies with the restrictions, prohibitions and requirements of this Order and the Hold Separate Order; and
2. no later than thirty (30) days after the Closing Date, 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 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:

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1. name, job title or position, date of hire, and effective service date;
 2. a specific description of the employee's responsibilities;
 3. the base salary or current wages;
 4. the most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year, and current target or guaranteed bonus, if any;
 5. employment status (i.e., active or on leave or disability; full-time or part-time);
 6. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 7. at the Prospective Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Relevant Employee.
- B. Within a reasonable time after a request from a Prospective Acquirer, provide to the Prospective Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of any Respondent, with any one or more of the Relevant Employees, and to make offers of employment to any one or more of the Relevant Employees;
- C. Not interfere, directly or indirectly, with the hiring or employing by the Prospective Acquirer of any Relevant Employees, not offer any incentive to such employees to decline employment with the Prospective Acquirer, and not otherwise interfere with the recruitment of any Relevant Employee by the Prospective Acquirer;

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- D. Remove any impediments within the control of Respondents that may deter Relevant Employees from accepting employment with the Prospective Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Prospective Acquirer, and shall not make any counteroffer to a Relevant Employee who receives a written offer of employment from the Prospective Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;
- E. Provide all Relevant Employees with reasonable financial incentives to continue in their positions until the Closing Date. Such incentives shall include, but are not limited to, a continuation, until the Closing Date, of all employee benefits, including the funding of regularly scheduled raises and bonuses, and the vesting of pension benefits (as permitted by law and for those Relevant Employees covered by a pension plan), offered by Respondents;
- F. Not, for a period of one (1) year following the Closing Date, directly or indirectly, solicit or otherwise attempt to induce any of the Relevant Employees who have accepted offers of employment with the Commission-approved Acquirer 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

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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, 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 each of the Psychiatric Hospital Facilities to be divested and to provide Acute Inpatient Psychiatric Services in substantially the same manner that Respondents have operated such facilities and provided such services at each of 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 the operation of each 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

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Transitional Services because of a material breach by the Commission-approved Acquirer of any agreement to provide such assistance unless Respondents are unable to provide such services due to such material breach.

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

- A. If Respondents have not fully complied with the obligations imposed by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the New Mexico Psychiatric Hospital 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 VI.A. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, and stated in writing their reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee,

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Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

1. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestiture required by, and satisfy the additional obligations imposed by, this Order.
2. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - a. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestiture required by, and satisfy the additional obligations imposed by, this Order.
 - b. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan to satisfy the obligations of Paragraph II. of this Order, or believes that such obligations can be achieved within a reasonable time, the period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, that the Commission may extend the period only two (2) times.
 - c. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full

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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 VI. for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

- d. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such entity within five (5) days after receiving notification of the Commission's approval.
- e. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the

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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 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, malfeasance, 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.

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- 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.
- C. 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 VI.
- D. 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 appropriate to accomplish the divestitures required by this Order.
- E. The Divestiture Trustee appointed pursuant to this Paragraph VI. may be the same person appointed as Hold Separate Trustee pursuant to the relevant provisions of the Hold Separate Order.

VII.**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.

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- B. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof.
- C. Respondents shall comply with all terms of the Divestiture Agreement, and any breach by Respondents of any term of the Divestiture Agreement shall constitute a failure to comply with this Order. If any term of the 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.

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

- A. For a period of ten (10) years from the date this Order is issued, Respondents shall not, without providing advance written notification to the Commission in the manner described in this Paragraph, directly or indirectly:
 - 1. Acquire any stock, share capital, equity, or other interest in any Person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in or is engaged in providing Acute Inpatient Psychiatric Services in the Relevant Area; or
 - 2. Enter into any agreement or other arrangement to manage or otherwise control a Third Party Psychiatric Facility which, during the twelve (12) months immediately preceding such agreement or arrangement, was engaged or is engaged in providing Acute Inpatient Psychiatric Services in the Relevant Area.

Nothing herein shall be construed to require advance written notification if Respondents seek to open a new Psychiatric Hospital Facility or expand existing Acute

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Inpatient Psychiatric Services at one of Respondents' Psychiatric Hospital Facilities in the Relevant Area.

- B. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as "the Notification"), 16 C.F.R. § 803 App., and shall be prepared and transmitted in accordance with the requirements of that Part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. *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 this Paragraph for Respondents' continued ownership, management, or operation of the assets required to be divested (i) pursuant to Paragraphs II. or VI. of this Order pending such divestiture; and (ii) pursuant to the Divestiture Agreement.

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

- A. Within thirty (30) days after this Order is issued, and every sixty (60) days thereafter until Respondents have complied with their obligations in Paragraph II. (or Paragraph VI. of this Order, if the New Mexico Psychiatric Hospital Assets are required to be divested) 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 Paragraph II. (or Paragraph VI. of this Order, if the New Mexico Psychiatric Hospital Assets are required to be divested) 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 Paragraph II. (or Paragraph VI. of this Order, if the New Mexico Psychiatric Hospital Assets are required to be divested) 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 is issued, 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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X.

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.

XI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to the applicable Respondent made to their principal United States offices, registered office of their United States subsidiaries, or headquarters addresses, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and
- B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Order.

Analysis to Aid Public Comment

XII.

IT IS FURTHER ORDERED that this Order shall terminate on November 27, 2022.

By the Commission.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT****I. INTRODUCTION AND BACKGROUND**

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”). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that otherwise would result from the merger of UHS with Ascend Health Corporation (“Ascend”). Under the terms of the proposed Consent Agreement, UHS is required to divest, within six months after the Decision and Order is issued, its Peak Behavioral Health Services facility (“Peak”), and all relevant assets and real property in the local market encompassing El Paso, Texas and its suburb, Santa Teresa, New Mexico (“El Paso/Santa Teresa”), to an acquirer that receives the approval of the Commission. UHS will acquire University Behavioral Health of El Paso, the Ascend facility, when the merger closes. To ensure that the divested assets attract a buyer that can adequately compete with UHS post-divestiture, the Consent Agreement requires a second UHS hospital, Mesilla Valley Hospital (“Mesilla Valley”), located in Las Cruces, New Mexico, to be divested if the original divestiture assets are not sold to an approved buyer within the six-month timeframe. UHS and Ascend have also agreed to hold the to-be-divested assets separate, and to maintain the economic viability, marketability, and competitiveness of both the Peak and Mesilla Valley assets

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until the potential acquirer is approved by the Commission and the divestiture is complete.

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 June 3, 2012, UHS agreed to acquire Ascend in a transaction valued at approximately \$517 million. 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 one local market for acute inpatient psychiatric services. The proposed Consent Agreement would remedy the alleged violations by requiring a complete divestiture in the affected market. The divestiture will replace the competition that otherwise would be lost in the El Paso/Santa Teresa market as a result of the proposed acquisition.

II. THE PARTIES

UHS, headquartered in King of Prussia, Pennsylvania, owns or operates 25 general acute care hospitals and 198 behavioral health facilities located in 36 states, Washington, D.C., Puerto Rico, and the U.S. Virgin Islands. It is one of the largest hospital management companies in the United States, with 2011 revenues totaling approximately \$7.5 billion. In 2011, UHS's 198 behavioral health facilities generated approximately \$3.4 billion in revenue (25% of total revenues) from nearly 19,000 licensed beds and over 5 million patient days. The top revenue sources for its behavioral health centers are commercial payors (38% of 2011 net revenue), Medicaid (24%), and Medicare (17%). In November 2010, UHS completed its acquisition of Psychiatric Solutions, Inc., which had operated the nation's largest network of freestanding inpatient behavioral health facilities, subject to an FTC consent order that required UHS to divest facilities in Nevada, Delaware, and Puerto Rico.

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Ascend, headquartered in New York, New York, owns or operates nine behavioral health facilities located in Arizona, Oregon, Texas, Utah, and Washington, including seven acute inpatient psychiatric hospitals, a substance abuse residential treatment center, and an addiction treatment center.

III. ACUTE INPATIENT PSYCHIATRIC SERVICES

UHS's proposed acquisition of Ascend poses substantial antitrust concerns in the relevant product market of acute inpatient psychiatric services provided to commercially insured patients. 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. Acute inpatient psychiatric care is distinct from other psychiatric services such as partial hospitalization, intensive outpatient programs, outpatient care, and residential treatment. Other, less intensive, psychiatric services are not substitutes for acute inpatient psychiatric services.

The acute inpatient psychiatric services market is local in nature. Analysis of patient flow data and evidence gathered from market participants indicate that patients and their families prefer to find care as close to home as possible and to stay within the city where they live or work. Accordingly, most residents of El Paso and Santa Teresa obtain acute inpatient psychiatric services from providers located in El Paso or Santa Teresa. Health plans also have internal guidelines or regulatory "geo-access" standards requiring that services be made available within a certain, usually short, distance from their members. The acute inpatient psychiatric services market affected by the proposed acquisition is thus limited to the El Paso/Santa Teresa market.

The proposed acquisition would lead to a virtual monopoly in the provision of acute inpatient psychiatric services provided to commercially insured patients in the El Paso/Santa Teresa market, which creates a strong presumption that the acquisition would create or enhance market power or facilitate its exercise. The presumption of anticompetitive harm is further supported by evidence of the close competition between the UHS- and Ascend-owned facilities that would be eliminated by the proposed merger. Consumers in El Paso/Santa Teresa have benefitted from the

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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 borne by 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 or expansion is unlikely to deter or counteract the anticompetitive effects of the proposed acquisition. While regulatory barriers to opening a new psychiatric facility or unit are lower in Texas and New Mexico than in other states (*e.g.*, there are no Certificate of Need regulations in either state), local zoning regulations, Medicaid and Medicare certifications, and the need to develop strong relationships with local patient referral sources hinder the ability of firms to enter the market. Cuts to Medicaid funding may also affect the financial incentive of a provider to offer inpatient psychiatric services. Thus, it is unlikely that new entry or expansion sufficient to achieve a significant market impact will occur in a timely manner.

IV. THE PROPOSED CONSENT AGREEMENT

The proposed Consent Agreement wholly remedies the anticompetitive effects in the El Paso/Santa Teresa market by requiring UHS to divest Peak, located in Santa Teresa, New Mexico, and its associated operations and businesses within six months after issuance of the Decision and Order. The potential acquirer of Peak is subject to prior approval of the Commission. The Consent Agreement also provides that, if Peak is not sold to an approved acquirer within six months, a Divestiture Trustee will be appointed and empowered to divest both Peak and Mesilla Valley. The purpose of this provision is to address the uncertainty of whether Peak alone is sufficient to attract an acquirer that would compete as effectively as UHS competed prior to the merger.

Until completion of the requisite divestiture(s), UHS is required to abide by the Order to Hold Separate and Maintain Assets, which includes a requirement that UHS hold Peak

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separate from its other businesses and facilities, and a requirement to take all actions necessary to maintain the economic viability, marketability, and competitiveness of the both the Peak and Mesilla Valley assets. The Consent Agreement also requires UHS to provide transitional services to the approved acquirer for one year, as needed to assist the acquirer with operating the divested assets as a viable and ongoing business. In addition, the proposed order allows the Commission to appoint a Hold Separate Trustee to oversee UHS's compliance with the Order to Hold Separate and Maintain Assets. Finally, the proposed order contains a ten-year prior notice requirement for acquisitions of acute inpatient psychiatric service providers in the local area, as well as compliance reporting requirements.

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

RENOWN HEALTHCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT*Docket No. C-4366; File No. 111 0101**Complaint, August 3, 2012 – Decision, November 30, 2012*

This consent order addresses the acquisition by Renown Health of Sierra Nevada Cardiology Associates and Reno Heart Physicians. The complaint alleges that Renown Health violated Section 7 of the Clayton Act by substantially lessening competition in the market for cardiology services in and around Reno, Nevada. The consent order requires Renown Health to release a certain number of its cardiologist employees from their employment contracts freeing them to practice either as employees of other health care entities or as part of independent medical groups in the Reno area.

Participants

For the *Commission*: Thomas Dahdouh, John Wiegand, and Erika Wodinsky.

For the *Respondent*: William Berlin, Ober Kaler; Kelly Testolin, in-house counsel.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Renown Health, directly or by or through its wholly-owned subsidiaries Nevada Heart Institute and NHI-1, Inc. (collectively “Renown Health”) has acquired the medical practices and assets of Sierra Nevada Cardiology Associates, Inc. (“SNCA”), and Reno Heart Physicians, Inc. (“RHP”), and has employed the physician members and physician employees previously providing cardiology services in connection with those entities, and has violated and is violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding by it in respect thereof would