

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

In the Matter of)
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)
)
 Alan B. Miller,)
 a natural person;)
) Docket No. C-4372
 and)
)
 Universal Health Services, Inc.,)
 a corporation.)
)
)
)
)

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order to Hold Separate and Maintain Assets (“Hold Separate Order”):

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

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 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, 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 pr

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

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.

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 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 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 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

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

necessary to assure the 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;
 - 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 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.

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;
- 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

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.

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:

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.

Donald S. Clark
Secretary

SEAL
ISSUED: October 5, 2012

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]