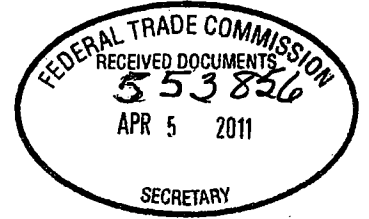


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill



_____)
In the Matter of)
)
)
 Alan B. Miller,)
 a natural person;)
)
 Universal Health Services, Inc.,)
 a corporation;)
)
 and)
)
 Psychiatric Solutions, Inc.;)
 a corporation.)
_____)

Docket No. C-4309
File No. 101 0142

APPLICATION FOR APPROVAL OF DIVESTITURE OF THE DELAWARE
DIVESTITURE ASSETS

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Health Services, Inc.*

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Introduction

Pursuant to Section 2.41(f) of the Federal Trade Commission (the “Commission”), Rules of Practice and Paragraph II of the Decision and Order accepted for public comment by the Commission on November 15, 2010 (the “Decision and Order”), Respondents Alan B. Miller and Universal Health Services, Inc. (“UHS”), respectfully submit this Application for Approval of Divestiture of the Delaware Divestiture Assets (the “Application”), in connection with the matter entitled *In the Matter of Alan B. Miller, a natural person; Universal Health Services, Inc., a corporation; and Psychiatric Solutions, Inc., a corporation*, Docket No. C-4309, FTC File No. 101 0142.

This matter arose out of UHS’s acquisition of Psychiatric Solutions, Inc. (“PSI”), on or about November 15, 2010. On October 26, 2010, Alan B. Miller and UHS executed an Agreement Containing Consent Orders that included a Decision and Order and an Order to Hold Separate and Maintain Assets. On November 15, 2010, the Commission accepted the Agreement Containing Consent Orders, the Decision and Order, and the Order to Hold Separate and Maintain Assets for public comment.

In this Application, UHS seeks approval of the proposed divestiture of the divestiture assets primarily used in connection with or primarily relating to MeadowWood Behavioral Health (the “Delaware Divestiture Assets”),¹ to PHC, Inc., d/b/a Pioneer Behavioral Health (“PHC” or the “Company”), described in the following

¹ Capitalized terms have the definitions given to them in the Decision and Order and the Order to Hold Separate and Maintain Assets.

agreements (collectively, the “Delaware Divestiture Agreements”): (i) an Asset Purchase Agreement between UHS and PHC, dated March 15, 2011, attached hereto as Exhibit A (the “Asset Purchase Agreement”), (ii) an Amendment to the Asset Purchase Agreement, dated March 29, 2011, attached hereto as Exhibit B, (iii) Disclosure Schedules to the Asset Purchase Agreement, attached hereto as Confidential Exhibit C, (iv) a Commitment Letter between Jefferies Finance LLC and PHC, dated March 15, 2011, attached hereto as Confidential Exhibit D, and (v) a Transition Services Agreement, to be dated and entered into on the Closing Date, the agreed upon form of which is attached hereto as Confidential Exhibit E. This Application describes how the proposed divestiture will satisfy the terms and purposes of the Decision and Order.²

Although the proposed Decision and Order is still not final, UHS has in good faith engaged in the divestiture process as contemplated by Paragraph II of the Decision and Order in order to divest the Delaware Divestiture Assets. As a result of that divestiture process, which involved discussions and negotiations with approximately twenty parties, UHS entered into the Asset Purchase Agreement with PHC, a leading provider of inpatient and outpatient behavioral health services, headquartered in Peabody, Massachusetts. Throughout the process, UHS has kept the Commission staff informed of

² Because this Application and accompanying Confidential Exhibits contain confidential and competitively sensitive commercial and financial information relating to the Delaware Divestiture Assets that neither UHS nor PHC discloses in the ordinary course of business, the disclosure of which may harm the ongoing competitiveness of MeadowWood Behavioral Health and thereby prejudice UHS and/or PHC, UHS has redacted confidential information from the public version of this Application. Pursuant to Sections 2.41(f)(4) of 4.9(c) of the Commission’s Rules of Practice, UHS requests that the confidential portion of this Application and the confidential material contained herein, including but not limited to portions of the Delaware Divestiture Agreements, be afforded confidential treatment under Section 4.10(a)(2) of the Commission’s Rules of Practice. See 16 C.F.R. § 4.10(a)(2); see also 15 U.S.C. §§ 46(f), 57b-2(c). Further, the confidential portions of this Application and accompanying Confidential Exhibits are exempt from disclosure under the Freedom of Information Act and the Hart Scott Rodino Act. See 5 U.S.C. § 552; 15 U.S.C. § 18a(h).

the manner in which UHS was conducting the divestiture process and the parties that expressed an interest in the Delaware Divestiture Assets. In addition to the required compliance reports that UHS has filed, UHS has communicated additional information to the Commission regarding the divestiture process.

The proposed divestiture to PHC would accomplish the Decision and Order's purposes by "ensur[ing] the continuation of the Delaware Divestiture Assets as an ongoing, viable Psychiatric Hospital Facility" and by "remedy[ing] the lessening of the competition resulting from the Acquisition alleged in the Commission's complaint". (Decision and Order, ¶ II.D.) Specifically, by divesting the Delaware Divestiture Assets as contemplated by the Decision and Order and the Delaware Divestiture Agreements, the Delaware Divestiture Assets will continue operating under the competent and capable direction of PHC and the State of Delaware will have the benefit of another significant competitor fully capable of and engaged in the provision of Acute Inpatient Psychiatric Services. As described in detail below, PHC has the financial, professional and operational resources to be a strong and effective competitor in the State of Delaware for the provision of Acute Inpatient Psychiatric Services.

I. UHS CONDUCTED A ROBUST DIVESTITURE PROCESS FOR THE DELAWARE DIVESTITURE ASSETS.

REDACTED

REDACTED

On March 15, 2011, UHS's discussions and negotiations with PHC culminated in the Delaware Divestiture Agreements. During the divestiture process and while UHS was in negotiations with interested parties, UHS has updated the Commission staff on progress of the negotiations and the identity of interested parties. Indeed, UHS informed the Commission staff of the execution of the Delaware Divestiture Agreements on March 15, 2011—the same day it was executed. As described below, the Delaware Divestiture Agreements are structured to meet the requirements of the Decision and Order. The contemplated divestiture of the Delaware Divestiture Assets to PHC meets the purposes and requirements of the Decision and Order by adding a viable competitor

with the financial, professional and operational resources to provide Acute Inpatient Psychiatric Services in the State of Delaware.

II. PHC IS A WELL-QUALIFIED PROSPECTIVE ACQUIRER AND IS READY, WILLING AND ABLE TO COMPETE FOR THE PROVISION OF ACUTE INPATIENT PSYCHIATRIC SERVICES IN THE STATE OF DELAWARE.

A. Prospective Acquirer's Name and Address.

PHC, Inc., d/b/a Pioneer Behavioral Health
200 Lake Street, Suite 102
Peabody, Massachusetts 01960
(978) 536-2777

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

PHC's corporate team is well-qualified and experienced in operating Acute Inpatient Psychiatric Services. Members of the PHC Executive team include:

- Bruce A. Shear, President and Chief Executive Officer. Mr. Shear has been President, Chief Executive Officer and a Director of the Company since 1980 and Treasurer of the Company from September 1993 until February 1996. From 1976 to 1980, he served as Vice President, Financial Affairs, of the Company. Mr. Shear has served on the Board of Governors of the Federation of American Health Systems for over fifteen years and is currently a member of the Board of Directors of the National Association of Psychiatric Health Systems. Mr. Shear received an M.B.A. from Suffolk University in 1980 and a B.S. in Accounting and Finance from Marquette University in 1976. Since November 2003, Mr. Shear has been a member of the Board of Directors of Vaso Active Pharmaceuticals, Inc., a company marketing and selling over-the-counter pharmaceutical products that incorporate Vaso's transdermal drug delivery technology.
- Robert H. Boswell, Senior Vice President. Mr. Boswell has served as the Senior Vice President of the Company since February 1999 and as Executive Vice President of the Company from 1992 to 1999. From 1989 until the spring of 1994, Mr. Boswell served as the Administrator of the Company's Highland Ridge Hospital facility where he is based. Mr. Boswell is principally involved with the Company's substance abuse facilities. From 1981 until 1989, he served as the Associate Administrator at the Prevention

Education Outpatient Treatment Program—the Cottage Program, International. Mr. Boswell graduated from Fresno State University in 1975 and from 1976 until 1978, he attended Rice University's doctoral program in philosophy. Mr. Boswell is a Board Member of the National Foundation for Responsible Gaming and the Chair for the National Center for Responsible Gaming.

- Paula C. Wurts, Chief Financial Officer and Clerk. Ms. Wurts has served as the Chief Financial Officer and Controller of the Company since 1989, and she served as Assistant Clerk from January 1996 until February 2006, when she became Clerk, and as Assistant Treasurer from 1993 until April 2000 when she became Treasurer. Ms. Wurts served as the Company's Accounting Manager from 1985 until 1989. Ms. Wurts received an Associate's degree in Accounting from the University of South Carolina in 1980, a B.S. in Accounting from Northeastern University in 1989 and passed the examination for Certified Public Accountants. She received a Master's Degree in Accounting from Western New England College in 1996.

(See PHC, Inc., Form 10-K, for the fiscal year ended June 30, 2010, filed September 24, 2010, at 69-70 (the "PHC Form 10-K"), attached hereto as Exhibit F.)

C. PHC Is in the Business of Operating Psychiatric Service Facilities.

PHC is a national healthcare company incorporated in 1976, which, through wholly owned subsidiaries, provides psychiatric services to individuals who have a variety of behavioral health disorders, including alcohol and drug dependency, and to individuals in the gaming and transportation industries. PHC is publicly traded on the American Stock Exchange under the symbol "PHC" and is headquartered in Massachusetts. As of March 25, 2011, PHC had more than 725 employees. As of June 30, 2010, PHC had annual revenue of approximately \$53 million, representing year-on-year growth of 14.36 percent.

PHC, through its subsidiaries, operates substance abuse treatment facilities in Utah and Virginia, five outpatient psychiatric locations in Michigan, three outpatient psychiatric facilities in Nevada, one outpatient psychiatric facility in Pennsylvania and

two psychiatric hospitals—one in Michigan and one in Nevada—as well as a residential treatment facility in Michigan. Currently, PHC has no facilities in the State of Delaware. PHC’s facilities have a patient population ranging from children as young as five years of age to senior citizens. PHC provides management, administrative and help-line services through contracts with major railroads and a call-center contract with Wayne County, Michigan. PHC also operates a website, <http://www.wellplace.com>, which provides education and training for behavioral health professionals and internet support services to all of PHC’s subsidiaries.

PHC’s services include behavioral health services in psychiatric treatment and the treatment of substance abuse. As such, PHC already has the capabilities to operate and manage Psychiatric Hospital Facilities providing services such as specialized treatment to patients who suffer from substance abuse as well as inpatient psychiatric care, intensive outpatient psychiatric treatment and partial hospitalization programs. PHC serves children, adolescents and adults; employees of major employers; clients of managed care companies and Medicare and Medicaid beneficiaries.

Further information about PHC is available (i) on the company’s website, <http://www.phc-inc.com>; (ii) in the PHC Form 10-K (attached hereto as Exhibit F); (iii) in PHC’s most recent Annual Report, filed October 27, 2010 (attached hereto as Exhibit G); (iv) in PHC’s Form 10-Q, for the three-month period ended December 31, 2010, filed February 14, 2011 (attached hereto as Exhibit H); and (v) in PHC’s Form 10-Q, for the three-month period ended September 30, 2010, filed November 10, 2010 (attached hereto as Exhibit I).

UHS does not have any current business relationship with PHC and is not aware of any previous sales or other transactions between it or any of its affiliates and PHC.

D. PHC Has the Financial Resources to Ensure that the Delaware Divestiture Assets Continue as a Viable Competitor in the State of Delaware.

PHC has entered into a Commitment Letter to provide financing for a new senior secured term loan of up to \$32.5 million which is intended, in part, to finance the acquisition of the Delaware Divestiture Assets. The Commitment Letter also includes a \$3.0 million senior secured revolving credit facility. The terms of the financing are set forth in the Commitment Letter attached hereto as Confidential Exhibit D.

E. PHC Has Developed a Comprehensive Business Plan to Compete for the Provision of Acute Inpatient Psychiatric Services in the State of Delaware.

PHC has spent considerable effort in connection with its decision to enter into the Delaware Divestiture Agreements, having made the determination that it sees an excellent business opportunity in the Delaware Divestiture Assets. PHC has developed a business plan setting forth how it plans to compete aggressively on a going-forward basis, consistent with the Commission's desire to ensure the continuation of the Delaware Divestiture Assets as an ongoing, viable Psychiatric Hospital Facility. (See Decision and Order ¶ II.D.) PHC has announced that it intends to retain the existing staff at MeadowWood Behavioral Health under PHC management. PHC further anticipates seeking approval for additional beds to expand the facility during the next twelve months. PHC will submit a business/marketing plan to the Commission staff under separate cover.

PHC has the requisite experience—administrative, management, financial and clinical—to compete aggressively on a going-forward basis after its purchase of the Delaware Divestiture Assets from UHS is complete and approved by the Commission.

Furthermore, PHC has the financial resources to ensure that the Delaware Divestiture Assets will be financially and competitively viable and that it will be able to provide its patients with Acute Inpatient Psychiatric Services well into the future.

III. THE DELAWARE DIVESTITURE ASSETS BEING DIVESTED ARE CONSISTENT WITH THE TERMS AND PURPOSES OF THE DECISION AND ORDER.

As required by the Decision and Order, to the extent allowable by law, the transaction has been structured to divest all of the Delaware Divestiture Assets to PHC. The transaction has been structured as an asset transaction, so that, upon closing, PHC will receive all transferable rights, title and interest to the Delaware Divestiture Assets. As a result, the Asset Purchase Agreement is consistent with the terms of the Decision and Order and the terms of the Asset Purchase Agreement—and related Transition Services Agreement—provide PHC with the technical and physical capabilities necessary to allow PHC to be a viable competitor in the State of Delaware and to ensure the continuation of the Delaware Divestiture Assets as an ongoing, viable Psychiatric Hospital Facility.

A. Transfer of the Delaware Divestiture Assets.

As required by the Decision and Order, the transaction will transfer the Delaware Divestiture Assets, absolutely and in good faith, as an on-going business, to PHC as a financially and competitively viable Psychiatric Hospital Facility operating as an ongoing business providing Acute Inpatient Psychiatric Services. To the extent permitted by law, and subject to certain exceptions, the transfer will include, but not be limited to, (i) real property interests; (ii) tangible personal property; (iii) contracts and agreements; (iv) intellectual property; (v) intangible rights other than intellectual property; (vi) approvals, consents, licenses, certificates, registrations, permits, waivers or

other authorizations by any governmental body or pursuant to any legal requirement and all pending applications or renewals thereof; (vi) inventories, stores and supplies; (vii) accounts receivables; (viii) rights under warranties and guaranties; and (ix) books, records, files, and other business records. To the extent permitted by law, UHS also will cooperate as necessary to ensure that PHC obtains all governmental approvals needed to operate the Delaware Divestiture Assets.

The Excluded Assets (as defined in the Asset Purchase Agreement), will not be transferred to PHC. Such Excluded Assets include, but are not limited to, (i) cash; (ii) certain rights, claims and credits of UHS and its subsidiaries (such as insurance policies and certain guarantees, warranties, and indemnities); (iii) certain trademarks and names; (iv) rights of UHS under the Asset Purchase Agreement; (v) financial and tax records that constitute part of UHS's or one of its subsidiaries' general ledger; (vi) credits and related rights and claims from any taxing authority with respect to certain taxes; (vii) certain rights, claims and credits relating to third party payor reimbursements; and (viii) certain properties and assets used in or relating to the operation or conduct of a business other than MeadowWood Behavioral Health that are not primarily used in or do not primarily relate to MeadowWood Behavioral Health. UHS will also retain a copy of all business records to be transferred to UHS to the extent necessary to comply with applicable laws, regulations and other legal requirements.

B. Securing Third Party Consents and Waivers.

UHS and PHC have agreed to use their reasonable best efforts to secure all material consents and waivers from all third parties necessary to permit the transfer of the Delaware Divestiture Assets (to the extent permitted by law), including such consents and waivers to grant licenses to PHC. In the event PHC is unable to obtain any permit

necessary to operate the Delaware Divestiture Assets prior to the Closing Date, UHS has agreed to provide such lawful assistance to PHC as PHC may reasonably request in connection with its efforts to obtain comparable authorization.

C. PHC's Opportunity to Hire Relevant Employees Currently Working at MeadowWood Behavioral Health.

As required by the Decision and Order, UHS has made the Relevant Employees who are currently staffing MeadowWood Behavioral Health available to PHC for hire. PHC has agreed to extend an offer of employment before the Closing Date to all employees of UHS whose duties relate primarily to the Divestiture Business. UHS will allow PHC to interview and inspect the personnel records of any Relevant Employee to the extent permissible under applicable laws. UHS will not (1) interfere, directly or indirectly, with the hiring or employment by PHC of any of these individuals, (2) offer any incentives to any of these individuals to decline employment with PHC, or (3) otherwise interfere with the recruitment of these individuals by PHC. UHS will also provide all such individuals with reasonable financial incentives to continue in their positions until the Closing Date of the divestiture and to the extent necessary, remove any impediments within UHS's control that may deter Relevant Employees from accepting employment with PHC.

D. Transition Services to Be Provided to PHC.

The parties have prepared a Transition Services Agreement (the "TSA"), to be dated and entered into on the Closing Date, a draft of the agreed-upon form is attached hereto as Confidential Exhibit E. Upon execution of the TSA, UHS will provide, at PHC's option, administrative assistance, clinical assistance and support services with respect to the operation of MeadowWood Behavioral Health and the provision of Acute

Inpatient Psychiatric Services, including assistance relating to billing, accounting, governmental regulation, human resources management, information systems, managed care contracting and purchasing, as well as assistance with respect to acquiring, obtaining access and customizing all software used in the provision of such services. UHS shall perform such services, to the extent necessary, at substantially the same level and quality as such services were provided by UHS to MeadowWood Behavioral Health prior to the Closing Date. The fee payable by PHC for services provided under the TSA will be equal to the cost directly incurred by UHS to provide such services.

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

The proposed divestiture will ensure the continuation of the Delaware Divestiture Assets as an ongoing, viable Psychiatric Hospital Facility by giving control of the Divestiture Business to PHC, an established national healthcare company experienced in the operation of Psychiatric Hospital Facilities and the provision of Acute Inpatient Psychiatric Services. In addition, UHS believes that the TSA provides any transitional support necessary to ensure that MeadowWood Behavioral Health continues to remain a viable competitor for the provision of Acute Inpatient Psychiatric Services in the State of Delaware. The TSA was purposefully designed to enable PHC to request essentially any transition assistance that PHC may need. In addition, PHC's considerable existing behavioral health service capabilities provide the Commission additional assurances that PHC is well-poised to be a viable competitor for the provision of Acute Inpatient Psychiatric Services in the State of Delaware. As set forth more fully above in Section II, PHC is an established national healthcare company already providing behavioral health services in five other states. With its strong national presence, PHC is an ideal candidate

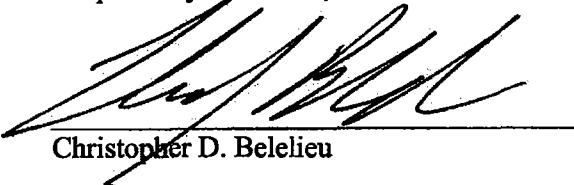
to acquire the Delaware Divestiture Assets in light of the purposes of the Decision and Order. The Delaware Divestiture Assets will strengthen PHC's competitive position nationally and provide a solid foothold to create a strong new competitor for the operation of Psychiatric Hospital Facilities and the provision of Acute Inpatient Psychiatric Services in the State of Delaware.

CONCLUSION

Because the proposed divestiture of the Delaware Divestiture Assets to PHC is pro-competitive, in the public interest and addresses the competitive concerns raised in the Decision and Order as they relate to the Delaware Divestiture Assets, and for the additional reasons set forth above, UHS respectfully requests that the Commission approve the divestiture of the Delaware Divestiture Assets to PHC as detailed in the Delaware Divestiture Agreements.

Dated: April 1, 2011

Respectfully submitted,



Christopher D. Belelieu

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