



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE CITY OF CAMBRIDGE
RETIREMENT SYSTEM,

Plaintiff,

v.

UNIVERSAL HEALTH SERVICES,
INC.,

Defendant.

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) C.A. No. _____
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**VERIFIED COMPLAINT PURSUANT TO 8 *DEL. C.* § 220
TO COMPEL INSPECTION OF BOOKS AND RECORDS**

Plaintiff The City of Cambridge Retirement System (“Plaintiff”), as and for its Complaint, herein alleges, upon knowledge as to itself and its own actions, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. It is deplorable for a Delaware incorporated health services company to systematically: (i) solicit individuals into conducting a free mental health examination; (ii) fraudulently declare them suicidal; (iii) keep them committed in the company’s hospital facilities against their will, purportedly “for their own safety”; and (iv) detain them until the moment their insurance company ceases covering the expense of their involuntary commitment.

2. A corporate board of directors that knows about, approves, and perpetuates this fraudulent business model, even when government regulators make serious and specific accusations about the company's business practices, is violating its fiduciary duties.

3. According to its most recent Form 10-K, filed on February 28, 2017, Universal Health Services, Inc. ("Universal Health" or the "Company") has disclosed that it is the subject of numerous government investigations, including "the investigation conducted by the [U.S. Department of Justice] Criminal Frauds Section" that was expanded in 2015 "to include UHS as a corporate entity arising out of the coordinated investigation of" numerous UHS facilities.

4. This books and records petition, pursuant to 8 *Del. C.* § 220 ("Section 220"), seeks to determine whether the board of directors of Universal Health (the "Board") has violated its duties by approving and/or endorsing the above deplorable and illegal business model. Plaintiff also seeks to investigate the independence and disinterest of the Board in determining whether pre-suit demand is necessary or would be excused prior to commencing derivative litigation on behalf of the Company.

5. As explained in Plaintiff's Section 220 demand dated March 9, 2017 – attached as Exhibit 1 hereto (the "Demand") and fully incorporated by reference herein – there is far more than a credible basis to infer that the Board and certain

senior executives actively approved of an illegal business plan, violated its duty to implement a reasonable set of internal legal compliance controls, and failed to monitor the activities of the Company and its subsidiaries to ensure compliance with applicable laws and regulations.

6. Universal Health first responded to Plaintiff on March 17, 2017 (“March 17 Letter”), attached as Exhibit 2, stating that the Company’s lawyers “are in the process of reviewing the Demand and we will make a more detailed response as soon as we have completed that review.” Rather than commenting on the draft confidentiality stipulation that Plaintiff attached with the Demand, the March 17 Letter enclosed an alternative draft confidentiality agreement for Plaintiff to execute in the event that the Company agreed to provide documents for inspection.

7. Universal Health’s first substantive response was sent to Plaintiff on April 3, 2017 (“April 3 Letter”), attached hereto as Exhibit 3. In the April 3 Letter, the Company claimed that Plaintiff had not established a credible basis to suspect wrongdoing or any other proper purpose for the demanded inspection. The April 3 Letter also claimed that the Demand lacked “rifled precision” and that Plaintiff’s document demands were too broad.

8. Universal Health offered to make *a select subset* of the requested documents available to Plaintiff on the condition that Plaintiff agree to a confidentiality agreement the Company had provided with the April 3 Letter.

9. The Company's proposed "confidentiality" agreement – rather than simply mandating that documents be kept confidential – included an incorporation by reference provision (an "Incorporation Provision") requiring Plaintiff incorporate all documents produced in response to the Demand into any subsequent derivative complaint. The Incorporation Provision is not required by Delaware law, especially when the Company artificially curtails the scope of production to a select universe of documents it unilaterally deems responsive to the Demand.

10. Plaintiff informed Universal Health that it would not agree to the incorporation by reference provision contained in Universal Health's proposed confidentiality agreement. Universal Health refused to remove the provision from the agreement, and refused to produce any documents to Plaintiff unless Plaintiff executed the confidentiality agreement with that provision.

11. Plaintiff is entitled to enforce its Section 220 rights, without unreasonable restrictions found nowhere in the statute and that operate unfairly to allow Defendants to "cherry-pick" and produce a select universe of documents favorable to the Company's defense, incorporate all such documents into any

subsequent derivative complaint, and successfully transform a motion on the pleadings into a one-sided summary judgment motion without the benefit of full discovery. Such gamesmanship is antithetical to the clear language of 8 *Del. C.* § 220 as well as basic concepts of fairness and equity.

12. In short, the Company's position threatens to frustrate the Court's search for substantive truth. For these reasons, Universal Health should be directed immediately to produce copies of all books and records sought by Plaintiff in the Section 220 Demand.

PARTIES

13. Plaintiff The City of Cambridge Retirement System owns shares of Universal Health, and has owned Universal Health shares continuously at all relevant times alleged herein.

14. Defendant Universal Health Services, Inc. is a Delaware corporation, with its principal offices located in King of Prussia, Pennsylvania. Universal Health's shares trade on the New York Stock Exchange under ticker symbol "UHS." The Company's disclosures describe Universal Health as "owning and operating, through our subsidiaries, acute care hospitals and outpatient facilities and behavioral health care facilities." The Company owns and/or operates 319 inpatient facilities and 33 outpatient and other facilities located in 37 states, Washington, D.C., the United Kingdom, Puerto Rico and the U.S. Virgin Islands.

Universal Health has a market capitalization of approximately \$11.4 billion. Universal Health reported net income of \$702.4 million for 2016, compared to \$680.5 million in 2015.

FACTUAL BACKGROUND

15. Plaintiff has a reasonable basis to believe that Universal Health's Board may have breached its fiduciary duties by allowing misconduct in violation of criminal and civil laws and regulatory requirements due to the Board's inadequate controls and lack of oversight. The misconduct alleged in the Demand details an elaborate scheme by Universal Health to illegally commit patients under the pretext that they are suicidal, in pursuit of manipulated insurance company payments, including through:

- a) Devising a scheme to lure unsuspecting patients into behavioral health facilities using advertisements for free wellness examinations;
- b) Manipulating the free wellness examination process in order to trick patients into implying they harbored suicidal thoughts;
- c) Admitting patients into the Company's inpatient care facilities without any objective procedures in place to determine whether admission was in the best interests of the patient (or medically necessary), and solely to bill the patient's insurance plan for unnecessary treatment; and

d) Keeping patients admitted until their insurance benefits ran out to ensure the maximum payment for its services, even if there were no legitimate mental health considerations warranting a continued stay for the patient.

16. Moreover, there are long-running and ever expanding government investigations – including by Office of Inspector General for the United States Department of Health and Human Services (“OIG”) and the United States Department of Justice – of UHS and numerous of its facilities, including for violations of the False Claims Act and improper billing.

17. As discussed in the Demand, each of these instances and areas of misconduct independently provides a credible basis to infer possible mismanagement and breaches of fiduciary duty.

A. PLAINTIFF’S MARCH 9, 2017 DEMAND

18. On March 9, 2017, Plaintiff’s counsel delivered to Universal Health’s registered agent in Delaware the narrowly tailored Section 220 Demand. The Demand seeks the inspection of Universal Health’s books and records relating to the Company’s elaborate scheme to defraud patients in pursuit of profits as referenced above, and failure of the Board to ensure that the Company had oversight mechanisms sufficient to alert the Board to such illegal behavior. The Demand specifically cited and incorporated a report published by *BuzzFeed*

detailing the misconduct (the “Report”). A copy of the proof-of-delivery of the Demand is attached as Exhibit 4 hereto.

19. The Demand was accompanied by an affidavit and documents evidencing Plaintiff’s beneficial ownership of Universal Health stock and a Power of Attorney signed under oath by Plaintiff, appointing Bernstein Litowitz Berger & Grossmann LLP, and any person designated by them to act as true and lawful attorney-in-fact for Plaintiff, as Plaintiff’s agents and attorneys-in-fact to act on Plaintiff’s behalf to make the demand pursuant to Section 220. *See* Exhibit 1.

20. In the Demand, Plaintiff requested that the Company produce or allow the inspection of the following documents:

1. All Board Material¹ and Senior Management Material² constituting or concerning:

¹ The term “Board Material” used herein means all documents provided, considered, discussed, prepared, or disseminated, in draft or final form, at, in connection with, in anticipation of, or as a result of any meeting of the Board or any regular or specially created committee thereof, including, without limitation, all presentations, Board packages, recordings, agendas, summaries, memoranda, charts, portals, transcripts, notes, minutes of meetings, drafts of minutes of meetings, exhibits distributed at meetings, or resolutions.

² The term “Senior Management Material” as used herein means all documents – regardless of whether they were ever provided to the Board or any committee thereof – discussed by, created by, reviewed by, provided to, and/or sent by any Company officer or lower-level manager employed by the Company concerning the subjects articulated in the Demand: (i) to investigate potential mismanagement and wrongdoing in connection with the events, circumstances, and transactions described in the Demand; and (ii) to investigate the ensuing response (including investigation, if any) to the events, circumstances and transactions described in the

- i. The compliance of Universal Health with any regulations or laws relating to billings submitted to government payers, including the U.S. False Claims Act (the “FCA”);
- ii. Any violation or potential violation of the FCA by Universal Health or any of the directors, officers, employees or agents of Universal Health;
- iii. Internal controls, procedures, policies, handbooks, instruction manuals, white papers, policy statements, or other guides provided to employees or representatives (including any materials reflecting any assessment by the Board of the effectiveness of its controls, procedures, and policies regarding the same, or any inquiry into instances of noncompliance with those controls, procedures, and policies) relating to the Company’s with laws. Any internal investigation conducted by or on behalf of Universal Health into whether its admissions and billing practices were in compliance with the FCA;
- iv. Any approval or review of budgets for the Company’s behavioral health facilities;
- v. Any review or approval of employee compensation plans, including the metrics used to determine benchmarks for employee bonuses;
- vi. Any review or tracking of diagnosis codes used for patients at the Company’s behavioral health facilities, including but not limited to suicide ideation; and
- vii. Any investigation, regulatory proceeding, or litigation by any federal, state or local governmental or regulatory body relating to any of the matters discussed in the section on the grounds supporting the Demand, set forth above.

Demand. *See Wal-Mart Stores v. Indiana Elec. Workers Pension Trust Client IBEW*, 95 A.3d 1264, 1279-1283 (Del. 2014).

2. All communications between or among the Board or senior management in connection with any of the items enumerated above in Request 1.
3. Complete versions of each document, report, e-mail, memorandum or other communication referenced in the section on the grounds supporting the Demand, set forth within the Demand (including, without limitation, in the Report, as defined in the Demand).
4. Documents sufficient to demonstrate how each of the directors serving on the Board was nominated for appointment and/or election to the Board or to any committee of the Board, and all documents considered by the Board in connection with such appointment or nomination.
5. Documents sufficient to show how the Company and/or the Board screened the directors serving on the Board to ensure they have no conflicts of interest or personal ties to any person or entity that may prevent them from acting in the best interest of Universal Health's stockholders.
6. Documents reflecting any and all personal, familial, financial or business relationships, other than their service as directors of Universal Health or its subsidiaries, between or among any members of the Board.
7. Documents sufficient to show the fees paid to each member of the Board by Universal Health within the past three years.
8. Documents sufficient to show any transaction within the past three years between Universal Health and (a) any entity that employed a member of the Board at the time of the transaction, or (b) any entity in which a Board member beneficially owned an equity interest of 5% or more at the time of the transaction.
9. Documents sufficient to show the personal net worth and annual compensation from any source of each member of the Board.

10. Any documents provided to any other investor in response to a demand made pursuant to Section 220.

B. UNIVERSAL HEALTH REFUSES PLAINTIFF'S DEMAND

21. On March 17, 2017 – more than 5 business days after Plaintiff's Demand was delivered to Universal Health – Plaintiff received Universal Health's first reply to the Demand. A copy of Universal Health's reply is attached as Exhibit 2 hereto.

22. On April 3, 2017, Universal Health sent a second response to the Demand by the April 3 Letter. The April 3 Letter contends that Plaintiff did not establish a credible basis to suspect wrongdoing or any other proper purpose for the Demand. The April 3 Letter also claims that the categories of documents Plaintiff sought lacked "rifled precision" and were overly broad. A copy of the April 3 Letter is attached as Exhibit 3 hereto.

23. Without waiving its stated objections, Universal Health offered to produce an undefined *select subset* of the documents Plaintiff sought, provided that Plaintiff execute the proposed confidentiality agreement that the Company had sent with the March 17 Letter. That confidentiality agreement contained the following provision, which is not required by statute and inherently undermines the basic norms of discovery and fundamental fairness given the Defendants' insistence on producing only a select subset of documents (the "Incorporation Provision):

[T]he Stockholder agrees that the complaint in any derivative lawsuit that it files relating to, involving or in connection with the Inspection Demand or any Confidential Inspection Material, shall be deemed to incorporate by reference the entirety of the books and records of which inspection is permitted.

24. Plaintiff made clear to Universal Health that it would not agree to the Incorporation Provision through email communications and on an April 18, 2017 telephone call.

25. Universal Health refuses to allow Plaintiff to inspect any of the demanded documents unless Plaintiff agrees to the Incorporation Provision.

26. Conditioning the production of documents on a stockholder's acceptance of an Incorporation Provision is improper under Section 220, and inconsistent with basic notions of judicial fairness.

a) First, nothing in Section 220 requires a stockholder to agree to an Incorporation Provision as a prerequisite to exercising its statutory inspection rights.

b) Second, an Incorporation Provision is not part of the standard form confidentiality order recommended by the Court of Chancery. *See Sample One-Tier Confidentiality Stipulation, Guidelines on Best Practices for Litigating Cases Before the Court of Chancery, available at http://courts.delaware.gov/chancery/docs/Sample_Confidentiality_Stipulation.pdf* (last visited Apr. 25, 2017).

c) Third, a routine imposition of an Incorporation Provision is inappropriate given the limited scope of a Section 220 demand. An inspection of corporate records under Section 220 is not the same as full discovery. “It does not open the door to the wide ranging discovery that would be available in support of litigation.” *Saito v. McKesson HBOC, Inc.*, 806 A.2d 113, 114 (Del. 2002). If an Incorporation Provision is deemed an automatic requirement for any Section 220 production, this essentially would allow a corporation to frame the stockholder’s pleading by cherry-picking the documents it produces and then claiming that its opportunistically framed world of evidence must be considered in connection with a motion to dismiss, whether or not such documents are cited or quoted in the complaint. Unless the 220 process is expanded to allow full discovery, an Incorporation Provision should not be deemed a default requirement in every case.

d) Fourth, accepting an Incorporation Provision, for all practical purposes, improperly alters the pleading standards applicable to any derivative claim that may result from the stockholder’s 220 investigation. Specifically, in pleading a Complaint under Rules 12(b)(6) and 23.1, a stockholder is entitled to frame its case against a defendant and is entitled to all reasonable inferences that may be drawn from the pleaded facts. *See Desimone v. Barrows*, 924 A.2d 908, 928 (Del. Ch. June 7, 2007) (“The Rule 12(b)(6) standard, like the Rule 23.1 standard, requires me to accept all well-pled allegations of fact as true and draw all

reasonable inferences in [plaintiff's] favor.”). Under Delaware law, a plaintiff is entitled to all reasonable inferences that may be drawn from the facts alleged in the complaint. If a corporate defendant believes that an alleged fact or inference supported by a document produced in response to a Section 220 demand is somehow contradicted by another document produced in response to that Demand, or otherwise is in the possession of the Company but *not* produced, this would simply give rise to either competing inferences or a factual dispute that should not be resolved against a plaintiff in the context of a motion to dismiss in any event.

e) Finally, speculation that a stockholder would cite a document “out of context” is an invalid justification for a corporation’s refusal to comply with its obligations under Section 220 unless the stockholder agrees to an Incorporation Provision. If a defendant board believes the stockholder is being disingenuous or making statements that are false and inconsistent with the evidence, the board has appropriate remedies, including under Rule 11. There is, simply, no reason to allow a corporation to refuse to comply with its obligation to produce documents in response to a valid inspection demand under Section 220 simply because the demanding stockholder will not, as a precondition to receiving a limited set of documents identified by the corporation, agree to include an Incorporation Provision in a confidentiality agreement.

27. Universal Health has improperly refused Plaintiff’s Demand.

C. PLAINTIFF’S DEMAND SETS FORTH PROPER PURPOSES FOR THE REQUESTED INSPECTION

28. The matters described in the Demand provide a credible basis from which mismanagement and breaches of fiduciary duty at Universal Health can be inferred.

29. Investigations of mismanagement and potential breaches of fiduciary duties, of possible *Caremark* violations and related wrongdoing, and of the independence and disinterest of Universal Health’s board of directors, are entirely proper purposes for Section 220 demands, and this Court encourages the use of such demands by concerned stockholders.

30. As such, Plaintiff has met the required burden and the Court should find that Plaintiff is entitled to inspect the books and records of Universal Health as set forth in the Demand.

D. THE DEMAND SEEKS APPROPRIATE BOOKS AND RECORDS IN FURTHERANCE OF PLAINTIFF’S PROPER PURPOSES

31. Each of the requests set forth in Plaintiff’s Demand is properly tailored to an investigation of the books and records of Universal Health for Plaintiff’s stated purposes.

32. Universal Health has failed to fulfill its obligation to permit Plaintiff to inspect the books and records identified in the Demand. As a result, the Court

should enter an Order compelling Universal Health's compliance with its statutory obligations to Plaintiff.

COUNT I
(Demand for Inspection Pursuant to 8 Del. C. § 220)

33. Plaintiff repeats and re-alleges all of the preceding allegations as if fully set forth herein.

34. On March 9, 2017, Plaintiff made written demand upon Universal Health for the inspection of the books and records set forth in the Demand.

35. Plaintiff has fully complied with all requirements under Section 220 of the Delaware General Corporation Law respecting the form and manner of making a demand for inspection of the books and records set forth in the Demand.

36. Plaintiff's demand for inspection is made for proper purposes. The documents identified in the Demand are essential to those proper purposes.

37. The Company has failed to permit the inspection sought by Plaintiff in the Demand.

38. Universal Health's reply to the Demand constitutes a refusal of the Demand on proper purpose and scope grounds, and with regard to the form of the confidentiality agreement.

39. By reason of the foregoing and pursuant to 8 *Del. C.* § 220, Plaintiff is entitled to an Order permitting Plaintiff to inspect and make copies of the books and records set forth in the Demand.

40. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays for the following relief:

A. An Order requiring Universal Health to permit the inspection and copying of each and every book and record requested by Plaintiff's Demand immediately;

B. An Order directing Universal Health to pay reasonable attorneys' fees and expenses in connection with Plaintiff's Demand and any related litigation; and

C. Such other relief as this Court deems just and appropriate.

DATED: April 26, 2017

GRANT & EISENHOFER P.A.

/s/ Irene R. Lax

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