

Squire Patton Boggs (US) LLP  
2550 M Street, NW  
Washington, DC 20037

O +1 202 457 6000  
F +1 202 457 6315  
squirepattonboggs.com

Jeffrey L. Turner  
T +1 202 457 6434  
jeff.turner@squirepb.com

## **BUSINESS CONFIDENTIAL AND PROPRIETARY INFORMATION**

Via regular mail and email

October 8, 2018

Representative Greg Walden  
Chairman  
House Energy and Commerce Committee  
Washington, DC 20515

Representative Frank Pallone, Jr.  
Ranking Member  
House Energy and Commerce Committee  
Washington, DC 20515

Representative Gregg Harper  
Chairman  
Subcommittee on Oversight and Investigations  
House Energy and Commerce Committee  
Washington, DC 20515

Representative Diana DeGette  
Ranking Member  
Subcommittee on Oversight and  
Investigations  
House Energy and Commerce Committee  
Washington, DC 20515

Representative Michael C. Burgess, M.D.  
Chairman  
Subcommittee on Health  
House Energy and Commerce Committee  
Washington, DC 20515

Representative Gene Green  
Ranking Member  
Subcommittee on Health  
House Energy and Commerce Committee  
Washington, DC 20515

Dear Chairman Walden, Ranking Member Pallone, Chairman Harper, Ranking Member DeGette, Chairman Burgess, and Ranking Member Green:

Please find attached our response to the additional questions for the hearing record sent to Mr. Robert Niznik by Chairman Harper on September 26, 2018.

### **Responses to Additional Questions for the Hearing Record**

#### **The Honorable Gregg Harper**

1. According to information provided to the Committee, Niznik Behavioral Health stated that it receives 14,000 calls a month. How many of those calls result in an admission to one of your facilities?

**BUSINESS CONFIDENTIAL AND PROPRIETARY INFORMATION**

Please see Appendix A to our letter of July 9, 2018, a copy of which is attached.

- a. How are the majority of calls that your company receives generated (a specific website, an advertisement, etc.)?

The majority of the calls that our company receives are generated through on-line advertising.

2. Are call center employees sales representatives or do they have any clinical background?

The customer service representatives are not sales representatives. They take basic personal, prior treatment and insurance information. If the caller is qualified and interested in our program, the center personnel then provide a list of NBH facilities from which the caller may choose. The customer service representatives do not have and do not require a clinical background. The work of an NBH customer service representative is akin to a receptionist in a doctor's office--a person who answers a call, provides information regarding the services the doctor offers, and then schedules an appointment for the doctor if the patient requests help.

- a. Do they disclose that status to callers?

When one of our customer service representatives receives a phone call, the individual answering the call immediately identifies himself or herself as an NBH employee--that way all callers know at all times that they are speaking directly with NBH. Based on the manner in which the customer service center is operated, as noted above, we do not believe that any disclosure of status is required.

3. The decision to seek treatment for yourself or a loved one is a big decision, and one that many individuals make without a good understanding of the treatment options that are available or that would best meet their needs. It's a big responsibility for whomever is on the other end of the line. How are those employees trained?

The customer service center employees are trained on the operations of the customer service center and on what facilities we operate. They are not trained and do not provide information on treatment options, as this question appears to contemplate. Those options are explained by medically trained personnel at whatever facility the caller elects to visit.

- a. Do those answering calls perform any sort of assessment of a caller's medical or treatment needs over the phone to ensure the caller can be properly treated at a Niznik facility?

**BUSINESS CONFIDENTIAL AND PROPRIETARY INFORMATION**

As noted above, no medical or clinical assessment is conducted by personnel at the customer service center. This is done at the facility.

- b. Do they have any formal education, certifications, or accreditation to be doing a clinical assessment and recommending or referring individuals to a treatment facility that is right for that patient?

They do not perform clinical assessments nor do they make any recommendation as to a suitable facility.

- c. If the employees that are answering these calls have no medical training, and in some cases no formal educational training at all, do you believe that they are qualified to be making recommendations to individuals seeking clinical treatment?

Our customer service center employees do not make such recommendations. They are qualified to perform the services they provide, as described above.

4. If a caller agrees to enroll at a Niznik facility, does the caller speak with anyone with medical or treatment expertise before his or her arrival at a Niznik facility?

No. Upon arrival at the facility the caller selects, a full medical assessment is conducted by trained medical and clinical personnel.

5. Do Niznik staff conduct a medical assessment of patients once they arrive at a facility?

Yes.

- a. Under what circumstances would a Niznik facility turn someone away or take them to another hospital or facility?

If it is determined by the medical and clinical staff that the patient requires a higher level of care or requires medical care which we do not provide, for example, psychiatric care or maternity-related services, they will be transferred, with their concurrence, to a hospital or other facility where the required care is available.

**BUSINESS CONFIDENTIAL AND PROPRIETARY INFORMATION**

- b. How frequently do Niznik facilities decline to enroll patients because they have medical or psychiatric conditions that the facility is not able provide adequate care for?

We do not track these statistics. However, if tracked the number would likely represent a small, single-digit percentage of total admissions.

6. Based on information you provided to the Committee, when Niznik Behavioral Health call center employees determine that one of your facilities doesn't meet the needs of the individual calling and/or the individual does not wish to go to one of your facilities, your call center employees will occasionally give them the information of another facility. How many non-Niznik Behavioral Health facilities do you call center employees refer individuals to and how often does this happen?

Customer service center employees do not make a determination as to whether NBH facilities meet the needs of the caller. The caller makes that determination in the manner described above.

- a. How is it determined what facilities your call center employees will make referrals to?

If the customer service employee is aware of a facility in the caller's desired area, the employee may refer the caller to such a facility. NBH does not keep a formal list of facilities for referral, but has an informal list based on knowledge that NBH has acquired through contacts at meetings and other means, from which it makes possible referrals.

- b. Does Niznik Behavioral Health do any vetting of these facilities prior to providing this information to individuals?

NBH does not engage in formal vetting of these facilities.

7. Do the television commercials that Niznik Behavioral Health runs contain disclosures that the phone number advertised as the hotline in the commercial is answered by Niznik Behavioral Health?

Yes. NBH runs commercials that are branded as NBH. It is clear to the viewer that the commercial is being run by NBH.

- a. If so, please provide the language of that disclosure.

N/A. See above.

**BUSINESS CONFIDENTIAL AND PROPRIETARY INFORMATION**

- b. When someone calls that hotline, is it disclosed to the individual that the phone is being answered by Niznik Behavioral Health?

Yes. Immediately.

8. Mr. Niznik testified that none of Niznik Behavioral Health's facilities or subsidiaries have ever paid for or sold leads. The website Rehab.com lists Niznik Behavioral Health as a paid sponsor of the 1-800 hotline listed on the website. Please clarify whether it has ever paid Rehab.com in order to receive calls from the hotline?

NBH pays a flat fee to have the NBH name listed on the website. It is paying for advertising on the site. If it receives no calls, the advertising cost is covered by the flat fee. NBH does not pay for leads. NBH does not sell leads.

9. Is there anything else that you'd like to add, clarify, or correct for the record?

No.

**The Honorable Gus Bilirakis**

1. What entity is responsible for auditing your facilities? Since opening your doors, how many times have you been audited, and is your experience unique or common in the industry?

On a state level, the entities responsible for auditing NBH facilities are the state licensing body, the state Department of Health, and the local fire department

At the national level, the entities are the Joint Commission and the Drug Enforcement Agency.

Audits/inspections occur annually, and randomly throughout the year as well, as the auditing agency decides. Our experience is common in the industry.

**BUSINESS CONFIDENTIAL AND PROPRIETARY INFORMATION**

\*\*\*

We have marked this document as containing “Business Confidential and Proprietary Information.” Given the nature of competition in this industry, disclosure of confidential and propriety business information in this document to competitors could create substantial harm. Consistent with the Rules of the House and of the Committee, we therefore ask that you not make this document available to the public. If the Committee needs a version of this letter that does not include any business confidential and proprietary information, we will be glad to provide one.

Thank you again for the opportunity to provide this response to the questions posed in Chairman Harper’s letter.

Sincerely yours,

/s/

Jeffrey L. Turner  
Partner

cc: Mitchell R. Berger  
Katie Novaria