



DAVID CHIU
City Attorney

ALEXANDER J. HOLTZMAN
Deputy City Attorney

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January 9, 2024

VIA FIRST CLASS MAIL AND EMAIL

John Potter
Quinn Emanuel Urquhart & Sullivan LLP
50 California St., 22nd Floor
San Francisco, California 94111
johnpotter@quinnemanuel.com

Re: Investigation of U.S. News & World Report Hospital Ranking Advertising
Representations and Hospital Payments

Dear Mr. Potter:

I write in response to your July 14, 2023 letter sent on behalf of U.S. News & World Report (“USNWR”). We are disappointed that USNWR has failed to meaningfully address the San Francisco City Attorney’s Office’s reasonable concerns about its hospital rankings and has refused to commit to providing transparency regarding its financial relationships with ranked hospitals.

Rather than engage with our Office, USNWR fails to provide *any* information responsive to the reasonable concerns raised in the City Attorney’s letter. Similarly, USNWR has failed to provide any of the requested information about the hospitals that have paid USNWR, and appears unwilling to disclose information about these payments as required by the Federal Trade Commission Act as interpreted by the Federal Trade Commission’s regulations.

Instead, USNWR points to third party sources in an attempt to show that its advertising practices are lawful. Yet, the few articles referenced in your letter do not support USNWR’s advertising claims about the reliability of its hospital rankings products, but rather underscore the City Attorney’s initial questions. For example, you cite a two-page article from the *Journal of General Internal Medicine* that, far from substantiating USNWR’s statements, raises significant concerns about USNWR’s hospital rankings.¹ The article notes that the mortality data used by USNWR “have been shown to be lacking in predicting the quality of care” and that “at one large hospital, for deaths included in the 2019 USNWR rankings attributed to nephrology, nephrology was involved in the care of only 40% of cases (based on internal institution data).”² The article also emphasizes the need for adequate risk adjustments, because “[i]nstitutions with a high percentage of inpatients with end-stage diseases may have lower specialty rankings. As a result,

¹ Mendu, M., Kechalia, A., and Eappen, S., *Revisiting US News & World Report’s Hospital Rankings—Moving Beyond Mortality to Metrics that Improve Care*, *J. Gen. Intern. Med.* 36(1):209-10, DOI: 10.1007/s11606-020-06002-x.

² *Id.* at p. 209.

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patients may be incorrectly discouraged by the lower ranking of a specialty group that takes care of a significant number of end-stage disease patients.”³

A second article, from the New England Journal of Medicine, criticizes the use of Medicare fee-for-service data that “often lack adequate granularity to produce valid risk adjustment” and the lack of transparency and perverse incentives created by hospital rankings systems receiving payments from ranked hospitals.⁴

Finally, you cite an article in USA Today crediting USNWR’s development of a health equity analysis. But, as the article points out, health equity does not factor into USNWR’s rankings, and “the representation of nonwhite patients” at the top three ranked hospitals “were all ‘lower than the community.’”⁵

The concerns highlighted in the above articles, as well as other questions grounded in the medical literature, were raised in the City Attorney’s request for information about USNWR’s methodology and payments received from hospitals. You contend that these requests were improper because USNWR’s characterization of its rankings products is noncommercial speech or nonactionable opinion, and that our Office is engaged in viewpoint discrimination. But USNWR’s statements about the authoritativeness and reliability of its rankings affect sales of USNWR’s products and induce hospitals to pay USNWR to license Best Hospitals badges, advertise, and subscribe to granular data. These statements constitute actionable commercial speech, and our Office is authorized to inquire into USNWR’s support for these claims.

In a further effort to obtain the necessary information to determine the scope of USNWR’s violations of federal and California consumer protection laws, please find attached two subpoenas issued pursuant to the Office’s authority under California Business & Professions Code section 16759(b). Please provide the responsive documents and information within 15 calendar days of service of these subpoenas to Deputy City Attorney Karun Tilak and me at Office of the City Attorney, 1390 Market Street, 7th Floor, San Francisco, CA 94102 (alexander.holtzman@sfcityatty.org; karun.tilak@sfcityatty.org). Should you have any questions, please contact Mr. Tilak and me by email or at 415-554-3800.

³ *Ibid.*

⁴ Bilimoria, K. et al., *Rating the Raters: An Evaluation of Publicly Reported Hospital Quality Rating Systems*, NEJM Catalyst at pp. 9, 11 (Aug. 14, 2019), <https://catalyst.nejm.org/evaluation-hospital-quality-rating-systems>

⁵ Adrianna Rodriguez, *US hospitals struggle to reduce health disparities; Minority patients underrepresented in 4 of 5 hospitals*, USA Today (Jul. 27, 2021), <https://www.usatoday.com/story/news/health/2021/07/27/us-news-best-hospital-ranking-includes-first-health-equity-analysis/8090005002/>.

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Very truly yours,

DAVID CHIU
City Attorney

A handwritten signature in blue ink that reads "Alexander Holtzman". The signature is written in a cursive, flowing style.

ALEXANDER J. HOLTZMAN
Deputy City Attorney

Enclosures (2)

SUBPOENA FOR PRODUCTION

BY PERSONAL SERVICE AND EMAIL

To: U.S. News & World Report, L.P.
c/o C T Corporation System
330 North Brand Blvd., Suite 700
Glendale, CA 91203

This Subpoena for Production (“Subpoena”) is issued to U.S. News & World Report, L.P. (“USNWR” or “you”) under the powers conferred to the City Attorney for the City and County of San Francisco by California Business & Professions Code section 16759(b) and California Government Code section 11180 *et seq.* as part of a pending investigation concerning potential violations of California Business and Professions Code section 17200, *et seq.* (the “Unfair Competition Law”). The Unfair Competition Law prohibits USNWR from engaging in any unlawful, unfair, or fraudulent business act or practice. Specifically, this Office’s investigation relates to USNWR’s advertising representations about its hospital rankings and its failure to disclose payments received from hospitals that it ranks.

YOU ARE HEREBY COMMANDED to produce, within 15 calendar days after service, all non-privileged documents, records, and other materials described in **Attachment A** (collectively, the “Subpoenaed Documents”). Unless otherwise stated, the operative timeframe is January 9, 2020, to the present, including and up to the date of your response to this Subpoena.

All of the Subpoenaed Documents must be sent electronically via email to alexander.holtzman@sfcityatty.org and karun.tilak@sfcityatty.org, via the City Attorney’s Office SecureShare FTP portal, or delivered on or before the deadline to the following address:

Office of the City Attorney
Attn: Alex Holtzman
1390 Market Street, 7th Floor
San Francisco, CA 94102

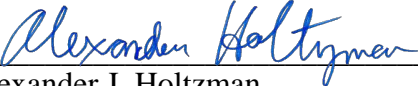
Your production must be accompanied by a certification in the form set forth in **Attachment B**, dated and signed under penalty of perjury under the laws of the State of California by the representative who supervised the response to this Subpoena, that the documents provided are true, correct, and complete copies of all documents responsive to this Subpoena.

USNWR must preserve and not modify or destroy or encourage others to modify or destroy any documents or information related to the topics described in Attachment A. The destruction or concealment by anyone subject to this Subpoena of any Subpoenaed Documents may result in our referral to law enforcement for criminal prosecution under California Penal Code section 135.

If you have questions regarding compliance with this Subpoena, concerns about the format of production, or need additional time to respond, please contact Deputy City Attorney Alex Holtzman (Alexander.Holtzman@sfcityatty.org) and Deputy City Attorney Karun Tilak (Karun.Tilak@sfcityatty.org).

Failure to comply with the commands of this Subpoena may subject you to citation for contempt or other penalties before the Superior Court of the State of California.

Signed in the City and County of San Francisco this 9th day of January, 2024.



Alexander J. Holtzman
Deputy City Attorney for the
City & County of San Francisco

ATTACHMENT A**DEFINITIONS:**

For purposes of each Specification:

1. “Hospitals” means hospitals, hospital networks, and entities associated with hospital or hospital networks (e.g., affiliated nonprofits or universities).
2. “USNWR” means U.S. News & World Report, L.P. and any parent, subsidiary, or affiliate corporate entity of U.S News & World Report, L.P.
3. “Agreement” means any written contract, licensing agreement, terms and conditions, or other written document governing the provision of, or access to, a product or service.
4. “Best Hospitals rankings” means Best Hospitals Honor Roll, Best Hospitals by Specialty, Best Hospitals by Medical Procedures and Conditions, Best Children’s Hospitals Honor Roll, Best Children’s Hospitals by Specialty, and any other ranking of Hospitals published by USNWR.

DOCUMENT SPECIFICATIONS:

1. Documents sufficient to show the corporate structure of USNWR, including but not limited to U.S. News & World Report L.P.’s relationship with any parent, subsidiary or affiliate entity identified in your responses to the accompanying Subpoena for Interrogatory Responses;
2. All agreements between USNWR and BrandConnex, LLC;
3. All agreements between USNWR and RTI International relating to the Best Hospitals rankings;
4. For each Hospital identified in response to Interrogatory Specification Nos. 1–6 in the accompanying Subpoena for Interrogatory Responses, all agreements between that Hospital and USNWR;
5. Documents sufficient to determine USNWR’s equity interest in Doximity, Inc. for each year between 2019 and the present; and
6. All USNWR policies and procedures governing the receipt of payments from Hospitals eligible to be considered in USNWR’s Best Hospitals rankings.

ATTACHMENT B

CERTIFICATION OF COMPLIANCE WITH SUBPOENA FOR PRODUCTION

State of [State]
County of [County]

I, [Name], declare and state as follows:

1. I am employed by U.S. News & World Report, L.P. (“USNWR”) in the position of [Position];
2. The enclosed production of documents and responses to the Subpoena dated [Date] served on USNWR was prepared and assembled under my personal supervision;
3. I made or caused to be made a diligent, complete, and comprehensive search for all Subpoenaed Documents, in full accordance with the instructions and definitions set forth in the Subpoena;
4. The enclosed production of documents and responses to the Subpoena are complete and correct to the best of my knowledge and belief;
5. No documents responsive to the Subpoena have been withheld from this production and response, other than responsive documents or information withheld on the basis of a legal privilege or doctrine; and
6. The Subpoenaed Documents contained in these productions and responses to the Subpoena for Production are authentic, genuine, and what they purport to be.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Declarant: _____ Date: _____

Printed Name of Declarant: _____

PROOF OF SERVICE

I, Christine Hoang, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney’s Office of San Francisco, Fox Plaza Building, 1390 Market Street, Seventh Floor, San Francisco, CA 94102.

On January 9, 2024, I served the following document:

SUBPOENA FOR PRODUCTION

on the following persons at the locations specified:

**U.S. News & World Report, L.P.
c/o C T Corporation System
330 North Brand Blvd., Suite 700
Glendale, CA 91203**

in the manner indicated below:

- BY PERSONAL SERVICE:** I caused a true and correct copy of the above document to be delivered by hand at the above location by a professional messenger service.
- BY ELECTRONIC MAIL:** I sent a true and correct copy of the above document in PDF format from christine.hoang@sfcityatty.org to johnpotter@quinnemanuel.com, michaelwilliams@quinnemanuel.com, and seananderson@quinnemanuel.com.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. Executed on January 9, 2024, at San Francisco, California.

/s/ Christine Hoang

Christine Hoang

SUBPOENA FOR INTERROGATORY RESPONSES

BY PERSONAL SERVICE AND EMAIL

To: U.S. News & World Report, L.P.
c/o C T Corporation System
330 North Brand Blvd., Suite 700
Glendale, CA 91203

This Subpoena for Interrogatory Responses (“Subpoena”) is issued to U.S. News & World Report, L.P. (“USNWR” or “you”) under the powers conferred to the City Attorney for the City and County of San Francisco by California Business & Professions Code section 16759(b) and California Government Code section 11180 *et seq.* as part of a pending investigation concerning potential violations of California Business and Professions Code section 17200, *et seq.* (the “Unfair Competition Law”). The Unfair Competition Law prohibits USNWR from engaging in any unlawful, unfair, or fraudulent business act or practice. Specifically, this Office’s investigation relates to USNWR’s advertising representations about its hospital rankings and its failure to disclose payments received from hospitals that it ranks.

YOU ARE HEREBY COMMANDED to provide, within 15 calendar days after service, a response under oath to each interrogatory in **Attachment A**. The following instructions apply to your responses:

1. Each answer must be as complete and straightforward as the information reasonably available to you, including the information possessed by your attorneys or agents, permits. If an interrogatory cannot be answered completely, answer it to the extent possible.
2. If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.
3. Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.
4. If you are asserting a privilege or making an objection to an interrogatory, you must specifically assert the privilege or state the objection in your written response.
5. Your production must be accompanied by a verification in the form set forth in **Attachment B**, dated and signed under penalty of perjury under the laws of the State of California.

The time period covered by the interrogatories is January 9, 2020, through the present, unless otherwise specified.

Your responses to the enclosed interrogatories must be sent electronically via email to alexander.holtzman@sfcityatty.org and karun.tilak@sfcityatty.org or delivered on or before the deadline to the following address:

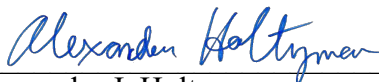
Office of the City Attorney
Attn: Alex Holtzman
1390 Market Street, 7th Floor
San Francisco, CA 94102

USNWR must preserve and not modify or destroy or encourage others to modify or destroy any documents or information related to the topics described in Attachment A. The destruction or concealment by anyone subject to this Subpoena may result in our referral to law enforcement for criminal prosecution under California Penal Code section 135.

If you have questions regarding compliance with this Subpoena or need additional time to respond, please contact Deputy City Attorney Alexander Holtzman (Alexander.Holtzman@sfcityatty.org) and Deputy City Attorney Karun Tilak (Karun.Tilak@sfcityatty.org).

Failure to comply with the commands of this Subpoena may subject you to citation for contempt or other penalties before the Superior Court of the State of California.

Signed in the City and County of San Francisco this 9th day of January, 2024.



Alexander J. Holtzman
Deputy City Attorney for the
City & County of San Francisco

ATTACHMENT A**DEFINITIONS:**

For purposes of each of Interrogatory Specification:

1. “Hospitals” means hospitals, hospital networks, and entities associated with hospital or hospital networks (e.g., affiliated nonprofits or universities).
2. “USNWR” means U.S. News & World Report, L.P. and any parent, subsidiary, or affiliate corporate entity of U.S News & World Report, L.P.. Where an Interrogatory Specification seeks information regarding payments made by Hospitals to USNWR, please identify the specific corporate entity to which the payment was made.
3. “Describe” means to provide a complete description and explanation of the facts, circumstances, analysis, opinion, and other information relating to the subject matter of the Interrogatory.
4. “Best Hospitals rankings” means Best Hospitals Honor Roll, Best Hospitals by Specialty, Best Hospitals by Medical Procedures and Conditions, Best Children’s Hospitals Honor Roll, Best Children’s Hospitals by Specialty, and any other ranking of Hospitals published by USNWR.
5. “Best Hospitals badges” means the Best Hospitals Honor Roll badge, Best Hospitals badge, Best Regional Hospitals badge, High Performing Hospitals badge, and any other badge created by USNWR in relation to a ranking of Hospitals and licensed to Hospitals.

INTERROGATORY SPECIFICATIONS:

1. Identify all Hospitals that paid USNWR or BrandConnex, LLC in each year for Best Hospital badge licensing and the amount paid by each Hospital for Best Hospital badge licensing;
2. Identify all Hospitals that paid USNWR in each year for access to USNWR data or data insights, including, but not limited to, USNWR’s “Hospital Data Insights” database and the amount paid by each Hospital for access to USNWR data or data insights;
3. Identify all Hospitals that paid USNWR in each year for advertising, including, but not limited to, advertising on USNWR’s website and in its Best Hospitals Guidebook and the amount paid by each Hospital for advertising;
4. Identify all Hospitals that paid USNWR in each year to be a Featured Hospital and the amount paid by each Hospital to be a Featured Hospital;
5. Identify all products or services other than those addressed in Interrogatory Specification Nos. 1–4 for which USNWR receives direct or indirect payments from Hospitals;
6. For each product or service identified in response to Interrogatory Specification No. 5, identify all Hospitals that paid for that product or service and the amount paid by each Hospital for that that product or service;
7. Describe USNWR’s basis for stating that its Best Hospitals rankings are “[h]ow to find the best medical care in 2023,” as stated on the following webpage:
<https://health.usnews.com/best-hospitals>.

8. Describe USNWR's basis for according 19 times greater weight to cystic fibrosis treatment than to sickle cell disease treatment in the Children's Hospital rankings;
9. Describe how, if at all, USNWR has incorporated primary and preventive care in each annual version of the Best Hospitals rankings;
10. Describe USNWR's basis for not including measures of health equity in its rankings of adult Hospitals;
11. Describe how USNWR has adjusted the Medicare fee-for-service dataset to reflect actual patient populations in each annual version of its Best Hospitals rankings;
12. Describe USNWR's basis for believing that Medicare outcomes information from at least 18 months ago accurately reflects current Hospital outcomes;
13. Describe USNWR's basis for using opinion surveys as the exclusive method for ranking Hospitals in ophthalmology, psychiatry, and rheumatology and for incorporating opinion surveys into other specialties ranked by USNWR; and
14. Describe USNWR's relationship with Doximity, Inc., including any equity interest held by USNWR in Doximity, Inc., and any change in that relationship over the last four years.

ATTACHMENT B

VERIFICATION

State of [State]
County of [County]

I, [Name], declare and state as follows:

1. I am employed by U.S. News & World Report, L.P. in the position of [Position];
2. I am authorized by USNWR to make this verification on its behalf;
3. I have reviewed the answers USNWR has provided to interrogatories served on it by the City Attorney for the City & County of San Francisco.
4. I declare under penalty of perjury under the laws of the State of California that the answers USNWR has provided to these interrogatories are true and correct.

Signature of Declarant: _____ Date: _____

Printed Name of Declarant: _____

PROOF OF SERVICE

I, Christine Hoang, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney’s Office of San Francisco, Fox Plaza Building, 1390 Market Street, Seventh Floor, San Francisco, CA 94102.

On January 9, 2024, I served the following document:

SUBPOENA FOR INTERROGATORY RESPONSES

on the following persons at the locations specified:

**U.S. News & World Report, L.P.
c/o C T Corporation System
330 North Brand Blvd., Suite 700
Glendale, CA 91203**

in the manner indicated below:

BY PERSONAL SERVICE: I caused a true and correct copy of the above document to be delivered by hand at the above location by a professional messenger service.

BY ELECTRONIC MAIL: I sent a true and correct copy of the above document in PDF format from christine.hoang@sfcityatty.org to johnpotter@quinnemanuel.com, michaelwilliams@quinnemanuel.com, and seananderson@quinnemanuel.com.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. Executed on January 9, 2024, at San Francisco, California.

/s/ Christine Hoang

Christine Hoang