

ORIGINAL

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**



In the Matter of)
)

PHOEBE PUTNEY HEALTH SYSTEM, INC. *et al.*,)
)

Respondents)
)

Docket No. 9348
Public

**PRICEWATERHOUSECOOPERS LLP'S MOTION
TO QUASH OR LIMIT SUBPOENA *DUCES TECUM***

KING & SPALDING LLP
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TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	1
FACTUAL BACKGROUND.....	2
A. The Activities of PwC	2
B. The Subpoena	2
ARGUMENT.....	2
A. The Subpoena Imposes an Undue Burden on PwC Because of its Broad Scope and Short Time Period Allotted for Compliance	3
B. The Subpoena Is Overly Broad.....	4
C. PwC’s Efforts to Comply with the Subpoena Would Obstruct Its Normal Business Operations.....	5
D. The Subpoena Requests Information that is Protected from Disclosure	6
GENERAL AND SPECIFIC OBJECTIONS	6
CONCLUSION.....	12
STATEMENT OF RYAN J. SZCZEPANIK PURSUANT TO 16 C.F.R. 3.22(g)	13
CERTIFICATE OF SERVICE	14

Pursuant to Section 3.34(c) of the Federal Trade Commission's ("FTC" or "Commission") Rules of Practice, 16 C.F.R. § 3.34(c), PricewaterhouseCoopers LLP ("PwC" or "the Company") hereby files its Motion to Quash or Limit the Subpoena *Duces Tecum* (the "Subpoena") served on PwC on June 10, 2011.

PRELIMINARY STATEMENT

The Subpoena issued pursuant to the FTC's adjudicative proceeding captioned *In the Matter of Phoebe Putney Health System, Inc. et al., Docket No. 9348* (the "Proceeding") commands PwC to collect, review, process and produce what could potentially be tens of thousands of pages of documents in a three week time frame. PwC has every intention of cooperating with the FTC with respect to the Subpoena subject to the privileges asserted by its clients. Indeed, PwC already has produced nearly 600 pages of documents to the FTC in connection with a prior subpoena duces tecum that the FTC served on PwC during the FTC's pre-litigation investigation of this matter. But the enormous burden, time and expense required to respond to the Subpoena as it is currently written are unreasonable and simply cannot be done within the time frame specified by the Subpoena. Moreover, PwC's clients will need an opportunity to review the requested documents prior to production in order to determine whether they will assert privilege. PwC is in the process of negotiating with the FTC Staff over the breadth of the subpoena in a good faith effort to cooperate with the FTC. As of the time of the filing of this Motion, however, a definitive agreement is not in place with the FTC as to the scope of the Subpoena. Therefore, PwC hereby moves to quash or alternatively to limit the Subpoena.

FACTUAL BACKGROUND

A. The Activities of PwC

PwC is a Delaware limited liability partnership that provides public accounting and other services. PwC entered into engagements with the Hospital Authority of Albany-Dougherty County (“Authority”) and Phoebe Putney Health Systems, Inc. (“PPHS”) to provide services concerning PPHS’ subsidiary entity, Phoebe Putney Memorial Hospital (“PPMH”), and Palmyra Park Hospital, Inc. (“Palmyra”).

B. The Subpoena

On June 10, 2011, the Commission served the Subpoena on PwC. The Subpoena is broad and calls for the production of documents by July 1, 2011, a mere three weeks from the date of service.¹ As demonstrated below, the volume of the information requested, the nature of the information requested, the short time frame provided, and the large size and scope of PwC’s operations dictate that the July 1 deadline cannot be met and that the Subpoena is over broad and unduly burdensome. In addition, many of the documents arguably requested by the Subpoena are subject to various privileges and protections, including the attorney work product doctrine and attorney-client privilege.

ARGUMENT

The FTC is authorized to issue subpoenas *duces tecum* to require the production of documentary evidence relating to any matter under investigation. 15 U.S.C. § 49. Pretrial discovery in an adjudicative proceeding brought by the FTC, however, is circumscribed by detailed agency rules, which must be scrupulously observed. *Atlantic Richfield Co. v. FTC*, 398

¹ The Subpoena is attached at Exhibit A.

F. Supp. 1, 9, 12 (S.D. Tex. 1975), citing 16 C.F.R. §§ 3.31 - 3.39.² In particular, a federal agency's use of compulsory process is enforceable only when the "disclosure sought [is not] unreasonable." *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 208 (1946). In turn, compulsory process is reasonable and thus enforceable where the requests are "reasonably relevant . . . and not unduly burdensome to produce." *F.T.C. v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992) (internal quotation marks and citations omitted); *see also* 16 C.F.R. § 3.31(c)(1) ("Parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent.").

The Subpoena should be quashed because, as discussed below, the Subpoena is unreasonable, unduly burdensome, overly broad and requests information that is protected from disclosure. Further, PwC's attempts to comply with the Subpoena would impede its normal business operations and impose a significant and unjustifiable expense on PwC.

A. The Subpoena Imposes an Undue Burden on PwC Because of its Broad Scope and Short Time Period Allotted for Compliance.

The broad scope and short return date of the Subpoena render compliance with the Subpoena by July 1 unrealistic. The Subpoena requires PwC to search through numerous electronic databases to collect documents from PwC custodians at multiple locations. The FTC has recognized that an "abbreviated schedule insisted upon" by the issuer of requests for information may be "the source of the undue burden" on the recipient of such requests. Pl.'s F.T.C.'s Opp'n to Defs.' Mot. to Compel at 9, *FTC v. W. Ref., Inc.*, No. 1: 07-CV-00352-JB-ACT (D.N.M. May 2, 2007).

² See also *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1024 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 1071 (1979) ("The federal courts stand guard . . . against abuses of [federal agencies'] subpoena-enforcement processes. . . .") (internal citations omitted).

Given the large number of engagements arguably covered by the Subpoena, PwC would need to identify, contact and interview numerous potential document custodians to determine whether they have responsive documents. Potentially responsive documents would need to be gathered from personal computers and other sources and then reviewed for responsiveness, privilege or other confidential information that is protected from disclosure. Moreover, the numerous instructions in the Subpoena as to how information must be searched and produced require significant additional time and resources by PwC in order to comply with the Subpoena. For example, the Subpoena requires PwC to perform a “complete search” of all the files of the Company rather than a reasonable search for responsive information as required by law; redact all Sensitive Personally Identifiable Information and Sensitive Health Information; produce documents in both native format and in image format with extracted text and extensive metadata information; contact a Complaint Counsel representative to address utilization of de-duplication software and services; produce an extensive privilege log; and submit an index identifying the documents and their custodians. Such a compressed time frame to accomplish this is unreasonable. The Subpoena, therefore, should be quashed.

B. The Subpoena Is Overly Broad.

The Subpoena requests a vast amount of data, requiring the production documents, information and data not likely to be material and/or relevant to the Proceeding. A subpoena issued by a federal agency is unenforceable if it is “unduly burdensome or unreasonably broad.” *See F.T.C. v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977) (en banc), *cert. denied*, 431 U.S. 974 (1977); 16 C.F.R. § 3.31(c)(2) (“The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the Administrative Law Judge if he or she determines that . . . [t]he burden and expense of the proposed discovery outweigh its likely

benefit.”). Similarly, a request for documents or information is reasonable, relevant and enforceable if the document requests are “adequate, but not excessive, for the purposes of the relevant inquiry.” *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1030 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 1071 (1979) (quoting *Okla. Press Publ’g Co. v. Walling*, 327 U.S. 186, 209 (1946)). The scope of the Subpoena is excessive.

For instance, Document Request No. 6 of the Subpoena requires PwC to produce “all communications” between the Company and PPHS, the Authority, Langley & Lee, LLC, or Dougherty County “in connection with healthcare services or prices or costs of healthcare services in Dougherty County, Georgia” that PwC performed for PPHS, the Authority, Langley & Lee, LLC, or Dougherty County. In addition, Document Request No. 7 requests “all documents” relating to notes, interviews, data compilations, and other internal-Company material “in connection with any evaluation of healthcare services, or the prices or costs of healthcare services in Dougherty County, Georgia.” Document Request No. 8 similarly requests “all documents” relating to the terms, operation, or performance of, or amendments to the Lease and Transfer Agreement dated December 11, 1990, as amended, between the Authority and PPMH. Such broad document requests will no doubt yield many documents that are technically responsive, but are irrelevant to the FTC’s antitrust analysis. The more documents that fall within the net cast by this overly broad Subpoena, the greater the burden and expense that PwC will incur in processing and reviewing the documents and the longer the process will take.

C. PwC’s Efforts to Comply with the Subpoena Would Obstruct Its Normal Business Operations.

The Subpoena is unduly burdensome because even a good faith effort at compliance “threatens to unduly disrupt or seriously hinder” PwC’s normal operations. *FTC. v. Church & Dwight Co.*, Misc. No. 10-149 (EGS/JMF), 2010 WL 4283998, at *4 (D.D.C. Oct. 29, 2010)

(quoting *Texaco*, 555 F.2d at 882). The tasks to be undertaken to compile a response to the Subpoena require PwC personnel to divert their attention away from the day-to-day operations of PwC, resulting in continued disruptions to PwC's business operations. Expecting PwC to devote these kinds of resources to the Proceeding is not reasonable and poses an undue burden on PwC.

D. The Subpoena Requests Information that is Protected from Disclosure.

Many of the documents requested by the Subpoena are subject to various privileges and protections, including the attorney work product doctrine and attorney-client privilege, because PwC was engaged by counsel for the Authority or PPHS. The Authority and PPHS have instructed PwC to assert these privileges, and have timely invoked the attorney-client privilege and work-product doctrine in response to the Subpoena. These privileges and protections exist under an FTC subpoena. *See* 16 C.F.R. § 3.34(c) (“Such motions [to limit or quash] shall set forth all assertions of privilege.”); 16 C.F.R. § 3.38A(a) (“Any person withholding material responsive to a subpoena issued pursuant to § 3.34 . . . shall assert a claim of privilege or any similar claim not later than the date set for production of the material.”). In addition, several of the documents requested may be protected from disclosure under 26 U.S.C. §§ 6713 and 7216, and 26 C.F.R. § 301.7216-3(b).

GENERAL AND SPECIFIC OBJECTIONS

PwC incorporates by reference the arguments made in its Motion to Quash or Limit Subpoena *Duces Tecum* and makes the following general objections. Each general objection is hereby incorporated by reference into each document request of the Subpoena.

1. PwC objects to the document requests, definitions, and instructions in the Subpoena as overly broad and unduly burdensome.
2. PwC objects to the document requests, definitions, and instructions in the Subpoena because the enormous expense of the proposed discovery outweighs its likely benefit.

3. PwC objects to the document requests, definitions, and instructions in the Subpoena on the ground that they unreasonably require full production of documents and information by July 1, 2011.
4. PwC objects to the document requests, definitions, and instructions in the Subpoena on the ground that they request documents or information that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence.
5. PwC objects to the document requests, definitions, and instructions in the Subpoena because compliance would unduly disrupt and seriously hinder normal operations of PwC's business.
6. PwC objects to the document requests, definitions, and instructions in the Subpoena to the extent that they seek the disclosure of information or production of documents subject to the attorney-client privilege, the attorney work product privilege, the common interest privilege, or any other applicable privilege or immunity.
7. PwC objects to the document requests, definitions, and instructions in the Subpoena to the extent that they require PwC to do more than is required by the applicable rules of procedure.
8. PwC objects to the document requests, definitions, and instructions in the Subpoena because they fail to specify with reasonable particularity the material to be produced. PwC will construe the words in the Subpoena according to their commonly understood meanings.
9. PwC objects to Instruction B of the Subpoena that requires a "complete search" of all the files of the Company and production of all responsive documents wherever located. Such instruction is contrary to the legal requirement of a reasonable search for responsive information and to any notion of de-duplication as set forth in Instruction F(3) of the Subpoena.
10. PwC objects to Instruction C of the Subpoena that requires a continuing supplementation of any document production as unduly burdensome and unreasonable given that PwC is engaged in ongoing work for PPHS.
11. PwC objects to the document requests, definitions, and instructions in the Subpoena because the discovery sought is unreasonably cumulative and duplicative, and is obtainable from other sources that are more convenient, less burdensome, and less expensive.
12. PwC objects to the document requests, definitions, and instructions in the Subpoena because the FTC has had ample opportunity by discovery in the action to obtain the information sought.
13. PwC objects to the document requests, definitions, and instructions in the Subpoena because the Subpoena is improper under 15 U.S.C. § 49.

The following specific objections fully incorporate, are subject to, and are made without waiver of the foregoing general objections.

1. *All retainer agreements between the Company and Phoebe Putney.*

OBJECTION

PwC has produced to the FTC the retainer agreement dated December 30, 2010 between PwC and PPHS (bates numbered PwC-206 to PwC-219) and the retainer agreement dated February 24, 2011 between PwC and PPHS (bates numbered PwC-91 to PwC-98). With respect to the other documents requested in Document Request No. 1, PwC incorporates by reference all of its general objections set forth above. PwC objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. PwC objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, immunity, or confidentiality, including all applicable privileges, immunities, or confidentiality asserted at the instruction of PwC's client(s).

2. *All retainer agreements between the Company and the Hospital Authority.*

OBJECTION

PwC incorporates by reference all of its general objections set forth above. PwC objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. PwC objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, immunity, or confidentiality, including all applicable privileges, immunities, or confidentiality asserted at the instruction of PwC's client(s).

3. *All retainer agreements between the Company and Langley & Lee, LLC.*

OBJECTION

PwC incorporates by reference all of its general objections set forth above. PwC objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, immunity, or confidentiality, including all applicable privileges, immunities, or confidentiality asserted at the instruction of PwC's client(s). PwC objects to this Document Request to the

extent that it is overbroad and requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

4. *All documents relating to the Company's "Albany-Dougherty County Hospital Authority Lease Analysis" dated May 31, 2005, including all documents furnished for the preparation of the Analysis, and all workpapers or supplemental documents or studies that the Company prepared or considered in connection with that Analysis.*

OBJECTION

PwC has produced to the FTC the publicly released report entitled "Albany-Dougherty County Hospital Authority Lease Analysis" (bates numbered PwC-1 to PwC-31). With respect to the other documents requested in Document Request No. 4, PwC incorporates by reference all of its general objections set forth above. PwC objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, immunity, or confidentiality, including all applicable privileges, immunities, or confidentiality asserted at the instruction of PwC's client(s). PwC objects to this Document Request to the extent that it is overbroad and unduly burdensome in scope and in that PwC cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Document Request by July 1, 2011 as required by the Subpoena. PwC objects to this Document Request to the extent it requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

5. *All documents relating to any study, analysis, or report issued by the Company, at the request of Phoebe Putney, the Hospital Authority, Langley & Lee, LLC, or Dougherty County regarding the provision of healthcare services, its prices, or its costs, in Dougherty County, Georgia.*

OBJECTION

PwC has produced to the FTC the publicly released report entitled "Albany-Dougherty County Hospital Authority Lease Analysis" (bates numbered PwC-1 to PwC-31) and the draft report entitled "Project Scan Due Diligence" (bates numbered PwC-32 to PwC-71). With respect to the other documents requested in Document Request No. 5, PwC incorporates by reference all of its general objections set forth above. PwC objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, immunity, or confidentiality, including all applicable privileges, immunities, or confidentiality asserted at the instruction of PwC's client(s). PwC objects to this Document Request to the extent that it is overbroad and unduly burdensome in scope and in that PwC cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Document Request by July 1, 2011 as required by the Subpoena. PwC objects to this Document Request to the extent it requests

documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

6. *All communications between the Company and Phoebe Putney, the Hospital Authority, Langley & Lee, LLC, or Dougherty County in connection with healthcare services or prices or costs of healthcare services in Dougherty County, Georgia, that the Company performed for Phoebe Putney, the Hospital Authority, Langley & Lee, LLC, or Dougherty County.*

OBJECTION

PwC incorporates by reference all of its general objections set forth above. PwC objects to this Document Request to the extent that it is overbroad and unduly burdensome in scope and in that PwC cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Document Request by July 1, 2011 as required by the Subpoena. PwC objects to this Document Request to the extent it requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. PwC objects to this Specification to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, immunity, or confidentiality, including all applicable privileges, immunities, or confidentiality asserted at the instruction of PwC's client(s).

7. *All documents relating to notes, interviews, data compilations, and other internal-Company material in connection with any evaluation of healthcare services, or the prices or costs of healthcare services in Dougherty County, Georgia.*

OBJECTION

PwC has produced to the FTC several hundreds of pages of documents responsive to this Document Request (bates numbered PwC-1 to PwC-589). With respect to the other documents requested in Document Request No. 7, PwC incorporates by reference all of its general objections set forth above. PwC objects to this Document Request to the extent that it is overbroad and unduly burdensome in scope and in that PwC cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Document Request by July 1, 2011 as required by the Subpoena. PwC objects to this Document Request to the extent it requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. PwC objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, immunity, or confidentiality, including all applicable privileges, immunities, or confidentiality asserted at the instruction of PwC's client(s).

8. *All documents relating to the terms, operation, or performance of, or amendments to the Lease and Transfer Agreement dated December 11, 1990, as amended, between the Hospital Authority and Phoebe Putney Memorial Hospital, Inc.*

OBJECTION

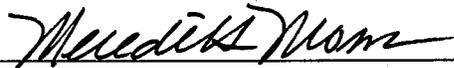
PwC has produced to the FTC several hundreds of pages of documents responsive to this Document Request (bates numbered PwC-1 to PwC-589). With respect to the other documents requested in Document Request No. 8, PwC incorporates by reference all of its general objections set forth above. PwC objects to this Document Request to the extent that it is overbroad and unduly burdensome in scope and in that PwC cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Document Request by July 1, 2011 as required by the Subpoena. PwC objects to this Document Request to the extent it requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. PwC objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, immunity, or confidentiality, including all applicable privileges, immunities, or confidentiality asserted at the instruction of PwC's client(s).

CONCLUSION

For all of the foregoing reasons, PwC respectfully requests that the Administrative Law Judge quash the Subpoena. In the alternative, PwC respectfully requests that the Administrative Law Judge modify the return date of the Subpoena to provide a reasonable time for compliance and to limit the Subpoena based on the objections set forth above.

Dated: June 22, 2011

Respectfully submitted,

By: 

Elizabeth V. Tanis, Esq.
Meredith Moss, Esq.
Ryan J. Szczepanik, Esq.

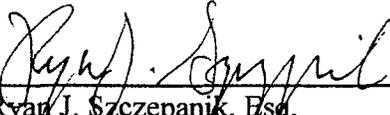
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Counsel for PricewaterhouseCoopers, LLP

STATEMENT OF RYAN J. SZCZEPANIK PURSUANT TO 16 C.F.R. 3.22(g)

I am an Associate with King & Spalding LLP, counsel for PricewaterhouseCoopers LLP (“PwC”). I submit this statement in connection with PwC’s Motion to Quash or Limit the Subpoena *Duces Tecum* (the “Motion”). On June 10, 2011, the FTC served the Subpoena *Duces Tecum* on PwC. On June 16, 2011, I conferred with Thomas Brock and Goldie Walker, counsel for the Commission, by telephone in a good faith attempt to resolve the issues set forth in the Motion. We, however, have been unable to resolve by agreement the issues raised in the Motion.

Dated: June 22, 2011



Ryan J. Szczepanik, Esq.
KING & SPALDING LLP
1180 Peachtree Street
Atlanta, GA 30309
(404) 572-4600

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of June, 2011, I caused the original and twelve (12) copies of the Motion to Quash or Limit with attached Exhibits to be filed with the Secretary of The Federal Trade Commission by hand delivery at 600 Pennsylvania Avenue, N.W., Room No. 113, Washington, D.C., 20580 with one (1) copy of the same to be e-mailed to dclark@ftc.gov; one (1) copy of the same to be filed before the Administrative Law Judge at 600 Pennsylvania Avenue, N.W., Room No. 110, Washington, D.C., 20580 and one (1) copy of the same to be e-mailed to oalj@ftc.gov; and one (1) copy of the same to be filed by hand delivery with Goldie Walker, Esq., 601 New Jersey Avenue, N.W., Room NJ-5257, Washington, D.C., 20580.

Dated: June 22, 2011



ATTACHMENT A



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO

Reatha Clark
PricewaterhouseCoopers, LLP
10 10th Street NW
Suite 1400
Atlanta, GA 30309

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION

Federal Trade Commission
Bureau of Competition, Mergers IV
601 New Jersey Avenue, NW
Washington, DC 20580

4. MATERIAL WILL BE PRODUCED TO

Goldie V. Walker, Complaint Counsel

5. DATE AND TIME OF PRODUCTION

July 1, 2011

6. SUBJECT OF PROCEEDING

In the Matter of Phoebe Putney Health System, Inc. et al., Docket No. 9348

7. MATERIAL TO BE PRODUCED

Please see attached.

8. ADMINISTRATIVE LAW JUDGE

Chief Judge D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL AND PARTY ISSUING SUBPOENA

Goldie V. Walker, Complaint Counsel
Federal Trade Commission
601 New Jersey Avenue, NW, Room NJ-5257
Washington, DC 20580
202-326-2919

DATE SIGNED

6/10/2011

SIGNATURE OF COUNSEL ISSUING SUBPOENA

Goldie V. Walker

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)	
PHOEBE PUTNEY HEALTH SYSTEM, INC., <i>et al.</i> ,)	Docket No. 9348
Respondents.)	

**COMPLAINT COUNSEL'S SUBPOENA DUCES TECUM TO
PRICEWATERHOUSECOOPERS, LLP**

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. §§ 3.31 and 3.34, and the Scheduling Order entered by Chief Administrative Law Judge Chappell, Complaint Counsel hereby requests that PricewaterhouseCoopers, LLP produce the following in accordance with the Definitions and Instructions set forth below:

1. All retainer agreements between the Company and Phoebe Putney.
2. All retainer agreements between the Company and the Hospital Authority.
3. All retainer agreements between the Company and Langley & Lee, LLC.
4. All documents relating to the Company's "Albany-Dougherty County Hospital Authority Lease Analysis" dated May 31, 2005, including all documents furnished for the preparation of the Analysis, and all workpapers or supplemental documents or studies that the Company prepared or considered in connection with that Analysis.
5. All documents relating to any study, analysis, or report issued by the Company, at the request of Phoebe Putney, the Hospital Authority, Langley & Lee, LLC, or Dougherty County regarding the provision of healthcare services, its prices, or its costs, in Dougherty County, Georgia.
6. All communications between the Company and Phoebe Putney, the Hospital Authority, Langley & Lee, LLC, or Dougherty County in connection with healthcare services or prices or costs of healthcare services in Dougherty County, Georgia, that the Company performed for Phoebe Putney, the Hospital Authority, Langley & Lee, LLC, or Dougherty County.

Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers, LLP (Docket No. 9348)

7. All documents relating to notes, interviews, data compilations, or other internal-Company material in connection with any evaluation of healthcare services, or the prices or costs of healthcare services in Dougherty County, Georgia.
8. All documents relating to the terms, operation, or performance of, or amendments to the Lease and Transfer Agreement dated December 11, 1990, as amended, between the Hospital Authority and Phoebe Putney Memorial Hospital, Inc.

DEFINITIONS

- A. The terms "Acquisition" or "relevant transaction" mean the acquisition pursuant to the December 21, 2010, Asset Purchase Agreement By and Among The Hospital Authority of Albany-Dougherty County, Phoebe Putney Health Systems, Inc., Phoebe North, Inc., and Palmyra Park Hospital, Inc.
- B. The terms "Commission" or "FTC" mean the Federal Trade Commission.
- C. The terms "the Company" or "you" mean PricewaterhouseCoopers, LLP, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.
- D. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody, or control of the Company. The term "documents" includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that person's files; and copies of documents the originals of which are not in the possession, custody, or control of the Company.
 1. Unless otherwise specified, the term "documents" excludes (a) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature; (b) architectural plans and engineering blueprints; and (c) documents solely relating to environmental, tax, human resources, OSHA, or ERISA issues.
 2. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other

Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers, LLP (Docket No. 9348)

forms of offline storage, whether on or off company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Complaint Counsel's need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Complaint Counsel representatives identified on the last page of this request. The Complaint Counsel representatives will consider modifying this instruction to:

- (a) exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company;
 - (b) limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain specifications identified by Complaint Counsel representatives; or
 - (c) include other proposals consistent with Complaint Counsel policy and the facts of the case.
- E. The terms "each," "any," and "all" mean "each and every."
- F. The term "entity" means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such.
- G. The terms "HCA/Palmyra," "Palmyra," "Palmyra Medical Center," and "Palmyra Park Hospital, Inc." include HCA Inc., Palmyra Park Hospital, Inc., their domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.
- H. The term "health plan" means any health maintenance organization, preferred provider arrangement or organization, managed healthcare plan of any kind, self-insured health benefit plan, other employer or union health-benefit plan, Medicare, Medicaid, TRICARE, or private or governmental healthcare plan or insurance of any kind.
- I. The term "hospital" means a facility that provides the relevant services as defined herein.

Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers, LLP (Docket No. 9348)

- J. The term “Hospital Authority” means the Hospital Authority of Albany-Dougherty County.
- K. The term “minimum viable scale” means the smallest service volume at which average costs equal the price currently charged for the relevant services. It should be noted that minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.
- L. The term “operate” with reference to a hospital facility means to directly or indirectly own or lease the facility or unit, manage its operations on behalf of another person under a management contract, have the power to appoint the majority of the facility’s governing board or body, or otherwise directly or indirectly control the facility or unit.
- M. The terms “or” and “and” have both conjunctive and disjunctive meanings.
- N. The term “person” includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- O. The terms “Phoebe Putney” and “Phoebe Putney Memorial Hospital” include Phoebe Putney Health Systems, Inc., Phoebe Putney Memorial Hospital, Inc., and Phoebe North, Inc., their domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.
- P. The term “plans” means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.
- Q. The terms “this proceeding” or “this matter” mean *In the Matter of Phoebe Putney Health Systems, Inc.*, Docket No. 9348, before the Federal Trade Commission.
- R. The term “provider” means a facility that provides any of the relevant services as defined herein, including, but not limited to, hospitals, physician group practices, or other healthcare facilities.
- S. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
- T. The term “relevant area” means the area encompassing Baker, Dougherty, Lee, Mitchell, Terrell, and Worth Counties in Georgia.

Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers, LLP (Docket No. 9348)

- U. The term “relevant service” means general acute care hospital services (*e.g.*, the provision of hospital care for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities, excluding the treatment of mental illness or substance abuse or long-term services such as skilled nursing care), collectively and individually.
- V. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any person in which there is partial (25 percent or more) or total ownership or control between the Company and any other person.
- W. The term “third party” means any person, individual, company, industry participant, or any entity other than Phoebe Putney Health Systems, Inc., Phoebe Putney Memorial Hospital, Inc., and the Commission, including the Company receiving this subpoena *duces tecum*.

INSTRUCTIONS

For the purposes of this subpoena *duces tecum*, the following instructions apply:

- A. All documents should be produced within 21 days of the issuance of this subpoena.
- B. Unless modified by agreement with Complaint Counsel, this subpoena requires a complete search of all the files of the Company. The Company shall produce all responsive documents, wherever located, that are in the actual or constructive possession, custody, or control of the Company and its representatives, attorneys, and other agents, including, but not limited to, consultants, accountants, lawyers, or any other Person retained by, consulted by, or working on behalf or under the direction of the Company.
- C. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and/or information for each of the years from January 1, 2007, to the present. Where information is requested, provide it separately for each year. Where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the Company’s fiscal year data indicating the twelve month period covered, and provide the Company’s best estimate of calendar year data.
- D. This subpoena request is continuing in nature and shall be supplemented in the event that additional documents responsive to this request are created, prepared, or received between the time of the Company’s initial response and trial.
- E. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information (“PII”) or Sensitive Health Information (“SHI”). For purposes of this

Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers, LLP (Docket No. 9348)

subpoena, PII means an individual's Social Security Number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security Number, driver's license number or other state identification number or a foreign country equivalent, passport number, financial account numbers, credit or debit card numbers. For purposes of this subpoena, SHI includes medical records or other individually identifiable health information. Where required by a particular specification, the Company shall substitute for the masked information a unique patient identifier that is different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient. Otherwise, the Company shall redact the PII or SHI but is not required to replace it with an alternate identifier.

- F. Forms of Production: The Company shall submit documents as instructed below absent written agreement of Complaint Counsel.
1. Documents stored in electronic or hard copy format in the ordinary course of business shall be submitted in electronic format provided that such copies are true, correct, and complete copies of the original documents:
 - (a) Submit Microsoft Access, Excel, and PowerPoint documents in native format with extracted text and metadata;
 - (b) Submit all other documents other than those identified in subpart (1)(a) in image format with extracted text and metadata; and
 - (c) Submit all hard copy documents in image format accompanied by OCR.
 2. For each document submitted in electronic format, include the following metadata fields and information:
 - (a) For documents stored in electronic format other than email: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, and MD5 or SHA Hash value;
 - (b) For emails: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, to, from, CC, BCC, subject, date and time sent, Outlook Message ID (if applicable), child records (the beginning Bates or document identification number of attachments delimited by a semicolon);

Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers, LLP (Docket No. 9348)

- (c) For email attachments: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, parent record (beginning Bates or document identification number of parent email), and MD5 or SHA Hash value; and
 - (d) For hard copy documents: beginning Bates or document identification number, ending Bates or document identification number, page count, and custodian.
- 3. If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this subpoena, or if the Company's computer systems contain or utilize such software, the Company must contact a Complaint Counsel representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this subpoena.
- 4. For each Specification marked with an asterisk (*), and to the extent any other responsive data exists electronically, provide such data in Excel spreadsheet with all underlying data un-redacted and all underlying formulas and algorithms intact.
- 5. Submit electronic files and images as follows:
 - (a) For productions over 10 gigabytes, use IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 external enclosure;
 - (b) For productions under 10 gigabytes, CD-R CD-ROM and DVD-ROM for Windows-compatible personal computers, and USB 2.0 Flash Drives are also acceptable storage formats; and
 - (c) All documents produced in electronic format shall be scanned for and free of viruses. Complaint Counsel will return any infected media for replacement, which may affect the timing of the Company's compliance with this subpoena *duces tecum*.
- 6. All documents responsive to this subpoena, regardless of format or form and regardless of whether submitted in hard copy or electronic format:

Subpoena Duces Tecum Issued to PricewaterhouseCoopers, LLP (Docket No. 9348)

- (a) Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files and shall not be shuffled or otherwise rearranged. For example:
 - i. If in their original condition hard copy documents were stapled, clipped or otherwise fastened together or maintained in file folders, binders, covers, or containers, they shall be produced in such form, and any documents that must be removed from their original folders, binders, covers, or containers in order to be produced shall be identified in a manner so as to clearly specify the folder, binder, cover, or container from which such documents came; and
 - ii. If in their original condition electronic documents were maintained in folders or otherwise organized, they shall be produced in such form and information shall be produced so as to clearly specify the folder or organization format;
- (b) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;
- (c) Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (*e.g.*, a chart or graph), makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-colored photocopy, or a JPEG format image);
- (d) Shall be marked on each page with corporate identification and consecutive document control numbers;
- (e) Shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct and complete copies of the original documents; and
- (f) Shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that Complaint Counsel representatives determine prior to submission that the machine-readable form would be in a format that

Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers, LLP (Docket No. 9348)

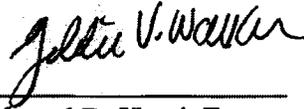
allows the agency to use the computer files). The Complaint Counsel representatives will provide a sample index upon request.

- G. If any documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log (hereinafter "Complete Log") that includes each document's authors, addressees, date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Complaint Counsel or a court to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal law firm memoranda, may be omitted from the log.
- H. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy, but the Company has reason to believe such documents have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents.
- I. In order for the Company's response to this subpoena to be complete, the attached certification form must be executed by the official supervising compliance with this subpoena, notarized, and submitted along with the responsive materials.
- J. If the Company believes that the required search or any other part of this subpoena can be narrowed in a way that is consistent with Complaint Counsel's need for information, it is encouraged to discuss such possible modifications with the Complaint Counsel representatives identified in Part K of these instructions below. All modifications to this subpoena *duces tecum* must be agreed to in writing pursuant to the Commission's Rules of Practice, 16 C.F.R. § 2.7(c).

Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers, LLP (Docket No. 9348)

K. Any questions relating to the scope or meaning of anything in this subpoena or suggestions for possible modifications thereto should be directed to Thomas H. Brock at 202-326-2813, or Goldie V. Walker at 202-326-2919. The response to the subpoena shall be addressed to the attention of Thomas H. Brock, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission. If you wish to submit your response by United States mail, please call one of the staff listed above for mailing instructions.

Respectfully submitted,



Edward D. Hassi, Esq.
Thomas H. Brock, Esq.
Goldie V. Walker, Esq.
Complaint Counsel
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
Telephone: (202) 326-2470
Facsimile: (202) 326-2286

Dated: June 10, 2011

Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers, LLP (Docket No. 9348)

CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the subpoena *duces tecum* has been prepared by me or under my personal supervision from records of PricewaterhouseCoopers, LLP, and is complete and correct to the best of my knowledge and belief.

Where copies rather than original documents have been submitted, the copies are true, correct, and complete copies of the original documents. If the Commission uses such copies in any court or administrative proceeding, PricewaterhouseCoopers, LLP, will not object based upon the Commission not offering the original document.

(Signature of Official)

(Title/Company)

(Typed Name of Above Official)

(Office Telephone)

Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers, LLP (Docket No. 9348)

CERTIFICATE OF SERVICE

I certify that on June 10, 2011, I delivered by electronic mail and Federal Express Complaint Counsel's Subpoena *Duces Tecum* to:

Ryan J. Szczepanik, Esq.
King & Spalding LLP
1180 Peachtree Street, NE
Atlanta, GA 30309-3521
Email: rszczepanik@kslaw.com

Attorney for PricewaterhouseCoopers, LLP

I certify that on June 10, 2011, I delivered by electronic mail a copy of Complaint Counsel's Subpoena *Duces Tecum* to:

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Subpoena Duces Tecum Issued to PricewaterhouseCoopers, LLP (Docket No. 9348)

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Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers, LLP (Docket No. 9348)

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*Counsel for Respondent Hospital
Authority of Albany-Dougherty County*

By:



Goldie V. Walker, Esq.
Federal Trade Commission
Bureau of Competition