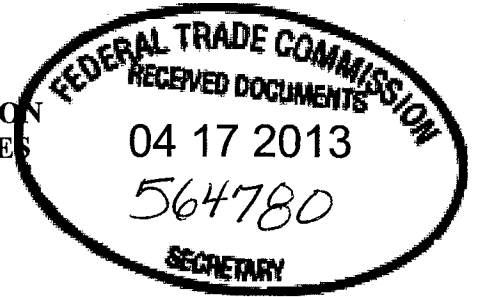


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
Phoebe Putney Health System, Inc.)
a corporation, and)
)
Phoebe Putney Memorial Hospital, Inc.)
a corporation, and)
)
HCA Inc.)
a corporation, and)
)
Palmyra Park Hospital, Inc.)
a corporation, and)
)
Hospital Authority of Albany-Dougherty)
County)

Docket No. 9348

RESPONDENTS' RESPONSES TO COMPLAINT COUNSEL'S FIRST REQUEST FOR ADMISSIONS

Respondents Phoebe Putney Memorial Hospital, Inc. and Phoebe Putney Health System, Inc. ("Respondents") respond and object to Complaint Counsel's Request for Admissions ("Requests") as set forth below. The following responses are made solely for the purposes of this action. Each response is subject to all objections as to relevance, materiality, and admissibility, and to any and all objections on any ground that would require exclusion of any response if it were introduced in court.

_____ No incidental or implied admissions are intended by these responses. The fact that Respondents have objected or responded to any Request shall not be deemed an admission that Respondents accept or admit the existence of any facts set forth or assumed by such Request or that such objection or response constitutes admissible evidence. The fact that Respondents have

responded to part or all of any Request is not intended to and shall not be construed to be a waiver by Respondents of any part of any objection to any Request.

The responses and objections are made on the basis of information and writings currently available to and located by Respondents upon reasonable investigation. Respondents expressly reserve the right to modify, revise, supplement, or amend their responses as they deem appropriate.

GENERAL OBJECTIONS

1. Respondents object to the Requests to the extent that they seek information that is protected from disclosure by the attorney-client privilege, the attorney work product doctrine or any other recognized privilege.

2. Respondents object to the Requests to the extent that they require Respondents to search for and produce documents or information that are not within their possession, custody, or control.

3. Respondents object to the Requests to the extent they seek information or documents that cannot be located by Respondents after reasonably diligent inquiry, are readily available from public sources, or are available to Complaint Counsel from another source or by other means that are more convenient, more appropriate, less burdensome, or less expensive.

4. Respondents object to the Requests to the extent they seek legal conclusions and/or would require Respondents to reach a legal conclusion in order to prepare a response.

5. Respondents object to the Requests to the extent they are argumentative, prejudicial, improper, incorrect, vague, and/or ambiguous.

6. Respondents object to the Definitions to the extent that certain Definitions imply legal conclusions. For example, by responding to or using the definitions "relevant area" or "relevant service," Respondents are not admitting that the defined "relevant area" constitutes a

relevant geographic market or that the defined “relevant service” constitutes a relevant product market.

RESPONSES

REQUEST FOR ADMISSION NO. 1:

Admit that the relevant service sold to commercial health plans constitutes a relevant product market in which to evaluate the effects of the relevant transaction.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Respondents object to the term “relevant service” to the extent that it implies a legal conclusion that the “relevant service” constitutes a relevant product market. Subject to and without waiving the foregoing objection, Respondents deny.

REQUEST FOR ADMISSION NO. 2:

Admit that prior to the relevant transaction, Phoebe Putney competed with Palmyra in the provision of the relevant service.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Respondents object to the term “relevant service” to the extent that it implies a legal conclusion that the “relevant service” constitutes a relevant product market. Respondents object to the term “compete” to the extent that it implies a legal conclusion. Subject to and without waiving the foregoing objections, Respondents cannot admit or deny this Request and therefore deny it. Nevertheless, subject to and without waiving the foregoing objections, Respondents state that Palmyra had little, if any, competitive effect on Phoebe Putney.

REQUEST FOR ADMISSION NO. 3:

Admit that Phoebe Putney required Palmyra to dismiss its monopolization lawsuit against Phoebe Putney as a condition precedent to the relevant transaction.

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Respondents object to this Request as vague and ambiguous with respect to the definition of “condition precedent.” Subject to and without waiving the foregoing objection, Respondents deny. Palmyra’s monopolization lawsuit against Phoebe Putney was dismissed but not as a “condition precedent to the relevant transaction.”

REQUEST FOR ADMISSION NO. 4:

Admit that as a result of the relevant transaction, Phoebe Putney owns or controls all of the beds licensed for inpatient services in Dougherty County.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Respondents object to the term “control” as vague and ambiguous and to the extent that it implies a legal conclusion. Subject to and without waiving the foregoing objections, Respondents deny.

REQUEST FOR ADMISSION NO. 5:

Admit that Phoebe Putney structured the relevant transaction in a manner to avoid antitrust scrutiny by federal and state antitrust enforcement authorities.

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Respondents object to this Request as vague and ambiguous as to the phrases “antitrust scrutiny” and “federal and state antitrust enforcement authorities.” Respondents also object to this Request to the extent that it implies that structuring a transaction to avoid antitrust scrutiny constitutes an admission of antitrust liability. Subject to and without waiving the foregoing objections, Respondents deny.

REQUEST FOR ADMISSION NO. 6:

Admit that the Georgia counties of Baker, Dougherty, Lee, Mitchell, Terrell, and Worth constitute a relevant geographic market in which to evaluate the effects of the relevant transaction.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Respondents object to this Request to the extent that it seeks a legal conclusion. Subject to and without waiving the foregoing objection, Respondents deny.

REQUEST FOR ADMISSION NO. 7:

Admit that no new hospitals have opened in the relevant area in the past five years.

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Respondents object to the term “relevant area” to the extent that it implies a legal conclusion that the “relevant area” constitutes a relevant geographic market. Subject to and without waiving the foregoing objection, Respondents cannot admit or deny this Request and therefore deny it. This Request asks for information outside of Respondents’ possession, custody, and control. Responsive information may be in the possession, custody, or control of The Georgia Department of Community Health.

REQUEST FOR ADMISSION NO. 8:

Admit that Phoebe Putney opposed Palmyra’s certificate of need application to offer obstetric services at Palmyra.

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Respondents object as vague and ambiguous as to the term “obstetric services.” Subject to and without waiving the foregoing objection, Respondents deny. Phoebe did, however, oppose Palmyra’s attempt to obtain a CON for Level I obstetric services for 7 beds.

REQUEST FOR ADMISSION NO. 9:

Admit that prior to the relevant transaction, Palmyra was Phoebe Putney's primary competitor for the relevant service.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Respondents object to this Request to the extent that it seeks a legal conclusion. Respondents also object to this Request as vague and ambiguous as to the term "primary competitor" and object to the term "relevant service" to the extent that it implies a legal conclusion that the "relevant service" constitutes a relevant product market. Subject to and without waiving the foregoing objections, Respondents deny.

REQUEST FOR ADMISSION NO. 10:

Admit that prior to the relevant transaction, Phoebe Putney competed with Palmyra for inclusion in provider networks offered by commercial health plans to consumers in the relevant area.

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Respondents object to the term "relevant area" to the extent that it implies a legal conclusion that the "relevant area" constitutes a relevant geographic market. Respondents object to the term "competed" to the extent that it implies a legal conclusion. Subject to and without waiving the foregoing objections, Respondents deny.

REQUEST FOR ADMISSION NO. 11:

Admit that prior to the relevant transaction, when both Phoebe Putney and Palmyra were in any commercial health plan's provider network, they competed with each other to attract patients covered by that health plan.

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Respondents object to the term “compete” to the extent that it implies a legal conclusion. This Request asks for information outside of Respondents’ possession, custody, and control. Responsive information may be in the possession, custody, or control of HCA. Subject to and without waiving the foregoing objections, Respondents deny.

REQUEST FOR ADMISSION NO. 12:

Admit that prior to the relevant transaction, Phoebe Putney and Palmyra competed for patient volume on the basis of price, clinical quality, amenities, and overall patient experience.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Respondents object to the term “competed” to the extent that it implies a legal conclusion. Subject to and without waiving the foregoing objection, Respondents deny.

REQUEST FOR ADMISSION NO. 13:

[REDACTED]

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Respondents object to this Request as vague and ambiguous [REDACTED]
[REDACTED] Subject to and without waiving the foregoing objection, [REDACTED]
[REDACTED]

REQUEST FOR ADMISSION NO. 14:

Admit that prior to the relevant transaction, Phoebe Putney planned to convert at least some of its semi-private beds to private beds in order to better compete with Palmyra.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Respondents object to the term “competed” to the extent that it implies a legal conclusion. Subject to and without waiving the foregoing objection, Respondents deny.

REQUEST FOR ADMISSION NO. 15:

Admit that prior to the relevant transaction, competition between Phoebe Putney and Palmyra encouraged Phoebe Putney to consider ways to reduce its emergency room wait times.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Respondents object to the term “competition” to the extent that it implies a legal conclusion. Subject to and without waiving the foregoing objection, Respondents deny.

REQUEST FOR ADMISSION NO. 16:

Admit that prior to the relevant transaction, Phoebe Putney offered health plans lower reimbursement rates in exchange for the exclusion of Palmyra from health plan networks.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Respondents object to this Request as vague and ambiguous as to the term “exclusion.” Subject to and without waiving the foregoing objection, Respondents state that during negotiations with managed care organizations, Phoebe Putney sometimes obtained higher volume for lower rates.

REQUEST FOR ADMISSION NO. 17:

Admit that, based on the current forecasts and projections of financial condition used by Phoebe Putney in the ordinary course of business, Phoebe Putney and Phoebe North are not at risk of closing for at least the next five years.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Phoebe Putney is the only licensed hospital in Dougherty County and Respondents are not aware of a risk of closing in the next five years.

REQUEST FOR ADMISSION NO. 18:

Admit that, based on Phoebe Putney's due diligence, Palmyra was not at risk of closing for at least the next five years if it remained independent.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Respondents object to this Request as vague and ambiguous as to when the five-year time period begins. Subject to and without waiving the foregoing objection, Respondents cannot either admit or deny this Request and therefore deny it. This Request asks for information outside of Respondents' possession, custody, and control. Respondents believe that this Request is more directed to HCA, Inc.

REQUEST FOR ADMISSION NO. 19:

Admit that the relevant transaction resulted in Phoebe Putney becoming the only provider of the relevant service in Dougherty County.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Respondents object to the term "relevant service" to the extent that it implies a legal conclusion that the "relevant service" constitutes a relevant product market. Subject to and without waiving the foregoing objection, Respondents state that Phoebe Putney is the only licensed hospital in Dougherty County. Phoebe Putney provides service to many patients who do not reside in Dougherty County.

REQUEST FOR ADMISSION NO. 20:

Admit that during provider contract negotiations with commercial health plans, Phoebe Putney attempts to obtain reimbursement rates and other contract terms that are as favorable as possible to Phoebe Putney.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Respondents object to this Request as vague and ambiguous as to the term “as favorable as possible” as it relates to obtaining reimbursement rates and other contract terms. Subject to and without waiving the foregoing objection, Respondents deny.

REQUEST FOR ADMISSION NO. 21:

Admit that in the ordinary course of business, Phoebe Putney’s employees track, utilize, or otherwise review market shares that are calculated based on inpatient discharges.

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

Respondents admit they, like every other hospital in the country, review such measures, among many others. In the case of Phoebe Putney, as an Authority owned hospital, review of such information is a necessary part of their fiduciary obligation under Georgia law to determine and serve the healthcare needs of the community.

REQUEST FOR ADMISSION NO. 22:

Admit that in the ordinary course of business, Phoebe Putney’s employees track, utilize, or otherwise review market shares that are calculated based on patient days.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Respondents admit they, like every other hospital in the country, review such measures, among many others. In the case of Phoebe Putney, as an Authority owned hospital, review of such information is a necessary part of their fiduciary obligation under Georgia law to determine and serve the healthcare needs of the community.

REQUEST FOR ADMISSION NO. 23:

Admit that in addition to Phoebe Putney and Phoebe North there is only one other independently-owned hospital located in the relevant area.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Respondents object to this Request as vague and ambiguous as to the term “independently-owned hospital.” Respondents further object to the term “relevant area” to the extent that it implies a legal conclusion that the “relevant area” constitutes a relevant geographic market. Subject to and without waiving the foregoing objections, Respondents cannot either admit or deny this Request and therefore deny it. This request asks for information outside of Respondents’ possession, custody, and control. Responsive information may be in the possession, custody, or control of the Georgia Department of Community Health.

REQUEST FOR ADMISSION NO. 24:

Admit that absent the relevant transaction, Phoebe Putney and Palmyra would continue to compete in the market for the relevant service.

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Respondents object to this Request because it assumes the conclusion that Phoebe Putney and Palmyra competed in the past. Respondents object to the term “compete” to the extent that it implies a legal conclusion. Respondents further object to the term “relevant service” to the extent that it implies a legal conclusion that the “relevant service” constitutes a relevant product market. Subject to and without waiving the foregoing objections, Respondents cannot either admit or deny this Request and therefore deny it. This Request asks for a future prediction based on a faulty assumption.

REQUEST FOR ADMISSION NO. 25:

Admit that construction of a new hospital comparable to Phoebe North would cost over \$100 million dollars.

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Respondents object to this Request as it is vague and ambiguous as to the terms “comparable” and “new.” Respondents further object to this Request, as Phoebe Putney is the only licensed hospital in Dougherty County. Subject to and without waiving the foregoing objections, respondents cannot admit or deny this request and therefore deny it. Respondents have never and could not assess the cost of the proposed hypothetical situation and cannot interpret it in such a way that Respondents would be able to answer the Request.

REQUEST FOR ADMISSION NO. 26:

Admit that construction of a new general acute care hospital comparable to Phoebe North would take over five years from the initiation of planning to the first day this hospital could treat commercially insured patients.

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

Respondents object to this Request as vague and ambiguous as to the terms “initiation of planning” and “new.” Respondents state that Phoebe Putney is the only licensed hospital in Dougherty County. Subject to and without waiving the foregoing objection, respondents cannot admit or deny this request and therefore deny it. Respondents have never and could not assess the hypothetical situation and cannot interpret it in such a way that Respondents would be able to answer the Request.

REQUEST FOR ADMISSION NO. 27:

Admit that no hospital has opened in Dougherty County since Palmyra opened.

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Respondents admit.

REQUEST FOR ADMISSION NO. 28:

Admit that during provider contract negotiations between Phoebe Putney and any commercial health plan, the level of reimbursement that Phoebe Putney will receive from the health plan is open to negotiation, regardless of the contract's reimbursement methodology.

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Respondents cannot admit or deny this Request and therefore deny it. Respondents do not understand what the Request means by "regardless of the contract's reimbursement methodology" and cannot interpret it in such a way that Respondents would be able to answer the Request.

REQUEST FOR ADMISSION NO. 29:

Admit that prior to the relevant transaction, Phoebe Putney made offers to lower its reimbursement rates to match the reimbursement rates that Palmyra offered to local employers.

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

Respondents object to this Request as vague and ambiguous as to the term "local employers." Subject to and without waiving the foregoing objection, Respondents cannot admit or deny this Request and therefore deny it. Respondents cannot properly answer this Request because it lacks specificity as to when and to whom Phoebe Putney allegedly offered to lower its reimbursement rates.

REQUEST FOR ADMISSION NO. 30:

Admit that prior to the relevant transaction, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

Respondents admit that [REDACTED]
[REDACTED] Respondents deny the remainder of the Request.

REQUEST FOR ADMISSION NO. 31:

[REDACTED]
[REDACTED]
[REDACTED]

RESPONSE TO REQUEST FOR ADMISSION NO. 31:

Respondents object to this Request as vague and ambiguous [REDACTED]
[REDACTED] Subject to and without waiving the foregoing objection, [REDACTED]
[REDACTED]
[REDACTED]

REQUEST FOR ADMISSION NO. 32:

[REDACTED]
[REDACTED]

RESPONSE TO REQUEST FOR ADMISSION NO. 32:

[REDACTED]
[REDACTED]

REQUEST FOR ADMISSION NO. 33:

[REDACTED]
[REDACTED]
[REDACTED] With respect to the remainder of the Request, Respondents deny.

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

[REDACTED]

REQUEST FOR ADMISSION NO. 34:

[REDACTED]

With respect to the remainder of the Request, Respondents deny.

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

[REDACTED]

REQUEST FOR ADMISSION NO. 35:

Admit that absent the relevant transaction, Phoebe Putney would independently seek to improve the quality of care it offered to the residents living in the relevant area.

RESPONSE TO REQUEST FOR ADMISSION NO. 35:

Respondents object to the term “relevant area” to the extent that it implies a legal conclusion that the “relevant area” constitutes a relevant geographic market. Subject to and without waiving the foregoing objection, Respondents state that their goal is to always provide high quality care to all patients irrespective of residential status.

REQUEST FOR ADMISSION NO. 36:

[REDACTED]

RESPONSE TO REQUEST FOR ADMISSION NO. 36:



REQUEST FOR ADMISSION NO. 37:

Admit that as a result of the relevant transaction, Phoebe Putney has the power to negotiate managed care contracts with health plans for healthcare services at Phoebe North.

RESPONSE TO REQUEST FOR ADMISSION NO. 37:

Respondents object to this Request as vague and ambiguous as to the term “power.” Subject to and without waiving the foregoing objection, Respondents deny.

REQUEST FOR ADMISSION NO. 38:

Admit that as a result of the relevant transaction, Phoebe Putney has full financial and operational control of Phoebe North.

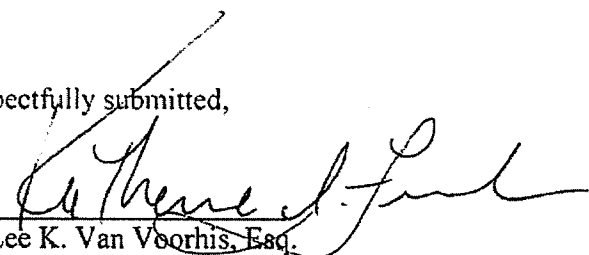
RESPONSE TO REQUEST FOR ADMISSION NO. 38:

Respondents object to this Request as vague and ambiguous as to the phrase “full financial and operational control.” Subject to and without waiving the foregoing objection, Respondents state that the assets acquired from HCA have been leased to Phoebe Putney.

Dated: April 17, 2013

Respectfully submitted,

By


Lee K. Van Voorhis, Esq.

Katherine I. Funk, Esq.

Baker & McKenzie LLP

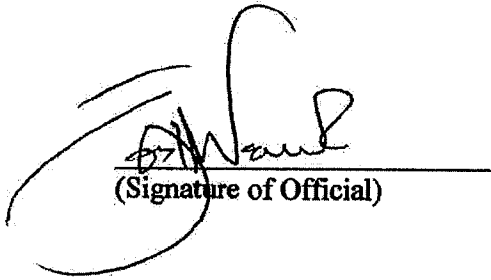
815 Connecticut Avenue, NW

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*Counsel For Phoebe Putney Memorial
Hospital, Inc. and Phoebe Puney Health
System, Inc.*

CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Requests for Admission has been prepared by me or under my personal supervision from records of Phoebe Putney Health System and Phoebe Putney Memorial Hospital, Inc. and is complete and correct to the best of my knowledge and belief.



(Signature of Official)

President and CEO,
Phoebe Putney Memorial Hospital, Inc. and
Phoebe Putney Health System, Inc.
(Title/Company)

Joel Wernick
(Typed Name of Above Official)

(229) 312-4053
(Office Telephone)

CERTIFICATE OF SERVICE

I hereby certify that this 17th day of April, 2013 a true and correct copy of the foregoing PUBLIC document was filed via FTC e-file, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
Room H113
600 Pennsylvania Avenue, NW
Washington, DC 20580
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I also certify that I delivered via electronic mail a copy of the foregoing PUBLIC document to:

The Honorable D. Michael Chappell
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This 17th day of April, 2013.

/s/ Brian Rafkin
Brian Rafkin, Esq.
*Counsel for Phoebe Putney Memorial
Hospital, Inc. and Phoebe Putney Health
System, Inc.*

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

April 17, 2013

By:

/s/ Brian Rafkin
Brian Rafkin, Esq.
*Counsel for Phoebe Putney Memorial
Hospital, Inc. and Phoebe Putney Health
System, Inc.*