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* Associated Firm

March 22, 2013

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

In the Matter of Phoebe Putney Health System Inc., et. al.

Secretary Clark:

Enclosed is a copy of Respondents Phoebe Putney Memorial Hospital, Inc., Phoebe Putney Health System, Inc., Phoebe North Inc., and Hospital Authority of Albany-Dougherty County's March 22, 2013 (1) Reply Brief in Support of Respondents' Motion to Reschedule Hearing Date and (2) Motion for Leave to File Reply Brief in Support of Respondents' Motion to Reschedule Hearing filed with the Federal Trade Commission in the above-noted matter.

Please acknowledge your receipt of this letter and the delivery of the enclosed submission.

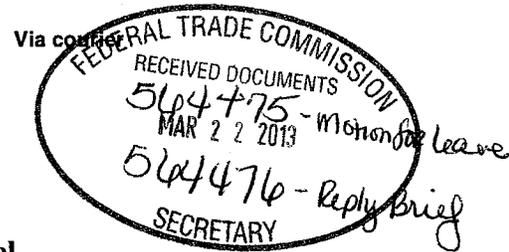
Best regards,

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Cc: Emmet J. Bondurant, Esq.
Frank M. Lowrey, Esq.
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Enclosures

ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

ORIGINAL

COMMISSIONERS: Edith Ramirez, Chairman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright



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

Public

MOTION FOR LEAVE TO FILE REPLY BRIEF IN SUPPORT OF RESPONDENTS'
MOTION TO RESCHEDULE HEARING

Pursuant to Rule 3.22(d), Respondents respectfully request leave to file the attached proposed reply in support of their pending motion to reschedule the hearing date. Respondents request leave in order to draw the Commission's attention to statements and proceedings in the March 21, 2013 scheduling conference before the Administrative Law Judge (conducted after Respondents filed their motion) that are contrary to the arguments advanced by Complaint Counsel in opposition to rescheduling.¹ More specifically:

¹ Rule 3.22(d) provides for leave where the parties wish "to draw ... the Commission's attention to recent important developments or controlling authority that could not have been raised earlier in the party's principal brief. The reply may be conditionally filed with the motion seeking leave to reply."

(1) Complaint Counsel argue that Respondents need no more time to develop their expert rebuttal reports than would be available under a July 2013 hearing schedule because Respondents have had the relevant expert report – the April 2011 Report by Dr. Garmon – for two years. Complaint Count’s Opposition to Respondents’ Motion to Reschedule Hearing Date (“Opposition”) at 4 (“Respondents have had a copy of this report, and an opportunity to analyze it and prepare for rebuttal, *for almost two years*”) (emphasis original). However, when asked by Judge Chappell at the March 21 scheduling conference, Complaint Counsel revealed that they will rely on as many as three experts. Tr. of Mar. 21, 2013 Status Conf. at 11-12 (“If I were to guess today, I would expect Complaint Counsel to have between one and three experts, and I just don’t have the information upon which to make that final decision”). Further, Complaint Counsel has confirmed that the reports will be new ones.

(2) Complaint Counsel’s opposition suggests that four months for hearing preparation is sufficient because, when combined with an alleged month-and-a-half of discovery conducted prior to the stay, the parties will have had the full five-month default period set out by Commission Rules. Opposition at 2. But, to the best of Respondents’ knowledge, the parties did not obtain discovery responses prior to the stay and, in any case, Complaint Counsel informed Judge Chappell on March 21 that they will withdraw all discovery requests issued prior to the stay and replace them with new requests. See Tr. of Mar. 21, 2013 Status Conf. at 6-7.

(3) Complaint Counsel’s opposition implies that Respondents have delayed proceedings by withholding information necessary for Complaint Counsel to identify additional witnesses. Opposition at 4, n.7. However, the transcript of the March 21 status conference shows that Counsel is referring to a *mutual* exchange by *both* parties of limited information that is to occur by *March 28*. See Tr. of Mar. 21, 2013 Status Conf. at 20-21. That is different than Complaint

Counsels' implication that Respondents are holding things up. Second, while Complaint Counsel says Respondents are the "only" reason that they have not yet identified new witnesses (Opposition at 4), the truth is that Complaint Counsel had never proposed to update their preliminary witness list sooner than April 1, which is the date that they requested and obtained from Judge Chappell in the March 21 scheduling conference.

Other than the April 1 and April 5 dates for Complaint Counsel's and Respondents' preliminary witness lists, Judge Chappell left the schedule open until the Commission ruled on Respondents' motion to reschedule the hearing. *Id.* at 9 ("I don't intend to issue a scheduling order until that motion is either granted or denied."). So any suggestion that Respondents are a source of delay is inconsistent with the proceedings before Judge Chappell.

Accordingly, Respondents respectfully request leave pursuant to Rule 3.22(d) to file the attached, proposed reply regarding the new matters summarized above.

Dated: March 22, 2013

Respectfully submitted,

By /s/ Lee K. Van Voorhis
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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairman
Julie Brill
Maureen K. Ohlhausen
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In the Matter of)	
Phoebe Putney Health System, Inc.)	
a corporation, and)	Docket No. 9348
)	
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)	

[PROPOSED] ORDER

Having reviewed the Respondents' Motion for Leave to File a Reply Brief in Support of Respondents' Motion to Reschedule Hearing Date, it is hereby

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Reply Brief in Support of Respondents' Motion to Reschedule Hearing Date attached to Respondents' motion be deemed filed as of the date of this Order;

By the Commission.

Donald S. Clark
Secretary

Dated:

CERTIFICATE OF SERVICE

I hereby certify that this 22nd day of March, 2013 a true and correct copy of the foregoing Motion for Leave to File Reply Brief in Support of Respondents' Motion to Reschedule Hearing 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
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dclark@ftc.gov

I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
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and by electronic mail to the following:

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This 22nd day of March, 2013.

/s/ Lee K. Van Voorhis

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*Counsel for Phoebe Putney Memorial
Hospital, Inc., Phoebe Putney Health
System, Inc., and Phoebe North, 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.

March 22, 2013

By:

/s/ Lee K. Van Voorhis

Lee Van Voorhis, Esq.

*Counsel for Phoebe Putney Memorial
Hospital, Inc., Phoebe Putney Health
System, Inc., and Phoebe North, Inc.*