

Original

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



In the Matter of)
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)
 Phoebe Putney Health System, Inc.)
 a corporation, and)
)
 Phoebe Putney Memorial Hospital, Inc.)
 a corporation, and)
)
 Phoebe North, 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

**COMPLAINT COUNSEL’S FIRST REQUEST FOR ADMISSIONS TO RESPONDENT
PHOEBE PUTNEY HEALTH SYSTEM, PHOEBE PUTNEY MEMORIAL HOSPITAL,
INC., AND PHOEBE NORTH, INC.**

Pursuant to the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.32, and the Scheduling Order entered by Chief Administrative Law Judge Chappell on April 3, 2013, Complaint Counsel hereby requests that Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Phoebe North, Inc. respond to the following Requests for Admission (“RFAs”) in accordance with the Definitions and Instructions set forth below:

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.
2. Admit that prior to the relevant transaction, Phoebe Putney competed with Palmyra in the provision of the relevant service.
3. Admit that Phoebe Putney required Palmyra to dismiss its monopolization lawsuit against Phoebe Putney as a condition precedent to the relevant transaction.

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.
5. Admit that Phoebe Putney structured the relevant transaction in a manner to avoid antitrust scrutiny by federal and state antitrust enforcement authorities.
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.
7. Admit that no new hospitals have opened in the relevant area in the past five years.
8. Admit that Phoebe Putney opposed Palmyra's certificate of need application to offer obstetric services at Palmyra.
9. Admit that prior to the relevant transaction, Palmyra was Phoebe Putney's primary competitor for the relevant service.
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.
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.
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.
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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.
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.
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.

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.
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.
19. Admit that the relevant transaction resulted in Phoebe Putney becoming the only provider of the relevant service in Dougherty County.
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.
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.
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.
23. Admit that in addition to Phoebe Putney and Phoebe North there is only one other independently-owned hospital located in the relevant area.
24. Admit that absent the relevant transaction, Phoebe Putney and Palmyra would continue to compete in the market for the relevant service.
25. Admit that construction of a new hospital comparable to Phoebe North would cost over \$100 million dollars.
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.
27. Admit that no hospital has opened in Dougherty County since Palmyra opened.
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.
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.
30. Admit that prior to the relevant transaction, Phoebe Putney provided Blue Cross Blue Shield of Georgia reduced reimbursement rates in exchange for excluding all other

all previous and former directors, officers, employees, agents, and representatives of the foregoing.

- C. The term “Palmyra” means HCA/Palmyra, Palmyra Medical Center, and Palmyra Park Hospital, doing business as Palmyra Medical Center, and its directors, officers, employees, agents, and representatives.
- D. The term “HCA” means Hospital Corporation of America, Inc., and its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. 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 a legal entity and any other person.
- E. The terms “Commission” or “FTC” mean the Federal Trade Commission.
- F. The terms “and” and “or” have both conjunctive and disjunctive meanings.
- G. The terms “each,” “any,” and “all” mean “each and every.”
- H. 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.
- I. The term “health plan” means any health maintenance organization, preferred provider arrangement or organization, managed health care plan of any kind, self-insured health benefit plan, other employer or union health benefit plan, Medicare, Medicaid, TRICARE, or private or governmental health care plan or insurance of any kind.
- J. The term “hospital” means a facility that provides the relevant service as defined herein.
- K. 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.
- L. The term “person” includes the Respondents and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

- M. The term “relevant transaction” includes (i) the acquisition of Palmyra pursuant to the Asset Purchase Agreement dated December 21, 2010; (ii) the possible acquisition of Palmyra referred to in paragraphs 29 through 49 of the Declaration of Joel Wernick dated May 16, 2011, and filed in *FTC v. Phoebe Putney Health System, Inc.*, Case No 1:11-cv-00058 (WLS) (M.D. Ga.); and (iii) any other instance in which either the Hospital Authority or Phoebe Putney considered purchasing Palmyra.
- N. The term “provider” means any licensed healthcare professional or healthcare facility, including, but not limited to, hospitals, as defined herein.
- O. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
- P. The term “relevant area” means the area encompassing the counties of Baker, Dougherty, Lee, Mitchell, Terrell, and Worth in the state of Georgia.
- Q. The term “relevant service” means inpatient 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.
- R. The term “inpatient services” refers to medical services that require the patient to stay overnight in a healthcare facility.
- S. The term “outpatient services” refers to medical services that do not require the patient to stay overnight in a healthcare facility.
- T. The terms “health plan network” and “provider network” mean a health plan’s preferred panel of providers at which the health plan’s members can obtain care without having to pay the higher out-of-pocket costs that the health plan’s members must pay to obtain care at a provider excluded from the preferred panel.
- U. The term “in-network provider” means a provider that is a member of a health plan network or a provider network.
- V. The term “reimbursement methodology” refers to the method for determining the amount of reimbursement a health plan owes to a provider as payment for healthcare services rendered by the provider to a patient or a group of patients covered by the health plan. The term includes, but is not limited to, reimbursement based on per diems, a percent of billed charges, MS-DRG weights, a discount off billed charges, pay-for-performance criteria, pay-for-value criteria, risk-sharing arrangements, and patient-centered medical home models.
- W. The term “reimbursement rates” refers to the payments that a health plan must make to a provider for healthcare services rendered by the provider to the health plan’s members.

INSTRUCTIONS

- A. These RFAs call for Respondents to make a reasonable inquiry into the information available from their documents, employees, contractors and agents to answer each RFA.
- B. Each RFA is to be answered separately and under oath.
- C. Each answer to these RFAs shall specifically admit or deny the statement or set forth in detail the reasons why Respondents cannot truthfully admit or deny the statement.
- D. If Respondents cannot admit or deny the entire RFA, it shall specify what portion of the statement is true and qualify or deny the remainder. When qualifying an answer, provide all facts and bases that Respondents contend support its refusal to admit to the statement.
- E. Respondents shall not give lack of information or knowledge as a reason for failure to admit or deny unless after a reasonable inquiry the information available to Respondents does not provide sufficient basis for admitting or denying the RFA. In such instances, Respondents shall describe the unavailable information and its efforts to obtain this information.
- F. If Respondents object to a RFA, it shall set forth the basis for its objection. Any ground not stated in an objection shall be waived. All objections must be made with particularity and must set forth all information upon which Respondents intend to rely in response to any motion to compel.
- G. Whenever necessary to bring within the scope of a RFA a response that might otherwise be construed to be outside its scope, the following constructions should be applied:
 - 1. Construing the terms “and” and “or” in the disjunctive or conjunctive, as necessary, to make the RFA more inclusive;
 - 2. Construing the singular form of any word to include the plural and the plural form to include the singular;
 - 3. Construing the past tense of the verb to include the present tense and the present tense to include the past tense;
 - 4. Construing the term “Date” to mean exact day, month, and year if ascertainable; if not, the closest approximation that can be made by means of relationship to other events, locations, or matters; and
 - 5. Construing the negative terms to include the positive and vice versa.
- H. An answer should not be supplied by reference to an answer to another RFA unless the information provided is intended to be identical in all respects.

- I. If Respondents claim any ambiguity in interpreting a RFA or a definition or instruction applicable thereto, Respondents shall set forth as part of its response the language deemed to be ambiguous and the interpretation used in responding to the RFA, and shall respond to the RFA as Respondents interpret it.
- J. If Respondents cannot find in the Definition section or in the body of the RFAs the definition for a word that is otherwise ambiguous, Respondents shall interpret the word according to its usage by Respondents and state in the answer to the RFA, Respondents definition of the word.
- K. If any privilege is claimed as a ground for not responding to a RFA, provide a privilege log describing the basis for the claim of privilege and all information necessary for the Court to assess the claim of privilege, in accordance with Rule 3.31(c)(2) of the FTC Rules of practice. The privilege log shall include the following:
 - 1. Specific grounds for the claim of privilege;
 - 2. The date of the privileged communication;
 - 3. The persons involved in the privileged communication;
 - 4. A description of the subject matter of the privileged communication in sufficient detail to assess the claim of privilege; and
 - 5. The specific RFA to which the privileged information is responsive.
- L. All questions relating to the RFAs should be directed to Douglas Litvack at (202) 326-2868.

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, Phoebe Putney Memorial Hospital, Inc., and Phoebe North, Inc. 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 Complaint Counsel uses such copies in any court or administrative proceeding, Phoebe Putney Health System, Phoebe Putney Memorial Hospital, Inc., and Phoebe North, Inc., will not object based upon Complaint Counsel not offering the original document.

(Signature of Official)

(Title/Company)

(Typed Name of Above Official)

(Office Telephone)

Respectfully submitted,

s/ Maria DiMoscato
Maria DiMoscato

Counsel Supporting the Complaint
Bureau of Competition
Federal Trade Commission
Washington, DC 20580

Dated: April 8, 2013

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2013 I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

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

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

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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 8, 2013

By: s/ Maria DiMoscato
Attorney