

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)
)
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 HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY

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 4, 2013, Complaint Counsel hereby requests that Respondent Hospital Authority of Albany-Dougherty County (the “Authority”) respond to the following Requests for Admission (“RFAs”) in accordance with the Definitions and Instructions set forth below:

1. Admit that Phoebe Putney pays all of the Authority’s expenses, including legal fees.
2. Admit that Phoebe Putney Health System, Inc. has no reporting obligations to the Authority.
3. Admit that the Authority has no control over the day-to-day operation of Phoebe Putney Memorial Hospital.
4. Admit that the Authority has no control over the reimbursement rates Phoebe Putney Memorial Hospital charges to commercial health plans for its services.

5. Admit that the Authority has no involvement in Phoebe Putney's contract negotiations with commercial health plans.
6. Admit that the Authority has never requested Phoebe Putney to change the reimbursement rates it charges to commercial health plans for its services.
7. Admit that the Authority has never requested Phoebe Putney to change the reimbursement rates it negotiated with commercial health plans for its services.
8. Admit that the Authority never requested that Phoebe Putney change any charges listed on its chargemaster list for its services.
9. Admit that the Authority never sought a fairness opinion relating to the purchase price paid in the relevant transaction.
10. Admit that the relevant transaction was structured in a manner to avoid antitrust scrutiny by federal and state antitrust enforcement authorities.
11. Admit that after the relevant transaction, the Authority leases Palmyra to Phoebe Putney in exchange for \$1.00 per annum.
12. Admit that after the relevant transaction, the Authority will lease Palmyra to Phoebe Putney until 2056.
13. Admit that after the relevant transaction, the Authority has no control over the reimbursement rates negotiated with commercial health plans for services provided at Phoebe North.
14. Admit that after the relevant transaction, the Authority has no control over the day-to-day operation of Phoebe North.
15. Admit that after the relevant transaction, the Authority has no involvement in reimbursement rate negotiations with commercial health plans for services provided at Phoebe North.
16. Admit that the Authority approved the relevant transaction exactly as Phoebe Putney negotiated it, not making a single change.
17. Admit that general acute inpatient hospital services sold to commercial health plans constitute a relevant product market in which to evaluate the effects of the relevant transaction.
18. Admit that the general acute care inpatient hospital services market properly excludes tertiary services.

19. Admit that the general acute care inpatient hospital services market properly excludes outpatient services.
20. Admit that prior to the relevant transaction, Phoebe Putney competed with Palmyra in the provision of inpatient general acute care hospital services.
21. Admit that no new hospitals offering general acute care inpatient services have entered the relevant area in the past five years.
22. Admit that prior to the relevant transaction, Phoebe Putney's primary competitor for general acute care inpatient services was Palmyra.
23. Admit that after the relevant transaction, Phoebe Putney is the only provider of general acute care inpatient hospital services in Dougherty County.
24. Admit that after the relevant transaction, in addition to Phoebe Putney and Palmyra there is only one other independently owned hospital located in the relevant area.

DEFINITIONS

- A. The term "Phoebe Putney," means Phoebe Putney Health System, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, including Phoebe Putney Memorial Hospital, Inc., Phoebe North, Inc., and Palmyra Health System, 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.
- B. The term "Authority" means the Hospital Authority of Albany-Dougherty County, and any predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and 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 terms "and" and "or" have both conjunctive and disjunctive meanings.
- 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 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.
- H. The term “hospital” means a facility that provides the relevant service as defined herein.
- I. The term “day-to-day operation” 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.
- J. The term “person” includes the Authority and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- K. 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.
- L. The term “provider” means any licensed healthcare professional or healthcare facility, including, but not limited to, hospitals, as defined herein.
- M. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
- N. The term “relevant area” means the area encompassing the counties of Baker, Dougherty, Lee, Mitchell, Terrell, and Worth in the state of Georgia.
- O. 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.
- P. The term “inpatient services” refers to medical services that require the patient to stay overnight in a healthcare facility.
- Q. The term “outpatient services” refers to medical services that do not require the patient to stay overnight in a healthcare facility.

- R. 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 the Authority 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 the Authority cannot truthfully admit or deny the statement.
- D. If the Authority 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 the Authority contends support its refusal to admit to the statement.
- E. The Authority 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 the Authority does not provide sufficient basis for admitting or denying the RFA. In such instances, the Authority shall describe the unavailable information and its efforts to obtain this information.
- F. If the Authority objects 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 the Authority intends 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 the Authority claims any ambiguity in interpreting a RFA or a definition or instruction applicable thereto, the Authority 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 the Authority interprets it.
 - J. If the Authority cannot find in the Definition section or in the body of the RFAs the definition for a word that is otherwise ambiguous, the Authority shall interpret the word according to its usage by the Authority and state in the answer to the RFA, the Authority's 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) 326-2143.

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 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 and hand delivery 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 18, 2013

By: s/ Maria DiMoscato
Attorney

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 the Hospital Authority of Albany-Dougherty County 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, the Hospital Authority of Albany-Dougherty County will not object based upon Complaint Counsel not offering the original document.

(Signature of Official)

(Title/Company)

(Typed Name of Above Official)

(Office Telephone)