

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' FIRST REQUEST FOR ADMISSIONS TO COMPLAINT COUNSEL

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. §§ 3.32 Respondents, Phoebe Putney Health System, Inc., and Phoebe Putney Memorial Hospital, Inc., ("Phoebe") and the Hospital Authority of Albany-Dougherty County (the "Authority") hereby request that Complaint Counsel respond to the following Requests for Admission ("RFAs") in accordance with the Definitions and Instructions set forth below:

1. Admit that hospitals incur costs in the delivery of care to all patients, regardless of payor class or category.
2. Admit that any monetary reimbursements received from indigent or charity patients are less than the total cost of providing health care services to such patients.
3. Admit that, in the aggregate, Medicare reimbursement rates are insufficient to cover the total cost of health care services provided to Medicare beneficiaries.
4. Admit that Medicare reimbursement rates are sometimes insufficient to cover the incremental cost of health care services provided to individual Medicare beneficiaries.
5. Admit that, in the aggregate, Georgia Medicaid reimbursement rates are insufficient to cover the total cost of health care services provided to Georgia Medicaid beneficiaries.

6. Admit that Georgia Medicaid reimbursement rates are sometimes insufficient to cover the incremental cost of health care services provided to individual Georgia Medicaid beneficiaries.
7. Admit that the cost of delivering health care services to indigent patients and patients who qualify for charity care is paid for, at least in part, by reimbursements received for delivering health care services to commercially insured patients.
8. Admit that the monetary differential between Medicare reimbursement rates and the costs of delivering health care services to Medicare beneficiaries is covered, at least in part, by reimbursements received for delivering health care services to commercially insured patients.
9. Admit that the monetary differential between Medicaid reimbursement rates and the costs of delivering health care services to Medicaid beneficiaries is covered, at least in part, by reimbursements received for delivering health care services to commercially insured patients.
10. Admit that the Hospital Authority of Albany-Dougherty County is a government entity.
11. Admit that the Hospital Authority of Albany-Dougherty County owns Phoebe Putney Memorial Hospital.
12. Admit that commercial health insurers do not offer health plans that cover only “inpatient general acute-care hospital services.”
13. Admit that “inpatient general acute-care hospital services” does not include emergency room care.
14. Admit that commercial health insurers licensed to do business in Georgia do not offer health plans limited to the six-county region consisting of Dougherty, Terrell, Lee, Worth, Baker, and Mitchell Counties in the State of Georgia.
15. Admit that each member of a community benefits from the good health of other community members.
16. Admit that between 2008 and 2011, more residents of Baker, Dougherty, Lee, Mitchell, Terrell and Worth Counties in Georgia who were covered by health plans were admitted to hospitals outside of Dougherty County than were admitted to Palmyra.
17. Admit that at as of December 2011, Palmyra did not offer, or have any plans to offer, Neonatal Intensive Care services.
18. Admit that the Certificate of Need that Palmyra sought to obtain for obstetrics services did not include Neonatal Intensive Care services.

DEFINITIONS

- A. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
- B. The term “charity care” means revenue forgone for services to income tested patients whose individual or family income is greater than 125% of the Federal Poverty Guidelines (FPG) and whose charges for such services were written off to a valid charity account in the hospital's accounting records pursuant to a formal and official written charity policy.
- C. The term “charity patient” means someone who receives charity care.
- D. The term “commercial insurance” means a health plan offered for sale by a non-governmental entity.
- E. The term “commercial health insurers” means a non-governmental entity that offers for sale a health plan (s).
- F. The term “commercially insured patients” means someone who has commercial insurance.
- G. The term “communication” means any transfer of information, written, oral, or by any other means.
- H. The term “computer files” includes information stored in, or accessible through, computer or other information retrieval systems. Thus, you 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 forms of offline storage.
- I. The terms “constitute,” “contain,” “discuss,” “analyze,” or “relate to” mean constituting, reflecting, respecting, regarding, concerning, pertaining to, referring to, relating to, stating, describing, recording, noting, embodying, memorializing, containing, mentioning, studying, assessing, analyzing, or discussing.
- J. The term “documents” means all computer files and written, recorded, and graphic materials of every kind in your possession, custody, or control. 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 your possession, custody, or control.
- K. The terms “each,” “any,” and “all” mean “each and every.”

- L. The terms “You” and “Your” means Complaint Counsel, the Federal Trade Commission, and any of the agents, employees, divisions, sub-divisions, units, sub-entities, and partners of Complaint Counsel and the Federal Trade Commission.
- M. The term “health care facility” means a hospital, health maintenance organization facility, ambulatory care center, first aid or other clinic, urgent care center, free-standing emergency care center, imaging center, ambulatory surgery center and all other entities that provide health care services.
- N. The term “health care services” means the examination, diagnosis, or treatment of any illness, malady, or disease for the purpose of cure, management, prevention, or healing whether on an in-patient or out-patient basis.
- O. 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.
- P. The term “hospital” means a health care facility providing care through specialized staff and equipment on either an in-patient or out-patient basis.
- Q. The term “including” shall mean “including without limitation.”
- R. The term “indigent care” means revenue forgone for services to income tested patients whose individual or family income is less than or equal to 125% of the Federal Poverty Guidelines (FPG).
- S. The term “indigent patient” means someone who received indigent care.
- T. The term “Palmyra” means HCA/Palmyra, Palmyra Medical Center, and Palmyra Park Hospital doing business as Palmyra Medical Center 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.
- U. The term “payor” means a person other than a natural person that pays any health care expenses of any other person, and all of its directors, officers, employees, agents and representatives. This payor includes, but is not limited to: Blue Cross and Blue Shield, commercial insurance companies, health maintenance organizations, preferred provider organizations, competitive medical plans, union trust funds, multiple employer trusts, corporate or governmental self-insured health benefits plans, Medicare, or Medicaid.
- V. The term “person” or “persons” means natural persons, groups of natural persons acting as individuals, groups of natural persons acting in a collegial capacity (*e.g.*, as a committee, board, panel, etc.), associations, representative bodies, government bodies, agencies, or any other commercial entity, incorporated business, social or government entity.

- W. The term “Phoebe” means Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Phoebe Health Partners.
- X. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
- Y. Unless otherwise defined, all words and phrases used in this First Request for Admissions shall be accorded their usual meaning as defined by Webster’s New Universal Unabridged Dictionary, Fully Revised and Updated (2003).

INSTRUCTIONS

- A. These RFAs call for Complaint Counsel to make a reasonable inquiry into the information available from its 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 Complaint Counsel cannot truthfully admit or deny the statement.
- D. If Complaint Counsel 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 Complaint Counsel contends support its refusal to admit to the statement.
- E. Complaint Counsel 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 Complaint Counsel does not provide sufficient basis for admitting or denying the RFA. In such instances, Complaint Counsel shall describe the unavailable information and its efforts to obtain this information.
- F. If Complaint Counsel 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 Complaint Counsel 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 Complaint Counsel claims any ambiguity in interpreting a RFA or a definition or instruction applicable thereto, Complaint Counsel 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 Complaint Counsel interprets it.
- J. If Complaint Counsel cannot find in the Definition section or in the body of the RFAs the definition for a word that is otherwise ambiguous, Complaint Counsel shall interpret the word according to its usage by Complaint Counsel and state in the answer to the RFA, Complaint Counsel’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 Katherine Funk at (202) 635-6161.

CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Request for Admissions has been prepared by me or under my personal supervision from the records of the Federal Trade Commission 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 Respondents use such copies in any court or administrative proceeding, Federal Trade Commission will not object based upon Respondents not offering the original document.

(Signature of Official)

(Title/Company)

(Typed Name of Above Official)

(Office Telephone)

Dated: April 26, 2013

Respectfully submitted,

By /s/ Lee K. Van Voorhis

Lee K. Van Voorhis, Esq.

Katherine I. Funk, Esq.

Brian F. Burke, Esq.

Jennifer A. Semko, Esq.

John J. Fedele, Esq.

Teisha C. Johnson, Esq.

Brian Rafkin, Esq.

Jeremy W. Cline, Esq.

Baker & McKenzie LLP

815 Connecticut Avenue, NW

Washington, DC 20006

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

Emmet J. Bondurant, Esq.

Frank M. Lowrey, Esq.

Michael A. Caplan, Esq.

Bondurant, Mixson & Elmore LLP

1201 W. Peachtree Street, Suite 3900

Atlanta, Georgia 30309

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

CERTIFICATE OF SERVICE

I hereby certify that this 26th day of April, 2013 a true and correct copy of the foregoing 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
dclark@ftc.gov

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
Room H110
600 Pennsylvania Avenue, NW
Washington, DC 20580
oyalj@ftc.gov

and by electronic mail to the following:

Edward D. Hassi, Esq.
Trial Counsel
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
ehassi@ftc.gov

Jeff K. Perry, Esq.
Assistant Director
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
jperry@ftc.gov

Maria M. DiMoscato, Esq.
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
mdimoscato@ftc.gov

Sara Y. Razi, Esq.
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
srazi@ftc.gov

Christopher Abbott
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
cabbott@ftc.gov

Lucas Ballet
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
lballet@ftc.gov

Amanda Lewis
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
alewis1@ftc.gov

Douglas Litvack
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
dlitvack@ftc.gov

Emmet J. Bondurant, Esq.
Bondurant@bmelaw.com
Michael A. Caplan, Esq.
caplan@bmelaw.com
Ronan A. Doherty, Esq.
doherty@bmelaw.com
Frank M. Lowrey, Esq.
lowrey@bmelaw.com
Bondurant, Mixson & Elmore, LLP
1201 West Peachtree St. N.W., Suite 3900
Atlanta, GA 30309

Kevin J. Arquit, Esq.
karquit@stblaw.com
Jennifer Rie, Esq.
jrie@stblaw.com
Simpson Thacher and Bartlett, LLP
425 Lexington Avenue
New York, New York 10017

This 26th 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 26, 2013

By:

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