

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
HCA, 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 4, 2013, Complaint Counsel hereby requests that HCA, Inc., respond to the following Requests for Admission in accordance with the Definitions and Instructions set forth below:

1. Admit that inpatient general acute care hospital services sold to commercial health plans constitutes a relevant product market in which to evaluate the effects of the relevant transaction.
2. 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.
3. Admit that, in the ordinary course of business prior to the relevant transaction, Palmyra tracked, utilized, or otherwise reviewed market shares that are calculated based on Palmyra’s inpatient discharges.

4. Admit that, in the ordinary course of business prior to the relevant transaction, Palmyra tracked, utilized, or otherwise reviewed market shares that are calculated based on patient days.
- 5.
- 6.
- 7.
8. Admit that, prior to the relevant transaction, Palmyra's primary competitor for the provision of inpatient general acute care services was Phoebe Putney.
- 9.
- 10.
- 11.
12. Admit that Georgia's Certificate of Need statutes make it more difficult for health care providers to enter the market for inpatient general acute care hospital services in Georgia than it would be absent those statutes, including within the geographic area that encompasses Dougherty, Terrell, Lee, Worth, Baker, and Mitchell counties.
13. Admit that, prior to the relevant transaction, Palmyra competed with Phoebe Putney for inclusion in commercial health plan networks offered for sale to employers and residents of Dougherty, Terrell, Lee, Worth, Baker, and Mitchell counties.
14. Admit that, through negotiations with commercial health plans prior to the relevant transaction, HCA attempted to obtain the most favorable reimbursement rates possible for inpatient acute care services provided by Palmyra.
15. Admit that, during the two-year period prior to the relevant transaction, Palmyra's overall market share for inpatient services, as measured in the ordinary course of business, increased.
16. Admit that, prior to the relevant transaction, Palmyra posted its emergency department wait time online, on electronic billboards, and made it available via text message.

- 17.
18. Admit that, prior to the relevant transaction, Palmyra would at times decide not to pursue payment from indigent patients even for services rendered in response to a non-life-threatening condition.
19. Admit that, prior to the relevant transaction, Palmyra obtained a Certificate of Need for Level I obstetric services but was unable to provide those services because of legal action taken by Phoebe Putney.
- 20.
- 21.
22. Admit that, prior to the relevant transaction, Palmyra launched a dedicated inpatient pediatric unit.
- 23.
24. Admit that, prior to the relevant transaction, Palmyra operated a childhood obesity program.
25. Admit that, prior to the relevant transaction, Palmyra achieved Center of Excellence status for its bariatric services.
26. Admit that, prior to the relevant transaction, all of the patient rooms at Palmyra were private.
27. Admit that, in the year prior to December 21, 2010, Palmyra's financial condition, as evaluated in the ordinary course of business, did not indicate that Palmyra was at risk of financial failure or closing for at least five years absent the relevant transaction.
28. Admit that, in the year prior to December 21, 2010, Palmyra's organizational performance and financial condition, as evaluated in the ordinary course of business, did not indicate that Palmyra's quality of care would decline absent the relevant transaction.
29. Admit that, as a result of the relevant transaction, HCA no longer negotiates managed care contracts with health plans for healthcare services provided at Palmyra.

30. Admit that, as a result of the relevant transaction, HCA no longer has financial or operational control, or involvement with, Palmyra.

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 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 “and” and “or” have both conjunctive and disjunctive meanings.
- F. The terms “each,” “any,” and “all” mean “each and every.”
- G. 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.
- H. 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.

- I. The term “hospital” means a facility that provides the relevant service as defined herein.
- J. 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.
- K. The term “person” includes the Respondents and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- L. 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.
- M. The term “provider” means any licensed healthcare professional or healthcare facility, including, but not limited to, hospitals, as defined herein.
- N. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
- O. The term “inpatient general acute care hospital services” means the provision of inpatient services 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.
- 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 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.
- S. The term “in-network provider” means a provider that is a member of a health plan network or a provider network.
- T. 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 HCA 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 HCA cannot truthfully admit or deny the statement.
- D. If HCA 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. HCA 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 HCA 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 HCA 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 HCA 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 HCA claims any ambiguity in interpreting a RFA or a definition or instruction applicable thereto, HCA 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 HCA interprets it.
- J. If HCA cannot find in the Definition section or in the body of the RFAs the definition for a word that is otherwise ambiguous, HCA shall interpret the word according to its usage by HCA and state in the answer to the RFA, HCA'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 Christopher Abbott at (202) 326-2685.

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 26, 2013

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 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 29, 2013

By: s/ Maria DiMoscato
Attorney