

ORIGINAL

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of:)
)
PHOEBE PUTNEY HEALTH SYSTEM, INC.,)
)
PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.,)
)
PHOEBE NORTH, INC.,)
)
HCA INC.,)
)
PALMYRA PARK HOSPITAL, INC., and)
)
HOSPITAL AUTHORITY OF ALBANY-)
DOUGHERTY COUNTY.)
_____)

Docket No. 9348

MILLER COUNTY HOSPITAL'S
MOTION TO QUASH SUBPOENA DUCES TECUM

Pursuant to Section 3.34(c) of the Rules of Practice of the Federal Trade Commission ("FTC" or "Commission"), Miller County Hospital ("Miller") hereby files its Motion to Quash or Limit the Subpoena *Duces Tecum* (the "Subpoena") served on Miller on April 26, 2013.

PRELIMINARY STATEMENT

This Subpoena impermissibly commands the production of non-discoverable documents from a non-party hospital, Miller, which is located nearly 50 miles from Phoebe Putney Memorial Hospital ("Phoebe Putney") and the Hospital Authority of Albany-Dougherty County (the "Authority") (together "Respondents"). Miller operates in a separate and distinct geographic market from Phoebe Putney. As such, the highly-detailed, proprietary information about the services that Miller provides and the pricing of such services is not relevant to this proceeding, and are not therefore discoverable as to the allegations raised in the Complaint or

Respondents' presumed defense theories. Moreover, the Subpoena is unduly burdensome and overly broad and cannot be reasonably complied with absent excessive cost, resources, and time by Miller.

As set forth herein, the Subpoena should be quashed because the ALJ "shall" limit discovery which falls outside the boundaries of the Commission's Procedural Rules regarding discovery. To that end, it is overbroad and unduly burdensome; seeks documents which are in most cases publicly available and could be obtained without the time or expense of Miller; seeks documents that could be obtained from other more convenient, less burdensome, and less expensive sources; and seeks documents for which the burden and expense of production would plainly outweigh any putative benefit. Of equal concern to Miller, to comply with this request would result in enormous time and expense, and would result in the disruption of Miller's business of providing healthcare to its patients.

Additionally, the documents sought in the Subpoena are not reasonably calculated to lead to the discovery of admissible evidence regarding the issues at hand. The focus of this proceeding concerns the anti-competitive behavior of Respondents within their geographic area and market and the impact of such behavior, not that of Miller. Even assuming that Phoebe Putney would seek to establish that its anti-competitive merger somehow passes on efficiencies to its patients, the documents sought in the Subpoena are still not "reasonably" calculated to result in admissible evidence of that theory. And if that is Phoebe Putney's theory, the singular focus in terms of evidence would still be *Phoebe Putney's* specific market, service area, and services provided, pricing and cost of same.

While Miller has approached Respondents' counsel in an attempt to limit the items sought in this Subpoena, those efforts have as of yet been unfruitful. Miller will consider

whether limitations offered by Respondents' counsel to the Subpoena will address the facially broad and non-discoverable Subpoena, however, in the meantime, Miller moves to quash or alternatively to limit the Subpoena.

FACTUAL BACKGROUND

A. The Activities of Miller

Miller is a critical access hospital located in Columbus, Georgia, which is nearly 50 miles away from Phoebe Putney Memorial Hospital ("Phoebe Putney") in Albany, Georgia. The primary service area for Miller is Miller County. Miller does not operate within the service area of Phoebe Putney Memorial Hospital ("Phoebe Putney"). There is no overlap in primary or secondary service area between Miller and Phoebe Putney do not share the same patient population, or referral sources, and the employers in these geographic markets are very different.

Additionally, Miller does not provide the same breadth of services that Phoebe Putney provides. For example, Phoebe Putney provides Certificate of Need ("CON")-approved radiation therapy, CON-approved inpatient rehabilitation services, and neonatal intensive care services, while Miller does not provide those services. Moreover, unlike Phoebe Putney Miller certainly does not hold the dominant market share in its market of Columbus, Georgia.

B. The Issues in this Adjudicative Proceeding

In this adjudicative proceeding, the Commission alleges that the acquisition of Palmyra Park Hospital, Inc. ("Palmyra") by Phoebe Putney¹ and the Hospital Authority of Albany-Dougherty County (the "Authority") from HCA Inc. (the "Transaction") substantially reduces competition and allows the combined entity to raise prices for general acute-care hospital services charged to commercial health plan in Albany, Georgia and the surrounding region.

¹ The other entities associated with Phoebe Putney which are parties here are Phoebe Putney Health System, Inc. and Phoebe North, Inc.

As a result of this Transaction, the Commission alleges that there is substantial harm to competition in the relevant market for inpatient general acute-care hospital services sold to commercial health plans. The Commission contends that the Transaction eliminates pricing constraints that have existed and increases Phoebe Putney's ability and incentive to increase reimbursement rates in its market.

The geographic market in which the effects of the Transaction are to be analyzed includes those areas from which Phoebe Putney's patients originate. The relevant geographic market here includes only six counties: Dougherty, Terrell, Lee, Worth, Baker, and Mitchell Counties. *Complaint*, ¶ 51. The nearest independent hospitals from Palmyra and Phoebe Putney are more than 30 miles away. *Complaint*, ¶ 54.

C. The Timing of the Subpoena

On March 14, 2013, the Secretary of the FTC issued an Order lifted the stay upon these adjudicative proceedings which went in effect in 2011 when the Commission sought preliminary injunctive relief pending the outcome of the instant adjudicative proceeding. Notably, in that collateral proceeding Respondents did not contest the merits of the Commission's anti-trust complaint, but instead moved for dismissal on the ground that the state action doctrine exempted the challenged acquisition of Palmyra from federal antitrust law. However, the United States Supreme Court of course unanimously held that the challenged transaction was not exempt from federal antitrust law: "respondents' claim for state-action immunity fails because there is no evidence the State affirmatively contemplated that hospital authorities would displace competition by consolidating hospital ownership." *FTC v. Phoebe Putney Health Sys.*, 133 S. Ct. 1003, 1011 (February 19, 2013).

Since Respondents' "state action" defense is gone, Respondents now seek to develop a new defense presumably premised on an argument that supposed efficiencies will result from and outweigh the anti-competitive nature of the Transaction. In a misguided attempt to create this evidence, Respondents seek virtually unlimited discovery from 160-plus hospitals throughout the State of Georgia. Yet the documents sought are not reasonably calculated to lead to admissible evidence, are overly broad, and contravene the FTC's Procedural Rules. Noticeably, Respondents seek this information at the tail-end of the discovery period but nevertheless presume that such documents could be produced in a timeframe of less than 30 days, by May 23, 2013.

D. The Subpoena

The April 26, 2013 Subpoena seeks the production of at least 15 categories of documents. By way of overview, those documents include Miller's contracts and price plans with health plans; patient origin information; documentation concerning competition in general in health care in other regions; audits statements; salary information for Miller's officers, employees, and physicians; and quality metrics that are not available to the public. Although the Complaint circumscribes a six-county geographic market, Respondents define the relevant "Geographic Area" for purposes of the Subpoena to include five counties in Alabama, six counties in Florida, and 51 counties in Georgia, for a total of 62 counties.

ARGUMENT

While a party to an adjudicative proceeding before the Commission may sign and issue a subpoena seeking discovery from a non-party, such discovery must of course be "reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defense of any respondent." 16 C.F.R. § 3.31(2). Indeed, any discovery sought by a

subpoena shall be limited where it is “obtainable from some other source that is more convenient, less burdensome, or less expensive.” 16 C.F.R. § 3.31(c)(2)(i). Likewise, such discovery shall be limited where the “burden and expense of the proposed discovery on a party or third party outweigh its likely benefit.” 16 C.F.R. § 3.31(c)(2)(iii). Here, the documents sought by Respondents fall outside the boundaries of each of these Procedural Rules, and are additionally not reasonably calculated to lead to the discovery of admissible evidence.

It is plainly unreasonable that Respondents can seek such voluminous discovery from so many different hospitals, in so many different markets, providing different services. The market in which Miller operates is separate and distinct from that of Phoebe Putney. Moreover, the data concerning Miller’s market cannot reasonably be admissible – even as a supposed basis for an expert’s opinion – or calculated to lead to the same, where the services offered and geographic markets are markedly different.

A. The Subpoena Is Overly Broad, Seeks Documents Which Would Be Obtainable From Another Source That is More Convenient or Less Burdensome, The Burden and Expense of the Proposed Discovery Would Outweigh its Benefit, and St Francis’ Efforts to Comply with the Subpoena Would Obstruct Its Normal Business Operations.

Assuming that the Subpoena seeks relevant information (which it does not, as explained below), it is overly broad in its scope and unduly burdensome. A subpoena is unenforceable if it is “unduly burdensome or unreasonably broad.” *FTC v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977), *cert. denied*, 431 U.S. 974 (1977). Indeed, although some information sought may conceivably be relevant, a request is overly broad when only a fraction of the countless documents requested are relevant. *Nugget Hydroelectric, L.P. v. Pacific Gas & Elec. Co.*, 981

F.2d 429, 438-39 (9th Cir. 1992). The Subpoena here would have Miller – and countless other hospitals throughout Georgia – produce a massive amount of information when only a small fraction of that information, if any at all, might be relevant.

Several of the documents sought from Miller could be obtained from the Department of Community Health's Annual Hospital Questionnaire ("AHQ") or the Georgia Hospital Association's database to which Phoebe Putney plainly has ready access. Accordingly, the discovery sought is obtainable from "some other source that is more convenient, less burdensome, or less expensive" for Miller. *16 C.F.R. § 3.31(2)(i)*.

Since the Subpoena is overly broad, the expense that must be incurred to respond to it is magnified. Personnel, extensive time, and resources would have to be devoted to responding to this Subpoena. Yet, the "burden and expense of [responding to] the proposed discovery ... would outweigh the likely benefit." *16 C.F.R. § 3.31(c)(2)(iii)*. Respondents cannot justify this burden and expense by the, at best, attenuated benefit of this information.

In fact, because the scope of the Subpoena is exceedingly broad, even a good faith effort at compliance would "threaten[] to unduly disrupt or seriously hinder normal operations of a business." *F.T.C. v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977). By way of example only, the Subpoena seeks "all documents relating to competition" between and among payors in the Geographic Area," *Request No. 2*; "all documents relating to competition in the provision of any health care service in the Geographic Area ...," *Request No. 4*, and "all documents relating to the pricing of in-patient and/or out-patient services at Your Hospital ..." *Request No. 8*. To comply with these Requests alone would divert a significant amount of limited resources at Miller. Considering Request No. 2 in greater detail, for instance, Miller would be required to perform a complete search of all of its files, identify every single document in its possession that concerns

competition for the provision of health care services in the large Geographic Area; mask all Sensitive Personally Identifiable Information and Sensitive Health Information; submit documents in accordance with Respondents' detailed "Forms of Production" instructions; produce an extensive privilege log; and submit an index identifying documents and their custodians. This is unduly burdensome.

B. The Subpoena Seeks Documents Which Are Not Reasonably Calculated to Lead to the Discovery of Admissible Evidence.

The Subpoena impermissibly seeks the production of documents which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Information is not discoverable if it is not relevant. *16 C.F.R. § 3.31(c)(1); Fed. R. Civ. P. 26(b)(1)*. The Subpoena must be "reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent." *16 C.F.R. § 3.31(c)(1)*(Emphasis added).

Here, the question is not whether the Subpoena *could* reveal relevant information or *might* reveal relevant information, but rather whether it is "reasonably expected" to do so. Again, the actions of Miller and the other hospitals throughout Georgia are not here at issue. And, even assuming that Respondents seek to show that their anti-competitive behavior results in efficiencies within their market, there is no need for them to seek information from *other markets* to attempt to make that showing.

C. The Subpoena Requests Documents that are Protected from Disclosure

Several of the documents requested by the Subpoena seek documents that are subject to attorney-work product doctrine and attorney-client privilege, to the extent that several of the documents concern legal decisions made by Miller in connection with its healthcare operations.

These privileges plainly exist under a subpoena issued to a non-party. *See 16 C.F.R. § 3.34(c)* (“Such motion to limit or quash shall set forth all assertions of privilege.”); 16 C.F.R. 3.38A(a) (“Any person withholding material responsive to a subpoena issued pursuant to § 3.34 ... shall assert a claim of privilege or any similar claim not later than the date set for production of the material.”).

GENERAL AND SPECIFIC OBJECTIONS

1. Miller objects to the document requests, definitions, and instructions in the Subpoena to the extent that they require Miller to do more than is required by the applicable rules of procedure.

2. Miller objects to the document requests, definitions, and instructions in the Subpoena to the extent that they are not reasonably calculated to lead to the discovery of admissible evidence.

3. Miller objects to the document requests, definitions, and instructions in the Subpoena to the extent that they seek the disclosure of information or documents subject to the attorney-client privilege, the work product privilege, or any other applicable privileges or immunities.

4. Miller objects to the document requests, definitions, and instructions in the Subpoena on the grounds that the expense of satisfying same outweighs any benefit.

5. Miller objects to the document requests, definitions, and instructions in the Subpoena as overly broad and unduly burdensome.

6. Miller objects to the document requests, definitions, and instructions in the Subpoena on the grounds that satisfying them would unduly disrupt and seriously hinder normal operations of business.

7. Miller objects to the document requests, definitions, and instructions in the Subpoena on the grounds that they are unreasonably cumulative and duplicative and because discovery is obtainable from other sources that are more convenient, less burdensome, and less expensive.

8. Miller objects to the document requests, definitions, and instructions in the Subpoena because Phoebe Putney has had ample opportunity by discovery in the action to obtain the information sought.

9. Miller objects to the document requests, definitions, and instructions in the Subpoena to the extent that they fail to specify with reasonable particularity the material to be produced.

10. Miller objects to Instruction C of the subpoena that requires a "complete search" of Miller and the production of all responsive documents "wherever located." This Instruction is contrary to the legal requirement of a reasonable search for responsive information.

11. Miller objects to the document requests, definitions, and instructions in the Subpoena on the grounds that they unreasonably demand the production of all responsive documents by May 21, 2013.

The following specific objections fully incorporate, are subject to, and are made without waiver of the foregoing general objections.

1. *All contracts, including price sheets, between Your Hospital and any health plan that includes Your Hospital, including all amendments, appendices, and related documents reflecting any contract terms.*

OBJECTION

Miller objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. Further, Miller objects that this Request seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, and any other privilege, immunity, or confidentiality. These contracts are also proprietary and confidential to Miller.

It is true that a central focus in this proceeding is Phoebe Putney's contracts and price sheets with health plans. However, the contracts and price sheets of Miller and other hospitals throughout Georgia are neither at issue in this proceeding nor are they reasonably calculated to lead to the discovery of admissible evidence as to those issues. The practices of Miller are not at issue, nor are Phoebe Putney's pricing relative to other hospitals outside of its service area.

Notwithstanding the foregoing, Miller has become aware that Respondents is withdrawing this Request.

2. *All documents relating to competition between and among payors in the Geographic Area, including but not limited to, the desirability or necessity of entering into contracts with certain health care facilities.*

OBJECTION

Miller objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. Further, Miller objects that this Request seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, and any other privilege, immunity, or confidentiality.

More specifically, the relevant geographic market in this adjudicative proceeding includes Dougherty, Terrell, Lee, Worth, Baker, and Mitchell Counties. Miller is located in Columbus, Georgia, and its patients originate from Muscogee County and the surrounding counties. None of Miller's patients come from the six counties identified in the FTC's Complaint. Columbus, Georgia is a completely separate healthcare market from that of Phoebe Putney, and is located nearly 50 miles from Albany, Georgia along rural highways with numerous towns and counties in between same.

Irrespective of the geographic area, in seeking "documents related to competition between and among payors ... including but not limited to, the desirability or necessity of entering into contracts with certain health care facilities" this request is not reasonably calculated to lead to admissible evidence of the issues in this case.

3. *All documents relating to the Transaction, including but not limited to, all documents sent to or received from the Federal Trade Commission, and all documents relating to communications with the Federal Trade Commission.*

RESPONSE

Miller is not in possession of any documents relating to the Transaction, nor has Miller sent to or received from the FTC any documents in connection with the Transaction.

4. *All documents relating to competition in the provision of any health care service in the Geographic Area, including but not limited to, market studies, forecasts, and surveys; competitor assessments; SWOT analyses; the supply and demand conditions, including the patient service area for Your Hospital and any other health care facility; and all*

documents relating to the quality of health care (however defined) provided by any health care facility.

OBJECTION

Miller objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. Further, Miller objects that this Request seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, and any other privilege, immunity, or confidentiality. These market studies, forecasts, surveys, and other similar documents are also proprietary and confidential to Miller, and thus should be protected from production.

5. *All documents relating to Phoebe or Palmyra.*

OBJECTION

Miller objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. Further, Miller objects that this Request seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, and any other privilege, immunity, or confidentiality.

Specifically, in seeking "all documents" relating to Phoebe or Palmyra, this Request is not reasonably attuned to the issues in this adjudicative proceeding. To search all of its documents for any reference to Phoebe or Palmyra would be unduly burdensome, and the burden and expense of obtaining such documents would plainly outweigh the benefit to Phoebe Putney and the Authority.

Notwithstanding the foregoing, Miller has become aware that Respondents is withdrawing this Request.

6. *Documents sufficient to show Your Hospital's patient draw or origin data, including but not limited to, the zip codes from which 90% of patients come from and the zip codes from which 75% of patients come from.*

OBJECTION

Miller objects to this Document Request to the extent that it is requests documents that are irrelevant to the FTC's proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. The patient origin data sought here is not relevant to the allegations in this adjudicative proceeding.

The information that Phoebe Putney and the Authority here seek is publicly available information. Further, in accordance with 16 C.F.R. § 3/31(2)(i), here it would be much more convenient, less burdensome, and less expensive if Phoebe Putney and the Authority sought to obtain this information from the Department of Community Health's Division of Health Planning, the Georgia Hospital Association database, or another similar source. Moreover, because this patient origin information is stored electronically, Miller also objects that such information is not reasonably accessible because of the undue burden and cost that would be required to comply with this Request.

Notwithstanding the foregoing, Miller has become aware that Respondents is withdrawing this Request.

7. *All documents relating to the categories of health care (including primary, secondary, tertiary, and quaternary) that Your Hospital provides, can provide, or has ceased*

providing. If your hospital has ceased providing a category of health care, documents sufficient to show why Your Hospital ceased providing that category of health care.

OBJECTION

Miller incorporates by reference all of its general objections set forth above. St. Francis objects to this Document Request to the extent that it requests documents that are irrelevant to the FTC's proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. The specific services provided by Miller are simply not relevant to this proceeding, which concerns the anti-competitive behaviors of Phoebe Putney and the Authority, not of Miller.

Further, Miller objects to this Request in that it is overly broad and unduly burdensome. Respondents here seek documents regarding "categories of health care," but that description gives no indication as to what documents Respondents specifically desire.

Notwithstanding the foregoing, Miller has become aware that Respondents is withdrawing this Request.

8. *All documents relating to the pricing of in-patient and/or out-patient services at Your Hospital, including their comparison to pricing for services at any and all other hospitals in the Geographic Area.*

OBJECTION

Miller objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. Further, Miller objects that this Request seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, and any other privilege, immunity, or confidentiality.

Additionally, the pricing information sought by Respondents is proprietary and confidential to Miller, and should be protected from disclosure even to Respondents' counsel or experts.

9. *Since 2006, all audited or other financial statements or materials for Your Hospital prepared for either internal use or presented to third parties, (e.g., the Georgia Department of Community Health, the Georgia Hospital Association, potential investors or lenders, investment banks).*

OBJECTION

Miller objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. Further, to the extent that counsel was involved in the preparation of any such financial statement, Miller objects that this Request seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, and any other privilege, immunity, or confidentiality. Additionally, the pricing information sought by Respondents is proprietary and confidential to Miller, and should be protected from disclosure.

Further, any financial document created prior to the Transaction at issue in this lawsuit would plainly not be relevant to this proceeding. The events leading up to the Transaction that is the subject of the Complaint began in April of 2010. Moreover, to the extent any financial statement was provided to the Georgia Department of Community Health or the Georgia Hospital Association, such would be publicly available.

10. *[sic]*

11. *All document relating to Your Hospital's utilization or capacity, including all documents relating to the number of licensed versus staffed beds at Your Hospital and the reasons for any difference.*

OBJECTION

Miller objects to this Document Request to the extent that it is requests documents that are irrelevant to the FTC's proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. The utilization and capacity data sought here is not relevant to the allegations in this adjudicative proceeding.

The information that Phoebe Putney and the Authority here seek is publicly available information. In fact, under 16 C.F.R. § 3/31(2)(i), here it would be much more convenient, less burdensome, and less expensive if Phoebe Putney and the Authority sought to obtain this information from the Department of Community Health's Division of Health Planning and Healthcare Facility Regulation Division, the Georgia Hospital Association database, or another similar source. Additionally, because this utilization, capacity, and staffing information is stored electronically, Miller also objects that such information is not reasonably accessible because of the undue burden and cost that would be required to comply with this Request.

12. *All Joint Commission on Accreditation of Healthcare Organizations ("JCAHO") or other periodic reviews performed by any organization that assigned a "quality rating" or "quality-score" to Your Hospital.*

OBJECTION

Miller objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. Further, Miller objects that this Request seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, and any other privilege, immunity, or confidentiality. Additionally, this information requested by Respondents is proprietary and confidential to Miller, and should be protected from disclosure.

The quality of the services at Miller – and candidly the quality of services provided at 160-plus other hospitals around the State of Georgia – is not discoverable in this adjudicative proceeding concerning the alleged anti-competitive activities of Phoebe Putney. The proprietary quality ratings and scores of Miller, particularly, located nearly 50 miles from Albany, Georgia, are not reasonably calculated to lead to the discovery of admissible evidence as to the Anti-Trust claims against Respondents.

Subject to the foregoing, Miller is willing to produce its Joint Commission Accreditation letter.

13. *All documents relating to the effect of the Affordable Care Act on Your Hospital, including but not limited to, the potential decision by the State of Georgia to not accept Federal funds to expand Medicaid.*

OBJECTION

Miller objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. This Request is also vague, overly broad and unduly

burdensome in that it seeks “all documents” that simply relate to the “effect” of the Affordable Care Act, and the “potential” decision by the State of Georgia to not accept Federal funds to expand Medicaid. Additionally, this Request seeks documents that are proprietary and confidential to Miller and should be protected from disclosure.

To the extent that Respondents seek documents related to Miller’s planning in connection with the Affordable Care Act, Miller objects that this Request seeks the production of documents subject to the attorney-client privilege and the attorney work product privilege.

14. *All documents relating to the compensation received by the CEO (or equivalent), Chief Medical Officer (or equivalent), Chief Financial Officer (or equivalent), Chief Operating Officer (or equivalent), Director of Managed Care Contracting (or equivalent), Health Nurse (or equivalent), and staff physicians of Your Hospital, including but not limited to all benchmarking studies relied upon by Your board of directors (or equivalent) to assess or compare the compensation of any hospital employee.*

OBJECTION

Miller objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC’s proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. This Request is also vague, overly broad and unduly burdensome in that it seeks “all documents” that in any way relate to the compensation of the officers and other individuals listed in this Request. Further, to the extent that Respondents seek documents related to Miller’s counsel’s involvement in determining such compensation, Miller objects that this Request seeks the production of documents subject to the attorney-client privilege and the attorney work product privilege. Additionally, this Request seeks documents that are proprietary and confidential to Miller and should be protected from disclosure.

15. *All documents relating to most-favored-nation agreements between Your Hospital and any payor or health plan.*

OBJECTION

Miller objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. Further, Miller objects that this Request seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, and any other privilege, immunity, or confidentiality. Additionally, this Request seeks documents that are proprietary and confidential to Miller and should be protected from disclosure.

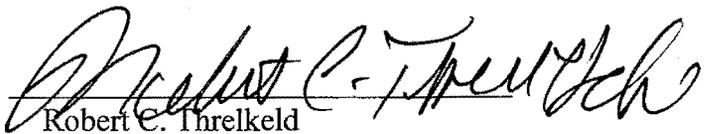
Notwithstanding the foregoing, Miller has become aware that Respondents is withdrawing this Request.

CONCLUSION

For all of the above reasons, Miller requests that this Commission quash this Subpoena or, in the alternative, limit the Subpoena.

This 3rd day of May, 2013.

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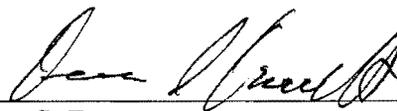
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This 3rd day of May, 2013.


Dana S. Durrett

