

**ORIGINAL**



**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 RESPONSE TO RESPONDENTS’ FIRST SET OF  
REQUESTS FOR ADMISSIONS**

Pursuant to the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.32, and the Revised Scheduling Order entered by Chief Administrative Law Judge Chappell on April 4, 2013, Complaint Counsel provides its objections and responses to Respondents’ First Set of Requests for Admissions (“Requests”).

The following objections and responses are made solely for the purpose of this action and are based upon information and documents presently within Complaint Counsel’s custody, possession or control, and no incidental or implied admissions are intended. Complaint

Counsel's responses are made with the express reservation of all rights pursuant to the Federal Trade Commission's Rules of Practice ("Rules") to supplement and/or amend these responses or otherwise to present evidence later discovered or the significance of which is learned subsequent to May 8, 2013. The fact that Complaint Counsel has not answered or objected to any Request, or part of a Request, does not constitute an admission of any facts or documents set forth in or assumed by that Request. All statements or inferences not explicitly admitted are denied.

Complaint Counsel is not waiving any objection as to the relevance of the information provided or the admissibility of that information at trial or otherwise. The fact that Complaint Counsel has responded to any Request for Admission is not intended and shall not be construed as a waiver by Complaint Counsel of all or any part of any objection to any Request for Admission.

### **GENERAL OBJECTIONS**

The following General Objections apply to each of Respondents' Requests and are incorporated into each subsequent response. The assertion of the same, similar, or additional objections or the provision of partial answers in response to one part of a Request does not waive any of Complaint Counsel's general objections as to the other parts of the Request.

1. Complaint Counsel objects to Respondents' Requests, Definitions, and Instructions to the extent they exceed the scope and authority of the Rules, or to the extent they purport to impose obligations on Complaint Counsel beyond what the Rules impose. Complaint Counsel will respond to each Request consistent with its obligations under the Rules.

2. Complaint Counsel objects to Respondents' Requests, Definitions, and Instructions to the extent they seek the disclosure of information protected by the deliberative process privilege, the informant's privilege, the attorney work-product doctrine, or any other privilege, doctrine, or protection as provided by any applicable law. Nothing contained in these responses is intended

to be, or in any way shall be deemed, a waiver of such available privilege or doctrine. Complaint Counsel will only provide non-privileged, non-protected information.

3. Complaint Counsel objects to all of Respondents' Requests, Definitions, and Instructions to the extent they are vague, ambiguous, overly broad, unduly burdensome, fail to describe the information sought with the required reasonable particularity, require unreasonable efforts on behalf of Complaint Counsel, and to the extent that the Requests use terms that are undefined or not susceptible to a single meaning. To the extent Complaint Counsel adopts any terms or phrases defined or used by Respondents, they are adopted solely for the sake of convenience in responding to the Requests. Complaint Counsel does not accept or concede that any of the terms, phrases, or definitions are appropriate, descriptive, or accurate.

4. Complaint Counsel objects to Respondents' Requests, Definitions, and Instructions to the extent they seek third-party proprietary, confidential, financial, trade secret, or commercially-sensitive information, the disclosure of which could harm third parties' competitive or business positions or result in a breach of Complaint Counsel's obligation to maintain the confidentiality of such information.

5. Complaint Counsel objects to Respondents' Requests, Definitions, and Instructions to the extent they require Complaint Counsel to interpret statements or actions made by third parties.

6. Complaint Counsel objects to Respondents' Requests, Definitions, and Instructions to the extent they require Complaint Counsel to admit to the genuineness or authenticity of any documents created, assembled, produced, or otherwise prepared by third parties.

**SPECIFIC OBJECTIONS AND RESPONSES**

Subject to and without waiver of the foregoing general objections, or any other objections or claims of privilege, Complaint Counsel presents its specific objections and responses to Respondents' First Request for Admission.

**ADMISSION REQUEST NUMBER 1**

- 1. Admit that hospitals incur costs in the delivery of care to all patients, regardless of payor class or category.*

Complaint Counsel objects to this Request because to respond fully would require information, which the FTC does not possess, about costs for all hospitals and patients without limitation. Complaint Counsel further objects to this Request to the extent that it involves locations outside of the relevant geographic market of the current transaction, outside of the scope of Complaint Counsel's investigation, and which are irrelevant to this proceeding. Subject to and without waiving its general objections, Complaint Counsel admits that hospitals generally incur costs related to providing care to patients.

**ADMISSION REQUEST NUMBER 2**

- 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.*

Complaint Counsel objects to this Request because to respond fully would require information, which the FTC does not possess, about hospital costs and reimbursements for all hospitals. Complaint Counsel further objects to this Request to the extent that it involves locations outside of the relevant geographic market of the current transaction, outside of the scope of the Complaint Counsel's investigation, and which are irrelevant to this proceeding. Subject to and without waiving its general objections, Complaint Counsel states that after

reasonable inquiry Complaint Counsel lacks sufficient knowledge or information to admit or deny this Request.

### **ADMISSION REQUEST NUMBER 3**

3. *Admit that, in the aggregate, Medicare reimbursement rates are insufficient to cover the total cost of health care services provided to Medicare beneficiaries.*

Complaint Counsel objects to this Request because to respond fully would require information, which the FTC does not possess, about Medicare reimbursement rates and the costs of health care services for all hospitals. Complaint Counsel further objects to this Request to the extent that it involves locations outside of the relevant geographic market of the current transaction, outside of the scope of the Complaint Counsel's investigation, and which are irrelevant to this proceeding. Subject to and without waiving its general objections, Complaint Counsel states that after reasonable inquiry Complaint Counsel lacks sufficient knowledge or information to admit or deny this Request.

### **ADMISSION REQUEST NUMBER 4**

4. *Admit that Medicare reimbursement rates are sometimes insufficient to cover the incremental cost of health care services provided to individual Medicare beneficiaries.*

Complaint Counsel objects to this Request because to respond fully would require information, which the FTC does not possess, about Medicare reimbursement rates and the costs of health care services for hospitals. Complaint Counsel further objects to this Request to the extent that it involves locations outside of the relevant geographic market of the current transaction, outside of the scope of Complaint Counsel's investigation, and which are irrelevant to this proceeding. Subject to and without waiving its general objections, Complaint Counsel states that after reasonable inquiry Complaint Counsel lacks sufficient knowledge or information to admit or deny this Request.

**ADMISSION REQUEST NUMBER 5**

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.*

Complaint Counsel objects to this Request because to respond fully would require information, which the FTC does not possess, about Georgia Medicaid reimbursement rates and the costs of health care services for all hospitals providing services to Georgia Medicaid beneficiaries. Complaint Counsel further objects to this Request to the extent that it involves locations outside of the relevant geographic market of the current transaction, outside of the scope of Complaint Counsel's investigation, and which are irrelevant to this proceeding. Subject to and without waiving its general objections, Complaint Counsel states that after reasonable inquiry Complaint Counsel lacks sufficient knowledge or information to admit or deny this Request.

**ADMISSION REQUEST NUMBER 6**

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.*

Complaint Counsel objects to this Request because to respond fully would require information, which the FTC does not possess, about Georgia Medicaid reimbursement rates and the costs of health care services for hospitals providing services to Georgia Medicaid beneficiaries. Complaint Counsel further objects to this Request to the extent that it involves locations outside of the relevant geographic market of the current transaction, outside of the scope of Complaint Counsel's investigation, and which are irrelevant to this proceeding. Subject to and without waiving its general objections, Complaint Counsel states that after reasonable

inquiry Complaint Counsel lacks sufficient knowledge or information to admit or deny this Request.

**ADMISSION REQUEST NUMBER 7**

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.*

Complaint Counsel objects to this Request because to respond fully would require information, which the FTC does not possess, about how each health care provider accounts for reimbursements received for delivering health care services to commercially insured patients in relation to how each health care provider accounts for the costs of delivering health care services to indigent or charity patients. Complaint Counsel further objects to this Request to the extent that it involves locations outside of the relevant geographic market of the current transaction, outside of the scope of Complaint Counsel's investigation, and which are irrelevant to this proceeding. Subject to and without waiving its general objections, Complaint Counsel states that after reasonable inquiry Complaint Counsel lacks sufficient knowledge or information to admit or deny this Request.

**ADMISSION REQUEST NUMBER 8**

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.*

Complaint Counsel objects to this Request because to respond fully would require information, which the FTC does not possess, about how each health care provider accounts for reimbursements received for delivering health care services to commercially insured patients in relation to how each health care provider accounts for Medicare reimbursements. Complaint Counsel further objects to this Request to the extent that it involves locations outside of the



relevant geographic market of the current transaction, outside of the scope of Complaint Counsel's investigation, and which are irrelevant to this proceeding. Subject to and without waiving its general objections, Complaint Counsel states that after reasonable inquiry Complaint Counsel lacks sufficient knowledge or information to admit or deny this Request.

**ADMISSION REQUEST NUMBER 9**

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.*

Complaint Counsel objects to this Request because to respond fully would require information, which the FTC does not possess, about how each health care provider accounts for reimbursements received for delivering health care services to commercially insured patients in relation to how each health care provider accounts for Medicaid reimbursements. Complaint Counsel further objects to this Request to the extent that it involves locations outside of the relevant geographic market of the current transaction, outside of the scope of Complaint Counsel's investigation, and which are irrelevant to this proceeding. Subject to and without waiving its general objections, Complaint Counsel states that after reasonable inquiry Complaint Counsel lacks sufficient knowledge or information to admit or deny this Request.

**ADMISSION REQUEST NUMBER 10**

10. *Admit that the Hospital Authority of Albany-Dougherty County is a government entity.*

Complaint Counsel admits that, to the best of its knowledge, the Hospital Authority of Albany-Dougherty County is organized and exists pursuant to the Georgia Hospital Authorities Law, O.C.G.A. §§ 31-7-70 *et seq.*



**ADMISSION REQUEST NUMBER 11**

*11. Admit that the Hospital Authority of Albany-Dougherty County owns Phoebe Putney Memorial Hospital.*

Complaint Counsel admits that, to the best of its knowledge, the Hospital Authority of Albany-Dougherty County holds title to Phoebe Putney Memorial Hospital's ("PPMH") assets, all of which are leased to PPMH until at least 2042.

**ADMISSION REQUEST NUMBER 12**

*12. Admit that commercial health insurers do not offer health plans that cover only "inpatient general acute-care hospital services."*

Complaint Counsel objects to this Request to the extent that it requires possession of information about all commercial health insurers. Complaint Counsel further objects to this Request to the extent that it involves locations outside of the relevant geographic market of the current transaction, outside of the scope of Complaint Counsel's investigation, and which are irrelevant to this proceeding. Subject to and without waiving its general objections, Complaint Counsel admits that commercial health insurers often offer health plans that cover services in addition to general acute-care hospital services.

**ADMISSION REQUEST NUMBER 13**

*13. Admit that "inpatient general acute-care hospital services" does not include emergency room care.*

Subject to and without waiving its general objections, Complaint Counsel denies this Request.

**ADMISSION REQUEST NUMBER 14**

*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.*

Complaint Counsel objects to this Request because to respond fully would require information, which the FTC does not possess, about all commercial health insurers licensed to do business in Georgia. Complaint Counsel further objects to this Request to the extent that it involves locations outside of the relevant geographic market of the current transaction, outside of the scope of Complaint Counsel's investigation, and which are irrelevant to this proceeding. Subject to and without waiving its general objections, Complaint Counsel states that after reasonable inquiry Complaint Counsel lacks sufficient knowledge or information to admit or deny this Request.

**ADMISSION REQUEST NUMBER 15**

*15. Admit that each member of a community benefits from the good health of other community members.*

Complaint Counsel objects to this Request because to respond fully would require information, which the FTC does not possess, about each and every member of each and every community and an understanding as to the causal relationship, if any, between a community member's good health and every other community member. Complaint Counsel further objects to this Request to the extent that it involves locations outside of the relevant geographic market of the current transaction, outside of the scope of Complaint Counsel's investigation, and which are irrelevant to this proceeding. Subject to and without waiving its general objections, Complaint Counsel states that after reasonable inquiry Complaint Counsel lacks sufficient knowledge or information to admit or deny this Request.

**ADMISSION REQUEST NUMBER 16**

*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.*

Complaint Counsel objects to this Request because to respond fully would require information, which the FTC does not possess, about the hospital admissions of all residents in Baker, Dougherty, Lee, Mitchell, Terrell and Worth Counties in Georgia. Subject to and without waiving its general objections, Complaint Counsel states that after reasonable inquiry Complaint Counsel lacks sufficient knowledge or information to admit or deny this Request.

**ADMISSION REQUEST NUMBER 17**

*17. Admit that as of December 2011, Palmyra did not offer, or have any plans to offer, Neonatal Intensive Care services.*

Subject to and without waiving its general objections, Complaint Counsel admits that, to the best of its knowledge, as of December 2011 Palmyra did not have a Neonatal Intensive Care Unit at its facility. Complaint Counsel lacks sufficient knowledge or information to admit or deny the remaining portions of the Request. Complaint Counsel states that the only information it has in its possession that is responsive to this Request was received from and is already in the possession of Respondents. Complaint Counsel further states that Respondents are better able to provide information about this Request than Complaint Counsel.

**ADMISSION REQUEST NUMBER 18**

*18. Admit that the Certificate of Need that Palmyra sought to obtain for obstetrics services did not include Neonatal Intensive Care services.*

Subject to and without waiving its general objections, Complaint Counsel admits that, to the best of its knowledge, the Certificate of Need that Palmyra sought was for the establishment of a Level 1 / Basic Perinatal service at its facility that, by implication, does not include a

Neonatal Intensive Care Unit. Complaint Counsel further states that the only information it has in its possession that is responsive to this Request was received from Respondents or from third parties and is already in the possession of, or has already been produced to, Respondents.

Complaint Counsel further states that Respondents are better able to provide information about this Request than Complaint Counsel.

Dated: May 8, 2013

Respectfully submitted,

s/ Maria DiMoscato  
Maria DiMoscato

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 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 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.

May 8, 2013

By: s/ Maria DiMoscato  
Attorney