

**ORIGINAL**

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**



_____	)	
In the Matter of	)	
	)	
PHOEBE PUTNEY HEALTH SYSTEM, INC., et al.,	)	Docket No. 9348
	)	Public Document
Respondents.	)	
	)	
_____	)	

**JACKSON HOSPITAL'S MOTION TO QUASH  
OR LIMIT SUBPOENA DUCES TECUM**

SMTIH MOORE LEATHERWOOD LLP  
Lawrence J. Myers, Esq.

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*Counsel for Jackson Hospital*

Pursuant to Section 3.34(c) of the Federal Trade Commission's ("FTC" or "Commission") Rules of Practice, 16 C.F.R. § 3.34(c), Jackson Hospital ("Jackson") hereby files its Motion to Quash or Limit the Subpoena *Duces Tecum* (the "Subpoena") served on Jackson on or about April 26, 2013.

### **PRELIMINARY STATEMENT**

The Subpoena issued by the Respondents in the proceeding captioned *In the Matter of Phoebe Putney Health System, Inc. et al.*, Docket No. 9348 (the "Proceeding") commands Jackson to collect, review, process and produce fifteen (15) extraordinarily broad categories of documents in a three week time frame. Jackson intends to cooperate with the Respondents with respect to the Subpoena, subject to those available and applicable objections and privileges which it asserts, agreement of the parties and further order of the Chief Administrative Law Judge. However, the enormous burden, time and expense required to respond to the substance and scope of Subpoena as it is currently drafted are unreasonable and cannot be accomplished within the time frame specified by the Respondents in the Subpoena. Jackson is in the process of actively negotiating with counsel for the Respondents over the substance and scope of the Subpoena in a good faith effort to arrive at an acceptable resolution of those issues. As of the time of the filing of this Motion, however, an agreement is not in place with the Respondents as to the substance and scope of the Subpoena.<sup>1</sup> Therefore, Jackson hereby moves to quash or alternatively to limit the Subpoena.

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<sup>1</sup> There is, however, a proposal from the Respondents to limit the substance and scope of the Subpoena. For purposes of this Motion, and without waiver of any available and applicable objections and/or privileges, Jackson will assume that the Respondents will at least honor and agree to what has been proposed as will be further noted herein.

## **FACTUAL BACKGROUND**

### **A. Jackson Hospital**

Jackson is a 100-bed community healthcare system located in northwest Florida, approximately 100 miles from Albany, Georgia. The Jackson County Hospital Corporation, a public non-profit corporation, controls the hospital. A Board of Trustees, appointed by the Governor of the State of Florida, manages the hospital and its operations. Jackson is not in the “service area” of the Respondents under any reasonably understood definition of that term.

### **B. The Subpoena**

On or about April 26, 2013, the Respondents served the Subpoena. The Subpoena is extraordinarily broad and calls for the production of documents by May 21, 2013, three weeks from the date of service.<sup>2</sup> The volume of the information requested, the nature of the information requested, the short time frame provided, and the size and scope of Jackson’s operations and its limited resources dictate that the May 21 deadline cannot be met and that the Subpoena is over broad and unduly burdensome. In addition, many of the documents arguably requested by the Subpoena are subject to various privileges and protections, including the attorney work product doctrine and attorney-client privilege.

## **ARGUMENT**

The FTC is authorized to issue subpoenas *duces tecum* to require the production of documentary evidence relating to any matter under investigation. 15 U.S.C. § 49. Pretrial discovery in an adjudicative proceeding brought by the FTC, however, is circumscribed by detailed agency rules, which must be scrupulously observed. *Atlantic Richfield Co. v. FTC*, 398

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<sup>2</sup> The Subpoena is attached at Exhibit A.

F. Supp. 1, 9, 12 (S.D. Tex. 1975), citing 16 C.F.R. §§ 3.31 - 3.39.<sup>3</sup> In particular, a federal agency's use of compulsory process is enforceable only when the "disclosure sought [is not] unreasonable." *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 208 (1946). In turn, compulsory process is reasonable and thus enforceable where the requests are "reasonably relevant ... and not unduly burdensome to produce." *F.T.C. v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992) (internal quotation marks and citations omitted); *see also* 16 C.F.R. § 3.31(c)(1) ("Parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent.").

The Subpoena should be quashed because, as discussed below, the Subpoena is unreasonable, unduly burdensome, overly broad and requests information that is protected from disclosure. Further, Jackson's attempts to comply with the Subpoena would impede its normal business operations and impose a significant, unreasonable and unjustifiable expense on Jackson.

**A. The Subpoena Imposes an Undue Burden on Jackson Because of its Broad Scope and Short Time Period Specified for Compliance.**

The broad scope and short return date for the Subpoena render compliance with the Subpoena by May 21 unrealistic. The Subpoena potentially requires Jackson to search through numerous electronic databases and to collect documents from multiple custodians in numerous departments and areas of the hospital.

Given the number of categories of documents and the scope of the Subpoena, Jackson would need to identify, contact and interview numerous potential document custodians to determine whether they have responsive documents. Potentially responsive documents would

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<sup>3</sup> See also *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1024 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 1071 (1979) ("The federal courts stand guard ... against abuses of [federal agencies'] subpoena-enforcement processes ....") (internal citations omitted).

need to be gathered from computers and other sources and then reviewed for responsiveness, privilege or other confidential information that is protected from disclosure. Moreover, the 5 ½ pages of “Definitions” and “Instructions” in the Subpoena as to how information must be searched and produced, if even enforceable, require significant additional time and resources by Jackson in order to comply with the Subpoena as it is currently drafted. For example, the Subpoena requires Jackson to perform a "complete search" of all the files of the hospital rather than a reasonable search for responsive information as required by law; redact all Sensitive Personally Identifiable Information and Sensitive Health Information; produce documents in both native format and in image format with extracted text and extensive metadata information; produce an extensive privilege log; and submit an index identifying the documents and their custodians. Such a compressed time frame to accomplish all of these tasks is unreasonable. The Subpoena, therefore, should be quashed.

**B. The Subpoena Is Overly Broad.**

The Subpoena requests a vast amount of data, requiring the production of documents, information and data not likely to be material and/or relevant to the Proceeding. A subpoena issued in a federal agency administrative proceeding is unenforceable if it is "unduly burdensome or unreasonably broad." *See F.T.C. v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977) (en banc), *cert. denied*, 431 U.S. 974 (1977); 16 C.F.R. § 3.31(c)(2) ("The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the Administrative Law Judge if he or she determines that ... [t]he burden and expense of the proposed discovery outweigh its likely benefit."). Similarly, a request for documents or information is reasonable, relevant and enforceable if the document requests are "adequate, but not excessive, for the purposes of the relevant inquiry." *SEC v. Arthur Young & Co.*, 584 F.2d

1018, 1030 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 1071 (1979) (quoting *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 209 (1946)). The scope of the Subpoena is excessive.

For example, Document Request No. 11 of the Subpoena requires Jackson to produce “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.” Document Request No. 14 requests “All documents relating to the compensation received by the CEO (or equivalent), Chief Medical Officer (or equivalent), Chief Operating Officer (or equivalent), Director of Managed Care Contracting (or equivalent), Head 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.” These document requests will likely yield documents that are technically responsive, but are irrelevant to any meaningful antitrust analysis in this case. The more documents that fall within the net cast by this overly broad Subpoena, the greater the burden and expense that Jackson will incur in processing and reviewing the documents and the longer the process will take.

**C. Jackson’s Efforts to Comply with the Subpoena Would Disrupt Its Normal Operations.**

The Subpoena is unduly burdensome because even a good faith effort at compliance “threatens to unduly disrupt or seriously hinder” the hospital’s normal operations. *FTC. v. Church & Dwight Co.*, Misc. No. 10-149 (EGS/JMF), 2010 WL 4283998, at \*4 (D.D.C. Oct. 29, 2010) (quoting *Texaco*, 555 F.2d at 882). The tasks to be undertaken to compile a response to the Subpoena require hospital personnel to divert their attention away from the day-to-day operations of the hospital, resulting in disruptions to Jackson’s operations, which include patient

care. Expecting Jackson to devote these kinds of resources to the Proceeding is not reasonable and poses an undue burden on Jackson and the patients which it serves.

**D. The Subpoena Requests Information that is Protected from Disclosure.**

Many of the documents requested by the Subpoena may be subject to various privileges and protections, including the attorney work product doctrine and attorney-client privilege. These privileges and protections exist under an FTC subpoena. *See* 16 C.F.R. § 3.34(c) ("Such motions [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**

Jackson incorporates by reference the arguments made in its Motion to Quash or Limit Subpoena *Duces Tecum* and makes the following general objections. Each general objection is hereby incorporated by reference into each document request of the Subpoena.

1. Jackson objects to the document requests, "Definitions," and "Instructions" in the Subpoena as overly broad and unduly burdensome.
2. Jackson objects to the document requests, "Definitions," and "Instructions" in the Subpoena because the enormous expense of the proposed discovery outweighs its likely benefit.
3. Jackson objects to the document requests, "Definitions," and "Instructions" in the Subpoena on the ground that they unreasonably require full production of documents and information by May 21, 2013.
4. Jackson objects to the document requests, "Definitions," and "Instructions" in the Subpoena on the ground that they request documents or information that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

5. Jackson objects to the document requests, “Definitions,” and “Instructions” in the Subpoena because compliance would unduly disrupt and seriously hinder Jackson’s normal operations.
6. Jackson objects to the document requests, “Definitions,” and “Instructions” in the Subpoena to the extent that they seek the disclosure of information or production of documents subject to the attorney-client privilege, the attorney work product privilege, or any other applicable privilege or immunity.
7. Jackson objects to the document requests, “Definitions,” and “Instructions” in the Subpoena to the extent that they require Jackson to do more than is required by the applicable rules of procedure.
8. Jackson objects to the document requests, “Definitions,” and “Instructions” in the Subpoena because they fail to specify with reasonable particularity the material to be produced. Jackson will construe the words in the Subpoena according to their commonly understood meanings.
9. Jackson objects to Instruction C of the Subpoena that requires a "complete search" of all the files of the hospital and production of all responsive documents wherever located. Such instruction is contrary to the legal requirement of a reasonable search for responsive information.
10. Jackson objects to the document requests, “Definitions,” and “Instructions” in the Subpoena because the discovery sought is unreasonably cumulative and duplicative, and is obtainable from other sources that are more convenient, less burdensome, and less expensive.
11. Jackson objects to the document requests and “Definitions” in the Subpoena because Respondents have had ample opportunity by discovery in the action to otherwise obtain the information sought.

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**

Respondents have agreed to withdraw this Document Request. Subject to such withdrawal, Jackson incorporates by reference all of its general objections set forth above. Jackson objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC’s Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Jackson objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work

product privilege, or any other applicable privilege, immunity, or confidentiality. Additionally, this Document Request seeks documents that are proprietary and confidential to Jackson and should be protected from disclosure.

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**

Jackson incorporates by reference all of its general objections set forth above. Jackson objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Jackson objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, or any other applicable privilege, immunity, or confidentiality. Additionally, this Document Request seeks documents that are proprietary and confidential to Jackson and should be protected from disclosure.

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.*

### **OBJECTION**

Jackson incorporates by reference all of its general objections set forth above. Jackson objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Jackson objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, or any other applicable privilege, immunity, or confidentiality.

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**

Jackson incorporates by reference all of its general objections set forth above. Jackson objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Jackson objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, or any other applicable privilege, immunity, or confidentiality. Additionally, this

Document Request seeks documents that are proprietary and confidential to Jackson and should be protected from disclosure.

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

### **OBJECTION**

Respondents have agreed to withdraw this Document Request. Subject to such withdrawal, Jackson incorporates by reference all of its general objections set forth above. Jackson objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Jackson objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, or any other applicable privilege, immunity, or confidentiality. Additionally, this Document Request seeks documents that are proprietary and confidential to Jackson and should be protected from disclosure.

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**

Respondents have agreed to withdraw this Document Request. Subject to such withdrawal, Jackson incorporates by reference all of its general objections set forth above. Jackson objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Jackson objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, or any other applicable privilege, immunity, or confidentiality. Additionally, this Document Request seeks documents that are proprietary and confidential to Jackson and should be protected from disclosure.

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**

Respondents have agreed to withdraw this Document Request. Subject to such withdrawal, Jackson incorporates by reference all of its general objections set forth above. Jackson objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Jackson objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, or any other applicable privilege, immunity, or confidentiality. Additionally,

this Document Request seeks documents that are proprietary and confidential to Jackson and should be protected from disclosure.

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**

Jackson incorporates by reference all of its general objections set forth above. Jackson objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Jackson objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, or any other applicable privilege, immunity, or confidentiality. Additionally, this Document Request seeks documents that are proprietary and confidential to Jackson and should be protected from disclosure.

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**

Jackson has produced to Respondents its 2010, 2011 and 2012 audited financial statements in response to this Document Request.

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**

Jackson incorporates by reference all of its general objections set forth above. Jackson objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Jackson objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, or any other applicable privilege, immunity, or confidentiality. Additionally, this Document Request seeks documents that are proprietary and confidential to Jackson and should be protected from disclosure.

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**

Jackson incorporates by reference all of its general objections set forth above. Jackson objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Jackson objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, or any other applicable privilege, immunity, or confidentiality. Additionally, this Document Request seeks documents that are proprietary and confidential to Jackson and should be protected from disclosure.

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**

Jackson incorporates by reference all of its general objections set forth above. Jackson objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Jackson objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, or any other applicable privilege, immunity, or confidentiality. Additionally, this Document Request seeks documents that are proprietary and confidential to Jackson and should be protected from disclosure.

14. *All documents relating to the compensation received by the CEO (or equivalent), Chief Medical Officer (or equivalent), Chief Operating Officer (or equivalent), Director of Managed Care Contracting (or equivalent), Head 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**

Jackson incorporates by reference all of its general objections set forth above. Jackson objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Jackson objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, or any other applicable privilege, immunity, or confidentiality. Additionally, this Document Request seeks documents that are proprietary and confidential to Jackson 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**

Respondents have agreed to withdraw this Document Request. Subject to such withdrawal, Jackson incorporates by reference all of its general objections set forth above. Jackson objects to this Document Request to the extent that it is overbroad and requests documents that are irrelevant to the FTC's Proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Jackson objects to this Document Request to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, or any other applicable privilege, immunity, or confidentiality. Additionally, this Document Request seeks documents that are proprietary and confidential to Jackson and should be protected from disclosure.

**CONCLUSION**

For all of the foregoing reasons, Jackson respectfully requests that the Chief Administrative Law Judge quash the Subpoena. In the alternative, Jackson respectfully requests that the Chief Administrative Law Judge modify the return date of the Subpoena to provide a reasonable time for compliance and to limit the Subpoena based on the objections set forth above.

Dated: May 13, 2013

Respectfully submitted,

By: /s/ Lawrence J. Myers

Lawrence J. Myers, Esq.

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Atlanta, Georgia 30309  
(404) 962-1000 (Phone)  
(404) 962-1200 (Fax)

*Counsel for Jackson Hospital*

**STATEMENT OF LAWRENCE J. MYERS PURSUANT TO 16 C.F.R. 3.22(g)**

I am A Partner with Smith Moore Leatherwood LLP, counsel for Jackson Hospital ("Jackson"). I submit this statement in connection with Jackson's Motion to Quash or Limit the Subpoena *Duces Tecum* (the "Motion"). On May 3, 6, and 10, 2013, I conferred with John Fedele, counsel for the Respondents, by telephone in a good faith attempt to resolve the issues set forth in the Motion. On May 9 and 10, 2013, I communicated by e-mail to Mr. Fedele in a good faith attempt to resolve the issues set forth in the Motion. We, however, have been unable to resolve by agreement the issues raised in the Motion.

Dated: May 13, 2013

By: /s/ Lawrence J. Myers  
Lawrence J. Myers, Esq.



<p>Pro Hac Vice  <i>Counsel for Plaintiff: Federal Trade Commission</i></p>	<p>Pro Hac Vice  <i>Counsel for Plaintiff: Federal Trade Commission</i></p>
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<p>Emmet J. Bondurant, II  1201 West Peachtree Street, NW  3900 One Atlantic Center  Atlanta, Georgia 30309  E-Mail: <a href="mailto:bondurant@bmelaw.com">bondurant@bmelaw.com</a>  <i>Attorney for Defendant Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc. and Phoebe North, Inc.</i></p>	<p>John J. Fedele  Baker &amp; McKenzie, LLP  815 Connecticut Avenue, NW  Washington, DC 20006  E-Mail: <a href="mailto:john.fedele@bakermckenzie.com">john.fedele@bakermckenzie.com</a>  <i>Attorney for Defendant Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc. and Phoebe North, Inc.</i></p>
<p>Kevin James Arquit, Esq.  Simpson, Thacher &amp; Bartlett, LLP  425 Lexington Avenue  New York, New York 10017-3954  E-Mail: <a href="mailto:karquit@stblaw.com">karquit@stblaw.com</a>  <i>Attorney for HCA, Inc. and Palmyra Park Hospital, Inc.</i></p>	

Dated: May 13, 2013

By: /s/ Lawrence J. Myers  
Lawrence J. Myers, Esq.

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of	)	
	)	
	)	
PHOEBE PUTNEY HEALTH SYSTEM, INC., et al.,	)	Docket No. 9348
	)	
Respondents.	)	
	)	
	)	
	)	

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served counsel for the foregoing matter with a true and correct copy of the within and foregoing “JACKSON HOSPITAL’S MOTION TO QUASH OR LIMIT SUBPOENA DUCES TECUM” via United States Mail with sufficient postage affixed thereto, by Federal Express upon:

Donald S. Clark, Secretary of the Commission Federal Trade Commission 600 Pennsylvania Avenue, NW Room H-113 Washington, DC 20580	Judge D. Michael Chappell Federal Trade Commission 600 Pennsylvania Avenue, NW Room H-110 Washington, DC 20580
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Dated: May 13, 2013

By: /s/ Lawrence J. Myers  
Lawrence J. Myers, Esq.

**ATTACHMENT A**

**ATTACHMENT A**

ATTACHMENT A



# SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO  
Jackson Hospital  
C/O Larry Meese, CEO, Or Person  
Authorized to Receive Service  
4250 Hospital Drive  
Marianna, FL 32446

2. FROM  
  
UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION  
  
Baker & McKenzie LLP  
815 Connecticut Avenue, NW  
Washington, DC 20006

4. MATERIAL WILL BE PRODUCED TO  
John J. Fedele, Respondents  
5. DATE AND TIME OF PRODUCTION  
May 21, 2013 - 5:00p.m. EDT

6. SUBJECT OF PROCEEDING  
  
Phoebe Putney Health System, Inc - Docket 9348

7. MATERIAL TO BE PRODUCED  
  
Documents and materials responsive to the attached Subpoena Duces Tecum  
Requests for Production

8. ADMINISTRATIVE LAW JUDGE  
  
Michael D. Chappell  
  
Federal Trade Commission  
Washington, D.C. 20580

9. COUNSEL AND PARTY ISSUING SUBPOENA  
Lee K. Van Voorhis:  
815 Connecticut Avenue, NW  
Washington, DC 20006  
202-835-6162

DATE SIGNED  
  
04/26/2013

SIGNATURE OF COUNSEL ISSUING SUBPOENA

### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/ETCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**RETURN OF SERVICE**

*I hereby certify that a duplicate original of the within subpoena was duly served:* (check the method used)

*In person.*

*by registered mail.*

*by leaving copy at principal office or place of business, to wit:*

*on the person named herein on:*

(Month, day, and year)

April 26, 2013

(Name of person making service)

Brian E. Rafkin, Esquire

(Official title)

Attorney

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

ORIGINAL



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

DOCKET NO. 9348

**PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL**

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

  
\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date: April 21, 2011

## ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

**IT IS HEREBY ORDERED THAT** this Protective Order Governing Confidential Material (“Protective Order”) shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, “confidential material” shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. “Sensitive personal information” shall refer to, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records. “Document” shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. “Commission” shall refer to the Federal Trade Commission (“FTC”), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.

2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.

3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.

5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL-FTC Docket No. 9348" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL-FTC Docket No. 9348" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

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	)	Docket No. 9348
	)	
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	)	

**RESPONDENTS' SUBPOENA DUCES TECUM TO**  
**Jackson Hospital**

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. §§ 3.31 and 3.34, and the Scheduling Order entered by Chief Administrative Law Judge Chappell on April 4, 2013, Respondents, Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Hospital Authority of Albany-Dougherty County ("Phoebe") hereby request that Jackson Hospital produce the documents set forth below in accordance with the Definitions and Instructions set forth below:

**DEFINITIONS**

- A. 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.
- B. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
- C. The term "communication" means any transfer of information, written, oral, or by any other means.

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- D. 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.
- E. 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.
- F. The terms “each,” “any,” and “all” mean “each and every.”
- G. The term “Geographic Area” means the geographic area including the following counties in Alabama, Florida, and Georgia: Alabama: Barbour, Henry, Houston, Lee, and Russell; Florida: Gadsden, Jackson, Jefferson, Hamilton, Leon, and Madison; Georgia: Bibb, Bleckley, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Grady, Harris, Houston, Irwin, Jeff Davis, Lanier, Lee, Lowndes, Macon, Marion, Miller, Mitchell, Muscogee, Peach, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Talbot, Taylor, Telfair, Terrell, Thomas, Tift, Turner, Twiggs, Upson, Webster, Wilcox, and Worth.
- H. The term “hospital” means a health care facility providing care through specialized staff and equipment on either an in-patient or out-patient basis.
- I. 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.
- J. 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.
- K. The term “including” shall mean “including without limitation.”
- L. The term “insurance premiums” means the fees paid for coverage of medical benefits for a defined benefit period.
- M. 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.

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- N. 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.
- O. 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.
- P. The term “Phoebe” means Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Phoebe Health Partners.
- Q. The term “reimbursement rate” means the rate paid to a health care provider for performing a certain procedure.
- R. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, reflecting, describing, analyzing, identifying, or stating.
- S. The term “Transaction” means the Hospital Authority of Albany-Dougherty County’s acquisition of Palmyra Park Hospital, which was consummated in December 2011.
- T. The term “You” and “Your” mean **Jackson Hospital** and all of its subsidiaries, affiliates or predecessors.
- U. Unless otherwise defined, all words and phrases used in this First Request for the Production of Documents shall be accorded their usual meaning as defined by Webster’s New Universal Unabridged Dictionary, Fully Revised and Updated (2003).

**INSTRUCTIONS**

- A. All responsive documents should be produced by May 21, 2013.
- B. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and/or information for each of the years from January 1, 2008 to the present.
- C. Unless modified by agreement with Respondents, this Subpoena requires a complete search of all Your files. You shall produce all responsive documents, wherever located, that are in the actual or constructive possession, custody, or control of Your Hospital and its representatives, attorneys, and other agents, including, but not limited to, consultants, accountants, lawyers, or any other person retained by, consulted by, or working on behalf or under the direction of You.

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- D. This subpoena is governed by the terms of the attached Protective Order Governing Discovery Material issued on April 21, 2011.
- E. To protect patient privacy, You shall mask any Sensitive Personally Identifiable Information (“PII”) or Sensitive Health Information (“SHI”). For purposes of this Subpoena, PII means an individual’s Social Security Number alone; or an individual’s name or address or phone number in combination with one or more of the following: date of birth, Social Security Number, driver’s license number or other state identification number or a foreign country equivalent, passport number, financial account numbers, credit or debit card numbers. For purposes of this Subpoena, SHI includes medical records or other individually identifiable health information. Where required by a particular request, You shall substitute for the masked information a unique patient identifier that is different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient. Otherwise, You shall redact the PII or SHI but is not required to replace it with an alternate identifier.
- F. Forms of Production: Your Hospital shall submit documents as instructed below absent written consent signed by Respondents.
- (1) Documents stored in electronic or hard copy format in the ordinary course of business shall be submitted in electronic format provided that such copies are true, correct, and complete copies of the original documents:
- (a) Submit Microsoft Access, Excel, and PowerPoint in native format with extracted text and metadata;
  - (b) Submit all other documents other than those identified in subpart (1)(a) in image format with extracted text and metadata; and
  - (c) Submit all hard copy documents in image format accompanied by OCR.
- (2) For each document submitted in electronic format, include the following metadata fields and information:
- (a) For documents stored in electronic format other than email: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, and MD5 or SHA Hash value;
  - (b) For emails: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, to, from, CC, BCC, subject, date and time sent, Outlook Message ID (if applicable), child records (the beginning Bates or document identification number of attachments delimited by a semicolon);
  - (c) For email attachments: beginning Bates or document identification number, ending Bates or document identification number, page count,

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custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, parent record (beginning Bates or document identification number of parent email), and MD5 or SHA Hash value; and

- (d) For hard copy documents: beginning Bates or document identification number, ending Bates or document identification number, page count, and custodian.
- (3) Submit electronic files and images as follows:
- (a) For productions over 10 gigabytes, use SATA, IDE, and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 external enclosure;
  - (b) For productions under 10 gigabytes, CD-R CD-ROM and DVD-ROM for Windows-compatible personal computers, USB 2.0 Flash Drives are also acceptable storage formats; and
  - (c) All documents produced in electronic format shall be scanned for and free of viruses.
- (4) All documents responsive to this request, regardless of format or form and regardless of whether submitted in hard copy or electronic format:
- (a) Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in Your Hospital's files and shall not be shuffled or otherwise rearranged;
  - (b) Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (*e.g.*, a chart or graph), makes any substantive information contained in the document unintelligible, Your Hospital must submit the original document, a like-colored photocopy, or a JPEG format image);
  - (c) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;
  - (d) Shall be marked on each page with corporate identification and consecutive document control numbers; and
  - (e) Shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s),

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provide the index both as a printed hard copy and in machine-readable form.

- G. If you object to responding fully to any of the below requests for documents based on a claim of privilege, You shall provide pursuant to 16 C.F.R. § 3.38A, for each such request, a schedule containing the following information: (a) the date of all responsive documents, (b) the sender of the document, (c) the addressee, (d) the number of pages, (e) the subject matter, (f) the basis on which the privilege is claimed, (g) the names of all persons to whom copies of any part of the document were furnished, together with an identification of their employer and their job titles, (h) the present location of the document and all copies thereof, and (i) each person who has ever had possession, custody, or control of the documents.
- H. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business but Your Hospital has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents.
- I. Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to John Fedele at (202) 835-6144. The response to the request shall be addressed to the attention of John Fedele, Baker & McKenzie LLP, 815 Connecticut Ave. NW, Washington, D.C. 20006, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to Baker & McKenzie.

**DOCUMENTS TO BE PRODUCED**

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

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

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**CERTIFICATION**

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Subpoena *Duces Tecum* has been prepared by me or under my personal supervision from the records of Jackson Hospital 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, Jackson Hospital will not object based upon Respondents not offering the original document.

\_\_\_\_\_  
(Signature of Official)

\_\_\_\_\_  
(Title/Company)

\_\_\_\_\_  
(Typed Name of Above Official)

\_\_\_\_\_  
(Office Telephone)

**Subpoena *Duces Tecum* Issued to Jackson Hospital (FTC Docket 9348)**

Dated: April 26, 2013

Respectfully submitted,

By /s/ Lee K. Van Voorhis

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**Subpoena Duces Tecum Issued to Jackson Hospital (FTC Docket 9348)**

**CERTIFICATE OF SERVICE**

I hereby certify that this 26th day of April, 2013, I delivered via FEDEX this Subpoena *Duces Tecum* to:

Jackson Hospital  
C/O Larry Meese, CEO, Or Person Authorized to Receive Service  
4250 Hospital Drive  
Marianna, FL 32446

I also certify that I delivered via electronic mail a copy of the foregoing document to:

Edward D. Hassi, Esq.  
Trial Counsel  
Federal Trade Commission  
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**Subpoena Duces Tecum Issued to Jackson Hospital (FTC Docket 9348)**

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This 26th day of April, 2013.

By:

/s/ Jeremy Cline  
Jeremy W. Cline, Esq.  
*Counsel for Phoebe Putney Memorial  
Hospital, Inc. and Phoebe Putney Health  
System, Inc.*