

ORIGINAL



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

In the Matter of)	
)	
PHOEBE PUTNEY HEALTH SYSTEM, INC., and)	
)	
PHOEBE PUTNEY MEMORIAL HOSPITAL, INC., and)	DOCKET NO. 9348
)	
PHOEBE NORTH, INC., and)	PUBLIC DOCUMENT
)	
HCA INC., and)	
)	
PALMYRA PARK HOSPITAL, INC., and)	
)	
HOSPITAL AUTHORITY OF ALBANY- DOUGHERTY COUNTY, Respondents.)	

**FANNIN REGIONAL HOSPITAL’S, TRINITY HOSPITAL OF AUGUSTA’S, AND
FLOWERS HOSPITAL’S MOTION TO QUASH OR LIMIT SUBPOENAS**

COME NOW non-parties Blue Ridge Georgia Hospital Company, LLC d/b/a Fannin Regional Hospital (“Fannin Regional”), Augusta Hospital, LLC d/b/a Trinity Hospital of Augusta (“Trinity”), and Triad of Alabama, LLC d/b/a Flowers Hospital (“Flowers”) (collectively, the “Non-Party Hospitals”), by and through the undersigned counsel, and, pursuant to Commission Rules 3.31 and 3.34 and 16 C.F.R. §§ 3.31, 3.34, hereby move to quash or limit the *Subpoenas Duces Tecum* served on the Non-Party Hospitals (as amended, the “Subpoenas”) by Respondents Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Hospital Authority of Albany-Dougherty County (collectively, “Respondents”) in the above-captioned matter.

INTRODUCTION

For the reasons and objections stated herein, the Subpoenas to the above-defined Non-Party Hospitals should be quashed or limited such that no production pursuant to Request No. 9 of the Long Form Subpoena (defined below) and Request No. 3 of the Short Form Subpoena (defined below) should be required and no further action should be required of Fannin Regional, Trinity, or Flowers. Respondents seek unprecedented discovery from 160-plus hospitals throughout the State of Georgia and others in Alabama and Florida. However, the documents sought are not reasonably calculated to lead to admissible evidence, are overly broad and unduly burdensome, contravene the FTC's Procedural Rules, and seek irrelevant, confidential, proprietary financial information that the Non-Party Hospitals should not be required to produce to Respondents.¹

FACTUAL BACKGROUND

Phoebe Putney Memorial Hospital ("Phoebe Putney") is located in Albany, Georgia and has numerous affiliates. It is a 443 bed facility.

Fannin Regional is located in Blue Ridge, Georgia and is 279 miles from Phoebe Putney, with a drive time in excess of four hours. Fannin Regional is a 50-bed facility.

Trinity Hospital of Augusta is located in Augusta, Georgia and is 208 miles from Phoebe Putney, with a drive time in excess of four hours. Trinity is a 231-bed facility.

¹ To the extent applicable, the Non-Party Hospitals join in and incorporate by reference the factual background provided in and the arguments in (a) the Motions to Quash or Limit Subpoena *Duces Tecum* filed May 6, 2013, by Morris, Manning & Martin, LLP on behalf of other hospitals and medical centers which were served with similar subpoenas and (b) the Coventry Health Care of Georgia, Inc. and Aetna Inc.'s Joint Motion to Limit Subpoena *Duces Tecum*, filed May 17, 2013, which provides additional information regarding the discovery and documents already made available to Respondents in these proceedings.

Flowers is located in Dothan, Alabama and is approximately 90 miles from Phoebe Putney, with a drive time in excess of two hours. Flowers is a 235-bed facility.

On or about April 26, 2013, Respondents served Subpoenas on each of the Non-Party Hospitals, along with numerous other non-party hospitals in Georgia, Florida, and Alabama. Certain of the Subpoenas directed to the Non-Party Hospitals attached fifteen (15) categories of documents requested to be produced pursuant to the Document Subpoenas, referred to as the “Long Form.” Other Subpoenas attached four (4) categories of documents requested to be produced referred to as the “Short Form.” A summary of the form of the Subpoenas served on the Non-Party Hospitals is below:

Non-Party Hospital	Location	Type of Subpoena Received
Fannin Regional Hospital	Blue Ridge, Georgia	Short Form
Trinity Hospital of Augusta	Augusta, Georgia	Short Form
Flowers Hospital	Dothan, Alabama	Long Form

Following the issuance of the Subpoenas, a flurry of activity ensued, and numerous discussions were convened between and among counsel for the hospitals receiving the subpoenas, the Respondents’ counsel, and the Georgia Hospital Association.

On or about May 6, 2013, Respondents’ counsel agreed to withdraw the Subpoenas that were issued to critical access hospitals. On or about May 10, 2013, the Long Form subpoena was narrowed to Requests 4 and 9, and the Short Form subpoena was narrowed to Request 3.

Long Form Request 9 and Short Form Request 3 -- at issue in this Motion -- requested the following:

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).

Counsel for Respondents subsequently narrowed the request to audited, hospital-level financial statements prepared from 2010 through the present. (The documents requested by Long Form Request 9 and Short Form Request 3 are referred to herein as the “Requested Financial Information.”)

Following several discussions and email exchanges with counsel for Respondents, counsel for the Non-Party Hospitals raised objections to the Subpoenas and requested additional information regarding the relevance of the information requested in Long Form Request No. 9 and Short Form Request No. 3, which Respondents’ counsel agreed to provide. As of this filing, counsel for the Non-Party Hospitals has not received sufficient clarity from Respondents. Despite efforts to resolve all objections, the Subpoenas still seek disclosure of the Non-Party Hospitals’ irrelevant, confidential Requested Financial Information for use by Respondents. The Non-Party Hospitals therefore object to producing such documents.

ARGUMENT AND CITATION OF AUTHORITY

Under Commission Rule 3.34, motions to quash or limit subpoenas “shall set forth all assertions of privilege or other factual and legal objections to the subpoena, including all appropriate arguments, affidavits and other supporting documentation.” 16 C.F.R. § 3.34(c). In addition, 16 C.F.R. § 3.31(d) gives the Administrative Law Judge the authority to “deny discovery or make any other order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent undue delay in the proceeding.” 16 C.F.R. § 3.31(d).

Rule 3.31 limits discovery in an adjudicative proceeding before the Commission. Discovery sought pursuant to a subpoena in such a proceeding must 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(c)(1). The discovery sought 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). Also, 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 requested by Respondents pursuant to the Subpoenas are not proper under these rules, are overbroad and unduly burdensome, seek highly sensitive, irrelevant information, and are not reasonably calculated to lead to the discovery of admissible evidence. Accordingly, the Non-Party Hospitals object to the Subpoenas on the grounds set forth below and request the relief stated herein.

OBJECTIONS TO SUBPOENAS

First, any Requested Financial Information maintained by the Non-Party Hospitals is irrelevant to the claims and defenses in the subject litigation. The Non-Party Hospitals are not located within any reasonably defined service area of Phoebe Putney. Fannin Regional and Trinity are both over 200 miles from Phoebe Putney (and in excess of a four-hour drive time), and Flowers is over 90 miles away (and in excess of a two-hour drive time). Despite repeated requests from counsel for the Non-Party Hospitals, Respondents have not articulated the basis of their purported need for economic data from hospitals so distant from the epicenter of the underlying litigation. The broad scope of the Subpoenas is beyond reason or justification. Respondents should not be permitted to cast a net far exceeding the breadth of potentially relevant information. Where, as here, the information sought is irrelevant, production is not justified or appropriate. Accordingly, the Non-Party

Hospitals' Requested Financial Information is irrelevant to Respondents' litigation, and Long Form Request 9 and Short Form Request 3 should be quashed.

Second, the Requested Financial Information is proprietary and confidential. The Non-Party Hospitals are situated differently from most of the hospitals served with Respondents' Subpoenas that have agreed to produce the requested financials. Most of these hospitals are obligated to disclose their financial records in connection with bond offerings, to public hospital districts, in Forms 990, and the like. In that sense, many of the subpoenaed hospitals' Requested Financial Information is publicly-available in any event. By contrast, the Non-Party Hospitals do not have such disclosure obligations independent of the consolidated filings of its publicly-traded, remote parent company. Given the lack of relevance of these documents, the Non-Party Hospitals should not be required to turn over their Requested Financial Information to Respondents.

Finally, the Non-Party Hospitals have made multiple requests for Respondents to identify which specific line items are purportedly needed by their expert economists in connection with Respondents' defenses. Such information is essential for the Non-Party Hospitals to understand how the Requested Financial Information will be utilized by the Respondents and whether, and to what extent, it will be disclosed in the underlying litigation. However, to date, this information has not been provided.

CONCLUSION AND REQUEST FOR RELIEF

For the forgoing reasons, the Non-Party Hospitals respectfully request an Order providing that Long Form Subpoena Request 9 and Short Form Subpoena Request 3 are quashed and that no production pursuant to these requests is required of Fannin Regional, Trinity, or Flowers.

A proposed order is attached hereto as Exhibit A.

Respectfully submitted, this 22nd day of May, 2013.

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Augusta, and Triad of Alabama, LLC d/b/a
Flowers Hospital*

EXHIBIT A
(PROPOSED ORDER)

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HOSPITAL AUTHORITY OF ALBANY- DOUGHERTY COUNTY, Respondents.)	

**ORDER GRANTING FANNIN REGIONAL HOSPITAL’S, TRINITY HOSPITAL OF
AUGUSTA’S, AND FLOWERS HOSPITAL’S MOTION TO QUASH OR LIMIT
SUBPOENAS AND FOR PROTECTIVE ORDER**

Before the Administrative Law Judge is Fannin Regional Hospital’s, Trinity Hospital of Augusta’s, and Flowers Hospital’s Motion to Quash or Limit Subpoenas (“Motion to Quash”), filed by Blue Ridge Georgia Hospital Company, LLC d/b/a Fannin Regional Hospital (“Fannin Regional”), Augusta Hospital, LLC d/b/a Trinity Hospital of Augusta (“Trinity”), and Triad of Alabama, LLC d/b/a Flowers Hospital (“Flowers”) (collectively, the “Non-Party Hospitals”). The motion seeks to quash Requests 9 (long form) and 3 (short form) of the *Subpoena Duces Tecum* served on Non-Party Hospitals on or about April 26, 2013 (the “Subpoenas”) by Respondents Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Hospital Authority of Albany-Dougherty County (collectively, “Respondents”).

Having considered the Motion to Quash and all responses thereto, this Court finds that the motion should be, and hereby is, GRANTED.

IT IS THEREFORE ORDERED that Requests 9 (long form) and 3 (short form) of the Subpoenas are quashed and that no production pursuant to these requests is required of Fannin Regional, Trinity, or Flowers

Signed this ____ day of _____, 2013.

D. Michael Chappell Chief
Administrative Law Judge

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HCA INC., and)	
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PALMYRA PARK HOSPITAL, INC., and)	
)	
HOSPITAL AUTHORITY OF ALBANY-)	
DOUGHERTY COUNTY,)	
Respondents.)	

STATEMENT OF BRIAN ALLEN HAYLES PURSUANT TO 16 C.F.R. 3.22(g)

I am an associate at Womble Carlyle Sandridge & Rice, LLP and counsel for Blue Ridge Georgia Hospital Company, LLC d/b/a Fannin Regional Hospital, Augusta Hospital, LLC d/b/a Trinity Hospital of Augusta, and Triad of Alabama, LLC d/b/a Flowers Hospital (collectively, the “Non-Party Hospitals”). I submit this statement in connection with Fannin Regional Hospital’s, Trinity Hospital of Augusta’s, and Flowers Hospital’s Motion to Quash or Limit Subpoenas (“Motion to Quash”). On April 26, 2013, Phoebe Putney served the *Subpoenas Duces Tecum* on the Non-Party Hospitals. On May 16, 2013, I conferred with John Fedele, counsel for the Phoebe Putney Memorial Hospital, Inc. and Phoebe Putney Health System, Inc., in a good faith attempt to resolve the issues set forth in the Motion to Quash. On May 17, 2013, and May 21, 2013, I further conferred with Mr. Fedele via telephone and/or email. However, we have been unable to resolve by agreement the issues raised therein.

This 22nd day of May, 2013.

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Augusta, and Triad of Alabama, LLC d/b/a
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HOSPITAL AUTHORITY OF ALBANY- DOUGHERTY COUNTY, 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 **“Fannin Regional Hospital’s, Trinity Hospital of Augusta’s, and Flowers Hospital’s Motion to Quash or Limit Subpoenas”** was electronically filed with the Federal Trade Commission using the FTC E-File system which will automatically send e-mail notification of such filing to:

Donald S. Clark
Secretary
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It was also served via electronic mail and United States Mail with sufficient postage affixed thereto, addressed to:

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This 22nd day of May, 2013.

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