

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

_____)
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

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having heretofore issued its Complaint charging Respondent Phoebe Putney Health System, Inc. (“PPHS”), Respondent Phoebe Putney Memorial Hospital, Inc. (“PPMH”), Respondent Phoebe North, Inc. (“PNI”), (hereinafter collectively referred to as “Respondent Phoebe Putney”), Respondent HCA Inc. (“HCA”), Respondent Palmyra Park Hospital, Inc. (“Palmyra”), and Respondent Hospital Authority of Albany-Dougherty County (“Hospital Authority”), with a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Respondents having been served with a copy of that Complaint, together with a notice of contemplated relief and having filed their answers denying said charges; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with § 3.25(c) of its Rules; and the Commission having thereafter considered the matter and having thereupon accepted the executed Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional and factual findings and enters the following Order:

1. Respondent PPHS is a not-for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its headquarters address located at 417 Third Avenue, Albany, Georgia 31701.
2. Respondent PPMH is a not-for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, and is a 691-bed general acute care hospital located at 417 Third Avenue, Albany, Georgia 31701.
3. Respondent PNI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, and was created for the purpose of managing the Palmyra assets during the interim period after Respondent Hospital Authority acquired Respondent Palmyra Hospital, with its headquarters address located at 417 Third Avenue, Albany, Georgia 31701.
4. Respondent Hospital Authority is organized and exists pursuant to the Georgia Hospital Authorities Law, O.C.G.A. §§ 31-7-70 et seq., a statute that governs 159 counties over the entire state of Georgia, where at least 92 hospital authorities currently exist. Respondent Hospital Authority maintains its principal place of business at 417 Third Avenue, Albany, Georgia 31701.
5. Respondent HCA is a for-profit health system that owns or operates 164 hospitals in 20 states and Great Britain. HCA is incorporated in the State of Delaware. Its offices are located at One Park Plaza, Nashville, Tennessee 37203.
6. Respondent Palmyra was a corporation named Palmyra Park Hospital, Inc., and was, prior to the acquisition by Respondent Hospital Authority, a 248-bed

general acute care hospital owned by Respondent HCA, incorporated in the State of Georgia, and was located at 2000 Palmyra Road, Albany, Georgia 31701.

7. Respondent Hospital Authority proposed to acquire nearly all of the assets of Respondent Palmyra from Respondent HCA (the “Transaction”).
8. Respondents admit all of the jurisdictional facts set forth in the Complaint.
9. For the sole purpose of this proceeding and achieving compromise through the Consent Agreement, Respondent Phoebe Putney and Respondent Hospital Authority have stipulated that the effect of the consummated Transaction may be substantially to lessen competition within the relevant service and geographic markets alleged in the Complaint.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “PPHS” or “Respondent PPHS” means Phoebe Putney Health System, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Phoebe Putney Health System Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “PPMH” or “Respondent PPMH” means Phoebe Putney Memorial Hospital, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Phoebe Putney Memorial Hospital, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “PNI” or “Respondent PNI” means Phoebe North, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Phoebe North, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Respondent Phoebe Putney” means, collectively, Respondent PPHS, Respondent PPMH, and Respondent PNI.

- E. “HCA” or “Respondent HCA” means HCA Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address located at One Park Plaza, Nashville, Tennessee 37203.
- F. “Palmyra” or “Respondent Palmyra” means Palmyra Park Hospital, Inc., which was a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its headquarters address located at 2000 Palmyra Road, Albany Georgia 31701.
- G. “Hospital Authority” or “Respondent Hospital Authority” means Hospital Authority of Albany-Dougherty County, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Hospital Authority of Albany-Dougherty County, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- H. “Commission” means The Federal Trade Commission.
- I. “CON” means a certificate of need issued by the Georgia Department of Community Health as provided by O.C.G.A. §§ 31-6-1 to 31-6-70.
- J. “General Acute Care Hospital” means an inpatient general acute care hospital that provides a broad cluster of basic medical and surgical diagnostic and treatment services that include overnight hospital stay, as described in Paragraph 48 of the Complaint.
- K. “Physician” means a doctor of medicine (“MD”) or a doctor of osteopathic medicine (“DO”).
- L. “Physician Group Practice” means a bona fide, integrated firm in which five (5) or more Physicians practice medicine together as partners, shareholders, owners, members, or employees.
- M. “Six-County Region” means the six-county region of Dougherty, Terrell, Lee, Worth, Baker, and Mitchell Counties in Georgia, as described in Paragraph 51 of the Complaint.

II.

IT IS FURTHER ORDERED that for a period of ten (10) years from the date this Order becomes final Respondent Phoebe Putney and Respondent Hospital Authority shall not, without providing advance written notification to the Commission in the manner described in this Paragraph II., directly or indirectly, acquire:

- A. All or any part of a General Acute Care Hospital in the Six-County Region;
- B. All or a controlling interest in any inpatient or outpatient clinic or facility in the Six-County Region that (1) may not be part of a General Acute Care Hospital but provides any of the services provided by Respondent Phoebe Putney or Respondent Hospital Authority in the Six-County Region, and (2) may or may not require a CON; and
- C. All or a controlling interest in a Physician Group Practice in the Six-County Region.

Said advance written notification shall contain (i) either a detailed term sheet for the proposed acquisition or the proposed agreement with all attachments, and (ii) documents that would be responsive to Item 4(c) and Item 4(d) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a, and Rules, 16 C.F.R. § 801-803, relating to the proposed transaction (hereinafter referred to as “the Notification”).

PROVIDED, HOWEVER, that (i) no filing fee will be required for the Notification, (ii) an original and one copy of the Notification shall be filed only with the Secretary of the Commission and need not be submitted to the United States Department of Justice, and (iii) the Notification is required from Respondent Phoebe Putney and Respondent Hospital Authority and not from any other party to the transaction. Respondent Phoebe Putney and Respondent Hospital Authority shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent Phoebe Putney and Respondent Hospital Authority shall not consummate the transaction until thirty days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

PROVIDED FURTHER, HOWEVER, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

PROVIDED FURTHER, HOWEVER, that prior notification shall not be required by this Paragraph II. for an acquisition, if (1) Respondent Phoebe Putney or Respondent Hospital Authority will hold, following the acquisition, no more than one percent of the outstanding securities or other equity interest in an entity described in this Paragraph II., or (2) Respondent Phoebe Putney or Respondent Hospital Authority acquires any additional ownership interest in an entity that it already controls.

III.

IT IS FURTHER ORDERED that until the earlier of five (5) years from the date this Order becomes final or the issuance of a CON for a General Acute Care Hospital in the Six-County Region, Respondent Phoebe Putney and Respondent Hospital Authority shall not file, formally or informally, directly or indirectly, with the Georgia Department of Community Health, its members, the Attorney General or any person in the Georgia Attorney General’s office, objections to or negative comments about, an application by any person or entity for a CON filed with the Georgia Department of Community Health – or any successor department or organization – or any appeals therefrom, for a General Acute Care Hospital in the Six-County Region.

PROVIDED, HOWEVER, that nothing in Part III. of this Order shall prohibit Respondent Phoebe Putney and Respondent Hospital Authority from providing information in response to a formal request from the Georgia Department of Community Health.

PROVIDED FURTHER, HOWEVER, that Respondent Phoebe Putney and Respondent Hospital Authority shall submit to the Commission (i) the request for comments from the Georgia Department of Community Health within ten (10) days of its receipt, and (ii) a copy of the response to such request, within five (5) days of its submission to the Georgia Department of Community Health.

IV.

IT IS FURTHER ORDERED that for a period of five (5) years from the date this Order becomes final, if Respondent Phoebe Putney or Respondent Hospital Authority file objections to an application by any person or entity for a CON filed with the Georgia Department of Community Health – or any successor department or organization – or any appeals therefrom, for an inpatient or outpatient clinic, facility or service in the Six-County Region, that may or may not be part of a General Acute Care Hospital, but provides any of the services provided by Respondent Phoebe Putney or Respondent Hospital Authority in the Six-County Region, such Respondent shall submit such objection to the Commission within five (5) days of its submission.

V.

IT IS FURTHER ORDERED that beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondent Phoebe Putney and Respondent Hospital Authority each shall submit to the Commission a verified written report setting forth in detail the manner and form in which they have complied, are complying, and will comply with this Order. Respondent Phoebe Putney and Respondent Hospital Authority each shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order and copies of all written communications to and from all persons relating to this Order. Additionally, Respondent Phoebe Putney and Respondent Hospital Authority each shall include in their compliance reports whether or not they made any acquisitions pursuant to Paragraph II, including acquisitions subject to the final proviso to Paragraph II, and shall include a description of such acquisitions.

VI.

IT IS FURTHER ORDERED that Respondent Phoebe Putney and Respondent Hospital Authority each shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of such Respondent;
- B. Any proposed acquisition, merger or consolidation of Respondent; or
- C. Any other change in the Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent Phoebe Putney and Respondent Hospital Authority, Respondent Phoebe Putney and Respondent Hospital Authority shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of Respondent Phoebe Putney or Respondent Hospital Authority and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent Phoebe Putney and Respondent Hospital Authority relating to compliance with this Order, which copying services shall be provided by Respondent Phoebe Putney and Respondent Hospital Authority at its expense; and

- B. to interview officers, directors, or employees of Respondent Phoebe Putney and Respondent Hospital Authority, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date on which it became final.

IX.

IT IS FURTHER ORDERED that the Complaint is dismissed as to Respondent HCA and Respondent Palmyra.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: