

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

ORIGINAL

IN THE MATTER OF
PROPOSED ACQUISITION BY THE
HOSPITAL AUTHORITY OF ALBANY-
DOUGHERTY COUNTY OF PALMYRA
PARK MEDICAL CENTER, INC. FROM
PALYMYRA PARK HOPSITAL, INC.

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) FILE No. 111-0067
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**PHOEBE PUTNEY HEALTH SYSTEM, INC.'S PETITION TO QUASH OR LIMIT
SUBPOENA *DUCES TECUM* AND CIVIL INVESTIGATIVE DEMAND**

WEIL, GOTSHAL & MANGES, LLP
Lee K. Van Voorhis

1300 Eye Street, NW
Washington, DC 20005
(202) 682-7000
(202) 857-0940 (fax)

Counsel For Petitioner

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Pursuant to Section 2.7(d)(1) of the Federal Trade Commission's ("FTC" or "Commission") Rules of Practice, 16 C.F.R. § 2.7(d)(1), and Section 20 of the FTC Act, 15 U.S.C. § 57b-1(f)(1), Phoebe Putney Health System, Inc. ("PPHS") hereby files its Petition to Quash or Limit the Subpoena *Duces Tecum*¹ (the "Subpoena") and the Civil Investigative Demand² (the "CID"), FTC File No. 111-0067, both served on PPHS on February 15, 2011.

I. INTRODUCTION AND SUMMARY

On December 21, 2010, the Hospital Authority of Albany-Dougherty County ("the Authority"), a political subdivision of the State of Georgia, entered into an asset purchase agreement to acquire Palmyra Medical Center ("Palmyra") from the Palmyra Park Hospital, Inc., a Georgia corporation, ("Seller") for \$195 million. Subsequent to the acquisition of Palmyra by the Authority, the asset purchase agreement contemplates that after a certain period of time, the Authority intends to lease Palmyra to Phoebe Putney Memorial Hospital, Inc.³

No Hart-Scott-Rodino pre-merger notification is required due to the exemption provided to state political subdivisions such as the Authority, the acquirer here, under Clayton Act 7A(c)(4) and further described in Section 801.1(a)(2) of the regulations promulgated under the HSR Act.

On December 29, 2010,⁴ Staff at the Federal Trade Commission ("FTC") informed the parties that it had opened a non-public preliminary investigation of the proposed transaction. In that same communication, the Staff requested certain information related to both a competitive analysis of the proposed transaction as well as possible state action doctrine immunity.

During multiple telephone conversations with Staff, PPHS (and other parties) stated the position that state action immunity applies to this transaction, negating the need for a full

¹ Attached as Exhibit A.

² Attached as Exhibit B.

³ Phoebe Putney Hospital System, Inc. is the parent entity of Phoebe Putney Memorial Hospital, Inc.

⁴ Attached as Exhibit C.

competitive analysis, an analysis that could cost PPHS hundreds of thousands of dollars and many thousands of person-hours of information compilation and review. As an act of good faith in order to allow the FTC to complete its review of the proposed transaction, the parties agreed not to close before March 1, 2011, one month later than the parties initially intended to close. The parties requested a meeting with Staff to discuss the applicability of the state action doctrine. That meeting between counsel for the Authority, PPHS, and the Seller, and the Staff took place on January 14, 2011. Prior to the meeting, certain relevant transaction documents were provided to the Staff. By way of a letter to PPHS received on January 18, 2011,⁵ Staff requested certain information related to state action immunity as a result of the meeting. Over the next three weeks, PPHS produced documents relevant to the state action issue, including Authority meeting materials, as well as presentations and reports given to the Authority Board that provided some insight on the competitive position of Phoebe Putney Memorial Hospital (“PPMH”). In addition, as requested by the Staff, PPHS sent a letter to Staff on February 4, 2011, detailing the arguments as to why state action immunity applies to the proposed transaction.⁶

On February 3, 2011, PPHS was informed by letter that the FTC had changed its investigation from preliminary to full phase status.⁷ Upon discussion with Staff, the parties agreed to delay closing for another month, meaning that consummation could happen no sooner than March 31, 2011, desiring to continue on an informal, voluntary basis. As part of the discussion with Staff, the parties also agreed to produce information that the Staff would designate as the critical or “key” information required for Staff’s competitive analysis of the proposed transaction. The parties agreed that they would provide such documents and information by February 28 so that the FTC would have a full month or more to engage the

⁵ Attached as Exhibit D.

⁶ Attached as Exhibit E.

⁷ Attached as Exhibit F.

parties regarding the state action issue, evaluate the additional materials, consider the issue at all levels within the FTC, and perform whatever competitive analysis the FTC felt necessary. On February 4, 2011, the Staff sent a letter identifying “key” information needed for its competitive analysis.⁸ On multiple calls with Staff, PPHS counsel stated that they had begun collecting information in response to Staff’s February 4 letter.

Nonetheless, the day after one such status call, on February 15, 2011, PPHS received a subpoena *duces tecum* and civil investigative demand, the breadth of which are comparable to an Request for Additional Information (“Second Request) in an HSR filing context and perhaps even more onerous. The subpoena contains 56 document requests including subparts, some of which request documents going back seven years. The CID contains 83 requests including subparts for information, data, and narrative responses, some of which date back seven years. The response date for both the subpoena and CID is stated as February 28, 2011, a mere 14 calendar days (nine business days) after issuance. It is patently impossible to comply with such broad requests in a mere two weeks and unreasonable to demand compliance in two weeks. Compliance with comparable Second Requests often takes 12 to 24 weeks or more.

Counsel for PPHS had two conversations with FTC counsel, on February 18 and February 23, regarding appropriate modifications and limitations to the subpoena and CID. PPHS counsel sent modification letters to FTC counsel on February 22 and February 24 that memorialized the conversation with FTC Staff.⁹ Most importantly, counsel for PPHS has requested an extension of the time to comply with the subpoena and CID to March 15, 2011. Meeting even that date would require a Herculean effort, yet this proposal was made in an attempt to continue to be as cooperative with Staff as possible. While the Staff has granted certain minor modifications to the Subpoena and CID, many others have not been granted as of

⁸ Attached as Exhibit G.

⁹ The letters are attached as Exhibits H and I and are incorporated by reference into this Petition.

the date of this petition, including denial of any extension of the time to comply. That has forced PPHS to file this petition.

II. THE ACTIVITIES OF PPHS

PPHS is a Georgia non-profit corporation that is the parent entity of certain hospitals in southwestern Georgia, including the relevant entity here, Phoebe Putney Memorial Hospital (“PPMH”). PPHS was formed in 1990 by the Authority to be the parent entity of PPMH in support of its charitable mission of providing care for all persons in the community regardless of ability to pay, and to serve to facilitate flexibility and outreach to advance the mission. PPHS is a 501(c)(3) and 509(a)(3) Internal Revenue Code public charity.

Phoebe Putney Memorial Hospital was founded in 1911 by a charitable bequest with the directive that it provide healthcare to all the citizens of the Albany, Georgia community regardless of station in life or ability to pay. Prior to 1990, the Authority operated the hospital directly. In 1990 the Authority, after significant deliberation, advice and consultation, decided to restructure its operations resulting in the Authority leasing PPMH to Phoebe Putney Memorial Hospital, Inc., the wholly controlled subsidiary of PPHS, itself formed by the Authority.

III. THE TRANSACTION

The Authority and Seller entered into an asset purchase agreement by which the Authority will acquire Palmyra for \$195 million. As described in the asset purchase agreement, the Authority intends to lease Palmyra, as it has leased PPMH since 1990, to Phoebe Putney Memorial Hospital, Inc., the PPHS subsidiary entity. In the interim time between acquisition and the lease taking effect, the asset purchase agreement contemplates that Phoebe North, Inc., an entity formed as a result of this transaction, would enter into a management contract with the Authority regarding Palmyra operations.

IV. LEGAL OBJECTIONS

A. Applicable Legal Principles for Agency Subpoenas and CIDs

Courts recognize the FTC's broad authority to issue subpoenas and CIDs to investigate unfair methods of competition and alleged antitrust violations under 15 U.S.C. § 45(a). However, courts also recognize that the FTC's power to demand documents and information has limits. Those limits were explained by the Supreme Court in *U.S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950), which articulated concern that a "governmental investigation into corporate matters may be of such sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power." *Id.* To defend parties from abusive agency subpoenas, the Supreme Court restated that "the gist of the protection is in the requirement, expressed in terms, that the disclosure sought shall not be unreasonable." *Id.* at 652-53, quoting *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 208 (1946).

Courts applying the *Morton Salt* standard have consistently restated that administrative subpoenas and CIDs must be "reasonable." See, e.g., *United States v. Construction Prods. Research, Inc.* 73 F.3d 464, 471 (2d Cir. 1996) ("the disclosure sought must always be reasonable"); *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1024 (D.C. Cir. 1978) ("the need for moderation in the subpoena's call is a matter of reasonableness"); *FTC v. Texaco, Inc.*, 555 F.2d 862, 881 ("the disclosure sought shall not be unreasonable"). Therefore, the FTC's broad authority to request documents and information through subpoenas and CIDs is tempered by the requirement that the requests be reasonable. See *Arthur Young & Co.*, 584 F.2d at 1031 ("while the Commission is entitled to great freedom in conducting its investigations, it is not at liberty to act unreasonably," quoting *SEC v. Brigadoon Scotch Distrib. Corp.*, 480 F.2d 1047, 1056 (2d Cir. 1973)).

Courts also seek to protect claimants from agency subpoenas and CIDs that are unduly

burdensome. *See Arthur Young & Co.*, 584 F.2d at 1024 (subpoenas are proper if “compliance will not be unreasonably burdensome”); *Texaco*, 555 F.2d at 882 (“We emphasize that the question is whether the demand is unduly burdensome or unreasonably broad.”); *U.S. Commodity Futures Trading Committee v. McGraw Hill Cos., Inc.*, 390 F.Supp.2d 27, 35 (D.D.C. 2005) (stating that subpoenas are enforceable only “if the information sought is reasonably relevant and not unduly burdensome”). Courts deem subpoenas and CIDs to be unduly burdensome where “compliance threatens to unduly disrupt or seriously hinder normal operations of a business.” *Texaco*, 555 F.2d at 882.

B. The Breadth of the FTC’s Subpoena and CID Makes Compliance Within 14 Days Unreasonable

Fourteen days is simply an impractical amount of time for PPHS to search for, collect, review, process, and produce the immense amount of documents and information sought in the subpoena and CID. The subpoena contains at least 56 requests for documents, including subparts. These requests seek voluminous amounts of information regarding all aspects of PPHS’ business. Some of the subpoena requests seek documents going back seven years. Further, the subpoena seeks documents from all of the entities and facilities affiliated with PPHS, many of which are not relevant to the investigation. Additionally, the subpoena has at least 35 instructions that add significant time and resources to the compliance process. For example, PPHS is required to find and redact all Sensitive Personally Identifiable Information and Sensitive Health Information. Although federal and state laws already require PPHS to redact this information, the process of doing so for the purpose of complying with the Subpoena adds to the impractical task of complying within 14 days.

Similarly, the CID contains 83 requests for information and data, many of which also date back seven years. The CID also seeks a number of detailed narrative responses. The CID requests require PPHS to search through numerous electronic databases and software systems

used to collect and store both financial and medical information. Even if PPHS had unlimited resources to locate each information source, it would require additional people and resources to review the data and information in each source and produce the information in the format required by the CID within the 14-day time period.

PPHS has already expended considerable time, effort, and expense in complying with Staff's letter of February 4, which sought "key" information needed for the FTC's competitive analysis. In an effort to provide the FTC with this information, PPHS has collected and is reviewing hundreds of thousands of documents. Further, PPHS has agreed to produce any documents responsive to the subpoena from the documents it has collected. PPHS' good faith effort to provide the FTC with responsive documents has taken over three weeks, a significant number of PPHS employees, and hundreds of thousands of dollars. Complying with the subpoena and CID would incur dramatically more time, personnel, and expense.

The FTC's two-week return date for the subpoena and CID is exactly the type of unreasonable agency action about which courts have expressed concern. To be clear, PPHS does not challenge the FTC's authority to conduct investigations and to issue compulsory process. Rather, the subpoenas and CIDs used by the FTC to gather information must be reasonable. As the court stated in *Brigadoon Scotch*, 480 F.2d at 1056, "while the Commission is entitled to great freedom in conducting its investigations, it is not at liberty to act unreasonably."

C. Complying With The FTC's Subpoena and CID Within 14 Days Is Unduly Burdensome on PPHS

Requiring PPHS to comply with the subpoena and CID within 14 days is unduly burdensome. Courts consider subpoenas and CIDs to be unduly burdensome where "compliance threatens to unduly disrupt or seriously hinder normal operations of a business." *Texaco*, 555 F.2d at 882. In *CFTC v. McGraw Hill*, the court concluded that parts of the CFTC's subpoena were unduly burdensome, including specifications that sought documents from every entity

affiliated with the company, even if the entity was unlikely to have the relevant information. 390 F.Supp.2d at 35-36 (“this Court does agree that some of the Requests are excessively broad on their face and call for a larger volume of data than may have been intended by the CFTC.”). The court partially modified the subpoena after concluding that the broad requests would disrupt or seriously hinder the company’s operations. *See id.* at 35 (“To the extent that these requests are unduly burdensome, this Court will Modify them...”). As in *McGraw-Hill*, requiring compliance with the FTC’s subpoena and CID would disrupt and seriously hinder PPHS’ operations.

PPHS has already undertaken a very expensive, time-consuming, and disruptive effort to provide the documents and information responsive to Staff’s February 4 letter. To require PPHS to comply with the subpoena and CID by February 28 would be significantly more disruptive and would seriously hinder PPHS’ operations. The vast majority of PPHS’ 3,800 employees are medical professionals who have no role in PPHS operations. As a result, PPHS does not have the personnel to search for, collect, review, and produce the immense volume of documents and information sought in the subpoena and CID within 14 days. Further, PPHS has already expended hundreds of thousands of dollars in attempting to provide the FTC with information relevant to its investigation. Even though it is impossible for PPHS to respond to the subpoena and CID within 14 days, even attempting to do so would impose immense additional costs on PPHS, a non-profit health system. As in *McGraw-Hill*, this subpoena and CID should be modified to provide PPHS additional time to comply with both the subpoena and CID.

Further, the applicability of state action immunity to this transaction increases the level of burden on compliance with the subpoena and CID, and makes such extensive requests unreasonable. Indeed, it is PPHS’ position that state action immunity clearly applies. Given that a finding of state action would be dispositive, thereby eliminating the need for the parties or the

Commission to expend any additional resources, PPHS has repeatedly requested that the Commission first address the question of state action immunity.¹⁰ However, Staff has demurred and other than one initial meeting, has not engaged with PPHS on the merits of the state action immunity. In good faith, PPHS has worked diligently to supply the FTC with significant documents and information on both state action and the competitive analysis. The likelihood that state action immunity will be the dispositive issue in this matter makes an already unduly burdensome subpoena even more unreasonable.

Similarly, this is not a case where additional merits discovery is necessary to understand whether state action immunity applies to the conduct at issue. The conduct is simple and clear – an acquisition of a hospital. The Commission can evaluate the applicability of state action immunity without the requested additional discovery.¹¹

V. GENERAL OBJECTIONS

PPHS sets forth its general objections to the subpoena and CID below. Each general objection is hereby incorporated by reference into each specification of the subpoena and CID.

1. PPHS objects to the specifications, definitions, and instructions in the subpoena and CID on the ground that they unreasonably require production of documents and information within 14 days of receipt of the subpoena and CID. Fourteen days is not a practical time period to search for, collect, process, review, and produce all non-privileged documents and information responsive to the subpoena and CID.

2. PPHS objects to the specifications, definitions, and instructions in the subpoena and CID on the ground that compliance with all of the specifications is unduly burdensome on PPHS

¹⁰ Counsel for PPHS offered a proposal to allow the Commission to assess state action immunity, while preserving the Commission's ability to conduct additional discovery on the transaction at a later point, but Staff rejected that proposal.

¹¹ Note that PPHS is not even a direct party to the acquisition. The Hospital Authority of Albany-Daugherty County is the acquirer. This suggests that the burden on PPHS is even more unreasonable and unnecessary.

and would unduly disrupt and seriously hinder normal operations of PPHS' business.

3. PPHS objects to the specifications, definitions, and instructions in the subpoena and CID because and to the extent they seek disclosure of documents or information not reasonably accessible to PPHS.

4. PPHS objects to the specifications, definitions, and instructions in the subpoena and CID because and to the extent they are redundant of each other.

5. PPHS objects to the specifications, definitions, and instructions in the subpoena and CID because and to the extent they seek documents or information already provided to the FTC.

6. PPHS objects to the specifications, definitions, and instructions in the subpoena and CID on the ground that they are unreasonably broad given that PPHS has only 14 days to comply with all of the specifications in the subpoena and CID.

7. PPHS objects to the specifications, definitions, and instructions in the subpoena and CID to the extent that they seek any documents or information protected by the attorney-client privilege, the attorney-work product privilege, or any other applicable privilege.

8. PPHS objects to the specifications, definitions, and instructions in the subpoena and CID to the extent that they seek any confidential patient information that is protected by statute and/or regulation, including but not limited to privacy laws.

9. PPHS objects to the specifications, definitions, and instructions in the subpoena and CID to the extent they seek any information that is not in the possession, custody, or control of PPHS.

VI. SPECIFIC OBJECTIONS TO THE SUBPOENA

1. (a) Each organization chart and personnel directory and (b) a list of all agents and representatives, including, but not limited to, all attorneys, consultants, investment bankers, product distributors, sales agents, and other persons retained by the Company in any capacity relating to the relevant transaction (other than those retained solely to environmental, tax, human resources, pensions, benefits, ERISA, or OSHA issues).

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

2. (a) All annual reports and other regularly prepared or periodic financial statements and reports, including but not limited to Medicare cost reports, income and retained income statements; cash flow statements; balance sheets; cost center reports; and departmental, facility, and profitability statements and reports; (b) all documents relating to, quantifying, or identifying contribution margins, fixed costs, or variable costs; and (c) all documents relating to the viability, gross or net margins, retained surplus, ability to obtain financing for capital improvements, or any other aspect of the financial condition of the Company.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

3. All documents relating to (a) metrics of cost and revenue per admission, (b) comparisons of costs, prices, charges, reimbursement rates at other hospitals, wherever located.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

4. *All data or reports submitted to or received from or by (a) a quality of care rating organization, and (b) a price comparison rating organization.*

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

5. *All documents relating to (a) the Company's certificate of need ("CON") applications submitted for its services, and (b) the Company's opposition to any CON application.*

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent it requests privileged information. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

6. *All documents relating to competition including, but not limited to, market studies, forecasts and surveys, and all other documents relating to: (a) the market share, identification, or competitive position of the Company or any of its competitors, including discussions of service areas, patient origins, and draw areas; (b) the relative strength or weakness of companies; (c) supply and demand conditions; (d) attempts to gain or retain individual patients, contracts with health plans, or physicians' patient admissions; (e) allegations by any person that any hospital is not behaving in a competitive manner, including, but not limited to, customer and competitor complaints, threatened, pending, or completed lawsuits, and federal and state investigations; and (f) any actual or potential effect on the supply, demand, cost, or price of the relevant service as a result of competition from any other possible substitute service.*

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot

search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

7. All plans, including but not limited to business plans; short term and long range strategies and objectives; budgets and financial projections; investment banker and other consultant reports; expansion or retrenchment plans; research and development efforts; and presentations to management committees, executive committees, boards of directors, or the Hospital Authority.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

8. All documents relating to the Company's or any other person's chargemaster, price lists, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, and pricing decisions.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

9. All contracts with health plans, now in effect or that were in effect at any time on or after January 1, 2004, along with all documents relating to communications, negotiations for contract terms and contracts, and reimbursement rates, between the Company and (a) health plans, (b) commercial health insurers, (c) health maintenance organizations, (d) preferred provider plans, (e) self-insured employee health benefit plans, (f) employers, (g) unions, and (h) physicians or physician organizations.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

10. All documents relating to formal or informal commercial or operational relationships or affiliations of any type between or among the Company and any hospital or physician organization.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

11. All documents relating to (a) requirements for entry or expansion, including but not limited to any necessary governmental approval and the time necessary to meet each entry requirement; (b) the total cost required for entry; and (c) possible new entrants

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

12. All documents (except engineering and architectural plans and blueprints) relating to any plans of the Company or any other person for the construction of new facilities, the

closing of any existing facilities, or the expansion, conversion, or modification (if such modification has a planned or actual cost of more than \$1 million) of current facilities.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

13. All documents relating to litigation between the Company and HCA Inc. and Palmyra Medical Center ("Palmyra").

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent it requests privileged information. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

14. The current (a) articles of incorporation, (b) bylaws, (c) rules and/or regulations of or for professional employees or staff, and (d) contracts and/or agreements with any political entity, relating to the Company.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

15. All documents relating to the rights, duties, obligations, relationship, and authority of the Hospital Authority with respect to (a) the Company, (b) Dougherty County, or (c) the State of Georgia.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification as unduly burdensome because it requests information already provided to the FTC. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

16. All documents relating to actions taken or not taken by the Hospital Authority in connection with any supervision or lack of supervision of the Company by the Hospital Authority.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification as unduly burdensome because it requests information already provided to the FTC. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

17. All documents relating to reports and communication from and between the Company and Mr. William Cheverly or Cheverly + Associates.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification as unduly burdensome because it requests information already provided to the FTC. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the

subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

18. All documents relating to any actual or planned lease, management contract, or other agreement for the Company to operate (a) any hospital and (b) Phoebe North, Inc. or the assets of Palmyra Park Hospital, Inc. d/b/a Palmyra Medical Center.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification as unduly burdensome because it requests information already provided to the FTC. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

19. All documents relating to any plans of, interest in, or efforts undertaken by the Company or any other person for any acquisition, divestiture, joint venture, alliance, or merger, of any kind.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

20. All documents analyzing or discussing the effect of any merger, joint venture, acquisition, or consolidation, including but not limited to the proposed acquisition, on prices, costs, margins, services, service quality, or any other aspect of competitive performance, including but not limited to expected improvements related to: (a) quality of care or safety; (b) the modernization or expansion of hospital facilities; (c) the integration of medical services or staff; and (d) the accessibility of services to the indigent or other populations.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation.

21. All documents (other than documents relating solely to environmental, tax, human resources, OSHA, or ERISA issues) relating to the proposed acquisition, including but not limited to (a) the valuation of the assets of Palmyra Park Hospital, Inc. d/b/a Palmyra Medical Center ("Palmyra"); (b) the reasons for the acquisition; (c) changes that the Company or the Hospital Authority plan or intend to make (i) at any existing facility, and Subpoena Duces Tecum Directed to (ii) at the Palmyra facility, (d) any actual or planned lease, management contract, or other agreement between or among the Company, the Hospital Authority, Dougherty County, and any other person, to manage, operate, or supervise operations or activities associated with the assets of Palmyra, (e) the integration of the Palmyra assets into the Company's operations, and (f) any projected efficiencies.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests information that is irrelevant to the FTC's investigation.

Definition and Instruction A. The term "the Company" means Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Phoebe North, Inc., their domestic and foreign parents, predecessors, divisions, subsidiaries, affiliate, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of each of the foregoing.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this definition and instruction to the extent that they are overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged documents

and information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this definition and instruction to the extent they request documents that are irrelevant to the FTC's investigation.

VII. SPECIFIC OBJECTIONS TO THE CID

1. Identify (a) all types of health care and clinical services that the Company currently offers, (b) the Company's competitors for each such service, and (c) the geographic area in which the Company and each such competitor competes.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests information that is irrelevant to the FTC's investigation.

2. Identify the geographic areas (by postal zip code) for each type of health care and clinical service identified in response to Specification 1 that the Company regularly serves.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests documents that are irrelevant to the FTC's investigation. PPHS objects to this specification to the extent it requests information that is not in the possession, custody, or control of PPHS.

3. Identify all health plans that contract for hospital services with the Company, and provide the total revenues (a) charged and (b) received, from each health plan or entity for the last fiscal or calendar year for which such information is available, and (c) state the contract expiration date for each health plan or entity.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests information that is irrelevant to the FTC's investigation.

4. *Submit separately for each hospital or other facility operated by the Company:*
 - a. *for each month, the total patient days, patient discharges, inpatient gross revenue, and inpatient net revenue for the hospital as a whole and by individual department;*
 - b. *for each year, outpatient visits, outpatient gross revenue, and outpatient net revenue for:*
 - i. *emergency room visits, and*
 - ii. *all other procedures;*
 - c. *the total number of licensed, available, and staffed beds on the first day of each year, and the average daily census for each year, separately for the hospital as a whole and for the relevant service;*
 - d. *for each year, and separately for the hospital as a whole and for the relevant service (broken down between inpatient and outpatient services), the dollar amount of the hospital's revenues received from, and the number of inpatients, inpatient days, and outpatient treatment episodes where the principal source of payment was from each of the following sources:*
 - i. *Medicare;*
 - ii. *Medicaid;*
 - iii. *any other health plan (provide data both for all such plans combined, and separately for: (1) each such health plan from which the hospital derives more than 1 % of its revenues; and (2) total revenues from all such health plans with which the hospital has contracts providing for reimbursement rates differing from standard charges of the hospital);*
 - iv. *patients (out-of-pocket);*
 - v. *no source of payment ("charity care" patients treated free of charge);*
 - vi. *bad debt; and*
 - vii. *any other source (identify, and provide dollar amounts separately for, any source from which the hospital derives more than 1 % of its revenues);*
 - e. *a list provided both in hard copy and as computer file(s) showing, for each physician or other healthcare professional who has held professional staff privileges at the hospital:*
 - i. *name;*
 - ii. *current (or last known) office address;*
 - iii. *medical specialty;*
 - iv. *medical practice group (if any);*
 - v. *professional license number;*
 - vi. *any other uniform physician identification number;*
 - vii. *type of staff privileges currently or most recently held;*
 - viii. *each other hospital at which he or she holds (or most recently held) professional staff privileges and the type of privileges held at each hospital;*

- ix. *the time period that the physician or healthcare professional held admitting privileges at the hospital;*
- x. *his or her employer(s), if any, during the time period during which he or she held admitting privileges at the hospital, and the time period he or she was employed by each employer; and*
- xi. *the number of inpatients, and the number of outpatients, he or she admitted to the hospital in each year;*
- f. *a list provided both in hard copy and as computer file(s) showing for each year, for each patient transferred from another hospital, the transferring hospital, the date the patient was transferred, the residence 5-digit ZIP code of the patient, any diagnosis codes, length of stay, revenues for that admission, and the reason for the transfer;*
- g. *a list provided both in hard copy and as computer file(s) showing for each year, for each patient transferred to another hospital, the transferee hospital, the date the patient was transferred, the residence 5-digit ZIP code, any diagnosis codes, and the reason for the transfer;*
- h. *a list provided both in hard copy and as computer file(s) showing for each year, each day on which the hospital went on diversion (i.e., refused to admit additional patients), the reason for each diversion, and the patient census of the hospital on the day the diversion occurred;*
- i. *the current nominal and practical capacity, and the annual capacity utilization rate, of the hospital (specifying all other factors used to calculate capacity), and the feasibility of increasing capacity, including the costs and time required;*
- j. *the principles used by the Company for accounting for contractual allowances and bad debt; the criteria used to determine which accounts receivable are recorded as bad debt; and the circumstances, if any, under which bad debt or contractual allowances are attributed to charity care or some similar account; and*
- k. *for each year the amounts of bad debt and charity care recorded by the Company for each hospital in the relevant area and the amount of bad debt that was rerecorded as charity care.*

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests information that is irrelevant to the FTC's investigation.

- 5. *Submit the identity of:*
 - a. *each physician organization owned or managed by the Company, and for each such organization:*
 - i. *the physician organization's specialty or specialties;*
 - ii. *the doctors in the physician organization; and*
 - iii. *the billing rates of each doctor in the physician organization;*

- b. *each entity in the relevant area in which the Company*
 - iv. *holds 50 percent or more of the outstanding voting securities of an issuer or, in the case of an unincorporated entity, has the right to 50 percent or more of the profits of the entity, or has the right in the event of dissolution to 50 percent or more of the assets of the entity; or*
 - v. *has the contractual power presently to designate 50 percent or more of the directors of a for-profit or not-for-profit corporation, or in the case of trusts, the trustees of such a trust;*
- c. *each entity not identified in part (b) above for which the Company has an ownership interest, and for each entity submit a description of:*
 - vi. *the Company's ownership interest;*
 - vii. *any agreement between the Company and the entity that relates to the Company's ownership in the entity submitting any such documents; and*
 - viii. *the persons who, pursuant to an agreement between the Company and the entity, have served as officers of the entity, board members of the entity, or in any other position with the entity.*

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests information that is irrelevant to the FTC's investigation.

- 6. *Submit, for each year from 2006 to the present, for any inpatient admission or discharge or outpatient treatment episode at any hospital operated by the Company in the relevant area:*
 - a. *the identity of the hospital at which the patient was treated, the address of the hospital, including 5-digit ZIP code, and any hospital identification number used for reimbursement purposes;*
 - b. *a unique patient identifier, different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient (to protect patient privacy, the Company shall mask personal identifying information, such as the patient's name or Social Security Number, by substituting a unique patient identifier as specified in Instruction V); if the Company is providing data in multiple records for the inpatient admission or outpatient visit, a unique identifier for the admission or visit shall also be included in each record associated with the admission or visit;*
 - c. *the patient's residence 5-digit ZIP code;*
 - d. *the patient's gender and age (in years) (if the patient age is 90 years or older the Company should so indicate, in lieu of providing the patient's age);*
 - e. *whether the treatment episode was inpatient or outpatient; if inpatient, the date of admission and date of discharge, and if outpatient, the date of treatment;*

- f. *the primary associated DRG and ICD9 diagnosis and procedure codes, and any secondary DRG and ICD9 diagnosis and procedure codes;*
- g. *all UB92 revenue codes and revenue code units;*
- h. *whether the treatment provided was for an emergency;*
- i. *the source of the patient (such as by referral from another hospital, or by a physician who does not admit the patient);*
- j. *the specific name of the entity and type of health plan (such as HMO, POS, PPO, etc.) that was the principal source of payment;*
- k. *identify whether the type of health plan that was the principal source of payment was offered through the Medicare Advantage program;*
- l. *whether the Company was a participating provider under the patient's health plan and, if the patient's health plan had different tiers of participating providers, which tier the hospital was in;*
- m. *whether there was a capitation arrangement with a health plan covering the patient and, if so, identify the arrangement;*
- n. *charges of the hospital, allowed charges under the patient's health plan, the amount of charges actually paid by the health plan, whether the amount of charges actually paid by the health plan including any adjustments under any stop-loss provisions or any other contractual provision, and any additional amounts paid by the patient;*
- o. *any breakdown of the hospital's charges by any categories of hospital services rendered to the patient (such as medical/surgical, obstetrics, pediatrics, or ICU);*
- p. *the identity of the patient's admitting physician and, if different, the identity of the treating physician;*
- q. *the amount of any payment by the Company to any physicians, not including any payment received in connection with employment by the Company, for any physician services associated with admission or treatment at the Company's hospitals; and*
- r. *the patient's status (e.g., normal discharge, deceased, transferred to another hospital, etc.) upon discharge.*

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests information that is irrelevant to the FTC's investigation. PPHS objects to this specification as overly burdensome to the extent it calls for sensitive personally identifiable patient information all of which must be reviewed in order to determine what PPHS is required to withhold or redact.

7. Identify, provide the title, and describe the contents of each financial statement, budget, profit and loss statement, customer or departmental profitability report, and each other financial report regularly prepared by or for the Company on any periodic basis

that relates to the relevant service, from year ending 2006 through year-to-date for 2011, and for each such report, state how often each is prepared and the person responsible for its preparation.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests information that is irrelevant to the FTC's investigation.

8. Submit, by hospital, Company-generated descriptions, summaries, and interpretations of contract terms and methodologies (including, but not limited to, per diem formulas, discount of charges formulas, stop loss provisions or any other formulas, codes, or templates containing the relevant terms of the contract between the hospital and health plans), that affect the total consideration any Company-owned or Company-affiliated hospital in the relevant area received or will receive under a contract with a health plan in effect at any time during the time period beginning January 1, 2004.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests information that is irrelevant to the FTC's investigation.

9. Identify for each hospital operated by the Company in the relevant area each person who is now or, since January 1, 2004, was responsible for the Company's negotiation of contracts with health plans or physician organizations, the entities for which each such person negotiates, and the time periods of that person's responsibilities.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests information that is irrelevant to the FTC's investigation.

10. State the name and address of each person that has entered or attempted to enter into, or exited from, the provision of the relevant service in the relevant area from January 1, 2001, to the present. For each such person, identify the date of its entry into or exit from the market. For each entrant, state whether the entrant built a new facility, converted assets previously used for another purpose (identifying that purpose), or began using facilities that were already being used for the same purpose.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent it requests information that is not in the possession, custody or control of PPHS. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests information that is irrelevant to the FTC's investigation.

11. Identify or describe (including the basis for your response) the following:
- a. requirements for entry into the relevant service in the relevant area including, but not limited to, research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, sales and marketing activities, and any necessary governmental and customer approvals, and the time necessary to meet each such requirement;
 - b. the total costs required for entry into the provision of the relevant service; the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the provision of the relevant service; the methods and amount of time necessary to recover such costs; and the total sunk costs entailed in satisfying the requirements for entry;
 - c. possible new entrants into the provision of the relevant service in the relevant area; and
 - d. the minimum viable scale, the minimum and optimum hospital and doctor/nurse-staff size, capacity utilization rate, volume, requirements for multi-facility, multi-services, or vertically integrated operations, or other factors required to attain any available cost savings or other efficiencies necessary to compete profitably in the provision of the relevant service.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged information responsive to this

specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests information that is irrelevant to the FTC's investigation.

12. *List each of the Company's prior acquisitions, affiliations, joint ventures, or similar transactions, and describe each efficiency (including cost savings, economies, new product or service introductions, and product or service improvements) that was expected to be achieved, that has been actually achieved, or is in the process of being achieved from each such transaction, including in the description:*
 - a. *the steps that the Company took to achieve the efficiency and the time and costs required to achieve it;*
 - b. *the dollar value of the efficiency and a detailed explanation of how that was calculated;*
 - c. *an explanation of how each prior transaction helped the Company achieve the efficiency;*
 - d. *the reason(s) the Company could not have achieved the efficiency without the prior transaction;*
 - e. *the proportion of the dollar value of the efficiency that the company passed on to consumers and the manner and fun (e.g., lower prices, better service) in which the company passed on the efficiency;*
 - f. *the identity of each person (including the person's title, telephone number, and business address) employed or retained by the company (including the company's counsel) with any responsibility for achieving, analyzing, or quantifying any efficiency described; and*
 - g. *for each efficiency that involved cost savings, state separately:*
 - ix. *the one-time fixed cost savings; and*
 - x. *the variable cost savings (in dollars per unit and dollars per year).*

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests information that is irrelevant to the FTC's investigation.

13. *Provide:*
 - a. *timetable for the proposed joinder, a description of all actions that must be taken prior to consummation of the proposed joinder, and any harm that will result if the joinder is not consummated, or not consummated by a certain time;*
 - b. *a detailed description of (including the rationale for, and identification of all documents directly or indirectly used to prepare the Company's response to this CID), all plans for changes in (i) the Company's and (ii) the assets of Palmyra Park Medical Center, Inc., operations, structure, policies, strategies, corporate goals,*

- financing, business, officers, employees or any other area of corporate activity as a result of the proposed joinder;*
- c. a detailed description of (including the identification of all documents directly or indirectly used to prepare the Company's response to this CID and quantification, if possible, of all cost savings, economies or other efficiencies) the reasons for the proposed joinder, and the benefits, costs, and risks anticipated as a result of the proposed joinder, including, but not limited to, all cost savings, economies, or other efficiencies of whatever kind;*
 - d. a detailed description of the reasons why the Company could not achieve each benefit, cost saving, economy, or other efficiency without the proposed joinder; and*
 - e. a detailed description of all statements or actions by any person (identifying the person by name, title, phone number, and business address) in support of, in opposition to, or otherwise expressing opinions about the proposed joinder or its effects.*

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests information that is irrelevant to the FTC's investigation.

14. Submit all information described in Instruction W below relating to, and other instructions necessary for the Commission to use or interpret, the databases or other data compilations submitted in response to this CID, to the extent such documentation is not contained in documents submitted in response to this CID.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests information that is irrelevant to the FTC's investigation.

15. Describe in detail the Company's policies and procedures relating to the retention and destruction of documents.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent that it requests information that is duplicative of other specifications. PPHS objects to this specification to the extent it requests information that is irrelevant to the FTC's investigation.

16. Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this CID and provide a copy of all instructions prepared by the Company relating to the steps taken to respond to this CID. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this specification to the extent it requests privileged information. PPHS objects to this specification to the extent that it is overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this specification to the extent it requests information that is irrelevant to the FTC's investigation.

Definition and Instruction A. The term "the Company" means Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Phoebe North, Inc., their domestic and foreign parents, predecessors, divisions, subsidiaries, affiliate, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of each of the foregoing.

OBJECTION

PPHS incorporates by reference all of its general objections set forth in paragraph V above. PPHS objects to this definition and instruction to the extent that they are overbroad in that PPHS cannot search for, collect, process, review, and produce all non-privileged information responsive to this specification within the 14 days required by the subpoena. PPHS objects to this definition and instruction to the extent they request information that is irrelevant to the FTC's investigation.

CONCLUSION

For all of the foregoing reasons, as well as those set forth in the accompanying Exhibits, PPHS respectfully requests that the Commission quash the subpoena and the CID. In the alternative, PPHS respectfully requests that the Commission modify the return dates of the subpoena and CID to provide a reasonable time for compliance and to limit the subpoena and CID based on the objections set forth above.

Dated: February 25, 2011

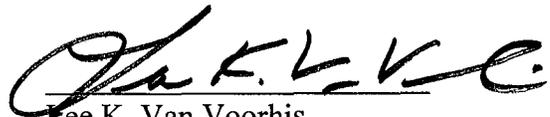
Respectfully submitted,

By 
Lee K. Van Voorhis, Esq.
Jonathan L. Sickler, Esq.
Vadim M. Brusser, Esq.
Weil, Gotshal & Manges LLP
1300 Eye Street, NW, Suite 900
Washington, DC 20005
Counsel For Petitioner

STATEMENT OF LEE K. VAN VOORHIS PURSUANT TO 16 C.F.R. § 2.7(d)(2)

I am counsel with Weil, Gotshal, & Manges LLP, counsel for Phoebe Putney Health System, Inc. (“PPHS”). I submit this statement in connection with PPHS’ Petition to Quash or Limit the Subpoena *Duces Tecum* and Civil Investigative Demand (“CID”) issued to PPHS by the Federal Trade Commission (“FTC”) related to FTC File No. 111-0067. On February 15, 2011, the FTC served a Subpoena *Duces Tecum* and CID on PPHS. I hereby certify that my colleagues and I have conferred with counsel for the FTC by phone and letter correspondence in a good faith effort to resolve by agreement the modifications sought by this Petition, but have been unable to reach an agreement. On February 18, 2011, I conferred with Goldie Walker and Steve Sockwell, counsel to the Commission. My colleague Vadim Brusser and I had a conversation with FTC counsel Goldie Walker and FTC Economist Lien Tran on February 23, 2011, in a good faith attempt to resolve the issues set forth in the Petition. During both phone calls, we proposed modifications to the Subpoena and CID, particularly with regard to the return date and the scope of certain specifications. I also sent letters to FTC counsel Goldie Walker on February 22, 2011 and February 24, 2011 repeating PPHS’ request for these modifications and requesting additional modifications. On February 23, 2011 FTC Counsel Goldie Walker verbally agreed to some of these requests, but denied our request to modify the search date and to other modifications that would limit the scope of the subpoena and CID. Although some modification requests were verbally granted, these minor modifications were not sufficient to alleviate the burden of the CID and Subpoena. The parties have yet to come to any satisfactory agreement on the modifications that are the subject of this Petition.

DATED: February 25, 2011



Lee K. Van Voorhis
Weil, Gotshal & Manges, LLP
1300 Eye Street NW, Ste 900
Washington, DC 20005
(202) 682-7272

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of February, 2011, I caused the original and twelve (12) copies of the Petition to Quash or Limit with attached Exhibits, as well as an electronic copy of the Petition and Exhibits, to be hand delivered with the Secretary of The Federal Trade Commission, with a courtesy copy to the listed Commission Counsel, at the following addresses:

Federal Trade Commission
Office of the Secretary
Room H-135
600 Pennsylvania Avenue, NW.
Washington, DC 20580

Federal Trade Commission
Goldie V. Walker, Esq.
601 New Jersey Avenue, N.W.
Suite 5257
Washington, D.C. 20001

DATED: February 25, 2011



Lee K. Van Voorhis
Weil, Gotshal & Manges, LLP
1300 Eye Street NW, Ste 900
Washington, DC 20005
(202) 682-7272

EXHIBIT A



SUBPOENA DUCES TECUM

1. TO

Phoebe Putney Health System, Inc.
C/O Mr. Joel Wernick
President and CEO
417 W. Third Avenue
Albany, GA 31702 - 1828

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and testify at the request of the Federal Trade Commission at a hearing [or deposition] in the proceeding described in Item 6.

3. LOCATION OF HEARING

Federal Trade Commission
601 New Jersey Avenue, N.W.
Suite 5257
Washington, D.C. 20001

4. YOUR APPEARANCE WILL BE BEFORE

Goldie Walker or other designated counsel

5. DATE AND TIME OF HEARING OR DEPOSITION

* February 28, 2011 at 5:00 p.m.

6. SUBJECT OF INVESTIGATION

Proposed Acquisition by the Hospital Authority of Albany-Dougherty County of Palmyra Park Medical Center, Inc. from HCA, Inc., FTC File No. 111-0067. See the attached Resolution authorizing use of Compulsory Process.

7. RECORDS YOU MUST BRING WITH YOU

Provide the responses to the specifications of the attachment. *In lieu of personal appearance, you may submit the requested material along with the certification attesting to the completeness of the response.

8. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Matthew Reilly, Records Custodian
Goldie Walker, Deputy Records Custodian

9. COMMISSION COUNSEL

Goldie Walker, Esq.
(202) 326-2919

DATE ISSUED

2/14/11

COMMISSIONER'S SIGNATURE

GENERAL INSTRUCTIONS

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.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within 20 days after service or, if the return date is less than 20 days after service, prior to the return date. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission. Send one copy to the Commission Counsel named in Item 9.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel 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 Commission Counsel.

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)

(Name of person making service)

(Official title)

SUBPOENA *DUCES TECUM*
ISSUED TO PHOEBE PUTNEY HEALTH SYSTEM, INC.
FTC File No. 111-0067

Unless modified by agreement with the staff of the Federal Trade Commission, each specification of this Subpoena *Duces Tecum* requires a complete search of "the Company" as defined in the Definitions and Instructions, wherever those files may be located. If the Company believes that the required search or any other part of this Subpoena may be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss any questions and possible modifications with the Commission representative identified on page 13. All modifications to this Subpoena must be agreed to in writing. You may find it useful to provide the response to Specification 1 of this Subpoena promptly and discuss limiting the required search with the Commission's representative before you begin your search.

SPECIFICATIONS

Submit the following documents, in the form maintained by the Company, prepared or in use by the Company in whole or in part for the relevant service (as defined) in the relevant area (as defined), during the period January 1, 2008, through the present (unless a different time period or geographic area is indicated):

1. (a) Each organization chart and personnel directory and (b) a list of all agents and representatives, including, but not limited to, all attorneys, consultants, investment bankers, product distributors, sales agents, and other persons retained by the Company in any capacity relating to the relevant transaction (other than those retained solely to environmental, tax, human resources, pensions, benefits, ERISA, or OSHA issues).
2. (a) All annual reports and other regularly prepared or periodic financial statements and reports, including but not limited to Medicare cost reports, income and retained income statements; cash flow statements; balance sheets; cost center reports; and departmental, facility, and profitability statements and reports; (b) all documents relating to, quantifying, or identifying contribution margins, fixed costs, or variable costs; and (c) all documents relating to the viability, gross or net margins, retained surplus, ability to obtain financing for capital improvements, or any other aspect of the financial condition of the Company.
3. All documents relating to (a) metrics of cost and revenue per admission, (b) comparisons of costs, prices, charges, reimbursement rates at other hospitals, wherever located.
4. All data or reports submitted to or received from or by (a) a quality of care rating organization, and (b) a price comparison rating organization.

5. All documents relating to (a) the Company's certificate of need ("CON") applications submitted for its services, and (b) the Company's opposition to any CON application.
6. All documents relating to competition including, but not limited to, market studies, forecasts and surveys, and all other documents relating to: (a) the market share, identification, or competitive position of the Company or any of its competitors, including discussions of service areas, patient origins, and draw areas; (b) the relative strength or weakness of companies; (c) supply and demand conditions; (d) attempts to gain or retain individual patients, contracts with health plans, or physicians' patient admissions; (e) allegations by any person that any hospital is not behaving in a competitive manner, including, but not limited to, customer and competitor complaints, threatened, pending, or completed lawsuits, and federal and state investigations; and (f) any actual or potential effect on the supply, demand, cost, or price of the relevant service as a result of competition from any other possible substitute service.
7. All plans, including but not limited to business plans; short term and long range strategies and objectives; budgets and financial projections; investment banker and other consultant reports; expansion or retrenchment plans; research and development efforts; and presentations to management committees, executive committees, boards of directors, or the Hospital Authority.
8. All documents relating to the Company's or any other person's chargemaster, price lists, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, and pricing decisions.
9. All contracts with health plans, now in effect or that were in effect at any time on or after January 1, 2004, along with all documents relating to communications, negotiations for contract terms and contracts, and reimbursement rates, between the Company and (a) health plans, (b) commercial health insurers, (c) health maintenance organizations, (d) preferred provider plans, (e) self-insured employee health benefit plans, (f) employers, (g) unions, and (h) physicians or physician organizations.
10. All documents relating to formal or informal commercial or operational relationships or affiliations of any type between or among the Company and any hospital or physician organization.
11. All documents relating to (a) requirements for entry or expansion, including but not limited to any necessary governmental approval and the time necessary to meet each entry requirement; (b) the total cost required for entry; and (c) possible new entrants
12. All documents (except engineering and architectural plans and blueprints) relating to any plans of the Company or any other person for the construction of new facilities, the

- closing of any existing facilities, or the expansion, conversion, or modification (if such modification has a planned or actual cost of more than \$1 million) of current facilities.
13. All documents relating to litigation between the Company and HCA Inc. and Palmyra Medical Center ("Palmyra").
 14. The current (a) articles of incorporation, (b) bylaws, (c) rules and/or regulations of or for professional employees or staff, and (d) contracts and/or agreements with any political entity, relating to the Company.
 15. All documents relating to the rights, duties, obligations, relationship, and authority of the Hospital Authority with respect to (a) the Company, (b) Dougherty County, or (c) the State of Georgia.
 16. All documents relating to actions taken or not taken by the Hospital Authority in connection with any supervision or lack of supervision of the Company by the Hospital Authority.
 17. All documents relating to reports and communication from and between the Company and Mr. William Cheverly or Cheverly + Associates.
 18. All documents relating to any actual or planned lease, management contract, or other agreement for the Company to operate (a) any hospital and (b) Phoebe North, Inc. or the assets of Palmyra Park Hospital, Inc. d/b/a Palmyra Medical Center.
 19. All documents relating to any plans of, interest in, or efforts undertaken by the Company or any other person for any acquisition, divestiture, joint venture, alliance, or merger, of any kind.
 20. All documents analyzing or discussing the effect of any merger, joint venture, acquisition, or consolidation, including but not limited to the proposed acquisition, on prices, costs, margins, services, service quality, or any other aspect of competitive performance, including but not limited to expected improvements related to: (a) quality of care or safety; (b) the modernization or expansion of hospital facilities; (c) the integration of medical services or staff; and (d) the accessibility of services to the indigent or other populations.
 21. All documents (other than documents relating *solely* to environmental, tax, human resources, OSHA, or ERISA issues) relating to the proposed acquisition, including but not limited to (a) the valuation of the assets of Palmyra Park Hospital, Inc. d/b/a Palmyra Medical Center ("Palmyra"); (b) the reasons for the acquisition; (c) changes that the Company or the Hospital Authority plan or intend to make (i) at any existing facility, and

(ii) at the Palmyra facility, (d) any actual or planned lease, management contract, or other agreement between or among the Company, the Hospital Authority, Dougherty County, and any other person, to manage, operate, or supervise operations or activities associated with the assets of Palmyra, (e) the integration of the Palmyra assets into the Company's operations, and (f) any projected efficiencies.

22. Documents sufficient to show the Company's policies and procedures relating to the retention and destruction of documents.

DEFINITIONS AND INSTRUCTIONS

For the purposes of this Subpoena, the following definitions and instructions apply:

- A. The term "the Company" means Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Phoebe North, Inc., their domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of each of the foregoing.
- B. The term "Hospital Authority" means the Hospital Authority of Albany - Dougherty County and its members.
- C. The term "Dougherty County" means the political subdivision of Dougherty County and its County Commissioners.
- D. The terms "and" and "or" have both conjunctive and disjunctive meanings.
- E. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody, or control of the Company. 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 the possession, custody, or control of the Company.
1. The term "documents" excludes (a) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature; (b) architectural plans and engineering blueprints; and (c) documents relating solely to environmental, tax, human resources, OSHA, or ERISA issues.
 2. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company 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, whether on or off company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission representative identified on the last page of this Subpoena. The Commission representative will consider modifying this instruction to:

- (a) exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company;
- (b) limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain specifications identified by Commission representatives; or
- (c) include other proposals consistent with Commission policy and the need for information.

- F. The terms "each," "any," and "all" mean "each and every."
- G. The term "entity" means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such.
- H. The term "health plan" means any health insurance or 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.
- I. The term "hospital" means a facility that provides at least some relevant service.

- J. The term “minimum viable scale” means the smallest service volume at which average costs equal the price currently charged for the relevant service. Minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.
- K. The term “operate” with reference to a hospital facility means to directly or indirectly own or lease the facility or unit, manage its operations on behalf of another person under a management contract, have the power to appoint the majority of the facility’s governing board or body, or otherwise directly or indirectly controls the facility or unit.
- L. The term “person” includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- M. The term “physician organization” means an integrated firm in which physicians practice medicine together as partners, shareholders, owners, or employees, or in which only one physician practices medicine, such as a physician group.
- N. The term “plans” means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.
- O. The term “proposed acquisition” means and includes the proposed acquisition by the Hospital Authority of Palmyra Park Hospital, Inc., from HCA Inc., and all related transactions or agreements, including those dealing with (a) the operation of the Palmyra Park Medical Center, Inc. facility after the acquisition, (b) the supervision by the Hospital Authority of the Palmyra assets after the acquisition, and (c) the creation and operation of Phoebe North, Inc. and the supervision of Phoebe North, Inc., and (d) the integration of the assets of Palmyra and/or Phoebe North Inc., into the Company’s operations.
- P. The term “provider” means a facility that provides any relevant service, and includes hospitals, physician group practices, and other healthcare facilities.
- Q. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating, but not merely referring to.
- R. The term “relevant area” means the following counties in the State of Georgia: Atkinson, Baker, Ben Hill, Berrien, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crisp, Decatur, Dooly, Dougherty, Early, Echols, Grady, Houston, Lanier, Lee, Lowndes, Macon, Marion, Miller, Mitchell, Quitman, Pulaski, Randolph, Schley, Seminole, Stewart, Sumter, Terrell, Thomas, Tift, Turner, Webster, Wilcox, and Worth.

- S. The term “relevant service” means the provision of general acute care hospital services including (1) inpatient services; (2) outpatient services; (3) emergency room services; (4) gastroenterological services; and (5) diagnostic imaging and scanning services including magnetic resonance imaging (“MRI”). The relevant service encompasses the provision of hospital care for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities but excludes treatments of mental illness or substance abuse, long-term services such as skilled nursing care, and services provided by a non-employee physician or non-owned physician organizations.
- T. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any person in which there is partial (25 percent or more) or total ownership or control between the Company and any other person.
- U. The term “sunk costs” means the acquisition costs of tangible and intangible assets necessary to provide the relevant service that cannot be recovered through the redeployment of these assets for other uses.
- V. 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. Where information is requested, provide it separately for each year. Where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the Company’s fiscal year data indicating the twelve month period covered, and provide the Company’s best estimate of calendar year data.
- W. This Subpoena is continuing in nature and requires the production of all documents responsive to any specification produced or obtained by the Company up to forty-five (45) calendar days prior to the date of the Company’s full compliance with this Subpoena.
- X. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information (“PII”) or Sensitive Health Information (“SHI”). The term 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. The term SHI includes medical records or other individually identifiable health information. Where required by a particular specification, the Company 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, the Company shall redact the PII or SHI but is not required to replace it with an alternate identifier.

Y. Submit all responsive documents as follows:

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 all extracted text¹ 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 loose 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, 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

¹“Extracted text” is a term of art that refers to the underlying text of a native file that allows the native file to be converted into another searchable format.

- (d) For hard copy documents: beginning Bates or document identification number, ending Bates or document identification number, page count, and custodian.
3. If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this Subpoena, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this Subpoena.
 4. For each Specification marked with an asterisk (*), and to the extent any other responsive data exists electronically, provide such data in Excel spreadsheet with all underlying data un-redacted and all underlying formulas and algorithms intact.
 5. Submit electronic files and images as follows:
 - (a) For productions over 10 gigabytes, use 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, and 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. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this Subpoena.
 6. All documents responsive to this Subpoena, 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 the Company's files and shall not be shuffled or otherwise rearranged. For example:
 - i. If in their original condition hard copy documents were stapled, clipped or otherwise fastened together or maintained in file folders, binders, covers or containers, they shall be produced in such form,

and any documents that must be removed from their original folders, binders, covers or containers in order to be produced shall be identified in a manner so as to clearly specify the folder, binder, cover or container from which such documents came; and

ii. If in their original condition electronic documents were maintained in folders or otherwise organized, they shall be produced in such form and information shall be produced so as to clearly specify the folder or organization format;

(b) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;

(c) 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, the Company must submit the original document, a like-colored photocopy, or a JPEG format image);

(d) Shall be marked on each page with corporate identification and consecutive document control numbers;

(e) Shall be accompanied by an affidavit of an officer of the Company stating that any copies submitted in lieu of originals are true, correct and complete copies of the original documents; and

(f) 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), provide the index both as a printed hard copy and in machine-readable form (provided that Commission representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request.

Z. If a document is withheld from production based upon a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log (hereinafter "Complete Log") that includes each document's authors, addressees,

date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm. Denote all attorneys with an asterisk and state the representation of the attorney at the time the documents were created. Describe the subject matter of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the applicability of the claimed privilege. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal law firm memoranda, may be omitted from the log.

In place of a Complete Log of all documents withheld from production based upon a claim of privilege, the Company may elect to submit a Partial Privilege Log ("Partial Log") for each person searched by the Company whose documents are withheld based on such claim and a Complete Log for a subset of those persons, as specified below:

1. The Partial Log will contain the following information: (a) the name of each person from whom responsive documents are withheld on the basis of a claim of privilege; and (b) the total number of documents that are withheld under a claim of privilege (stating the number of attachments separately) contained in each such person's files. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made.
2. Within five (5) business days after receipt of the Partial Log, Commission staff may identify in writing five (5) individuals or ten percent of the total number of persons searched, whichever is greater, for which the Company will be required to produce a Complete Log in order to certify compliance with this Subpoena.
3. For the Company to exercise the option to produce a Partial Log, the Company must provide a signed statement in which the Company acknowledges and agrees that, in consideration for being permitted to submit a Partial Log:

- (a) The Commission retains the right to serve a discovery request or requests regarding documents withheld on grounds of privilege in the event the Commission seeks relief through judicial or administrative proceedings;
 - (b) The Company will produce a Complete Log of all documents withheld from production based on a claim of privilege no later than fifteen (15) calendar days after such a discovery request is served, which will occur promptly after the filing of the Commission's complaint; and
 - (c) The Company waives all objections to such discovery, including the production of a Complete Log of all documents withheld from production based on a claim of privilege, except for any objections based strictly on privilege.
4. The Company retains all privileged documents that are responsive to this Subpoena until the completion of any investigation and administrative or court proceedings of the relevant transaction.
 5. The Commission retains the right to require the Company to produce a Complete Log for all persons searched in appropriate circumstances.
- AA. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.
- BB. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy as disclosed or described in response to Specification 21 of this Subpoena, but the Company 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.
- CC. Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this Subpoena and produce a copy of all instructions prepared by the Company relating to the steps taken to respond to the Subpoena. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each specification, identify the

person(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

DD. In order for the Company's response to this Subpoena to be complete, the attached certification form must be executed by the official supervising compliance, notarized, and submitted along with the responsive materials.

Any questions you have relating to the scope or meaning of anything in this Subpoena or suggestions for possible modifications should be directed to Goldie Walker at (202) 326-2919. Address the response to this Subpoena to the attention of Ms. Goldie Walker, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580, and have it delivered between 8:30 a.m. and 5:00 p.m. on any business day at the New Jersey Avenue address.

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

COMMISSIONERS: **Jon Leibowitz, Chairman**
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

**RESOLUTION AUTHORIZING USE OF
COMPULSORY PROCESS IN A NONPUBLIC INVESTIGATION**

File No. 111 0067

Nature and Scope of Investigation:

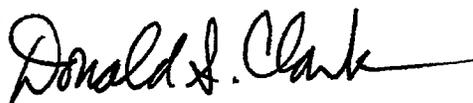
To determine whether the proposed acquisition by The Hospital Authority of Albany-Dougherty County and/or Phoebe Putney Health System, Inc. of Palmyra Park Hospital, Inc. from HCA, Inc. is in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the proposed acquisition, if consummated, would be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to said transaction.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.* and supplements thereto.

By direction of the Commission.



Donald S. Clark
Secretary

Issued: February 8, 2011

EXHIBIT B



United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

Phoebe Putney Health System, Inc.
C/O Mr. Joel Wernick
President and CEO
417 W. Third Avenue
Albany, GA 31702 - 1828

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING

Federal Trade Commission
601 New Jersey Avenue, N.W.
Suite 5257
Washington, D.C. 20001

YOUR APPEARANCE WILL BE BEFORE

Goldie Walker or other designated counsel

DATE AND TIME OF HEARING OR DEPOSITION

You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

February 28, 2011 at 5:00 p.m.

3. SUBJECT OF INVESTIGATION

Proposed Acquisition by the Hospital Authority of Albany-Dougherty County of Palmyra Park Medical Center, Inc. from HCA, Inc. FTC File No. 111-0067. See the attached Resolution authorizing use of Compulsory Process.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Matthew Reilly, Records Custodian
Goldie Walker, Deputy Records Custodian

5. COMMISSION COUNSEL

Goldie Walker, Esq.
(202) 326-2919

DATE ISSUED

2/17/11

COMMISSIONER'S SIGNATURE

Edith D.

INSTRUCTIONS AND NOTICES

The delivery of this demand 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. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

Form of Certificate of Compliance*

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

**CIVIL INVESTIGATIVE DEMAND
ISSUED TO PHOEBE PUTNEY HEALTH SYSTEM, INC.
FTC File No. 111-0067**

Unless modified by agreement with the staff of the Federal Trade Commission, each specification of this Civil Investigative Demand ("CID") requires a complete search of "the Company" as defined in the Definitions and Instructions. If the Company believes that any other part of this CID may be narrowed in a manner that is consistent with the Commission's need for information, you are encouraged to discuss any questions and possible modifications with the Commission representative identified on page 18. All modifications to this CID must be agreed to in writing.

Responses to specifications identified with an asterisk (*) are to be provided in electronic format specified in Instruction W.4.

SPECIFICATIONS

Unless otherwise indicated all specifications are limited to the relevant service in the relevant area, for the time period January 1, 2008, to the present.

1. Identify (a) all types of health care and clinical services that the Company currently offers, (b) the Company's competitors for each such service, and (c) the geographic area in which the Company and each such competitor competes.
2. Identify the geographic areas (by postal zip code) for each type of health care and clinical service identified in response to Specification 1 that the Company regularly serves.
3. Identify all health plans that contract for hospital services with the Company, and provide the total revenues (a) charged and (b) received, from each health plan or entity for the last fiscal or calendar year for which such information is available, and (c) state the contract expiration date for each health plan or entity.
- 4.* Submit separately for each hospital or other facility operated by the Company:
 - a. for each month, the total patient days, patient discharges, inpatient gross revenue, and inpatient net revenue for the hospital as a whole and by individual department;
 - b. for each year, outpatient visits, outpatient gross revenue, and outpatient net revenue for:
 - (i) emergency room visits, and
 - (ii) all other procedures;

- c. the total number of licensed, available, and staffed beds on the first day of each year, and the average daily census for each year, separately for the hospital as a whole and for the relevant service;
- d. for each year, and separately for the hospital as a whole and for the relevant service (broken down between inpatient and outpatient services), the dollar amount of the hospital's revenues received from, and the number of inpatients, inpatient days, and outpatient treatment episodes where the principal source of payment was from each of the following sources:
 - (i) Medicare;
 - (ii) Medicaid;
 - (iii) any other health plan (provide data both for all such plans combined, and separately for: (1) each such health plan from which the hospital derives more than 1% of its revenues; and (2) total revenues from all such health plans with which the hospital has contracts providing for reimbursement rates differing from standard charges of the hospital);
 - (iv) patients (out-of-pocket);
 - (v) no source of payment ("charity care" patients treated free of charge);
 - (vi) bad debt; and
 - (vii) any other source (identify, and provide dollar amounts separately for, any source from which the hospital derives more than 1% of its revenues);
- e. a list provided both in hard copy and as computer file(s) showing, for each physician or other healthcare professional who has held professional staff privileges at the hospital:
 - (i) name;
 - (ii) current (or last known) office address;
 - (iii) medical specialty;
 - (iv) medical practice group (if any);
 - (v) professional license number;

- (vi) any other uniform physician identification number;
 - (vii) type of staff privileges currently or most recently held;
 - (viii) each other hospital at which he or she holds (or most recently held) professional staff privileges and the type of privileges held at each hospital;
 - (ix) the time period that the physician or healthcare professional held admitting privileges at the hospital;
 - (x) his or her employer(s), if any, during the time period during which he or she held admitting privileges at the hospital, and the time period he or she was employed by each employer; and
 - (xi) the number of inpatients, and the number of outpatients, he or she admitted to the hospital in each year;
- f. a list provided both in hard copy and as computer file(s) showing for each year, for each patient transferred from another hospital, the transferring hospital, the date the patient was transferred, the residence 5-digit ZIP code of the patient, any diagnosis codes, length of stay, revenues for that admission, and the reason for the transfer;
- g. a list provided both in hard copy and as computer file(s) showing for each year, for each patient transferred to another hospital, the transferee hospital, the date the patient was transferred, the residence 5-digit ZIP code, any diagnosis codes, and the reason for the transfer;
- h. a list provided both in hard copy and as computer file(s) showing for each year, each day on which the hospital went on diversion (*i.e.*, refused to admit additional patients), the reason for each diversion, and the patient census of the hospital on the day the diversion occurred;
- i. the current nominal and practical capacity, and the annual capacity utilization rate, of the hospital (specifying all other factors used to calculate capacity), and the feasibility of increasing capacity, including the costs and time required;
- j. the principles used by the Company for accounting for contractual allowances and bad debt; the criteria used to determine which accounts receivable are recorded as bad debt; and the circumstances, if any, under which bad debt or contractual allowances are attributed to charity care or some similar account; and

- k. for each year the amounts of bad debt and charity care recorded by the Company for each hospital in the relevant area and the amount of bad debt that was re-recorded as charity care.
5. Submit the identity of:
- a. each physician organization owned or managed by the Company, and for each such organization:
 - (i) the physician organization's specialty or specialties;
 - (ii) the doctors in the physician organization; and
 - (iii) the billing rates of each doctor in the physician organization;
 - b. each entity in the relevant area in which the Company
 - (i) holds 50 percent or more of the outstanding voting securities of an issuer or, in the case of an unincorporated entity, has the right to 50 percent or more of the profits of the entity, or has the right in the event of dissolution to 50 percent or more of the assets of the entity; or
 - (ii) has the contractual power presently to designate 50 percent or more of the directors of a for-profit or not-for-profit corporation, or in the case of trusts, the trustees of such a trust;
 - c. each entity not identified in part (b) above for which the Company has an ownership interest, and for each entity submit a description of:
 - (i) the Company's ownership interest;
 - (ii) any agreement between the Company and the entity that relates to the Company's ownership in the entity submitting any such documents; and
 - (iii) the persons who, pursuant to an agreement between the Company and the entity, have served as officers of the entity, board members of the entity, or in any other position with the entity.
6. Submit, for each year from 2006 to the present, for any inpatient admission or discharge or outpatient treatment episode at any hospital operated by the Company in the relevant area:

- a. the identity of the hospital at which the patient was treated, the address of the hospital, including 5-digit ZIP code, and any hospital identification number used for reimbursement purposes;
- b. a unique patient identifier, different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient (to protect patient privacy, the Company shall mask personal identifying information, such as the patient's name or Social Security Number, by substituting a unique patient identifier as specified in Instruction V); if the Company is providing data in multiple records for the inpatient admission or outpatient visit, a unique identifier for the admission or visit shall also be included in each record associated with the admission or visit;
- c. the patient's residence 5-digit ZIP code;
- d. the patient's gender and age (in years) (if the patient age is 90 years or older the Company should so indicate, in lieu of providing the patient's age);
- e. whether the treatment episode was inpatient or outpatient; if inpatient, the date of admission and date of discharge, and if outpatient, the date of treatment;
- f. the primary associated DRG and ICD9 diagnosis and procedure codes, and any secondary DRG and ICD9 diagnosis and procedure codes;
- g. all UB92 revenue codes and revenue code units;
- h. whether the treatment provided was for an emergency;
- i. the source of the patient (such as by referral from another hospital, or by a physician who does not admit the patient);
- j. the specific name of the entity and type of health plan (such as HMO, POS, PPO, etc.) that was the principal source of payment;
- k. identify whether the type of health plan that was the principal source of payment was offered through the Medicare Advantage program;
- l. whether the Company was a participating provider under the patient's health plan and, if the patient's health plan had different tiers of participating providers, which tier the hospital was in;
- m. whether there was a capitation arrangement with a health plan covering the patient and, if so, identify the arrangement;

- n. charges of the hospital, allowed charges under the patient's health plan, the amount of charges actually paid by the health plan, whether the amount of charges actually paid by the health plan including any adjustments under any stop-loss provisions or any other contractual provision, and any additional amounts paid by the patient;
 - o. any breakdown of the hospital's charges by any categories of hospital services rendered to the patient (such as medical/surgical, obstetrics, pediatrics, or ICU);
 - p. the identity of the patient's admitting physician and, if different, the identity of the treating physician;
 - q. the amount of any payment by the Company to any physicians, not including any payment received in connection with employment by the Company, for any physician services associated with admission or treatment at the Company's hospitals; and
 - r. the patient's status (*e.g.*, normal discharge, deceased, transferred to another hospital, etc.) upon discharge.
7. Identify, provide the title, and describe the contents of each financial statement, budget, profit and loss statement, customer or departmental profitability report, and each other financial report regularly prepared by or for the Company on any periodic basis that relates to the relevant service, from year ending 2006 through year-to-date for 2011, and for each such report, state how often each is prepared and the person responsible for its preparation.
8. Submit, by hospital, Company-generated descriptions, summaries, and interpretations of contract terms and methodologies (including, but not limited to, per diem formulas, discount of charges formulas, stop loss provisions or any other formulas, codes, or templates containing the relevant terms of the contract between the hospital and health plans), that affect the total consideration any Company-owned or Company-affiliated hospital in the relevant area received or will receive under a contract with a health plan in effect at any time during the time period beginning January 1, 2004.
9. Identify for each hospital operated by the Company in the relevant area each person who is now or, since January 1, 2004, was responsible for the Company's negotiation of contracts with health plans or physician organizations, the entities for which each such person negotiates, and the time periods of that person's responsibilities.
10. State the name and address of each person that has entered or attempted to enter into, or exited from, the provision of the relevant service in the relevant area from January 1, 2001, to the present. For each such person, identify the date of its entry into or exit from

the market. For each entrant, state whether the entrant built a new facility, converted assets previously used for another purpose (identifying that purpose), or began using facilities that were already being used for the same purpose.

11. Identify or describe (including the basis for your response) the following:
 - a. requirements for entry into the relevant service in the relevant area including, but not limited to, research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, sales and marketing activities, and any necessary governmental and customer approvals, and the time necessary to meet each such requirement;
 - b. the total costs required for entry into the provision of the relevant service; the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the provision of the relevant service; the methods and amount of time necessary to recover such costs; and the total sunk costs entailed in satisfying the requirements for entry;
 - c. possible new entrants into the provision of the relevant service in the relevant area; and
 - d. the minimum viable scale, the minimum and optimum hospital and doctor/nurse-staff size, capacity utilization rate, volume, requirements for multi-facility, multi-services, or vertically integrated operations, or other factors required to attain any available cost savings or other efficiencies necessary to compete profitably in the provision of the relevant service.

12. List each of the Company's prior acquisitions, affiliations, joint ventures, or similar transactions, and describe each efficiency (including cost savings, economies, new product or service introductions, and product or service improvements) that was expected to be achieved, that has been actually achieved, or is in the process of being achieved from each such transaction, including in the description:
 - a. the steps that the Company took to achieve the efficiency and the time and costs required to achieve it;
 - b. the dollar value of the efficiency and a detailed explanation of how that was calculated;
 - c. an explanation of how each prior transaction helped the Company achieve the efficiency;

- d. the reason(s) the Company could not have achieved the efficiency without the prior transaction;
- e. the proportion of the dollar value of the efficiency that the company passed on to consumers and the manner and form (*e.g.*, lower prices, better service) in which the company passed on the efficiency;
- f. the identity of each person (including the person's title, telephone number, and business address) employed or retained by the company (including the company's counsel) with any responsibility for achieving, analyzing, or quantifying any efficiency described; and
- g. for each efficiency that involved cost savings, state separately:
 - (i) the one-time fixed cost savings; and
 - (ii) the variable cost savings (in dollars per unit and dollars per year).

13. Provide:

- a. a timetable for the proposed joinder, a description of all actions that must be taken prior to consummation of the proposed joinder, and any harm that will result if the joinder is not consummated, or not consummated by a certain time;
- b. a detailed description of (including the rationale for, and identification of all documents directly or indirectly used to prepare the Company's response to this CID), all plans for changes in (i) the Company's and (ii) the assets of Palmyra Park Medical Center, Inc., operations, structure, policies, strategies, corporate goals, financing, business, officers, employees or any other area of corporate activity as a result of the proposed joinder;
- c. a detailed description of (including the identification of all documents directly or indirectly used to prepare the Company's response to this CID and quantification, if possible, of all cost savings, economies or other efficiencies) the reasons for the proposed joinder, and the benefits, costs, and risks anticipated as a result of the proposed joinder, including, but not limited to, all cost savings, economies, or other efficiencies of whatever kind;
- d. a detailed description of the reasons why the Company could not achieve each benefit, cost saving, economy, or other efficiency without the proposed joinder; and

- e. a detailed description of all statements or actions by any person (identifying the person by name, title, phone number, and business address) in support of, in opposition to, or otherwise expressing opinions about the proposed joinder or its effects.
- 14. Submit all information described in Instruction W below relating to, and other instructions necessary for the Commission to use or interpret, the databases or other data compilations submitted in response to this CID, to the extent such documentation is not contained in documents submitted in response to this CID.
- 15. Describe in detail the Company's policies and procedures relating to the retention and destruction of documents.
- 16. Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this CID and provide a copy of all instructions prepared by the Company relating to the steps taken to respond to this CID. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

DEFINITIONS AND INSTRUCTIONS

For the purposes of this CID, the following definitions and instructions apply:

- A. The term "the Company" means Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Phoebe North, Inc., their domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of each of the foregoing.
- B. The terms "and" and "or" have both conjunctive and disjunctive meanings.
- C. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody, or control of the Company. 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 the possession, custody, or control of the Company.

1. Unless otherwise specified, the term “documents” excludes (a) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature; (b) architectural plans and engineering blueprints; and (c) documents relating solely to environmental, tax, human resources, OSHA, or ERISA issues.
 2. The term “computer files” includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company 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, whether on or off company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Commission’s need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission representative identified on the last page of this CID. The Commission representative will consider modifying this instruction to:
 - (a) exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company;
 - (b) limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain specifications identified by Commission representatives; or
 - (c) include other proposals consistent with Commission policy and the facts of the case.
- D. The terms “each,” “any,” and “all” mean “each and every.”
- E. The term “entity” means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such.
- F. 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.
- G. The term “hospital” means a facility that provides the relevant service as defined herein.
- H. The term “minimum viable scale” means the smallest service volume at which average costs equal the price currently charged for the relevant service. Minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.
- I. The term “operate” with reference to a hospital facility means to directly or indirectly own or lease the facility or unit, manage its operations on behalf of another person under a management contract, have the power to appoint the majority of the facility’s governing board or body, or otherwise directly or indirectly control the facility or unit.
- J. The term “person” includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- K. The term “physician organization” means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, or employees, or in which only one physician practices medicine, such as a physician group.
- L. The term “plans” means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.
- M. The term “provider” means a facility that provides any of the relevant services as defined herein, including, but not limited to, hospitals, physician group practices, or other healthcare facilities.
- N. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating, but not merely referring to.
- O. The term “relevant area” means the following counties in the State of Georgia: Atkinson, Baker, Ben Hill, Berrien, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crisp, Decatur, Dooly, Dougherty, Early, Echols, Grady, Houston, Irwin, Lanier, Lee, Lowndes, Macon, Marion, Miller, Mitchell, Quitman, Pulaski, Randolph, Schley, Seminole, Stewart, Sumter, Terrell, Thomas, Tift, Turner, Webster, Wilcox, and Worth.
- P. The term “relevant service” means the provision of general acute care hospital services including (1) inpatient services; (2) outpatient services; (3) emergency room services; (4) gastroenterological services; and (5) diagnostic imaging and scanning services including

magnetic resonance imaging ("MRI"). The relevant service encompasses the provision of hospital care for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities but excludes treatments of mental illness or substance abuse, long-term services such as skilled nursing care, and services provided by a non-employee physician or non-owned physician organizations.

- Q. The term "relevant transaction" means and includes the proposed joinder or acquisition by the Hospital Authority of Albany - Dougherty County (the "Hospital Authority") of Palmyra Park Hospital, Inc. d/b/a Palmyra Medical Center ("Palmyra"), from HCA Inc., and all related transactions or agreements, including those dealing with (a) the operation of the Palmyra facility after the acquisition, (b) the supervision by the Hospital Authority of the Palmyra assets after the acquisition, and (c) the creation and operation of Phoebe North, Inc. and the supervision of Phoebe North, Inc., and (d) the integration of the assets of Palmyra and/or Phoebe North Inc., into the Company's operations.
- R. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between the Company and any other person.
- S. The term "sunk costs" means the acquisition costs of tangible and intangible assets necessary to provide the relevant service that cannot be recovered through the redeployment of these assets for other uses.
- T. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for information and/or documents for each of the years from January 1, 2008, to the present. Where information is requested, provide it separately for each year. Where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the Company's fiscal year data indicating the twelve month period covered, and provide the Company's best estimate of calendar year data.
- U. This CID shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this CID produced or obtained by the Company up to forty-five (45) calendar days prior to the date of the Company's full compliance with this CID.
- V. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). For purposes of this CID, 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 CID, SHI includes medical records or other individually identifiable health

information. Where required by a particular specification, the Company 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, the Company shall redact the PII or SHI but is not required to replace it with an alternate identifier.

- W. The Company shall submit documents as instructed below absent written consent signed by an Assistant Director of the Commission's Bureau of Competition.
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 text¹ 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 loose 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, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, parent record

¹"Extracted text" is a term of art that refers to the underlying text of a native file that allows the native file to be converted into another searchable format.

(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. If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this CID, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this CID.
 4. For each specification marked with an asterisk (*), and to the extent any other responsive data exists electronically, provide such data in Excel spreadsheet with all underlying data un-redacted and all underlying formulas and algorithms intact.
 5. Submit electronic files and images as follows:
 - (a) For productions over 10 gigabytes, use 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, and 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. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this CID.
 6. All documents responsive to this CID, 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 the Company's files and shall not be shuffled or otherwise rearranged. For example:

- i. If in their original condition hard copy documents were stapled, clipped or otherwise fastened together or maintained in file folders, binders, covers or containers, they shall be produced in such form, and any documents that must be removed from their original folders, binders, covers or containers in order to be produced shall be identified in a manner so as to clearly specify the folder, binder, cover or container from which such documents came; and
 - ii. If in their original condition electronic documents were maintained in folders or otherwise organized, they shall be produced in such form and information shall be produced so as to clearly specify the folder or organization format;
- (b) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;
- (c) 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, the Company must submit the original document, a like-colored photocopy, or a JPEG format image);
- (d) Shall be marked on each page with corporate identification and consecutive document control numbers;
- (e) Shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct and complete copies of the original documents; and
- (f) 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), provide the index both as a printed hard copy and in machine-readable form (provided that Commission representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request.

- X. If any document or information is withheld from production based upon a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log (hereinafter "Complete Log") that includes each document's authors, addressees, date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm. Denote all attorneys with an asterisk and state the representation of the attorney at the time the documents was created. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal law firm memoranda, may be omitted from the log.

In place of a Complete Log of all documents withheld from production based on a claim of privilege, the Company may elect to submit a Partial Privilege Log ("Partial Log") for each person searched by the Company whose documents are withheld based on such claim and a Complete Log for a subset of those persons, as specified below:

1. The Partial Log will contain the following information: (a) the name of each person from whom responsive documents are withheld on the basis of a claim of privilege; and (b) the total number of documents that are withheld under a claim of privilege (stating the number of attachments separately) contained in each such person's files. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made.
2. Within five (5) business days after receipt of the Partial Log, Commission staff may identify in writing five individuals or ten percent of the total number of persons searched, whichever is greater, for which the Company will be required to produce a Complete Log in order to certify compliance with this CID.

3. For the Company to exercise the option to produce a Partial Log, the Company must provide a signed statement in which the Company acknowledges and agrees that, in consideration for being permitted to submit a Partial Log:
 - (a) The Commission retains the right to serve a discovery request or requests regarding documents withheld on grounds of privilege in the event the Commission seeks relief through judicial or administrative proceedings;
 - (b) The Company will produce a Complete Log of all documents withheld from production based on a claim of privilege no later than fifteen (15) calendar days after such a discovery request is served, which will occur promptly after the filing of the Commission's complaint; and
 - (c) The Company waives all objections to such discovery, including the production of a Complete Log of all documents withheld from production based on a claim of privilege, except for any objections based strictly on privilege.
 4. The Company retains all privileged documents that are responsive to CID until the completion of any investigation of the relevant transaction.
 5. The Commission will retain the right to require the Company to produce a Complete Log for all persons searched in appropriate circumstances.
- Y. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.
- Z. If information responsive to a particular specification is no longer available because documents or data bases that contained the information no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy as disclosed or described in the Company's response to Specification 15 of this CID, but the Company 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 or data bases.

**Civil Investigative Demand Directed to
Phoebe Putney Health System, Inc.**

Page 18 of 18

AA. In order for the Company's response to this CID to be complete, the attached certification form must be executed by the official supervising the response, notarized, and submitted along with the responsive information and material.

Any questions you have relating to the scope or meaning of anything in this CID or suggestions for possible modifications should be directed to Goldie Walker at (202) 326-2919. The response to the CID shall be addressed to the attention of Ms. Goldie Walker, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Commission's New Jersey Avenue address.

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

COMMISSIONERS: **Jon Leibowitz, Chairman**
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

**RESOLUTION AUTHORIZING USE OF
COMPULSORY PROCESS IN A NONPUBLIC INVESTIGATION**

File No. 111 0067

Nature and Scope of Investigation:

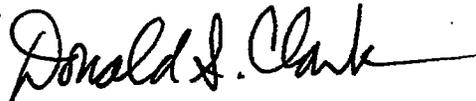
To determine whether the proposed acquisition by The Hospital Authority of Albany-Dougherty County and/or Phoebe Putney Health System, Inc. of Palmyra Park Hospital, Inc. from HCA, Inc. is in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the proposed acquisition, if consummated, would be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to said transaction.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.* and supplements thereto.

By direction of the Commission.



Donald S. Clark
Secretary

Issued: February 8, 2011

EXHIBIT C



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV

~
Joseph Brownman
Attorney

~
Direct Dial
202-326-2605

E-Mail
jbrownman@ftc.gov

~
Fax
202-326-2286

December 29, 2010

**VIA FEDERAL EXPRESS
ADVANCE PDF COPY VIA E-MAIL**

Mr. Joel Wernick
President and CEO
Phoebe Putney Health System, Inc.
417 W. Third Avenue
Albany, GA 31702 - 1828

Re: Phoebe Putney / Palmyra
FTC File No. 1110067

Dear Mr. Wernick:

The Federal Trade Commission's Bureau of Competition is conducting a non-public investigation of the recently announced proposed acquisition by the Hospital Authority of Albany - Dougherty County ("Hospital Authority") and Phoebe Putney Health System, Inc. ("Phoebe Putney") of Palmyra Medical Center ("Palmyra") from Hospital Corporation of America ("HCA").¹ The purpose of this investigation is to determine whether the acquisition may be anticompetitive, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, or Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. We are also investigating whether the premerger notification requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a have been or will be satisfied in connection this acquisition.

¹ The terms "Hospital Authority," "Phoebe Putney," "Palmyra," and "HCA" include their domestic and foreign parents, predecessors, divisions, subdivisions, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents, and representatives. The terms subsidiary, affiliate, and joint venture refer to any entity as to which there is a 10 percent or more ownership or control between the Hospital Authority, Phoebe Putney, Palmyra, or HCA and the entity.

If the Commission were to conclude that the proposed acquisition may be anticompetitive, it may seek a temporary restraining order and/or a preliminary injunction in United States District Court to block or rescind the acquisition pending an administrative adjudication of its legality. The Commission may determine to initiate administrative proceedings whether or not a court issues preliminary injunctive relief. Depending upon the information developed in the investigation, if the acquisition will not have been consummated, the Commission may seek relief that would prohibit the acquisition. If the acquisition is consummated, the Commission may order rescission or other relief, including other divestitures. This may require a full and complete divestiture by the Hospital Authority and Phoebe Putney of Palmyra as well as other assets necessary to restore the competitive *status quo ante*. The Commission also has authority to order such additional relief as may be necessary to restore the lost competition in addition to any asset divestitures.

In order to protect the Commission's interest and ability to proceed with this investigation, we ask that Phoebe Putney, pending the completion of the investigation and any court or administrative proceedings, take immediate steps to retain and preserve in its files and computer systems all documents and information that may lead to relevant information. Among other things, this would include all documents and information relating to (a) the proposed acquisition, (b) the competition for hospital or health care services in Albany, Georgia and the surrounding county areas, and (c) the condition of the Palmyra assets. Please be aware that the intentional destruction of documents or other relevant material or assets while our investigation is pending may be a serious criminal offense, in violation of 18 U.S.C. §1505.

The purpose of the Commission's preliminary investigation is to determine whether a full-scale, in depth, investigation is required. In this connection, we have tried to ask for sufficient information that may resolve potentially dispositive issues without undertaking a full competitive effects analysis. For the purpose of proceeding with this investigation, we are asking that the Hospital Authority and Phoebe Putney, on a voluntary basis (but in lieu of compulsory process) provide the Commission with the answers to the following questions, information,² and material,³ regardless whether the information or material may be in hard copy form or stored electronically, including as e-mail, in its possession, custody, or control:

1. Will Phoebe Putney file a premerger notification report pursuant to Section 7A of the Clayton Act, and observe the statutory waiting periods, prior to consummation of the proposed acquisition? If not, is the acquisition exempt from the reporting requirement, and if so, which exemption and why?
2. What is the status of the litigation or appeal involving the Hospital Authority and/or Phoebe Putney with Palmyra related to (a) whether Palmyra may obtain a certificate of need ("CON") for a proposed obstetrics department and (b) alleged

² In response to questions and requests for information, state the sources of the information provided.

³ Copies of documents may be produced in lieu of originals.

tying of reimbursement rates? Provide all court pleadings and opinions in these matters as well as any other matters involving both the Hospital Authority and/or Phoebe Putney and Palmyra.

3. Does Phoebe Putney contend that state action considerations, failing division issues, acquisition-related efficiencies, quality of care issues, or the status of Phoebe Putney as a non-profit entity, should be considered by the Commission in this investigation? If so, explain why, and provide all available supporting information, material, and citations. Are there other potentially dispositive legal or factual issues the Commission should consider?
4. Documents sufficient fully to describe (a) Phoebe Putney's status as a non-profit entity and (b) the rights, duties, and authority of the Hospital Authority with respect to Phoebe Putney.
5. Identify (a) all types of health care and clinical services that Phoebe Putney currently offers, and (b) Phoebe Putney's competitors for each such service, by geographic area.
6. An organization chart with lines of reporting that depict the names and titles of all persons associated with the Hospital Authority, Phoebe Putney, and Palmyra that are involved in management or pricing activities associated with the provision of hospital or health care services in Albany, Georgia and the surrounding county areas.
7. State all metrics used by the Hospital Authority, Phoebe Putney, or Palmyra to measure to measure performance, including, but not limited to, average bed occupancy, admissions, overnight stays, and revenue streams, from January 1, 2008, to the present.
8. Identify the geographic areas (by postal zip code) that each Phoebe Putney facility located in the Albany, Georgia and the surrounding county areas, and Palmyra, serves. Provide available supporting draw area information. information
9. Describe all changes the Hospital Authority or Phoebe Putney plan or intend to make (b) at any existing facility, and (b) at the Palmyra facility, after the proposed acquisition. State whether changes to any Phoebe Putney facility or operation will occur whether or not the proposed acquisition occurs.
10. All current articles of incorporation, bylaws, and contracts or agreements regarding the relationship between Phoebe Putney, the Hospital Authority, and persons that may be directors, trustees, or board members of Phoebe Putney and the Hospital Authority.
11. What have the Hospital Authority or Phoebe Putney agreed to pay HCA for Palmyra, and from what sources and in what amounts will the payment be made?

12. All documents relating to the valuation of the Palmyra assets involved in the proposed acquisition.
13. All contracts and agreements between the Hospital Authority, Phoebe Putney, HCA, and Palmyra related to the proposed acquisition.
14. All documents discussing or relating to the proposed acquisition. This includes all contracts and agreements (including last prepared drafts of proposed contracts or agreements) as well as notes of meetings and other forms of negotiations or communications, both internal and with others.
15. All documents related to alternative purchasers of Palmyra other than the Hospital Authority or Phoebe Putney.
16. The names, titles, and business addresses of all employees, agents, or other representatives of Phoebe Putney, the Hospital Authority, Palmyra, and HCA who played a role in the negotiation of the proposed acquisition. Provide a description of the role played by each such person.
17. What is the planned consummation date of the proposed acquisition? Also provide a full description of the planned timetable for the proposed acquisition and an explanation of all contingencies that must be satisfied before such acquisition may be consummated, together with a description of all contingencies that may already have occurred.
18. A full detailed description of, and documents setting forth the terms of, any affiliation, ownership interest, or participation in governance (such as by representation on a board of directors), between Phoebe Putney and any other surgical or other health care facility in Albany, Georgia and the surrounding county areas.
19. All Medicare cost reports for the three most recent years for Phoebe Putney and Palmyra.
20. All Phoebe Putney, Hospital Authority, and Palmyra annual financial statements, income statements, and balance sheets for the three most recent fiscal or calendar years, as well as the most recent year-to-date financial statements for time periods less than a full year if less than a full year.
21. All Hospital Authority, Phoebe Putney, and Palmyra annual reports to a state agency, budgets, and business plans and similar strategic documents prepared or in use since January 1, 2008.
22. Identify all health plans, commercial health insurers, health maintenance organizations, preferred provider plans, and self-insured employee health benefit plans that contract for hospital services with Phoebe Putney and Palmyra, and

provide the total revenues (a) charged and (b) received, from each health such entity for the last fiscal or calendar year for which such information is available, and (c) state the contract expiration date for each health plan or entity.

23. For the period January 1, 2008, to the present, identify any health plans or other entities that contracted for hospital or other health care services with either Phoebe Putney or Palmyra, but not both.
24. All documents, prepared or in use since January 1, 2008, relating to communications between the Hospital Authority, Phoebe Putney, or Palmyra with health plans, commercial health insurers, health maintenance organizations, preferred provider plans, and self-insured employee health benefit plans, regarding proposed changes in reimbursement rates for hospital or other health care services for Albany Georgia and the surrounding county areas.
25. All documents referring or relating to pricing and negotiation strategies for each plan or entity identified in response to Specification 22.

I hope that providing the information and material that we are asking for will not be unduly burdensome and that it may be readily produced. If some information or material can be located and produced more quickly than other information or material, it would be very helpful if you would produce what becomes available on a rolling basis. If you so request, we will treat any or all of the information and material as confidential under applicable statutes and the Commission's Rules of Practice.

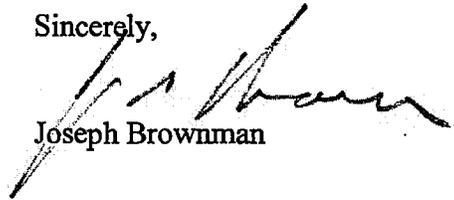
Because this request for information and material is intended to provide the Commission with sufficient information to determine whether a full scale investigation may be warranted, it may not be all-inclusive. As with any investigation, the Commission may need to seek additional information and material, or pursue additional avenues of inquiry. For this reason, we are not asking that a general search of all files be conducted for the information and material we now request. We believe that the information and material we seek is likely to be reasonably quickly available, and without the need for a broad file search, but if we are mistaken, please let us know so that we may work with you to amend portions of this request.

I would appreciate it if you (or your representative or counsel) would call me so that we may discuss your willingness to commit to not closing the proposed transaction before a date certain. For any such date to be meaningful it will need to take into account the time that will be required for the Commission to receive a complete response to this request as well as the time we will need to review the information and discuss any lingering concerns with you that we may have. We ask that you agree not to consummate the proposed acquisition until at least 45 days from the date that Phoebe Putney provides all of the requested information and material, and in any event, not before March 1, 2011. Should the Commission as of March 1 determine that more investigation would be required, we reserve the right to ask you for additional time-related commitments, as well as additional information and material.

We are of course available on relatively short notice to meet with you or your counsel or other representatives to discuss this matter in more detail and to learn more from you regarding the proposed acquisition. I will also be more than happy to answer any questions you may have. You may reach me by telephone at (202) 326-2605. If I am not available, please call my colleague Oscar Voss at (202) 326-2750.

Thank you for your understanding and your cooperation.

Sincerely,


Joseph Brownman

cc: Tommy Chambless, Esq.
Senior Vice President and General Counsel
Phoebe Putney Health System, Inc.
417 W. Third Avenue
Albany, GA 31702 - 1828

Dawn G. Benson, Esq.
Associate Counsel
Phoebe Putney Health System, Inc.
417 W. Third Avenue
Albany, GA 31702 - 1828

EXHIBIT D



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV

Joseph Brownman
Attorney

Direct Dial
202-326-2605

E-Mail
jbrownman@ftc.gov
Fax
202-326-2286

January 18, 2011

VIA FEDERAL EXPRESS
ADVANCE PDF COPY VIA E-MAIL (lee.vanvoorhis@weil.com)

Lee K. Van Voorhis, Esq.
Weil, Gotshal & Manges
1300 Eye Street, NW
Washington, D. C. 20005

Re: Phoebe Putney / Palmyra
FTC File No. 1110067

Dear Lee:

Thank you coming to see us last Friday. Your state action presentation was very helpful to us as we try better to understand all of the relevant facts and issues related to our investigation.

The purpose of this letter is to request specific supplemental material from Phoebe Putney relating to the state action exemption in light of what we learned at our meeting. You may find that the material we are identifying in this letter was previously requested in our letter to Mr. Wernick of December 29, 2010, perhaps in a more general fashion. So although our need to more particularly ask for this material may be substantively unnecessary, I thought it may potentially expedite matters to err on the side of redundancy rather than perhaps to miss asking for something that we need.¹

The supplemental (state action related) specifications are the following:

1. All reports or correspondence from Phoebe Putney or any of its officers or

¹ In my e-mail to Bob Baudino on January 8, 2011, a copy of which was directed to you (as well as counsel for HCA), in anticipation of our meeting, I identified Specifications 3, 4, 6, 7, 9, 10, 11, 13, 14, and 16 of my letter of December 29, 2010, that I believed, at a minimum, were relevant to state action issues.

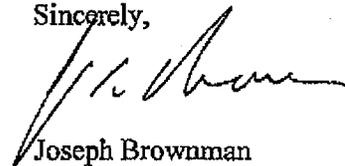
directors that were provided or shown to the Hospital Authority or any of its members (including the Community Budget reports) and annual or other periodic reports.

2. All minutes of meetings, reports, statements, resolutions, correspondence or other documents from the Hospital Authority or any of its members directed to, or about, Phoebe Putney.
3. All minutes of meetings, reports, statements, resolutions, correspondence, or other documents of the Phoebe Putney Board of Directors.
4. The Memorandum of Understanding between Phoebe Putney and/or the Hospital Authority and HCA.
5. The Management Agreement (or its draft) that was referred to in the December 21, 2010, Resolution of the Hospital Authority.
6. All reports and correspondence (including drafts of reports) of or from Dr. William Cleverly or Cleverly + Associates.

The posture of our investigation remains preliminary. While we recognize that the state action issue is potentially dispositive in your favor (and therefore requires our full attention), the possibility that the parties to the proposed acquisition may close before the Commission will have had an opportunity to give us direction on the entirety of the transaction requires that we not limit our investigation to the state action issue.

We therefore renew our request that Phoebe Putney and the Hospital Authority give us a commitment in writing that the proposed transaction with HCA will not close until at least 45 days after a full and complete compliance with our (now two) letter requests, as written or as they may be amended after further discussion with you or your representatives. As always, I am more than happy to discuss our needs, and any possible undue burdens.

Sincerely,



Joseph Brownman

cc: James C. Egan, Jr., Esq. (jim.egan@weil.com)
Weil, Gotshal & Manges
1300 Eye Street, NW
Washington, D. C. 20005

Lee K. Van Voorhis, Esq.

Page 3

Robert J. Baudino, Jr., Esq. (baudino@baudino.com)
Baudino Law Group, PLC
2600 Grand Avenue
Suite 300
Des Moines, Iowa 50312

EXHIBIT E

1300 Eye Street NW, Suite 900
Washington, DC 20005-3314
+1 202 682 7000 tel
+1 202 857 0940 fax

Weil, Gotshal & Manges LLP

Lee K. Van Voorhis
+1 (202) 682-7272
lee.vanvoorhis@weil.com

February 4, 2011

HAND DELIVERY

Joe Brownman, Esq.
Federal Trade Commission
Washington, D.C. 20580

Re: Phoebe Putney/Palmyra, FTC File No. 1110067

Dear Joe:

As we have discussed, the Hospital Authority of Albany-Dougherty County (the "Authority") has entered an agreement to acquire Palmyra Medical Center ("PMC"). Following the acquisition, the Authority will own both PMC and Phoebe Putney Memorial Hospital. The Authority currently leases Phoebe Putney Memorial Hospital to Phoebe Putney Memorial Hospital, Inc. ("PPMH"), and intends to lease PMC to PPMH as well.

As we have also discussed, it is our position that these transactions have been authorized by the State of Georgia and therefore are immune from the antitrust laws. First, there is the acquisition itself. The acquirer – the Authority – is clearly a political subdivision with statutory authority to make the acquisition, and courts have found displacement of competition to have been foreseeable in circumstances virtually identical to those present here. We believe the inquiry need go no further. If the acquisition is immune, the fact that the Authority determines to lease the hospitals it owns would not give rise to a new or separate antitrust cause of action. Nevertheless, assuming a cause of action, the grant of a lease is also an action by and within the statutory authority of the Authority, and courts have found displacement of competition to have been foreseeable in circumstances that are impossible to distinguish from those present here. Similarly, if both the acquisition and the lease are subject to state action immunity, the mere operation of the hospitals under the lease would not give rise to a new or separate cause of action. Nevertheless, again assuming a cause of action, the actions of PPMH under the lease are subject to the oversight of the Authority to a degree that meets the standard for active state supervision. Because of your interest in this question, we have provided a fair amount of detail regarding the oversight exercised by the Authority.

The Georgia Hospital Authorities Law, the parties and the transaction.

Exercising its authority under Georgia law "[t]o acquire by purchase, lease, or otherwise and to operate projects," the Authority entered into an asset purchase agreement to acquire Palmyra Medical Center

from Palmyra Park Hospital, Inc., (“Palmyra”) for \$195 million on December 21, 2010.¹ The Authority recognized that PPMH is operating at full capacity and additional capacity is needed. It determined that acquiring PMC provided a more efficient option for expansion (both cheaper and faster) than expanding existing facilities, building additional facilities or acquiring other facilities, which it determined were necessary to fulfill its public health mission. It evaluated options and determined that the \$195 million purchase price would be less than the cost of building additional capacity.² In addition, a new facility would take a significant amount of additional time, both for construction and the Certificate of Need (“CON”) process.³ In short, the Authority evaluated options and decided this acquisition would be the best way to further the Authority’s mission and serve its constituents, the people of Albany and Dougherty County.⁴

The Authority is a hospital authority organized and existing pursuant to the Hospital Authorities Law of Georgia, jointly activated by the City of Albany and Dougherty County in 1941 for the purpose of furthering the care offered through Phoebe Putney Memorial Hospital pursuant to the Hospital Authorities Law.⁵ It is a political subdivision of the state of Georgia that “shall be deemed to exercise public and essential governmental functions and shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of” Georgia law.⁶

Phoebe Putney Memorial Hospital was founded in 1911 by a charitable bequest with the directive that it provide health care to all the citizens of the community regardless of station in life or ability to pay, and on condition that it be named for the mother of the benefactor, Phoebe Putney.

Prior to 1990, the Authority operated Phoebe Putney Memorial Hospital directly. In 1990, the Authority, after significant deliberation, advice, and consultation, decided to restructure its operations.⁷ The Authority created PPMH, a Georgia non-profit corporation (and its parent entity, Phoebe Putney Hospital System, Inc. (“PPHS”)).⁸ The Authority then leased all of its assets to PPMH and PPMH

¹ O.C.G.A. § 31-7-75(4)

² See Presentation to Board of Hospital Authority of Albany-Dougherty County, Dec. 21, 2010 at 18-20.

³ Georgia law provides that the Department of Community Health serves as the arbiter of whether a new hospital will be built or whether an existing hospital will be expanded. See generally O.C.G.A. § 31-6-40(b).

⁴ See generally Resolutions of the Hospital Authority of Albany-Dougherty County, Georgia Approving Proposed Transaction With Palmyra Park Hospital, Inc.; Authorizing Waiver of Lease Provision; and Declaring Official Intent Relative to Possible Tax Exempt Financing, Dec. 21, 2010 (the “Authority Transaction Resolutions”).

⁵ See *id.* at 1.

⁶ O.C.G.A. § 31-7-75.

⁷ See generally Lease and Transfer Agreement Between Hospital Authority of Albany-Dougherty County, Georgia, and Phoebe Putney Memorial Hospital, Inc., dated as of December 11, 1990 (the “PPMH Lease”) at Background Section (detailing the three-year deliberation process before restructuring decision was made).

⁸ According to the PPMH Lease, the parent holding company structure was designed to provide “additional long-term flexibility for further ventures and activities of the Hospital.” See PPMH Lease at Background Section. PPHS must operate

thereby undertook the day-to-day operation of the hospital on behalf of the Authority. PPMH is the vehicle through which the Authority carries out its official responsibilities and is essentially the Authority's operating arm. Rent due the Authority under the lease is \$1 per year, and termination of the lease by the Authority can occur if PPMH ever fails to perform any one of the lease's key obligations.⁹ Among those obligations are those put upon the Authority by state statute: public service, indigent care, low costs, and strict adherence to the letter and spirit of Georgia law.¹⁰

Although PPHS is a party to the purchase agreement as guarantor of the purchase price, it bears repeating that it is the Authority that considered and agreed to this transaction, and that it is the Authority that will own the Palmyra hospital once the deal closes.

In response to your request, the parties have agreed to consummate the acquisition no earlier than March 1, 2011.

The Authority's acquisition of the Palmyra hospital is subject to state action immunity from federal antitrust laws.

State action immunity originated with the Supreme Court decision in *Parker v. Brown*,¹¹ which held that the Sherman Act was intended to prohibit private restraints on trade, but did not prohibit anti-competitive actions by states.¹²

Subsequently, the Supreme Court elaborated that as instrumentalities of the state whose actions may reflect state policy, political subdivisions are immune from antitrust liability if they can show that "their anticompetitive activities were authorized by the state pursuant to a state policy to displace competition."¹³ Those circumstances are applicable to the Authority's acquisition in this instance.

The Eleventh Circuit detailed the analysis to be used when determining whether state action immunity applies to the actions of Georgia hospital authorities.¹⁴ The first step in the test is the determination of whether the Authority is an instrumentality, agency, or political subdivision of the State of Georgia. The Eleventh Circuit has held specifically that Georgia hospital authorities are political subdivisions of the State of Georgia.¹⁵ In particular, the Authority is organized and exists pursuant to the Georgia Hospital

in support of the charitable mission of the Authority to provide care for all persons in the community regardless of ability to pay, and to serve to facilitate flexibility and outreach to advance the mission. *See, e.g., id.* at Background Section and § 4.02. It is a 509(a)(3) public charity. *See* PPHS Articles of Incorporation at IV(a).

⁹ *See* PPMH Lease at §§ 3.05(a); 4.02 (a), (c), (e), (f), (g), (h); 4.03; 4.12

¹⁰ *See* O.C.G.A. §§ 31-7-75; 31-7-77 (providing guidance regarding rates and charges of public hospitals).

¹¹ 317 U.S. 341 (1943).

¹² *Id.* at 350-51.

¹³ *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 39 (1985).

¹⁴ *See FTC v. Hospital Board of Directors of Lee County*, 38 F.3d 1184 (11th Cir. 1994).

¹⁵ *See Crosby v. Hosp. Auth. of Valdosta & Lowndes County*, 93 F.3d 1515, 1525 (11th Cir. 1996).

Authorities Law with the requisite powers “to exercise public and essential governmental functions and shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of” Georgia law.¹⁶ As authorized by the Hospital Authorities Law, the Authority was jointly activated by the City of Albany and Dougherty County in 1941 for the purpose of furthering the care offered through PPMH pursuant to the Hospital Authorities Law.¹⁷

The second part of the analysis requires an examination of whether the Authority acted within its statutory authority when it entered into the PMC acquisition agreement with Palmyra. This part of the analysis is clearly demonstrated. The 1941 Georgia Hospital Authorities Law authorized hospital authorities “to acquire, lease, and operate hospital projects.”¹⁸ The 1964 law specified that this power to acquire hospital projects could be exercised “by purchase, lease or otherwise.”¹⁹ This power has been preserved in every subsequent iteration of the Hospital Authorities Law.²⁰ Notably, the Georgia General Assembly also has authorized hospital authorities to “form and operate, either directly or indirectly, one or more networks of hospitals, physicians, and other health care providers and to arrange for the provision of health care services through such networks.”²¹ In light of these expansive grants of authority, there can be no question that the Authority possesses the power to acquire the Palmyra hospital. Furthermore, in *Lee County*, the FTC recognized this point and conceded that a hospital authority making an acquisition per an enabling statute similar to that of Georgia’s was properly authorized by the State. The Court agreed.²²

The final part of the analysis asks if any anticompetitive effects of the acquisition were foreseeable by the State when the Hospital Authorities Law was promulgated, or put another way, are the actions of the Authority subject to a clearly articulated state policy that displaces competition. Again, the test is met. To express a state policy to displace competition, a legislature need not explicitly state that anticompetitive effects were expected. Rather, the question is whether the suppression of competition is “the foreseeable result of what the statute authorizes.”²³ For example, the Supreme Court found state action immunity applied in *Hallie* even though “the legislature [had] not include[d] language anticipating – and condoning – anticompetitive conduct.”²⁴

¹⁶ See O.C.G.A. §§ 31-7-75.

¹⁷ See Authority Transaction Resolutions at 1. We note that the FTC previously did not contest the assertion that hospital authorities with enabling statutes and powers similar to those in Georgia are state government actors. See *Lee County*, 38 F.3d at 1188.

¹⁸ 1941 Ga. Laws at 243-44, § 5.

¹⁹ 1964 Ga. Laws at 601, § 88-1805.

²⁰ See 1969 Ga. Laws at 104, § 881805(d); O.C.G.A. § 31-7-75(4).

²¹ O.C.G.A. § 31-7-75(27).

²² See *Lee County*, 38 F.3d at 1188.

²³ *City of Columbia v. Omni Outdoor Advertising, Inc.*, 499 U.S. 365, 373 (1991).

²⁴ *Askew v. DCH Reg'l Health Care Auth.*, 995 F.2d 1033, 1041 (11th Cir. 1993) (citing *Hallie*, 471 U.S. at 44 n.7).

The Eleventh Circuit followed the Supreme Court by making it clear that the foreseeability test does not require enabling statutes to have explicit language stating that competition has been displaced. No detailed description of the policy is needed, only that “the anticompetitive conduct be reasonably anticipated, rather than the inevitable, ordinary, or routine outcome of a statute.”²⁵

Applying these standards to Georgia’s hospital authorities’ power to acquire, the test is met. As noted above, the Georgia Hospital Authorities Law specifically empowers the Authority to acquire hospitals.²⁶ As further evidence, as mentioned above, the Authority is statutorily permitted to create “networks of hospitals.”²⁷ In *Lee County*, the Eleventh Circuit held that Florida’s legislature, when enacting and amending its hospital authority enabling statute, with language and granted powers very similar to that of Georgia, foresaw that the creation of hospital authorities with the power to acquire other hospitals would necessarily increase market share in an anticompetitive manner and therefore the displacement of competition was reasonably foreseeable.²⁸ The same is true here, especially when the creation of hospital networks is also authorized.

Furthermore, here, the Authority’s projects shall only be operated on a non-profit basis, a requirement that highlights that the General Assembly sought to guarantee that hospital authorities could fulfill their mission of promoting the public health without regard to competitive forces or the existence of competitors.²⁹ From a policy perspective, competition is favored because self-interested parties are motivated by competition to lower cost or expand output to increase their personal profits. When the legislature removes the profit motive, allows the Authority to “acquire by purchase, lease, or otherwise and to operate projects,” and mandates post-closing that any lease lower costs and expand output to “promote the public health needs of the community,” the legislature has clearly articulated a policy to displace normal competition with its own public health agenda.³⁰

Thus, these powers of acquisition and limitations on the Authority’s operations establish that the Georgia General Assembly has clearly articulated a policy to displace competition with respect to the Authority’s acquisition of hospitals.

²⁵ *Lee County*, 38 F.3d at 1190-91; see also *Crosby*, 93 F.3d at 1532; see also generally *Bankers Ins. Co. v. Fla. Residential Prop. & Cas. Underwriting Ass’n*, 137 F.3d 1293, 1298 (11th Cir. 1998).

²⁶ See O.C.G.A. §§ 31-7-400; 31-7-75(4).

²⁷ *Id.* § 31-7-75(27)

²⁸ See *Crosby* 93 F.3d at 1534, citing *Lee County*, 38 F.3d at 1192; see generally *Crosby* 93 F.3d at 1534 (the court finds that peer review activities are clearly contemplated by the Georgia Hospital Authorities Law based on statutory language regarding “the appropriate utilization of hospital facilities”).

²⁹ See O.C.G.A. §31-7-77.

³⁰ *Id.* §§ 31-7-75(4); 31-7-75(7).

There is no other basis for a cause of action by the FTC.

We believe the inquiry need go no further. Aside from the acquisition, there is no conduct that could give rise to an antitrust claim. Once the Authority has made the acquisition, antitrust laws do not prohibit it from overseeing or otherwise managing its assets. If the Authority chooses to lease its assets to a single entity, that is permissible under the antitrust laws.³¹ Where there is a single owner of two assets, as there will be after the proposed acquisition, it makes no economic or legal difference if that entity has one lessee, two lessees, twenty lessees, a management agreement, operates the asset itself, or any other manner of operating its assets. Beyond the hypothetical theories of harm that might be applicable to the acquisition itself, there is no theory of harm that applies to any other conduct here.

Nevertheless, we understand that the Commission may wish to understand how state action immunity might apply to other conduct. Therefore, below we discuss how state action immunity would also apply to the Authority's leasing of its assets.

The Authority's grant of a lease to PPMH is also subject to state action immunity.

As discussed earlier, the formulation for state action immunity applicable to political subdivisions is described in *Parker* and *Hallie* and the specific Eleventh Circuit test is explained in *Lee County* and *Crosby*. Under all the aforementioned cases, the Authority is clearly an instrumentality or political subdivision of the State of Georgia, meeting the first test.

The second part of the analysis requires an examination of whether the Authority acts within its statutory authority when it leases the Palmyra hospital to PPMH. This second part of the analysis is also clearly met. Georgia has specifically authorized the Authority to lease hospitals. The Hospital Authorities Law empowers the Authority "to lease to others for any number of years up to a maximum of forty years, any lands, buildings, structures, or facilities constituting all or any part of any existing or hereafter established project."³² The plain language of the statute leaves no alternative interpretation.

The final part of the analysis asks if the leasing action of the Authority is subject to a clearly articulated state policy that displaces competition. Again, the test is met.

First, there was a clearly articulated state policy to allow the Authority to displace competition by acquisition, and the authority to lease the combined hospitals, granted by the State subsequently when the State knew it had granted the power to acquire hospitals, must be viewed in that context. Consider the *Lee County* case. The Eleventh Circuit found that displacement of competition from the acquisition was foreseeable. Suppose the Lee County Authority, upon consummation of the merger, had then leased the hospitals to a private operator. Would the foreseen displacement of competition somehow disappear? There, as here, any displacement of competition occurred at the time of the acquisition and the subsequent lease would not have a further effect on competition. But even if the lease is viewed as

³¹ See generally *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984) (holding that "the coordinated activity of a parent and its wholly-owned subsidiary must be viewed as that of a single entity"); see also, e.g., *Bankers Ins.*, 137 F.3d at 1295-96 (same).

³² O.C.G.A. § 31-7-75(6).

somehow giving rise to a separate and different competitive concern, it is impossible to ignore the holding of the Eleventh Circuit that the State of Florida had foreseen the displacement of competition resulting from the common ownership and operation of the hospitals. Any decision by the Authority to subsequently lease those hospitals to a private operator must be viewed in that light.

Second, when the Authority leases, public notice must be given, and a public hearing held, at which hearing, among other matters, the Authority must discuss “the reasonably foreseeable adverse and beneficial effects” of the proposed lease upon health care in the service area affected by the lease.³³ The statute authorizes the Authority to lease any project for operation by others for up to forty years, provided that “the authority shall have first determined that such lease will promote the public health needs of the community by making additional facilities available in the community or by lowering the cost of health care in the community and that the authority shall have retained sufficient control over any project so leased so as to ensure that the lessee will not in any event obtain more than a reasonable rate of return on its investment in the project, which . . . shall not contravene in any way the mandate . . . that no authority shall operate or construct any project for profit.”³⁴ Lastly, the Authority must determine that the lease will promote the public health needs of the community because it will lead to either an increase in the supply of facilities or a decrease in the cost of health care.³⁵ These statutory requirements clearly articulate a policy to displace competition.

Similar to the displacement of competition in an acquisition context, the policy implication of the Hospital Authorities Law is applicable to leases. When the legislature removes the profit motive and mandates that costs are to be lowered and output expanded to instead “promote the public health needs of the community,” the legislature has clearly articulated a policy to displace normal competition with its own public health agenda.³⁶

Moreover, several Circuits have held that a grant of authority to a political subdivision to enter into leases with private parties itself establishes a clearly articulated state policy to displace competition with respect to such leases.³⁷

PPMH, as lessee, would also have state action immunity.

The Supreme Court has held that state action immunity can apply to a private party that has particular interactions with a state actor. Where there is a risk that the private party’s interest may diverge from

³³ O.C.G.A. § 31-7-74(3)(a)(1).

³⁴ *Id.* § 31-7-75(7).

³⁵ *See id.*

³⁶ *See id.*

³⁷ *See Cine 42nd Street Theater Corp. v. The Nederlander Org., Inc.*, 790 F.2d 1032, 1044-46 (2d Cir. 1986); *Montauk-Caribbean Airways, Inc. v. Hope*, 784 F.2d 91, 95-96 (2d Cir. 1986), *cert. denied*, 479 U.S. 872 (1986), *reh’g denied*, 483 U.S. 1034 (1987) *Pueblo Aircraft Serv., Inc. v. City of Pueblo*, 679 F.2d 805, 808-11 (10th Cir. 1982), *cert. denied*, 459 U.S. 1126 (1983).

the State's, *Midcal* holds that a second prong, active supervision, applies.³⁸ However, as stated in *Hallie*, *Midcal*'s active supervision prong only applies because of the risk that the interest of the private party may diverge from that of the state.³⁹ There is no such risk here.

As the Court recognized in *Hallie*, the second prong need not always be applied, and it should not be applied in this instance. A number of courts of appeals, including the Eleventh Circuit, have held that state action immunity attaches to a private party's participation in a transaction with the State where it demonstrates that the State has clearly articulated a policy to displace competition and that the State or a political subdivision is the effective decision maker with respect to the transaction.⁴⁰ As detailed below, the activity surrounding the subsequent lease of the Palmyra hospital would meet this standard.

The ultimate decision on operating the hospitals by entering the lease lies with the Authority. Therefore, under *Crosby*, PPMH is entitled to state action immunity as the lessee. In *Crosby*, which also dealt with a Georgia Hospital Authority, the Eleventh Circuit reasoned that because the ultimate decision on peer review matters rested with the hospital authority, "the 'active state supervision' requirement is unnecessary."⁴¹ Citing *Hallie*, the court examined "whether the nexus between the State and the actions of [the other party] is sufficiently strong that there is little real danger that [the other party is] involved in a private [illegal] arrangement." *Id.* (emphasis in original) Like the conduct of the Hospital Authority in *Crosby*, the Albany-Dougherty Hospital Authority conducts a meaningful review of the lease.⁴² The statute authorizes the Authority to lease any project for operation by others for up to forty years, but only (a) provided that the Authority shall have first determined that such lease will promote the public health needs of the community by making additional facilities available in the community or by lowering the cost of health care in the community and (b) further provided that the Authority shall have retained sufficient control over any project so leased so as to ensure that the lessee will not in any event obtain more than a reasonable rate of return on its investment, which reasonable rate of return shall not contravene in any way the mandate that the Authority shall not operate or construct any project for profit.⁴³ Before the Authority can enter such a lease, it is subject to a 60-day public notice period, and a public hearing at which the lease is gone through in detail. Thereafter follows another 60 day period before the lease may become effective.⁴⁴ Because the Authority conducts this detailed review before

³⁸ See *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980); *Hallie*, 471 U.S. at 46.

³⁹ See *Hallie*, 471 U.S. at 47.

⁴⁰ See, e.g., *Crosby*, 93 F.3d 1515; *Mich. Paytel Joint Venture v. City of Detroit*, 287 F.3d 27, 536-39 (6th Cir. 2002); *Zimomra v. Alamo Rent-A-Car, Inc.*, 111 F.3d 1495, 1499-1501 (10th Cir. 1997); *Elec. Inspectors, Inc. v. Vill. of E. Hills*, 320 F.3d 110, 126 (2d Cir. 2002); *Charley's Taxi Radio Dispatch Corp. v. SIDA of Hawaii, Inc.*, 810 F.2d 869, 878-9 (9th Cir. 1987).

⁴¹ *Crosby*, 93 F.3d at 1530.

⁴² See *id.* at 1531.

⁴³ See O.C.G.A. § 31-7-75(7). Note that the lease entered into with PPMH is highly detailed, running over 100 pages, with many prescribed and proscribed actions, as more fully described in my letter to you of January 20, 2011 that accompanied the lease.

⁴⁴ See *id.* § 31-7-74.3(a).

entering a lease, and because the Authority is the owner of the hospital, the Authority is the effective decision maker on whether and how to grant a lease.⁴⁵

Moreover, there is little risk that the private party's interests here could diverge from the State's. PPMH is essentially the operating arm of the Authority. Indeed, Georgia courts have recognized that the distinction between the Authority and PPMH is a fine one at best, and have held PPMH subject to Georgia's open meetings laws.⁴⁶

In addition, the Authority is directly vested in the success of PPHS and PPMH. In the lease, PPMH assumes responsibility for the obligations of the Authority, then and in the future.⁴⁷ The rent due to the Authority by PPMH is \$1 per year.⁴⁸ The Authority has the sole reversionary interest in PPMH. *See* PPMH Lease Background Section. All projects of PPMH must be operated on a non-profit basis, as the statute requires of the Authority, and its rates and charges must be set "only in amounts sufficient" to cover the four statutorily enumerated categories of expenses Georgia law authorizes the Authority to consider.⁴⁹ PPMH is required to fulfill the mission of the Authority. Specifically, PPMH must operate for the benefit of the general public, provide for the health care needs of the community, provide indigent care for the community, provide emergency care regardless of an individual's ability to pay, ensure the hospital qualifies for Medicare/Medicaid funding, and assume responsibility for all of the Authority's required Medicare/Medicaid filings.⁵⁰

In fact, if the interests of PPMH ever would diverge from that of the Authority and the State, the lease would terminate, the assets would revert to the Authority, and PPMH would cease to exist.⁵¹ Under the PPMH Lease, its operating arm stands in for the Authority when it comes to compliance with Georgia law, including the section of Georgia law regulating the way in which public hospitals may price their services, O.C.G.A. § 31-7-77.⁵² In the event that the Authority ever determines PPMH is in non-compliance with Georgia law, it has the unilateral authority to terminate the lease.⁵³ If that were to

⁴⁵ *See Michigan Paytel*, 287 F.3d at 536-39; *Zimomra*, 111 F.3d at 1499-1501.

⁴⁶ *See Albany Herald Publishing Co. and WALB-TV, Inc. v. Phoebe Putney Health Systems, Inc. et al.*, No. 95-CV-2424 (Dougherty County Sup. Ct. Jan. 23, 1998) (stipulated final judgment) ("Under current Georgia case law, Phoebe Putney Memorial Hospital, Inc., a private nonprofit corporation is . . . a private vehicle through which the Hospital Authority of Albany/Dougherty County carries out its official responsibilities.").

⁴⁷ *See, e.g.*, PPMH Lease at §§ 3.05, 3.07.

⁴⁸ *See id.* at § 3.05(a)(i).

⁴⁹ *See* O.C.G.A. § 31-7-77.

⁵⁰ *See, e.g.*, PPMH Lease §§ 4.02 (a), (c), (e), (f), (g), (h); 4.12.

⁵¹ *See* PPMH Lease at Background and §§ 4.06, 9.01, 9.02, and 9.03.

⁵² *See* Lease § 4.03(a)-(b).

⁵³ *See* PPMH Lease §§ 4.06; 9.01, 9.02, 9.03.

occur, PPMH “and its parent affiliate and other affiliates shall thereafter be dissolved.”⁵⁴ In other words, the lease provides that the Authority “retains such public control of the Hospital as is contemplated by the Hospital Authorities Law.”⁵⁵

Therefore, as stressed by *Hallie* and *Crosby*, the active supervision requirement need not apply, because “there is little real danger that [the actor] is involved in a *private* [illegal activity.]”⁵⁶ Thus, the state action immunity afforded to the Authority also extends to PPMH.

Similarly, several Circuits have held that where a state actor enters a contract with a private actor and the state actor is afforded state action immunity, so must the private actor.⁵⁷ These cases recognize that state action immunity must logically extend to the private party contracting with the state entity because the private party is a necessary counterpart to the government’s decision.⁵⁸ Thus, as the Ninth Circuit stated in *Charley’s Taxi*: “We earlier determined that the DOT had *Parker* immunity to grant SIDA an exclusive franchise . . . *Parker* immunity exempts state action, not merely state actors. Because the monopoly granted to SIDA was shielded by the *Parker* doctrine, SIDA cannot be held liable for possessing that monopoly. To hold otherwise would allow the *Parker* doctrine to be circumvented by artful pleading.”⁵⁹ Therefore, for this reason as well, PPMH as the lessee in this instance would be entitled to state action immunity.

While not necessary to prove, there is active supervision by the Authority.

Because there can be no cause of action regarding the lease, a unilateral action, and because the risk that the interests of PPMH would ever diverge from that of the Authority is infinitesimal, no further analysis is necessary. However, for the sake of fully addressing FTC concerns, we turn to a review of the elements that constitute the Authority’s supervision of PPMH. As detailed below, the level of oversight by the Authority and the interactions between the Authority and PPMH are more than sufficient to meet the active supervision test, as described by various courts but also as contemplated by the FTC State Action Task Force.

The Authority actively supervises PPMH when it comes to decisions ranging from the routine (setting prices and rates) to the extra-ordinary (issuing bonds), as posited in the FTC State Action Task Force report. According to the FTC State Action Task Force’s contemplation of active supervision, PPMH should be required to demonstrate that the Authority ascertains the relevant facts, examines the

⁵⁴ PPMH Lease, Background Section.

⁵⁵ *Id.*

⁵⁶ *Crosby*, 93 F.3d at 1530 (emphasis in original); see also *Hallie*, 471 U.S. at 47.

⁵⁷ See, e.g., *Michigan Paytel*, 287 F.3d at 536-39; *Zimomra*, 111 F.3d at 1499-1501.

⁵⁸ See, e.g., *Charley’s Taxi*, 810 F.2d at 878-79; *Cine*, 790 F.2d at 1048; *Zimomra*, 111 F.3d at 1500; *Elec. Inspectors*, 320 F.3d at 126; *Wheelabrator*, 155 F.3d at 74.

⁵⁹ *Id.* at 878.

substantive merits of PPMH action, assesses whether the PPMH actions comport with the underlying statutory authority established by the Georgia legislature, and makes rulings in a way sufficient to establish the challenged conduct is a product of deliberate state intervention rather than private choice.⁶⁰ Specifically, the Report lists three procedural elements that may be used to determine if active supervision is present.

The first element is whether there is an adequate factual record, including notice and an opportunity to be heard. As demonstrated by the meeting materials of the Authority already provided to you, the Authority Board meets quarterly in open session.⁶¹ Furthermore, like the Authority, and specifically because it is the vehicle through which the Authority carries out its official responsibilities, PPMH is subject to the Georgia "Sunshine Laws," the state laws requiring "open meetings / open records" of state agencies and authorities.

The second element looks to determine if a written decision on the merits has been made. Again, the Authority Board meeting materials, including minutes, describe the Authority's oversight of its hospitals and, through the various types of reports it requires, provides context and rationale as to what the Authority values and how it applies those values to the hospital operations.

The third element contemplated by the FTC task force is whether there is a specific assessment, both qualitative and quantitative, of how private action comports with the substantive standards established by the state legislature. The Georgia legislature established hospital authorities in order to provide for proper medical care for the indigent. This policy is found throughout the Georgia Hospital Authorities Law. In support of that policy, the Authority requires and receives numerous reports from PPMH that detail, both in quantitative and qualitative terms, how medical care is being provided for the indigent in Dougherty County. For example, in accordance with state statute, the Authority requires an annual Community Benefit Report from PPMH that the Authority then uses for its own such report to be provided to the State.⁶²

Most importantly, the following rate setting, pricing, and cost factors are reviewed:

- PPMH must attest to its compliance with O.C.G.A. §31-7-77, which requires rates and charges be set "only in amounts sufficient, together with all other funds of the authority" to service its debt, provide for maintenance and operation of the hospital, to create a reserve that can cover debt service for one year, and to create a reserve for improvement of its facilities or services.
- In the case of PPMH, the section of the report dealing with its rates is prepared by an outside consultant from time to time and compares its rates and charges with those of other Georgia

⁶⁰ See FTC State Action Task Force Report at 53-54.

⁶¹ Executive sessions, not open to the public, take place when there is a need to consider a limited list of topics, including discussion of privileged material or discussion related to competitively sensitive information.

⁶² See O.C.G.A. § 31-7-90; see also 2008 Audited Financial Statements at 29-41 (2008 Community Benefit Report); 2009 Audited Financial Statements at 31-44 (2009 Community Benefit Report); 2010 Audited Financial Statements at 38-51 (2010 Community Benefit Report).

hospitals and hospitals nationally.⁶³ PPMH's rates and fees have always been near the median in the state. However, a determination that PPMH failed to comply with §31-7-77 would be a material breach of the lease that could lead to remediation or even termination.

- The need to make additional facilities and care available in the community or lower the cost of health care in the community is included.
- An analysis of the cost and extent of indigent and charity care PPMH provided is reviewed.

In addition, there are other factors reviewed relevant to hospital performance including:

- Activities addressing the unmet health needs of the public are a part of the report.
- Also, a section on PPMH's participation in the Medicare and Medicaid programs is included.

The following are further examples of the supervisory and management roles that the Authority plays with respect to PPMH.

- As noted above, there are quarterly meetings of the Authority in which PPHS management participates. The issues the Authority considers in those meetings vary depending on the needs of PPHS, PPMH, and ultimately the community, at any given time. Among the issues, both notable and commonplace, in which the Authority has had documented recent involvement:
 - *This transaction:* As noted, the Authority approved acquisition of the Palmyra hospital at its December 21, 2010 meeting. However, prior to that meeting, the Authority Chair and Vice-Chair, along with the Chair of PPMH and in-house counsel, met individually with each Authority Board to carefully consider the proposed acquisition of the Palmyra hospital in detail.
 - *PPHS Strategy:* From time to time, PPHS management will present to the Authority information regarding the business strategy of the hospital. One such presentation occurred during the closed meeting on May 14, 2009. Among other topics discussed during that meeting included how "Growth is an Essential Strategy for the Authority of Albany Dougherty County," financial results, the importance of specific third party payers as a percentage of the Hospital's gross revenues, indigent care, the master facility plan, expanded market opportunities in secondary and tertiary service areas, and requested lease modifications.
 - *Obstetrics Certificate of Need:* As noted above, Georgia law requires a Certificate of Need issued by the state for all new hospital programs. The Authority meeting minutes from the November 5, 2009 meeting reflect discussion of whether the Authority should appeal a decision to grant a certificate for obstetrics care to PMC. The discussion, as reflected in the minutes,

⁶³ See, e.g., Procedure Pricing Recommendations, Cleverly + Associates, July 3, 2007; Procedure Pricing Recommendations, Cleverly + Associates, June 27, 2008; Pricing Defensibility, Cleverly + Associates, June 23, 2008; Procedure Pricing Recommendations, Cleverly + Associates, Nov. 11, 2009.

included input from a retired obstetrician who serves on the Authority Board regarding why the grant of this certificate may not be in the best medical interests of patients in the community. Ultimately the Authority determined it would support PPMH should it decide to appeal this decision.

- *Sumter County*: The Second Amendment to the PPMH Lease permits PPHS to enter into leases or other agreements with other hospital authorities organized under the Georgia Hospital Authorities Law in other jurisdictions. The Authority meeting minutes from the May 14, 2009 meeting reflect the Authority's supervision of one such transaction, involving Sumter County Hospital.
- *Other Periodic Updates*: From time to time, management of PPHS will update the Authority on current events in the hospital system. For example, the CEO of PPHS gave a presentation on current building and renovation projects during the February 18, 2010 Authority meeting. During that same meeting, the Executive Director of the Phoebe Foundation updated the Authority regarding Willson Hospice House, presented the results of the current giving campaign, and offered to have the Authority Board tour the facility.
- *Facility Tours*: Perhaps the most frequent, if sometimes informal, way in which Authority Board members actively supervise the activities of the hospital is through tours of the facilities. Informal tours often occur when the Authority Board members come to the Phoebe campus for meetings. Authority Board members have the right to go anywhere in the Hospital, except where patient care may be compromised, and they often exercise this right. Formal facility tours also occur from time to time. For example, a guided tour of the Willson Hospice House occurred immediately following the June 17, 2010 Authority Board meeting, as reflected in that meeting's minutes.
- The lease gives the Authority significant involvement and the ability to take corrective measures in the course of its supervision duties, including requiring performance of PPMH's obligations at its expense, termination, repossession without termination, or seeking other legal remedies including receivership and injunctive relief.⁶⁴ The basis for these corrective measure is derived from state statute. The lease agreement between the Authority and PPMH explicitly states that "the restructuring plan adopted by the Transferor also retains such public control of the Hospital as is contemplated by the Hospital Authorities Law."⁶⁵
- Given that PPMH is required to make all payments with respect to bonds and other outstanding obligations of the Authority as noted above, the Authority closely monitors the financial state of the Hospital and Health System.⁶⁶

⁶⁴ See PPMH Lease at §§ 4.06; 9.01, 9.02, 9.03, 9.05.

⁶⁵ See PPMH Lease at Background Section.

⁶⁶ See PPMH Lease at §§ 3.05; 4.02(e) (detailing PPMH's responsibilities of meeting bond and other Authority obligations).

- State law requires PPMH to provide operating and capital budgets to the Authority in advance so there is ample time to review and comment: within 30 days after adoption for the fiscal year yet to commence, or any other fiscal reporting period.⁶⁷
- Within 90 days of the close of any fiscal year, PPMH must provide the Authority its complete and detailed financial statements, including a balance sheet, statements of operations, changes in net assets, and statements of cash flow.⁶⁸ The lessee is subject to annual audits.
- The Authority's bond documents include provisions whereby the Authority is to be notified in the event of a default, the loss of tax-exempt status for bond interest, or the bonds being classified as "arbitrage."⁶⁹
- The Authority's meeting minutes reflect discussions related to the financial state of the hospital as well as the Authority's bond obligations, including restructuring alternatives for the Authority's bonds.⁷⁰
- Every three years, PPMH provides a report to the Authority on the unmet health needs of the community to enable the Authority to plan to address those needs.⁷¹
- As noted above, PPMH also provides an annual Community Benefit Report to the Authority.⁷²
- At least one member of the Authority board must serve as a full voting member on PPMH's governing board.⁷³

⁶⁷ See O.C.G.A. § 31-7-90.

⁶⁸ See O.C.G.A. § 31-7-74.3(b)(2); § 31-7-91; *see also* PPMH Lease § 4.20.

⁶⁹ See, e.g., Hospital Authority of Albany-Dougherty County, Georgia and U.S. Bank National Association, as Trustee, Indenture of Trust, Dated as of July 1, 2010 at § 9.12. The annual financial reports also include bond repayment information. See, e.g., 2010 Audited Financial Statement at 2, 17, 19-21.

⁷⁰ See, e.g., Authority Meeting Minutes of June 17, 2010 at 2 (discussion related to Authority issuing \$99,000,000 in new bonds and approval of resolution regarding same); February 18, 2010 at 2 (presentation, review and approval of annual audit and motion to forward same to Dougherty County Commission); August 13, 2009 at 2 (finance report by PPMH CFO); May 14, 2009 at 1 (presentation, review, and approval of FY 2007-2008 audit); August 14, 2008 at 1 and accompanying presentation (discussion of bond re-issuance and restructuring alternatives).

⁷¹ See O.C.G.A. §§ 31-7-5(22) and 31-7-76(d)(4).

⁷² See 2008 Audited Financial Statements at 29-41 (2008 Community Benefit Report); 2009 Audited Financial Statements at 31-44 (2009 Community Benefit Report); 2010 Audited Financial Statements at 38-51 (2010 Community Benefit Report).

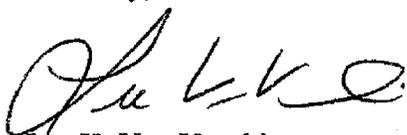
⁷³ See PPMH Articles of Incorporation at Article VII.

The above list of examples demonstrates the active role of the Authority in making deliberate decisions based on a full accounting of relevant facts.

* * *

The Authority's acquisition of the Palmyra hospital and its subsequent lease are subject to state action immunity. The Authority is a political subdivision with statutory authority to make the acquisition and courts have found displacement of competition to have been foreseeable in circumstances virtually identical to those present here. The grant of a lease by the Authority to PPMH is also an action by and within the statutory authority of the Authority, and courts have found displacement of competition to have been foreseeable in circumstances that are impossible to distinguish from those present here. The acquisition of the Palmyra hospital and its subsequent lease are subject to state action immunity, and no active supervision analysis is necessary. However, the actions of PPMH under the lease are subject to the oversight of the Authority to a degree that meets the standard for active state supervision. Therefore, we believe that the FTC investigation should be closed without further action.

Sincerely,



Lee K. Van Voorhis

cc: Robert J. Baudino

EXHIBIT F



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV

Joseph Brownman
Attorney

Direct Dial
202-326-2605

E-Mail
jbrownman@ftc.gov

Fax
202-326-2286

February 3, 2011

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Lee K. Van Voorhis, Esq.
Weil, Gotshal & Manges
1300 Eye Street, NW
Washington, D. C. 20005
(lee.vanvoorhis@weil.com)

Robert J. Baudino, Jr., Esq.
Baudino Law Group, PLC
2600 Grand Avenue
Suite 300
Des Moines, Iowa 50312
(baudino@baudino.com)

Kevin J. Arquit, Esq.
Simpson Thatcher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017 - 3954
(karquit@stblaw.com)

Re: Phoebe Putney / Palmyra
FTC File No. 1110067

Dear Lee, Bob, and Kevin:

From press reports we have seen, the public apparently was informed on December 21, 2010, of the planned acquisition by the Hospital Authority of Albany-Dougherty County of

Palmyra Park Medical Center, Inc. from HCA, Inc. It was on that date that Mr. Joel Wernick, the CEO of Phoebe Putney Medical Center, Inc. held a press conference to announce the proposed transaction.

The Commission's Bureau of Competition began looking into the matter almost immediately. On December 29, the day that the Department of Justice cleared the investigation to the Commission, we informed Phoebe Putney by e-mail, and HCA and the Hospital Authority by Federal Express overnight delivery, of the fact that our Bureau had opened a non-public preliminary investigation of the proposed transaction.

In this correspondence with all three parties, we asked for information on all matters that we thought would be relevant in a preliminary investigation, and cautioned all not to conduct a general file search for the requested information. We also stipulated that if the search might create an undue burden on anyone that we should be contacted so that we could consider possible amendments to the request. We asked that fairly specific documents and pieces of information be produced on a voluntary basis, all of which would facilitate our recommendation to the Bureau whether the matter should be closed, or instead, whether a more complete or full phase investigation should proceed.

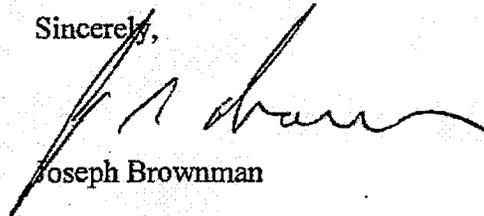
Over the last five weeks since the December 29th letter, we met with you at our offices (on January 14) and received, on a rolling basis, Phoebe Putney and Hospital Authority documents relating almost exclusively to the state action exemption defense. The only documents we received that relate to issues other than the state action exemption were provided to us by Phoebe Putney because, as attachments to state action documents, they needed to be provided for context. We have yet to receive documents or information from HCA.

As you know, the Hospital Authority responded to our request for additional time by committing that the transaction would not close at least until March 1, 2011. This was in response to our request, which we repeated in our letter of January 18 and on two more occasions in conversations with counsel for Phoebe Putney, that the transaction not close until at least 45 days after the parties had provided all of the requested documents and information. Always we were told that you wanted us to look at the state action issue first because it was a potentially dispositive issue in your favor.

We are now less than four weeks away from the March 1st commitment, but are without information or documents from the parties other than state action material (and the few attachments). This morning, the Bureau of Competition determined to convert the investigation from preliminary to full phase. This was done for two reasons: First, the staff was not satisfied that the state action issues as you presented them to us and as we understand them (absent your twice-promised white paper) are so clearly weighed in your favor that this antitrust investigation should not proceed. Second, the proposed acquisition potentially involves a merger to monopoly that may significantly increase healthcare costs to residents in the greater Albany area.

If you are authorized to address a timing commitment in a way that takes into consideration the legitimate concerns of the Bureau, I welcome a return call. If you do call, you will find that we are prepared to respond to you in a manner that takes into account the legitimate interests of your clients as you take into account our concerns and need to protect the public interest.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Brownman", written over the word "Sincerely,".

Joseph Brownman

cc: James C. Egan, Jr., Esq.
Weil, Gotshal & Manges
1300 Eye Street, NW
Washington, D. C. 20005
(jim.egan@weil.com)

Aimee H. Goldstein, Esq.
Simpson Thatcher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017 - 3954
(agoldstein@stblaw.com)

Mark J. Horoschak, Esq.
Womble Carlyle Sandridge & Rice, PLLC
One Wells Fargo Center
Suite 3500
Charlotte, North Carolina 28202 - 6037
(mhoroschak@wcsr.com)

EXHIBIT G



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV

~
Joseph Brownman
Attorney

~
Direct Dial
202-326-2805

E-Mail
jbrownman@ftc.gov

~
Fax
202-326-2286

February 4, 2011

**VIA FEDERAL EXPRESS
ADVANCE PDF COPY VIA E-MAIL**

Lee K. Van Voorhis, Esq.
Weil, Gotshal & Manges
1300 Eye Street, NW
Washington, DC 20005
(lee.vanvoorhis@weil.com)

Kevin J. Arquit, Esq.
Simpson Thatcher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017 - 3954
(karquit@stblaw.com)

Re: Phoebe Putney / Palmyra
FTC File No. 111 0067

Dear Lee and Kevin:

Thank you for your calls to me yesterday. I am happy to respond to Lee's request that we specify the "key" documents and information that the Commission needs. I do so because I believe it is in our mutual interest to expedite the Commission's substantive antitrust analysis of your pending transaction. I must emphasize, however, that this continued informal approach does not compromise the Commission's discretion to issue a more comprehensive subpoena or civil investigative demand requiring the kind of production and investigation hearings that we typically seek in a hospital merger investigation.

We have structured the items in this request to apply separately, but also consistently, to (a) Phoebe Putney Health System, Inc. and Phoebe Putney Memorial Hospital, Inc. (collectively "Phoebe Putney") and (b) Palmyra Medical Center, Inc. and HCA, Inc. (collectively "Palmyra"). Our geographic area of interest is limited to Southwest Georgia. The specifications are as follows:¹

1. All documents relating to any aspect or part of the proposed transaction and acquisition, (including any closing date) involving Phoebe Putney, Phoebe North, Inc, the Hospital Authority of Albany - Dougherty County ("Hospital Authority"), Palmyra, Dougherty County, and any interim manager of Phoebe North.²
2. For the period January 1, 2006, all documents relating to any pending litigation or potential litigation between Phoebe Putney, or the Hospital Authority, with Palmyra, including copies of all pleadings.
3. For the period January 1, 2008, to the present, all documents relating to (a) competition between Phoebe Putney with Palmyra or any other hospital or facility, (b) competition between Palmyra with Phoebe Putney or any other hospital or facility, and (c) hospital competition in (i) the Southwest Georgia and (ii) the Albany area.
4. For the most recent 12-month period, the database that contains patient draw data, by postal zip code and specific type of service provided, for (a) Phoebe Putney and (b) Palmyra.³ (Please make arrangements with us for an appropriate IT

¹ To expedite matters we have not drafted the lengthy definitions or instructions that typically accompany a document request. Based upon your suggestion that we continue to proceed in an informal manner, we expect that the parties will honor the standard practices necessary to yield a comprehensive production. For example, we expect the parties to extend production to documents in the possession of any party affiliated with Phoebe Putney, such as Phoebe North, Inc., or with Palmyra, such as HCA. We also expect the parties will confirm that their production is complete by submitting the attached certification. Also, we reserve the right to conduct hearings of company personnel to determine the adequacy of the search and production.

² The terms "Phoebe Putney", the "Hospital Authority", and "Palmyra" include their domestic and foreign parents, predecessors, divisions, subdivisions, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents, and representatives. The terms subsidiary, affiliate, and joint venture refer to any entity as to which there is a 10 percent or more ownership or control between Phoebe Putney, the Hospital Authority, Palmyra, and the entity.

³ To protect patient privacy, mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). 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

person to discuss with us the Commission's need for the information to be produced in a form that we can read and use.)

5. For the period January 1, 2006, to the present, all documents relating to proposed or actual pricing policies, plans, strategies, and analyses of (a) Phoebe Putney and (b) Palmyra.
6. For the period January 1, 2006, to the present, all documents relating to Mr. William Cheverly and Cheverly + Associates.
7. For the period January 1, 2006, to the present, identify all health plans, commercial health insurers, health maintenance organizations, preferred provider plans, and self-insured employee health benefit plans that contract for hospital services with (a) Phoebe Putney and (b) Palmyra, and provide the total revenues (i) charged and (ii) received, from each health such entity for the five fiscal or calendar years for which such information is available, and (c) state the contract expiration date for each health plan or entity.
8. For the period January 1, 2006, to the present, all documents referring or relating to pricing and negotiation strategies for each plan or entity identified in response to Specification 7.
9. For the period January 1, 2006, to the present, all documents, prepared or in use since January 1, 2006, relating to communications by (a) Phoebe Putney or (b) Palmyra, with health plans, commercial health insurers, health maintenance organizations, preferred provider plans, and self-insured employee health benefit plans, regarding contract terms or proposed changes in reimbursement rates for hospital or other health care services.

During yesterday's call I again renewed our request that the parties give us a commitment not to close the transaction – still set for March 1, 2011 – until at least 45 days after we receive all of the information we are requesting. This is the same 45-day period that we originally noted in our request of December 29. Now that you have these “key” document specifications, I trust you will reconsider our oft-repeated 45-day request.

You have repeatedly told us that you want the Commission to deal first with the state action issue before you produce, or we examine, any of your materials relating to a competitive analysis. As I told you yesterday, we have indeed looked at all of your state action material as

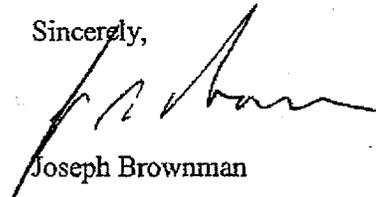
number or other state identification number or a foreign country equivalent, passport number, financial account numbers, credit or debit card numbers. SHI includes medical records or other individually identifiable health information. Substitute for the masked information a unique patient identifier 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, redact the PII or SHI but do not replace it with an alternate identifier.

they have been produced. But we cannot begin to look at matters of substance in this acquisition only after there is some internal resolution of the state action issue. We simply will not have enough time to examine the competitive effects of the transaction after the state action issue is fully addressed, especially if you continue to hold to the March 1st date.⁴

As to the possibility of conducting investigation hearings, we would strongly prefer to postpone any decision as to which party persons we might need to question until we receive the documents in today's request. We nevertheless want to give you advance notice that we may want to question, on the record at our Washington offices, (a) Mr. Joel Wernick, (b) Ms. Pat Sumner, (c) Mr. Mark Rader, (4) the person at HCA responsible for negotiating the proposed acquisition, and (e) a member of the Hospital Authority. In the interest of expediting this investigation, we will try to conduct any necessary hearings in about one week from the completion of your submission in response to today's request. Please also understand, however, that we may proceed with official requests for investigation hearings before the production should it become necessary for us to assess the need for litigation by March 1. So in addition to our need to see the "key" documents we hope you will also take into account our need for investigation hearings as you consider extending your transaction closing date.

As always, we remain ready on relatively short notice to meet with you to discuss any of these matters in more detail. I will also be more than happy to answer any questions you may have.

Sincerely,



Joseph Brownman

cc: James C. Egan, Jr., Esq.
Weil, Gotshal & Manges
1300 Eye Street, NW
Washington, D. C. 20005
(jim.egan@weil.com)

Aimee H. Goldstein, Esq.
Simpson Thatcher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017 - 3954
(agoldstein@stblaw.com)

⁴ By no reasonable standard can you contend that, given the lack of production on competition issues to date, there remains "plenty of time" for the Commission to complete its investigation and prepare for possible court proceedings by March 1, 2011.

Mark J. Horoschak, Esq.
Womble Carlyle Sandridge & Rice, PLLC
One Wells Fargo Center
Suite 3500
Charlotte, NC 28202 - 6037
(mhoroschak@wcsr.com)

Robert J. Baudino, Jr., Esq.
Baudino Law Group, PLC
2600 Grand Avenue
Suite 300
Des Moines, IA 50312
(baudino@baudino.com)

CERTIFICATION

This response to the letter request for documents and/or information of the Federal Trade Commission's Bureau of Competition dated February 4, 2011, was prepared and assembled under my supervision in accordance with the definitions and instructions contained in that request. The material provided is, to the best of my knowledge, true, correct, and complete and the documents submitted, to the best of my knowledge, is a full and complete response to the request for documents. Where copies rather than original documents have been submitted, the copies are true, correct, and complete. If the Commission uses such copies in any court or administrative proceeding, the Company will not object to the use by the Commission of such copies rather than the original documents.

TYPE OR PRINT NAME

TITLE

DATE

(Signature)

EXHIBIT H

1300 Eye Street NW, Suite 900
Washington, DC 20005-3314
+1 202 682 7000 tel
+1 202 857 0940 fax

Weil, Gotshal & Manges LLP

Lee K. Van Voorhis
+1 (202) 682-7272
lee.vanvoorhis@weil.com

February 22, 2011

CONFIDENTIAL

BY E-MAIL

Goldie Walker, Esq.
Federal Trade Commission
Washington, D.C. 20580

Re: Phoebe Putney/Palmyra, FTC File No. 1110067

Dear Goldie:

Thank you for the conversation on February 18, 2011 regarding documents and information that Phoebe Putney Health System, Inc. ("Phoebe Putney" or the "Hospital") has agreed to provide to the FTC in response to the February 14, 2011 subpoena and Civil Investigative Demand ("CID"). It remains the position of the Hospital Authority of Albany-Dougherty County (the "Authority") and Phoebe Putney that the transaction involving Palmyra Medical Center is immune from antitrust scrutiny under the state action doctrine, as detailed in my letter to Joe Brownman of February 4, 2011.

Nevertheless, as we have stated repeatedly and reiterated during our February 18 conversation, the Authority and Phoebe Putney have committed in good faith to provide the FTC with information to investigate this transaction. We believe we had reached an understanding to provide documents and information responsive to the February 4 letter from Joe Brownman instead of formal process and we began in good faith to gather those documents. However, less than a week after informing the FTC staff that we were proceeding on that course, and after we had also informed staff that we had collected responsive documents from custodians, we received the subpoena and CID.

We will provide you with non-privileged documents and information responsive to the subpoena and CID. However, as we have discussed, it is not physically or technically possible to comply with the subpoena and CID as written by February 28 given the volume of information requested, the nature of the information requested, and the extremely short time frame for compliance. To that end, we hope that the FTC is willing to work with us to narrow the amount of material sought, recognizing the desire of the FTC to study this transaction, but also recognizing that these requests will take hundreds of thousands of dollars and thousands of hours to comply with, which simply cannot be completed in the 14 calendar days (only 9 business days) the FTC has given us to comply.

Scope of search/custodians

As noted, in good faith reliance on Joe Brownman's February 4, 2011 letter, we collected documents before the FTC served the subpoena upon Phoebe Putney. We proposed nine individuals to you as our custodians for responsive documents under the subpoena. Specifically, we proposed searching:

1. Joel Wernick, President and CEO. We explained to you our understanding that Mr. Wernick is involved in all significant strategic decisions of the hospital, all significant interactions with the Authority, and was directly involved in the negotiations for the Palmyra transaction. Mr. Wernick will possess high-level strategy documents responsive to every specification of the subpoena, to the extent that such documents exist.
2. Kerry Loudermilk, Senior Vice President and Chief Financial Officer. We explained to you our understanding that Mr. Loudermilk supervises decisions regarding pricing and rates, supervises the negotiation of managed care contracts, and is involved in decisions regarding margins and costs, capital improvements financing, and costs and revenue per admission. See Specifications 2-3, 6, 8-9, 17. Mr. Loudermilk supervises all other aspects of the financial condition of Phoebe Putney. See Specification 2. In addition, Mr. Loudermilk is involved in significant strategic decisions of the hospital, and was involved in decisions regarding the transaction. See Specifications 6-7, 11-12, 18-21. We believe that Mr. Loudermilk should have substantially all of the high level strategy documents regarding pricing, rates, the negotiation of managed care contracts, commercial or operational relationships with physicians, and the financial condition of the Hospital, as well as the corresponding documents regarding the effect of competition on the same. Nevertheless, in the interest of providing the FTC with a more complete view on these issues and consistent with our desire to operate in good faith regarding this investigation, we have agreed to search three of Mr. Loudermilk's direct or indirect reports, Pat Sumner, Gail Carter, and Wendy Allen. See Nos. 5-7 below. Mr. Loudermilk reports to Mr. Wernick.
3. Joe Austin, Chief Operating Officer. Mr. Austin is supervising the efforts at planning for the integration of Palmyra's assets and personnel into the Authority and its operating arm, Phoebe Putney. See Specifications 18-21. In addition, we understand that Mr. Austin will possess plans for construction of new facilities or closing of existing facilities, to the extent that such documents exist. See Specifications 11-12. Mr. Austin was also involved in strategic decisions related to the transaction. See Specifications 18-21. Mr. Austin reports to Mr. Wernick.
4. Tom Sullivan, Senior Vice President for Strategy and Development. Our understanding is that Mr. Sullivan supervises the marketing efforts of Phoebe Putney and the development of strategic plans for Hospital programs. See Specifications 6-7. We understand that Mr. Sullivan will possess documents related to competition and strategic plans and presentations to management committees, boards, and/or the Authority. See *id.*; see also Specification 11. Mr. Sullivan reports to Mr. Wernick.
5. Pat Sumner, Executive Director of Managed Care. Our understanding is that Ms. Sumner is responsible for the negotiation of managed care contracts and will possess the corpus of documents called for by Specification 9 of the subpoena. Ms. Sumner reports to Mr. Loudermilk.
6. Gail Carter, Vice President of Revenue. Our understanding is that Ms. Carter supervises pricing and pricing strategies across the Hospital. We expect that Ms. Carter's files will contain, *inter alia*, documents relating to margins, costs, metrics of cost and revenue per admission, comparisons of costs and rates to other hospitals, and reports and/or communications from and between the Hospital and Mr. William Cleverley and/or Cleverley + Associates to the extent they exist. See Specifications 2-3, 6, 8, 17. Ms. Carter reports to Mr. Loudermilk.

7. Wendy Allen, Interim Director of Revenue Management. Our understanding is that Ms. Allen assists Ms. Carter with pricing and pricing strategies. See Specification 8. We expect that Ms. Allen's files will contain, *inter alia*, supporting data used to develop pricing and pricing strategies, including additional documents relating to margins, costs, metrics of cost and revenue per admission, comparisons of costs and rates to other hospitals, and reports and communications from and between the Hospital and Mr. William Cleverley and/or Cleverley + Associates to the extent they exist. See Specifications 2-3, 6, 8, 17. Ms. Allen reports to Ms. Carter.
8. Jackie Ryan, Assistant Vice President for Corporate Communications and Marketing Operations. Our understanding is that Ms. Ryan develops marketing and communications strategies for the hospital and is involved in the creation of strategic plans. See Specifications 6-7. We expect that Ms. Ryan's files will contain documents related to competition, including market share, patient origin and draw areas, Hospital strengths and weaknesses, attempts to gain or retain individual patents, and complaints. See Specification 6. See Specification 11. Ms. Ryan reports to Mr. Sullivan.
9. Annette Allen, Senior Executive Coordinator. We explained to you that Ms. Allen is the Executive Assistant to Mr. Wernick, and as such, will have many of his documents. She also assists in coordination of meetings of and the distribution of information to the Hospital Board of Directors as well as the Authority. See Specifications 2, 7, 15-16, 18-21. She is responsible for compiling the minutes of meetings of both supervisory boards. See Specifications 7, 15-16. Given the types of issues presented to these groups, as well as Mr. Wernick, she may possess material responsive to many specifications. Ms. Allen reports to Mr. Wernick.

Return Date

The subpoena and CID are on their faces similar to a Second Request, and in fact may request more information than the typical Second Request, which typically takes from 12 to 20 weeks or more to complete. Nevertheless, the FTC has requested compliance in 2 weeks. We are working as quickly as possible to provide as much information as possible, and while we do believe that we will be able to produce a significant percentage of the documents called for by the subpoena and some of the data and information requested by the CID on or before February 28, 2011, full compliance cannot be achieved, even if the modifications included in this letter are granted. Therefore, we requested an alternative return date of March 15, 2011 for the subpoena and CID, which will still require very significant resources and effort in order to produce the requested information. You stated that the FTC would take this under advisement.

Definition of "Company"

We requested that the definition of "Company" in both the subpoena and Civil Investigative Demand be narrowed to include only Phoebe Putney Memorial Hospital, Inc. As currently written, the subpoena and CID ask for information from every predecessor, division, subsidiary, joint venture, affiliation, partnership, etc., of Phoebe Putney Health System, Inc. Phoebe Putney Health System, Inc. is a network of hospitals, family medicine clinics, rehab facilities, auxiliary services, and medical education training facilities. Among those facilities is Phoebe Putney Memorial Hospital, but many other Phoebe Putney Health System, Inc. facilities are not relevant to the transaction under investigation. As you are aware,

Phoebe Putney Memorial Hospital is in Albany, GA, as is the target, Palmyra Medical Center. Narrowing the definition of Company to cover just Phoebe Putney Memorial Hospital would significantly limit the necessary scope of compliance to the relevant facility. You stated that the FTC would take this under advisement.

We continue to study both the subpoena and CID. While we have not determined all of the modifications we may need in order to comply with the subpoena and CID in a timely and reasonable manner, below is a preliminary list of modifications and/or agreements we would propose for the subpoena. We have not yet discussed with you the proposed modifications below, but look forward to doing so on our call Wednesday or at another time at your earliest convenience.

Specification 1(a): Organizational charts responsive to this specification have already been produced.

Specification 1(b): Phoebe Putney believes that this specification is not material to the FTC's analysis and proposes to defer responding to this specification at this time.

Specification 2: To the extent that such documents exist, Phoebe Putney will produce ordinary course non-privileged documents responsive to this specification that are located in the files of the custodians detailed above from January 1, 2008 to the present.

Specification 3: To the extent that such documents exist, Phoebe Putney will produce ordinary course non-privileged documents responsive to this specification that are located in the files of the custodians detailed above from January 1, 2008 to the present.

Specification 4: To the extent that such documents exist, Phoebe Putney will produce ordinary course non-privileged documents responsive to this specification that are located in the files of the custodians detailed above from January 1, 2008 to the present.

Specification 5: Phoebe Putney proposes to provide the actual CON applications and oppositions from January 1, 2008 to the present, as opposed to "all documents."

Specification 6: To the extent that such documents exist, Phoebe Putney will produce ordinary course non-privileged documents responsive to this specification that are located in the files of the custodians detailed above from January 1, 2008 to the present.

Specification 7: To the extent that such documents exist, Phoebe Putney will produce ordinary course non-privileged documents responsive to this specification that are located in the files of the custodians detailed above from January 1, 2008 to the present.

Specification 8: To the extent that such documents exist, Phoebe Putney will produce ordinary course non-privileged documents responsive to this specification that are located in the files of the custodians detailed above from January 1, 2008 to the present.

Specification 9: To the extent that such documents exist, Phoebe Putney will produce ordinary course documents responsive to this specification that are located in the files of custodians from January 1, 2006 to the present. It should be noted that, before the issuance of the subpoena, Phoebe Putney already collected material in good faith reliance on Joe Brownman's letter of February 4, 2011, which requested

documents similar to those called for by Specification 9 to be produced from January 1, 2006 to the present. Therefore, Phoebe Putney proposes to defer responding to the period from 2004-2006 at this time.

Specification 10: To the extent that such documents exist, Phoebe Putney will produce ordinary course non-privileged documents responsive to this specification that are located in the files of the custodians detailed above from January 1, 2008 to the present.

Specification 11: To the extent that such documents exist, Phoebe Putney will produce ordinary course non-privileged documents responsive to this specification that are located in the files of the custodians detailed above from January 1, 2008 to the present.

Specification 12: To the extent that such documents exist, Phoebe Putney will produce ordinary course non-privileged documents responsive to this specification that are located in the files of the custodians detailed above from January 1, 2008 to the present.

Specification 13: Phoebe Putney proposes to provide the pleadings for litigation between Phoebe Putney and HCA and/or Palmyra, as opposed to "all documents."

Specification 14: To the extent that such documents exist, Phoebe Putney will produce ordinary course non-privileged documents responsive to this specification that are located in the files of the custodians detailed above from January 1, 2008 to the present.

Specification 15: To the extent that such documents exist, Phoebe Putney will produce ordinary course non-privileged documents responsive to these specifications that are located in the files of the custodians detailed above from January 1, 2008 to the present.

Specification 16: To the extent that such documents exist, Phoebe Putney will produce ordinary course non-privileged documents responsive to this specification that are located in the files of the custodians detailed above from January 1, 2008 to the present.

Specification 17: To the extent that such documents exist, Phoebe Putney will produce ordinary course non-privileged documents responsive to this specification that are located in the files of the custodians detailed above from January 1, 2008 to the present.

Specification 18: To the extent that such documents exist, Phoebe Putney will produce ordinary course non-privileged documents responsive to this specification that are located in the files of the custodians detailed above from January 1, 2008 to the present.

Specification 19: To the extent that such documents exist, Phoebe Putney will produce ordinary course non-privileged documents responsive to this specification that are located in the files of the custodians detailed above from January 1, 2008 to the present.

Specification 20: To the extent that such documents exist, Phoebe Putney will produce ordinary course non-privileged documents responsive to this specification that are located in the files of the custodians detailed above from January 1, 2008 to the present.

Goldie Walker, Esq.
February 22, 2011
Page 6

Specification 21: To the extent that such documents exist, Phoebe Putney will produce ordinary course non-privileged documents responsive to this specification that are located in the files of the custodians detailed above from January 1, 2008 to the present.

Specification 22: To the extent that such policies exist, Phoebe Putney will produce a copy of the materials detailed in Specification 22.

* * *

Please let us know if this does not comport to your understanding of our discussion. We look forward to speaking with you on Wednesday to discuss our proposals above, as well as to continue to discuss ways in which we may provide the FTC with the information it needs in order to conduct a reasonable study of this transaction.

Sincerely,



Lee K. Van Voorhis

cc: James C. Egan, Jr., Esq.
Robert J. Baudino, Esq.
Kevin J. Arquit, Esq.
Aimee H. Goldstein, Esq.

EXHIBIT I

1300 Eye Street NW, Suite 900
Washington, DC 20005-3314
+1 202 682 7000 tel
+1 202 857 0940 fax

Weil, Gotshal & Manges LLP

Lee K. Van Voorhis
+1 (202) 682-7272
lee.vanvoorhis@weil.com

February 24, 2011

CONFIDENTIAL

BY E-MAIL

Goldie Walker, Esq.
Federal Trade Commission
Washington, D.C. 20580

Re: Phoebe Putney/Palmyra, FTC File No. 1110067

Dear Goldie:

Thank you for our conversation yesterday regarding documents and information that Phoebe Putney Health System, Inc. ("Phoebe Putney" or the "Hospital") has agreed to provide to the FTC in response to the February 14, 2011, subpoena and Civil Investigative Demand ("CID") and our requests to modify the subpoena and CID.

Scope of Search/Return Date

We asked whether you had any questions regarding my letter of February 22, 2011, proposing modifications to the subpoena. You agreed to limit the document search and collection to the nine custodians proposed in the letter. You stated that the FTC is not willing to extend the February 28, 2011, return date for the subpoena or CID.

You stated that you were not ready to discuss our proposals related to individual specifications in the subpoena. We look forward to your responses on these proposed modifications, which would significantly lessen the burden placed on Phoebe Putney under the subpoena.

Definition of "Company"

We then discussed narrowing the definition of "company" in the subpoena and CID to only Phoebe Putney Memorial Hospital, Inc. We explained that, particularly for the CID, collecting and producing information from every entity under the Phoebe Putney Health System was exceedingly burdensome, and physically and technically impossible by the return date. You stated that the FTC would consider that modification.

Pre-2008 Data Under the CID

We requested that the FTC agree to defer collection and production of all data pre-dating January 1, 2008 under the CID. You agreed that the FTC would defer collection and production of pre-2008 data for Specification 6 of the CID. We agreed to provide an explanation for why the other pre-2008 data

requests in the CID should also be deferred. After consulting with our client, we learned that deferring collection and production of data pre-dating January 1, 2008, would significantly limit the burden on the Hospital.

Pat Sumner Deposition

We noted that counsel was advised via email of the FTC's desire to have an investigational hearing with testimony from Pat Sumner. However, we informed you that Ms. Sumner had not been served with a subpoena. In addition, we advised you that Ms. Sumner recently had surgery and has been asked by her doctors not to fly. We asked whether the FTC would consider holding its hearing in Albany, rather than Washington, D.C. You expressed understanding of Ms. Sumner's medical situation. During your telephone call today with Vadim Brusser, you stated a willingness to postpone Ms. Sumner's investigational hearing until she is cleared by her physician to travel to Washington, and asked whether she would be available the week of March 7, 2011. You stated that the FTC is unwilling to take Ms. Sumner's investigational hearing in Albany, GA.

Additional Modifications

Below is a list of modifications we would propose for individual specifications in the CID. As the Hospital gathers the extensive amount of data requested under the CID, we may seek other modifications to the CID. We have not yet discussed with you the proposed modifications below, but look forward to doing so at your earliest convenience.

Specification 4(g): We are advised that complying with this request would involve a manual review of hundreds of patient files, as the record of which hospital to which a patient is transferred is not kept in electronic form. Therefore, Phoebe Putney requests deferral on compliance with this specification at this time.

Specification 5(a)(iii): We are advised that this information is kept in multiple databases and that compiling this information would require a burdensome effort at cross-referencing this material. Therefore, Phoebe Putney requests deferral on compliance with this specification at this time.

* * *

We look forward to speaking with you at your earliest convenience to discuss the proposals and outstanding issues above, as well as to continue to discuss ways in which we may provide the FTC with the information it needs in order to conduct a reasonable investigation of this transaction.

Sincerely,



Lee K. Van Voorhis

cc: James C. Egan, Jr., Esq.

Goldie Walker, Esq.
February 24, 2011
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Robert J. Baudino, Esq.
Kevin J. Arquit, Esq.
Aimee H. Goldstein, Esq.