

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

In the Matter of)	
)	
Phoebe Putney Health System, Inc.)	
a corporation, and)	
)	
Phoebe Putney Memorial Hospital, Inc.)	
a corporation, and)	DOCKET NO. 9348
)	
Phoebe North, Inc.)	
a corporation, and)	
)	
HCA Inc.)	
a corporation, and)	
)	
Palmyra Park Hospital, Inc.)	
a corporation, and)	
)	
Hospital Authority of Albany-Dougherty County.))	
)	

AGREEMENT CONTAINING CONSENT ORDER

The agreement herein (“Consent Agreement”), by and between Respondent Phoebe Putney Health System, Inc. (“PPHS”), a corporation, Respondent Phoebe Putney Memorial Hospital, Inc. (“PPMH”), a corporation, Respondent Phoebe North, Inc. (“PNI”), a corporation, (hereinafter collectively referred to as “Respondent Phoebe Putney”), Respondent HCA Inc. (“HCA”), a corporation; Respondent Palmyra Park Hospital, Inc. (“Palmyra”), a corporation, and Respondent Hospital Authority of Albany-Dougherty County (“Hospital Authority”), by their duly authorized officers, hereafter sometimes referred to as Respondents, and their attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission’s Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent PPHS is a not-for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its headquarters address located at 417 Third Avenue, Albany, Georgia 31701.
2. Respondent PPMH is a not-for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, and is a 691-bed general acute-care hospital located at 417 Third Avenue, Albany, Georgia 31701.

3. Respondent PNI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, and was created for the purpose of managing the Palmyra assets during the interim period after Respondent Hospital Authority acquired Respondent Palmyra, with its headquarters address located at 417 Third Avenue, Albany, Georgia 31701.
4. Respondent Hospital Authority is organized and exists pursuant to the Georgia Hospital Authorities Law, O.C.G.A. §§ 31-7-70 et seq., a statute that governs 159 counties over the entire state of Georgia, where at least 92 hospital authorities currently exist. Respondent Hospital Authority maintains its principal place of business at 417 Third Avenue, Albany, Georgia 31701.
5. Respondent HCA is a for-profit health system that owns or operates 167 hospitals in 20 states and Great Britain. HCA is incorporated in the State of Delaware. Its offices are located at One Park Plaza, Nashville, Tennessee 37203.
6. Respondent Palmyra was a corporation doing business as Palmyra Park Hospital, Inc., and was, prior to the acquisition by Respondent Hospital Authority, a 248-bed general acute care hospital owned by Respondent HCA, incorporated in the State of Georgia, and was located at 2000 Palmyra Road, Albany, Georgia 31701.
7. Respondent Hospital Authority proposed to acquire nearly all of the assets of Respondent Palmyra from Respondent HCA (the “Transaction”).
8. At the time that the Transaction was entered into and consummated, Respondent Phoebe Putney and Respondent Hospital Authority believed in good faith that federal antitrust law did not apply to the Transaction by virtue of the United States Supreme Court’s state-action doctrine, as then interpreted by the United States Court of Appeals for the Eleventh Circuit.
9. The Commission issued an administrative complaint in this matter on April 20, 2011 (“Complaint”), alleging, *inter alia*, that the proposed Transaction threatened substantial harm to competition in the relevant market for inpatient general acute-care hospital services paid for by commercial health plans (Paragraph 47 of the Complaint) in a geographic market no broader than the six-county region consisting of Dougherty, Terrell, Lee, Worth, Baker, and Mitchell Counties in Georgia (Paragraph 51 of the Complaint) in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and – if consummated – Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45. The Commission also alleged that the Transaction was for all practical purposes a merger to monopoly (Paragraph 58 of the Complaint).
10. Respondents were served with a copy of the Complaint and filed Answers denying the charges and asserting affirmative defenses.
11. On April 20, 2011, the Commission also filed in the U.S. District Court for the Middle District of Georgia a complaint for temporary restraining order and preliminary injunction. After first granting the Commission’s requested temporary restraining order, the Court dismissed the action on grounds of state-action immunity.

The Commission appealed to the Court of Appeals, which affirmed the District Court and dissolved its injunction pending appeal. On December 15, 2011, Respondents consummated the Transaction.

12. The Commission petitioned the United States Supreme Court for a writ of certiorari, which was granted on June 25, 2012. On February 19, 2013, the Court ruled unanimously that the Transaction does not enjoy state-action immunity; accordingly, it reversed the Court of Appeals' decision and remanded the case for further proceedings in the District Court. On May 15, 2013, the District Court issued a Temporary Restraining Order, and on June 5, 2013, entered a Stipulated Preliminary Injunction Order.
13. On March 14, 2013, the Commission lifted its stay of the administrative proceedings and ordered that a hearing on the antitrust merits commence on or before August 5, 2013.
14. On August 22, 2013, the Commission accepted for public comment a proposed consent agreement to settle the Part 3 administrative litigation relating to the acquisition of Palmyra from HCA by PPHS and the Hospital Authority. On September 4, 2014, after considering the public comments and additional information obtained in response to the public comments, the Commission withdrew its acceptance of the proposed consent agreement and returned the matter to Part 3 litigation, with a Part 3 evidentiary hearing that was scheduled to begin on February 4, 2015.
15. Respondents admit all of the jurisdictional facts set forth in the Complaint.
16. For the sole purpose of this proceeding and achieving compromise through this Consent Agreement, Respondent Phoebe Putney and Respondent Hospital Authority stipulate that the effect of the consummated Transaction may be substantially to lessen competition within the relevant service and geographic markets alleged in the Complaint.
17. Subject to the waivers in Paragraph 19, Respondents and Commission staff intend that the terms of this Consent Agreement in any other proceeding shall not be (i) given preclusive effect, (ii) treated as prima facie evidence, or (iii) admissible as evidence in any form for any reason.
18. For the sole purpose of this Consent Agreement, Respondent Phoebe Putney and Respondent Hospital Authority waive their defenses to the allegations of the Complaint, *PROVIDED, HOWEVER*, that in the event the Commission does not accept this Consent Agreement or withdraws its acceptance, as provided in Paragraph 22 below, the terms of this Consent Agreement shall be of no further force and effect. *PROVIDED FURTHER*, that, except for the waivers in Paragraph 19 below, Respondent Phoebe Putney and Respondent Hospital Authority reserve all rights to defend the Transaction as lawful in any other proceeding irrespective of whether the

Commission finalizes the attached Decision and Order, terminating the administrative proceeding relating to this matter, Docket Number 9348.

19. Respondents waive:
 - a. any further procedural steps in this proceeding;
 - b. the requirement that the Commission's Decision and Order, attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;
 - c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order entered pursuant to this Consent Agreement; and
 - d. any claim under the Equal Access to Justice Act.
20. This Consent Agreement does not constitute an admission by Respondent HCA and Respondent Palmyra that the law has been violated as alleged in the Complaint, or that the facts alleged in the Complaint, other than the jurisdictional facts, are true.
21. This Consent Agreement shall not become part of the public record of the proceeding unless and until the Consent Agreement is accepted by the Commission. If accepted by the Commission, this Consent Agreement will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either issue and serve its Decision and Order in disposition of the proceeding or withdraw its acceptance of this Consent Agreement and so notify Respondents, in which event it will take such action as it may consider appropriate, including returning the matter to adjudication.
22. This Consent Agreement contemplates that, if it is accepted by the Commission, the Commission may make information public with respect thereto. If such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to Respondents, issue and serve the attached Decision and Order providing for relief in disposition of the proceeding.
23. When final, the Decision and Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order shall become final upon service. Delivery of the Decision and Order to Respondents by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a) – including, but not limited to, delivery to any office within the United States of Lee K. Van Voorhis, Baker & McKenzie LLP, Frank M. Lowrey, Bondurant, Mixson & Elmore LLP, and Kevin J. Arquit, Simpson Thacher & Bartlett LLP, or of any other lawyer or law firm listed as Counsel for Respondents on this Consent Agreement – shall constitute service as to the Respondent. Respondents waive any right they may have to any other manner of service. Respondents also waive any right they may otherwise have to service of any Appendices incorporated by reference into the Decision and Order, and agree that they are bound to comply with and will comply with the Decision and Order to the

same extent as if they had been served with copies of the Appendices, where Respondents are already in possession of copies of such Appendices.

24. The Complaint may be used in construing the terms of the Decision and Order, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order, or the Consent Agreement may be used to limit or contradict the terms of the Decision and Order.
25. By signing this Consent Agreement, Respondent Phoebe Putney and Respondent Hospital Authority each represents and warrants that it can accomplish the full relief contemplated for it by the attached Decision and Order and that all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement are within the control of the party to this Consent Agreement.
26. Respondent Phoebe Putney and Respondent Hospital Authority each has read the Complaint and the Decision and Order contained in this Consent Agreement. Respondent Phoebe Putney and Respondent Hospital Authority each understands that once the Decision and Order has been issued, each will be required to file one or more compliance reports showing that it has fully complied with the Decision and Order as applied to that Respondent.
27. Respondent Phoebe Putney and Respondent Hospital Authority each agrees to comply with the terms of the proposed Decision and Order applicable to it from the date it signs this Consent Agreement. Each further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order after it becomes final.
28. Respondent Palmyra and Respondent HCA each has read the Complaint and the Decision and Order contained in this Consent Agreement. Each understands that once the Decision and Order has been issued, they will be dismissed from this matter with prejudice and have no obligations under the Decision and Order. In the event that the Commission does not accept this Consent Agreement or the attached Decision and Order as to Respondent Palmyra or Respondent HCA, each such Respondent reserves all rights to defend the Transaction as lawful in any proceeding.

PHOEBE PUTNEY HEALTH SYSTEM, INC.

By: _____
Joel Wernick
Chief Executive Officer
Phoebe Putney Health System, Inc.
Dated: _____

PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.

By: _____

Joel Wernick
Chief Executive Officer
Phoebe Putney Memorial Hospital, Inc.
Dated: _____

PHOEBE NORTH, INC.

By: _____
Joel Wernick
Chief Executive Officer
Phoebe North, Inc.
Dated: _____

Lee K. Van Voorhis, Esq.
Baker & McKenzie LLP
Counsel for Phoebe Putney Health System, Inc.
Phoebe Putney Memorial Hospital, Inc., and
Phoebe North, Inc.
Dated: _____

HCA INC.

By: _____
Scott Noonan
Vice President, Operations
HCA Inc.
Dated: _____

Kevin J. Arquit
Simpson Thacher & Bartlett LLP
Counsel for HCA Inc. and Palmyra Park Hospital, Inc.
Dated: _____

HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY

By: _____
Ralph S. Rosenberg
Chairman of the Board
Hospital Authority of Albany-Dougherty County
Dated: _____

Frank M. Lowrey IV
Bondurant, Mixson & Elmore LLP
Counsel for Hospital Authority of Albany-Dougherty County
Dated: _____

FEDERAL TRADE COMMISSION

By: _____
Maria DiMoscato
Attorney
Bureau of Competition

APPROVED:

By: _____
Alexis J. Gilman
Assistant Director
Bureau of Competition

Mark Seidman
Deputy Assistant Director
Bureau of Competition

Deborah L. Feinstein
Director
Bureau of Competition