

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



ORIGINAL

\_\_\_\_\_)  
In the Matter of )  
)  
Phoebe Putney Health System, Inc. )  
a corporation, and )  
)  
Phoebe Putney Memorial Hospital, Inc. )  
a corporation, and )  
)  
Phoebe North, Inc. )  
a corporation, and )  
)  
HCA Inc. )  
a corporation, and )  
)  
Palmyra Park Hospital, Inc. )  
a corporation, and )  
)  
Hospital Authority of Albany-Dougherty County. )  
\_\_\_\_\_)

DOCKET NO. 9348

**COMPLAINT COUNSEL’S REQUEST FOR ADMISSIONS  
TO RESPONDENT PHOEBE PUTNEY HEALTH SYSTEM, PHOEBE PUTNEY  
MEMORIAL HOSPITAL, INC., AND PHOEBE NORTH, INC.**

Pursuant to the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.32 and the Revised Scheduling Order entered by Chief Administrative Law Judge Chappell on September 15, 2014, Complaint Counsel hereby requests that Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Phoebe North, Inc. respond to the following Requests for Admission (“RFAs”) in accordance with the Definitions and Instructions set forth below:

1. Admit that, from December 21, 2010 to October 3, 2014, Phoebe Putney, Phoebe North and Palmyra each provided inpatient general acute care hospital services to residents of Baker, Dougherty, Lee, Mitchell, Terrell, and Worth counties in the State of Georgia.
2. Admit that, besides Phoebe Putney, there is only one other licensed hospital in Baker, Dougherty, Lee, Mitchell, Terrell, and Worth counties in the State of Georgia.

3. Admit that, Phoebe Putney is licensed for more hospital beds than the other licensed hospital in Baker, Dougherty, Lee, Mitchell, Terrell, and Worth counties in the State of Georgia.
4. Admit that Phoebe Putney plans to convert Phoebe North from a general acute care hospital to a women's and children's hospital.
5. Admit that Phoebe Putney is opposing the attempt by North Albany Medical Center ("NAMC") to obtain a determination from the Georgia Department of Community Health that a certificate of need is not required for NAMC to acquire or lease Phoebe North from the Hospital Authority of Albany-Dougherty County.
6. Admit that Phoebe Putney has shortened the operating room hours at Phoebe North since December 21, 2010.
7. {  
  
}
8. {  
  
  
}
9. Admit that, for the two years prior to December 21, 2010, Phoebe Putney's share of inpatient general acute care hospital discharges in its primary service area declined.
10. Admit that a 2012 Leapfrog Hospital Safety Score Report ranked Phoebe Putney Memorial Hospital number six among the 25 worst hospitals in the United States, and gave Phoebe Putney a letter grade of "F."
11. Admit that a 2012 Leapfrog Hospital Safety Score Report gave Palmyra Medical Center a letter grade of "B."
12. Admit that, prior to December 21, 2010, Phoebe Putney tried to lower costs and improve the efficiency of Phoebe Putney Memorial Hospital.

### **DEFINITIONS**

- A. The terms "the Company," "Phoebe Putney," or "Respondents" means Phoebe Putney Health System, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, including Phoebe Putney Memorial Hospital, Inc., Phoebe North, Inc., and Palmyra Health System, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. 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 a legal entity and any other person.
- B. The term “Authority” means the Hospital Authority of Albany-Dougherty County, and any predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all previous and former directors, officers, employees, agents, and representatives of the foregoing.
  - C. The term “Palmyra” means HCA/Palmyra, Palmyra Medical Center, and Palmyra Park Hospital, doing business as Palmyra Medical Center, and its directors, officers, employees, agents, and representatives.
  - D. The term “HCA” means Hospital Corporation of America, Inc., and its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. 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 a legal entity and any other person.
  - E. The terms “Commission” or “FTC” mean the Federal Trade Commission.
  - F. The terms “and” and “or” have both conjunctive and disjunctive meanings.
  - G. The terms “each,” “any,” and “all” mean “each and every.”
  - H. 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.
  - I. 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.
  - J. The term “hospital” means a facility that provides the relevant service as defined herein.
  - 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 control the facility or unit.

- L. The term “person” includes the Respondents and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- M. The term “relevant transaction” includes (i) the acquisition of Palmyra pursuant to the Asset Purchase Agreement dated December 21, 2010; (ii) the possible acquisition of Palmyra referred to in paragraphs 29 through 49 of the Declaration of Joel Wernick dated May 16, 2011, and filed in *FTC v. Phoebe Putney Health System, Inc.*, Case No 1:11-cv-00058 (WLS) (M.D. Ga.); and (iii) any other instance in which either the Hospital Authority or Phoebe Putney considered purchasing Palmyra.
- N. The term “provider” means any licensed healthcare professional or healthcare facility, including, but not limited to, hospitals, as defined herein.
- O. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
- P. The term “relevant area” means the area encompassing the counties of Baker, Dougherty, Lee, Mitchell, Terrell, and Worth in the state of Georgia.
- Q. The term “relevant service” means inpatient general acute care hospital services (*e.g.*, 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, excluding the treatment of mental illness or substance abuse, or long-term services such as skilled nursing care), collectively and individually.
- R. The term “inpatient services” refers to medical services that require the patient to stay overnight in a healthcare facility.
- S. The term “outpatient services” refers to medical services that do not require the patient to stay overnight in a healthcare facility.
- T. The terms “health plan network” and “provider network” mean a health plan’s preferred panel of providers at which the health plan’s members can obtain care without having to pay the higher out-of-pocket costs that the health plan’s members must pay to obtain care at a provider excluded from the preferred panel.
- U. The term “in-network provider” means a provider that is a member of a health plan network or a provider network.

- V. The term “reimbursement methodology” refers to the method for determining the amount of reimbursement a health plan owes to a provider as payment for healthcare services rendered by the provider to a patient or a group of patients covered by the health plan. The term includes, but is not limited to, reimbursement based on per diems, a percent of billed charges, MS-DRG weights, a discount off billed charges, pay-for-performance criteria, pay-for-value criteria, risk-sharing arrangements, and patient-centered medical home models.

### **INSTRUCTIONS**

- A. These RFAs call for Respondents to make a reasonable inquiry into the information available from their documents, employees, contractors and agents to answer each RFA.
- B. Each RFA is to be answered separately and under oath.
- C. Each answer to these RFAs shall specifically admit or deny the statement or set forth in detail the reasons why Respondents cannot truthfully admit or deny the statement.
- D. If Respondents cannot admit or deny the entire RFA, it shall specify what portion of the statement is true and qualify or deny the remainder. When qualifying an answer, provide all facts and bases that Respondents contend support its refusal to admit to the statement.
- E. Respondents shall not give lack of information or knowledge as a reason for failure to admit or deny unless after a reasonable inquiry the information available to Respondents does not provide sufficient basis for admitting or denying the RFA. In such instances, Respondents shall describe the unavailable information and its efforts to obtain this information.
- F. If Respondents object to a RFA, it shall set forth the basis for its objection. Any ground not stated in an objection shall be waived. All objections must be made with particularity and must set forth all information upon which Respondents intend to rely in response to any motion to compel.
- G. Whenever necessary to bring within the scope of a RFA a response that might otherwise be construed to be outside its scope, the following constructions should be applied:
1. Construing the terms “and” and “or” in the disjunctive or conjunctive, as necessary, to make the RFA more inclusive;
  2. Construing the singular form of any word to include the plural and the plural form to include the singular;

3. Construing the past tense of the verb to include the present tense and the present tense to include the past tense;
  4. Construing the term “Date” to mean exact day, month, and year if ascertainable; if not, the closest approximation that can be made by means of relationship to other events, locations, or matters; and
  5. Construing the negative terms to include the positive and vice versa.
- H. An answer should not be supplied by reference to an answer to another RFA unless the information provided is intended to be identical in all respects.
- I. If Respondents claim any ambiguity in interpreting a RFA or a definition or instruction applicable thereto, Respondents shall set forth as part of its response the language deemed to be ambiguous and the interpretation used in responding to the RFA, and shall respond to the RFA as Respondents interpret it.
- J. If Respondents cannot find in the Definition section or in the body of the RFAs the definition for a word that is otherwise ambiguous, Respondents shall interpret the word according to its usage by Respondents and state in the answer to the RFA, Respondents definition of the word.
- K. If any privilege is claimed as a ground for not responding to a RFA, provide a privilege log describing the basis for the claim of privilege and all information necessary for the Court to assess the claim of privilege, in accordance with Rule 3.31(c)(2) of the FTC Rules of practice. The privilege log shall include the following:
1. Specific grounds for the claim of privilege;
  2. The date of the privileged communication;
  3. The persons involved in the privileged communication;
  4. A description of the subject matter of the privileged communication in sufficient detail to assess the claim of privilege; and
  5. The specific RFA to which the privileged information is responsive.
- L. In order for the Company’s responses to this Request for Admissions to be complete, the attached certification form must be executed by the official supervising compliance with this Request for Admissions, notarized, and submitted along with the responsive materials.
- M. All questions relating to the RFAs should be directed to Bob Zuver at (202) 326-3134.

**CERTIFICATION**

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Requests for Admission has been prepared by me or under my personal supervision from records of Phoebe Putney Health System, Phoebe Putney Memorial Hospital, Inc., and Phoebe North, Inc. and is complete and correct to the best of my knowledge and belief.

Where copies rather than original documents have been submitted, the copies are true, correct, and complete copies of the original documents. If Complaint Counsel uses such copies in any court or administrative proceeding, Phoebe Putney Health System, Phoebe Putney Memorial Hospital, Inc., and Phoebe North, Inc., will not object based upon Complaint Counsel not offering the original document.

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

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

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

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

Respectfully submitted,

s/ Alexis J. Gilman

ALEXIS J. GILMAN  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, DC 20580

Dated: October 6, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on October 6, 2014 I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580

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

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

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

Lee K. Van Voorhis, Esq.  
Teisha C. Johnson, Esq.  
Baker & McKenzie, LLP  
815 Connecticut Avenue, NW  
Washington, DC 20006  
(202) 835-6162  
lee.vanvoorhis@bakermckenzie.com

*Counsel for Respondent*  
*Phoebe Putney Memorial Hospital, Inc., Phoebe*  
*Putney Health System, Inc., and Phoebe North, Inc.*

Edgar B. Wilkin, Jr., Esq.  
Perry & Walters LLP  
212 North Westover Boulevard  
Albany, GA 31708  
(229) 439-4000  
ewilkin@perrywalters.com

*Counsel for Respondent*  
*Hospital Authority of Albany-Dougherty County*

Emmet J. Bondurant, Esq.  
Frank M. Lowrey, Esq.

Ronan P. Doherty, Esq.  
Bondurant, Mixson & Elmore LLP  
1201 Peachtree Street, Suite 3900  
Atlanta, GA 30309  
(404) 881-4126  
bondurant@bmelaw.com

*Counsel for Respondent  
Hospital Authority of Albany-Dougherty County*

Michael A. Caplan, Esq.  
Caplan Cobb LLP  
1447 Peachtree Street, N.E., Suite 880  
Atlanta, GA 30309  
(404) 596-5610  
mcaplan@caplancobb.com

*Counsel for Respondent  
Hospital Authority of Albany-Dougherty County*

Kevin J. Arquit, Esq.  
Jayma Meyer, Esq.  
Abram J. Ellis, Esq.  
Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, NY 10017-3954  
(212) 455-7680  
jmeyer@stblaw.com

*Counsel for Respondent  
HCA Inc. and Palmyra Park Hospital, Inc.*

### **CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

October 6, 2014

By: s/ Maria DiMoscato  
Attorney