

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



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

Docket No. 934

PHOEBE RESPONDENTS' RESPONSES TO COMPLAINT COUNSEL'S REQUEST FOR ADMISSIONS

Respondents Phoebe Putney Memorial Hospital, Inc. and Phoebe Putney Health System, Inc. (“Respondents”) respond and object to Complaint Counsel’s Request for Admissions (“Requests”) as set forth below. The following responses are made solely for the purposes of this action. Each response is subject to all objections as to relevance, materiality, and admissibility, and to any and all objections on any ground that would require exclusion of any response if it were introduced in court.

No incidental or implied admissions are intended by these responses. The fact that Respondents have objected or responded to any Request shall not be deemed an admission that Respondents accept or admit the existence of any facts set forth or assumed by such Request or that such objection or response constitutes admissible evidence. The fact that Respondents have

responded to part or all of any Request is not intended to and shall not be construed to be a waiver by Respondents of any part of any objection to any Request.

The responses and objections are made on the basis of information and writings currently available to and located by Respondents upon reasonable investigation. Respondents expressly reserve the right to modify, revise, supplement, or amend their responses as they deem appropriate.

GENERAL OBJECTIONS

1. Respondents object to the Requests to the extent that they seek information that is protected from disclosure by the attorney-client privilege, the attorney work product doctrine or any other recognized privilege.

2. Respondents object to the Requests to the extent that they require Respondents to search for and produce documents or information that are not within their possession, custody, or control.

3. Respondents object to the Requests to the extent they seek information or documents that cannot be located by Respondents after reasonably diligent inquiry, are readily available from public sources, or are available to Complaint Counsel from another source or by other means that are more convenient, more appropriate, less burdensome, or less expensive.

4. Respondents object to the Requests to the extent they seek legal conclusions and/or would require Respondents to reach a legal conclusion in order to prepare a response.

5. Respondents object to the Requests to the extent they are argumentative, prejudicial, improper, incorrect, vague, and/or ambiguous.

6. Respondents object to the Definitions to the extent that certain Definitions imply legal conclusions. For example, by responding to or using the definitions “relevant area” or “relevant service,” Respondents are not admitting that the defined “relevant area” constitutes a

relevant geographic market or that the defined “relevant service” constitutes a relevant product market.

RESPONSES

REQUEST FOR ADMISSION NO. 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.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Respondents object to this Request for Admission because it is inconsistent with the Revised Scheduling Order in this matter issued September 15, 2014. The Order provides that “[w]ritten discovery served upon the parties shall be limited to seeking information created or received after June 24, 2013.” Respondents also object to the term “Phoebe North” to the extent that it is intended to designate Phoebe North, Inc. Respondents further object to the Request to the extent it implies that Phoebe Putney and Phoebe North are separate hospitals.

REQUEST FOR ADMISSION NO. 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.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Respondents object to this Request to the extent that it implies a legal conclusion that Baker, Dougherty, Lee, Mitchell, Terrell, and Worth counties constitute a relevant geographic market. Subject to and without waiving the foregoing objections, Respondents cannot either admit or deny this Request and therefore deny it. This request asks for information outside Respondents’ possession, custody, and control. Responsive information may be in the possession, custody, or control of the Georgia Department of Community Health.

REQUEST FOR ADMISSION NO. 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.

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Respondents object to this Request to the extent that it implies a legal conclusion that Baker, Dougherty, Lee, Mitchell, Terrell, and Worth counties constitute a relevant geographic market. Subject to and without waiving the foregoing objections, Respondents cannot either admit or deny this Request and therefore deny it. This request asks for information outside Respondents' possession, custody, and control. Responsive information may be in the possession, custody, or control of the Georgia Department of Community Health.

REQUEST FOR ADMISSION NO. 4:

Admit that Phoebe Putney plans to convert Phoebe North from a general acute care hospital to a women's and children's hospital.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Respondents object to the phrase "plans to convert" as vague and ambiguous. Respondents also object to the term "general acute care hospital" to the extent it implies a legal conclusion that general acute care is a relevant product market. Respondents also object to the term "Phoebe North" to the extent that it is intended to designate Phoebe North, Inc., which does not currently exist. Respondents further object to the Request to the extent it implies that Phoebe Putney and Phoebe North are separate hospitals. Subject to and without waiving the foregoing objections, Respondents state that they plan to offer women and children's services at Phoebe Putney Memorial Hospital's North Campus.

REQUEST FOR ADMISSION NO. 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.

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Respondents object to the phrase “opposing the attempt” as vague and ambiguous. Respondents also object to the term “Phoebe North” to the extent that it is intended to designate Phoebe North, Inc., which does not currently exist. Subject to and without waiving the foregoing objection, Respondents admit that they have made submissions to the Georgia Department of Community Health, which are publicly available.

REQUEST FOR ADMISSION NO. 6:

Admit that Phoebe Putney has shortened the operating room hours at Phoebe North since December 21, 2010.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Respondents object to this Request for Admission because it is inconsistent with the Revised Scheduling Order in this matter issued September 15, 2014. The Order provides that “[w]ritten discovery served upon the parties shall be limited to seeking information created or received after June 24, 2013.” Respondents also object to the term “Phoebe North” to the extent that it is intended to designate Phoebe North, Inc. Respondents further object to the Request to the extent it implies that Phoebe Putney and Phoebe North are separate hospitals.

REQUEST FOR ADMISSION NO. 7:

[REDACTED]

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Respondents object to this Request for Admission because it is inconsistent with the Revised Scheduling Order in this matter issued September 15, 2014. The Order provides that “[w]ritten discovery served upon the parties shall be limited to seeking information created or received after June 24, 2013.”

REQUEST FOR ADMISSION NO. 8:

[REDACTED]

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Respondents object to this Request for Admission because it is inconsistent with the Revised Scheduling Order in this matter issued September 15, 2014. The Order provides that “[w]ritten discovery served upon the parties shall be limited to seeking information created or received after June 24, 2013.”

REQUEST FOR ADMISSION NO. 9:

Admit that, for two years prior to the December 21, 2010, Phoebe Putney’s share of inpatient general acute care hospital discharges in its primary service area declined.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Respondents object to this Request for Admission because it is inconsistent with the Revised Scheduling Order in this matter issued September 15, 2014. The Order provides that

“[w]ritten discovery served upon the parties shall be limited to seeking information created or received after June 24, 2013.”

REQUEST FOR ADMISSION NO. 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.”

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Respondents object to this Request for Admission because it is inconsistent with the Revised Scheduling Order in this matter issued September 15, 2014. The Order provides that “[w]ritten discovery served upon the parties shall be limited to seeking information created or received after June 24, 2013.”

REQUEST FOR ADMISSION NO. 11:

Admit that a 2012 Leapfrog Hospital Safety Score Report gave Palmyra Medical Center a letter grade of “B.”

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Respondents object to this Request for Admission because it is inconsistent with the Revised Scheduling Order in this matter issued September 15, 2014. The Order provides that “[w]ritten discovery served upon the parties shall be limited to seeking information created or received after June 24, 2013.”

REQUEST FOR ADMISSION NO. 12:

Admit that, prior to December 21, 2010, Phoebe Putney tried to lower costs and improve the efficiency of Phoebe Putney Memorial Hospital.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Respondents object to this Request for Admission because it is inconsistent with the Revised Scheduling Order in this matter issued September 15, 2014. The Order provides that “[w]ritten discovery served upon the parties shall be limited to seeking information created or received after June 24, 2013.”

Dated: October 15, 2014

Respectfully submitted,

By /s/ Jennifer Ancona Semko
Lee K. Van Voorhis, Esq.
Brian F. Burke
Jennifer Ancona Semko
Baker & McKenzie LLP
815 Connecticut Avenue, NW
Washington, DC 20006
*Counsel For Phoebe Putney Memorial
Hospital, Inc. and Phoebe Putney Health
System, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that this 15th day of October, 2014 a true and correct copy of the foregoing PUBLIC document was filed via FTC e-file, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
Room H113
600 Pennsylvania Avenue, NW
Washington, DC 20580

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

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
Room H110
600 Pennsylvania Avenue, NW
Washington, DC 20580

and by electronic mail to the following:

Alexis Gilman
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
agilman@ftc.gov

Maria DiMoscato
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
mdimoscato@ftc.gov

Christopher Abbott
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
cabbott@ftc.gov

Joshua Smith
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
jsmith3@ftc.gov

Amanda Lewis
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
alewis1@ftc.gov

Jennifer Schwab
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
jschwab@ftc.gov

Mark Seidman
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
mseidman@ftc.gov

Kevin J. Arquit, Esq.
karquit@stblaw.com
Peter Thomas, Esq.
pthomas@stblaw.com
Jayma Meyer
jmeyer@stblaw.com
Abram J. Ellis, Esq.
Aellis@stblaw.com
Simpson Thacher and Bartlett, LLP
425 Lexington Avenue
New York, New York 10017

Stelios Xenakis
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
sxenakis@ftc.gov

Lucas Ballet
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
lballet@ftc.gov

Emmet J. Bondurant, Esq.
Bondurant@bmelaw.com
Ronan A. Doherty, Esq.
doherty@bmelaw.com
Frank M. Lowrey, Esq.
lowrey@bmelaw.com
Bondurant, Mixson & Elmore, LLP
1201 West Peachtree St. N.W., Suite 3900
Atlanta, GA 30309

Michael A. Caplan, Esq.
Caplan Cobb
1447 Peachtree Street, N.E., Suite 880
Atlanta, Georgia 30309
mcaplan@caplancobb.com

This 15th day of October, 2014.

/s/ Jennifer Ancona Semko
Jennifer Ancona Semko, Esq.
*Counsel for Phoebe Putney Memorial
Hospital, Inc. and Phoebe Putney Health
System, 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 15, 2013

By:

/s/ Jennifer Ancona Semko
Jennifer Ancona Semko, Esq.
*Counsel for Phoebe Putney Memorial
Hospital, Inc., Phoebe Putney Health
System, Inc., and Phoebe North, Inc.*