

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



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

**HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY'S
RESPONSE TO COMPLAINT COUNSEL'S FIRST REQUEST FOR ADMISSIONS**

Pursuant to Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.32, and the Scheduling Order entered by Chief Administrative Law Judge Chappell on April 4, 2013, Respondent Hospital Authority of Albany-Dougherty County (the "Authority" or "Respondent") responds and objects to Complaint Counsel's First 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 the Authority has objected or responded to any Request shall not be deemed an admission that the Authority accepts or admits the existence of any facts set forth or assumed by such Request or that such objection or response constitutes admissible evidence. The fact that the Authority has responded to part or all of any Request is not intended to and shall not be construed to be a waiver by the Authority 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 the Authority upon reasonable investigation. The Authority expressly reserves the right to modify, revise, supplement, or amend their responses as it deems appropriate.

GENERAL OBJECTIONS

1. The Authority objects 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. The Authority objects to the Requests to the extent that they require the Authority to search for and produce documents or information that are not within its possession, custody, or control.
3. The Authority objects to the Requests to the extent they seek information or documents that cannot be located by the Authority 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. The Authority objects to the Requests to the extent they seek legal conclusions and/or would require the Authority to reach a legal conclusion in order to prepare a response.

5. The Authority objects to the Requests to the extent they are argumentative, prejudicial, improper, incorrect, vague, and/or ambiguous.

6. The Authority objects 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,” the Authority is not admitting that the defined “relevant area” constitutes a relevant geographic market or that the defined “relevant service” constitutes a relevant product market.

RESPONSES

1.

Admit that Phoebe Putney pays all of the Authority’s expenses, including legal fees.

RESPONSE:

The Authority objects to Request No. 1 as not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objection, the Authority denies.

2.

Admit that Phoebe Putney Health System, Inc. has no reporting obligations to the Authority.

RESPONSE:

Denied.

3.

Admit that the Authority has no control over the day-to-day operation of Phoebe Putney Memorial Hospital.

RESPONSE:

The Authority objects to the phrase “control” as vague and ambiguous and to the extent that it implies a legal conclusion. Subject to and without waiving the foregoing objections, the Authority denies.

4.

Admit that the Authority has no control over the reimbursement rates Phoebe Putney Memorial Hospital charges to commercial health plans for its services.

RESPONSE:

The Authority objects to the phrase “control” as vague and ambiguous and to the extent that it implies a legal conclusion. Subject to and without waiving the foregoing objections, the Authority denies.

5.

Admit that the Authority has no involvement in Phoebe Putney’s contract negotiations with commercial health plans.

RESPONSE:

The Authority objects to the term “involvement” as vague and ambiguous and to the extent that it implies a legal conclusion. Subject to and without waiving the foregoing objections, the Authority states that Phoebe Putney conducts the direct contractual negotiations with commercial health plans concerning the pricing for its services; however, the Authority denies that it has no involvement in the manner in which Phoebe Putney negotiates the

reimbursement rates Phoebe Putney Memorial Hospital charges to commercial health plans and specifically avers that it exercises supervisory, contractual, and legal authority over the rates Phoebe Putney Memorial Hospital charges to commercial health plans for its services.

6.

Admit that the Authority has never requested Phoebe Putney to change the reimbursement rates it charges to commercial health plans for its services.

RESPONSE:

The Authority objects to this Request as unreasonable in time and scope, particularly insofar as it seeks information over the course of a more than 24-year time period. The Authority further objects to the Request to the extent that it requires the Authority to undertake a burdensome examination of records which are equally available to Complaint Counsel. Subject to and without waiving the foregoing objections, the Authority states that it has conducted a diligent inquiry and can neither admit nor deny the Request, and for that reason it is denied. Further answering, the Authority states that, to its best knowledge and understanding, since the Authority leased Phoebe Putney hospital in 1990, it has not determined that it was necessary to formally request that Phoebe Putney change the reimbursement rates it charges to commercial health plans for its services.

7.

Admit that the Authority has never requested Phoebe Putney to change the reimbursement rates it negotiated with commercial health plans for its services.

RESPONSE:

The Authority objects to this Request as unreasonable in time and scope, particularly insofar as it seeks information over the course of a more than 24-year time period. The Authority further objects to the Request to the extent that it requires the Authority to undertake a burdensome examination of records which are equally available to Complaint Counsel. Subject to and without waiving the foregoing objections, the Authority states that it has conducted a diligent inquiry and can neither admit nor deny the Request, and for that reason it is denied. Further answering, the Authority states that, to its best knowledge and understanding, since the Authority leased Phoebe Putney hospital in 1990, it has not determined that it was necessary to formally request that Phoebe Putney change the reimbursement rates it negotiates with commercial health plans for its services.

8.

Admit that the Authority never requested that Phoebe Putney change any charges listed on its chargemaster list for its services.

RESPONSE:

The Authority objects to this Request as unreasonable in time and scope, particularly insofar as it seeks information over the course of a more than 24-year time period. The Authority further objects to the Request to the extent that it requires the Authority to undertake a burdensome examination of records which are equally available to Complaint Counsel. Subject to and without waiving the foregoing objections, the Authority states that it has conducted a diligent inquiry and can neither admit nor deny the Request, and for that reason it is denied. Further answering, the Authority states that, to its best knowledge and understanding, since it leased Phoebe Putney Memorial Hospital to Phoebe Putney in 1990, it has not determined that it

was necessary to formally request that Phoebe Putney change any charges listed on its chargemaster list for its services.

9.

Admit that the Authority never sought a fairness opinion relating to the purchase price paid in the relevant transaction.

RESPONSE:

The Authority states that it did not seek (and was not required to seek) a separate fairness opinion concerning the purchase price of the assets of Palmyra Park Hospital.

10.

Admit that the relevant transaction was structured in a manner to avoid antitrust scrutiny by federal and state antitrust enforcement authorities.

RESPONSE:

The Authority objects to this Request as vague and ambiguous as to the phrases “antitrust scrutiny” and “federal and state antitrust enforcement authorities.” The Authority also objects to this Request to the extent that it implies that structuring a transaction to avoid antitrust scrutiny constitutes an admission of antitrust liability. Subject to and without waiving the foregoing objections, the Authority denies.

11.

Admit that after the relevant transaction, the Authority leases Palmyra to Phoebe Putney in exchange for \$1.00 per annum.

RESPONSE:

Denied.

12.

Admit that after the relevant transaction, the Authority will lease Palmyra to Phoebe Putney until 2056.

RESPONSE:

Denied.

13.

Admit that after the relevant transaction, the Authority has no control over the reimbursement rates negotiated with commercial health plans for services provided at Phoebe North.

RESPONSE:

The Authority objects to the phrase “control” as vague and ambiguous and to the extent that it implies a legal conclusion. Subject to and without waiving the foregoing objections, the Authority denies.

14.

Admit that after the relevant transaction, the Authority has no control over the day-to-day operation of Phoebe North.

RESPONSE:

The Authority objects to the phrase “control” as vague and ambiguous and to the extent that it implies a legal conclusion. Subject to and without waiving the foregoing objections, the Authority denies.

15.

Admit that after the relevant transaction, the Authority has no involvement in reimbursement rate negotiations with commercial health plans for services provided at Phoebe North.

RESPONSE:

The Authority objects to the term “involvement” as vague and ambiguous and to the extent that it implies a legal conclusion. Subject to and without waiving the foregoing objections, the Authority states that Phoebe Putney conducts the direct contractual negotiations with commercial health plans concerning the pricing for its services; however, the Authority denies that it has no involvement in the manner in which Phoebe Putney negotiates the reimbursement rates Phoebe Putney Memorial Hospital charges to commercial health plans and specifically avers that it exercises supervisory, contractual, and legal authority over the rates Phoebe Putney Memorial Hospital charges to commercial health plans for its services, including those provided at its North campus.

16.

Admit that the Authority approved the relevant transaction exactly as Phoebe Putney negotiated it, not making a single change.

RESPONSE:

Denied. The Authority admits that the transaction was approved by the Authority’s Board just as presented in December 2010. However, prior to that meeting members of and counsel for the Authority were involved in the negotiation of the transaction, so the Authority denies that “Phoebe Putney negotiated” the transaction without the Authority, to the extent that that is the premise of this request.

17.

Admit that general acute inpatient hospital services sold to commercial health plans constitute a relevant product market in which to evaluate the effects of the relevant transaction.

RESPONSE:

The Authority objects to this Request to the extent that it seeks a legal conclusion. Subject to and without waiving the foregoing objection, the Authority denies.

18.

Admit that the general acute care inpatient hospital services market properly excludes tertiary services.

RESPONSE:

The Authority objects to this Request to the extent that it seeks a legal conclusion. Subject to and without waiving the foregoing objection, the Authority denies.

19.

Admit that the general acute care inpatient hospital services market properly excludes outpatient services.

RESPONSE:

The Authority objects to this Request to the extent that it seeks a legal conclusion. Subject to and without waiving the foregoing objection, the Authority denies.

20.

Admit that prior to the relevant transaction, Phoebe Putney competed with Palmyra in the provision of inpatient general acute care hospital services.

RESPONSE:

The Authority objects to the phrase “inpatient general acute care hospital services” to the extent that it implies a legal conclusion that “inpatient general acute care hospital services” constitutes a relevant product market. The Authority objects to the term “compete” to the extent that it implies a legal conclusion. Subject to and without waiving the foregoing objections, the Authority cannot admit or deny this Request and therefore denies it. Nevertheless, subject to and without waiving the foregoing objections, the Authority states that Palmyra had little, if any, competitive effect on Phoebe Putney.

21.

Admit that no new hospitals offering general acute care inpatient services have entered the relevant area in the past five years.

RESPONSE:

The Authority objects to the phrase “general acute care inpatient services” to the extent that it implies a legal conclusion that “general acute care inpatient services” constitutes a relevant product market. Subject to and without waiving the foregoing objection, the Authority cannot admit or deny this Request and therefore denies it. This Request asks for information outside of the Authority’s possession, custody, and control. Responsive information may be in the possession, custody, or control of The Georgia Department of Community Health.

22.

Admit that prior to the relevant transaction, Phoebe Putney’s primary competitor for general acute care inpatient services was Palmyra.

RESPONSE:

The Authority objects to this Request to the extent that it seeks a legal conclusion. The Authority also objects to this Request as vague and ambiguous as to the phrase “primary competitor” and object to the phrase “general acute care inpatient services” to the extent that it implies a legal conclusion that the “general acute care inpatient services” constitutes a relevant product market. Subject to and without waiving the foregoing objections, the Authority denies.

23.

Admit that after the relevant transaction, Phoebe Putney is the only provider of general acute care inpatient hospital services in Dougherty County.

RESPONSE:

The Authority objects to the phrase “general acute care inpatient hospital services” to the extent that it implies a legal conclusion that the “general acute care inpatient hospital services” constitutes a relevant product market. Subject to and without waiving the foregoing objection, the Authority states that Phoebe Putney is the only licensed hospital in Dougherty County. Phoebe Putney provides service to many patients who do not reside in Dougherty County.

24.

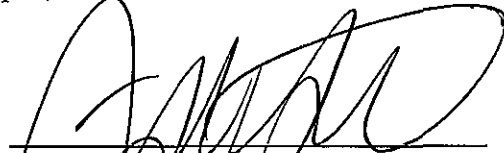
Admit that after the relevant transaction, in addition to Phoebe Putney and Palmyra there is only one other independently owned hospital located in the relevant area.

RESPONSE:

The Authority objects to this Request as vague and ambiguous as to the phrase “independently owned hospital.” The Authority further objects to the phrase “relevant area” to the extent that it implies a legal conclusion that the “relevant area” constitutes a relevant

geographic market. Subject to and without waiving the foregoing objections, the Authority cannot either admit or deny this Request and therefore denies it. Responsive information may be in the possession, custody, or control of the Georgia Department of Community Health.

Respectfully submitted this 29th day of April, 2013.



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CERTIFICATE OF SERVICE

This is to certify that on April 29, 2013, **HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY'S RESPONSE TO COMPLAINT COUNSEL'S FIRST REQUEST FOR ADMISSIONS** was filed via hand and electronic delivery an original and two copies with:

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Federal Trade Commission
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I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing to:

The Honorable D. Michael Chappell
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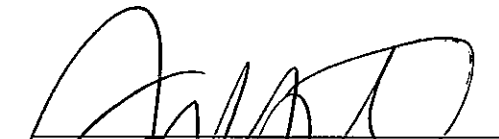
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This 29th day of April, 2013.



Frank M. Dowley
*Attorney for Hospital Authority
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CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Request for Admission has been prepared by me or under my personal supervision from records of the Hospital Authority of Albany-Dougherty County and is complete and correct to the best of my knowledge and belief.

Jay Reynolds
(Signature of Official)

General Counsel, Hospital Authority of
Albany-Dougherty County
(Title/Company)

Jay Reynolds, Esq.
(Typed Name of Above Official)

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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.

April 29, 2013

By:

/s/ Jeremy Cline
Jeremy Cline
*Counsel for Phoebe Putney Memorial
Hospital, Inc. and Phoebe Putney Health
System, Inc.*