

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



\_\_\_\_\_  
In the Matter of )  
)

PHOEBE PUTNEY HEALTH SYSTEM, INC. *et al.*, )  
)

Respondents )  
\_\_\_\_\_ )

Docket No. 9348  
Public

**PRICEWATERHOUSECOOPERS LLP'S MOTION  
TO QUASH OR LIMIT SUBPOENA DUCES TECUM**

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## I. PRELIMINARY STATEMENT

After PwC voiced its objections to the April 25, 2013 Subpoena (the "Subpoena") issued by the FTC, the FTC agreed to modify or defer certain requests in the Subpoena and asked PwC to produce documents responsive to certain non-deferred requests.<sup>1</sup> PwC has agreed to produce documents responsive to those non-deferred requests, subject to any assertions of privilege or other protection from disclosure that may be lodged by PwC or by PwC's clients pursuant to 16 C.F.R. § 3.38A(a). *If the FTC does not attempt to withdraw its modifications to the Subpoena or renew the deferred requests in the Subpoena, then the Administrative Law Judge, from PwC's perspective, need not rule on this Motion.*

If, however, the FTC later attempts to withdraw its modifications to the Subpoena or renew the deferred requests, then this Motion will be ripe for adjudication, because the Subpoena, as originally issued, is overbroad and unreasonably burdensome. As PwC explains below, a good faith effort at compliance would unduly disrupt and seriously hinder PwC's normal operations, particularly in light of the short time period that the FTC has allotted for PwC's compliance. Therefore, if the Administrative Law Judge is called upon to rule on this Motion, the Subpoena should be quashed.

## II. FACTUAL BACKGROUND

The Subpoena represents the FTC's third effort to obtain documents from PwC in connection with this matter, and it is the most onerous and overbroad by far.

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<sup>1</sup> The Subpoena is attached as Exhibit A. The FTC's modification letter and email are attached as Exhibits B and C, respectively. PwC's objection letter is attached as Exhibit D. A proposed order is attached as Exhibit E.

**A. The First Subpoena**

PwC is a Delaware limited liability partnership that provides public accounting and other services. PwC entered into engagements with outside counsel for the Hospital Authority of Albany-Dougherty County (the “Authority”) and with Phoebe Putney Health Systems, Inc. (“PPHS”) and Phoebe Putney Memorial Hospital (“PPMH”).

In March 2011, the FTC served a subpoena on PwC during the FTC’s pre-litigation investigation of this matter (FTC File No. 111-0067). That subpoena was overbroad and unduly burdensome, so PwC petitioned to quash or limit it. In the meantime, however, PwC undertook efforts to negotiate an agreement with the FTC regarding PwC’s production of documents, and ultimately produced nearly 600 pages of documents to the FTC, all of which are in the FTC’s possession and available for use in this proceeding.

**B. The Second Subpoena**

This proceeding was initiated in April 2011. Two months later, the FTC served another subpoena on PwC. That subpoena largely mirrored the earlier subpoena; like its predecessor, it was overbroad and unduly burdensome, and afforded PwC far too little time for the contemplated production.

PwC moved to quash the second subpoena on June 22, 2011. Ten days later, on July 1, Respondents moved to stay this proceeding. That stay was granted by the Commission fifteen days later, on July 15, 2011. The stay was lifted on March 14, 2013.

Even after the stay was lifted, the FTC never responded to PwC’s June 2011 motion to quash. *See* 16 C.F.R. § 3.22(d) (establishing a 10-day period for responding to written motions and providing that failure to respond shall be deemed to be consent). Instead, the FTC apparently withdrew its subpoena to PwC—without informing PwC that the subpoena had been withdrawn or that PwC’s pending motion to quash had been rendered moot.

C. **The Third Subpoena: The Subpoena at Issue Here**

Unaware that the second subpoena had been withdrawn or that PwC's June 2011 motion to quash had been rendered moot, PwC's counsel received a third subpoena—"the Subpoena" at issue here—from the FTC's counsel on April 25, 2013. The FTC did not provide PwC with any notice of this Subpoena before it was served.

Rather than narrow its requests in response to the well-founded concerns that PwC voiced in its June 2011 motion to quash, the FTC, in its most recent Subpoena, actually *expands* the scope of its requests in several ways.

The Subpoena demands the production of virtually every document created or considered by PwC in connection with at least five different PwC engagements. Rather than seeking engagement letters and PwC's work papers, these requests seek several categories of other documents that have no perceptible relevance to this proceeding and that would be impossible to collect and produce within the prescribed discovery period, including every piece of correspondence or communication regarding the drafting of the engagement letters; every document in PwC's possession regarding the 2005 Lease Analysis engagement; every communication that PwC has had with Phoebe Putney, the Hospital Authority, Langley & Lee, or Dougherty County over the 5+ year period from January 2008 until April 2013 regarding healthcare services; and every document in PwC's possession regarding the acquisition of Palmyra.

Nor is the Subpoena limited solely to PwC's work for Phoebe Putney, the Hospital Authority, or Langley & Lee (the Hospital Authority's counsel). In another request, the Subpoena commands the production of studies, analyses, or reports regarding healthcare services prepared by PwC since 2008 *for any other general acute care hospital in Georgia*. Those studies, analyses, and reports were commissioned by PwC clients who are not parties to this

proceeding. They contain confidential, proprietary information. The FTC has failed to articulate any justification for compelling PwC to review all of its engagements for general acute care hospitals in Georgia over the past 5+ years and turn over confidential studies, analyses, and reports that were paid for by those hospitals. Rather than perform the analysis itself (or retain experts to do so), the FTC seeks production of confidential, proprietary studies and reports paid for by strangers to this proceeding. *See, e.g., In re Frates*, Case No. M8-85, 1985 WL 2752, at \*1 (S.D.N.Y. Sept. 25, 1985) (quashing subpoena to non-party).

Going one step further, in a stunningly broad demand that epitomizes the unrestrained overbreadth of the Subpoena, the FTC demands that PwC produce every PwC document regarding the provision, prices, costs, or quality of healthcare since 2008. This request is not limited to certain engagements, to certain clients, to certain geographic areas, or to certain types of documents: It calls for every document in PwC's possession from January 1, 2008, to April 25, 2013, regarding healthcare. This request is simply indefensible.

Despite the overbreadth of the Subpoena, the FTC waited to serve it on PwC until the second-to-last possible day. The FTC knew, by April 4, that the deadline for serving third party subpoenas was April 26 and that the discovery period was set to close just one month later, on May 29. The FTC also knew that PwC had objected to the FTC's prior subpoena, arguing (among other things) that the three-week period allotted for PwC's compliance with the pervious subpoena was unreasonably short. Nevertheless, the FTC expanded the scope of its requests in the Subpoena, established the same three-week period for compliance, gave PwC no notice that a new subpoena was forthcoming (while PwC was under the apparent misimpression that the FTC's prior subpoena and PwC's unopposed motion to quash were still pending), and waited until the second-to-last day (April 25) to serve the subpoena on PwC.

### III. ARGUMENT

The FTC is authorized to issue subpoenas *duces tecum* to require the production of documentary evidence relating to any matter under investigation. 15 U.S.C. § 49.

Pretrial discovery in an adjudicative proceeding brought by the FTC, however, is circumscribed by detailed agency rules, which must be scrupulously observed. *Atlantic Richfield Co. v. FTC*, 398 F. Supp. 1, 9, 12 (S.D. Tex. 1975), citing 16 C.F.R. §§ 3.31 - 3.39. In particular, a federal agency's use of compulsory process is enforceable only when the "disclosure sought [is not] unreasonable." *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 208 (1946). In turn, compulsory process is reasonable and thus enforceable where the requests are "reasonably relevant . . . and not unduly burdensome to produce." *F.T.C. v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992) (internal quotation marks and citations omitted); *see also* 16 C.F.R. § 3.31(c)(1), (2).

The Subpoena should be quashed because, as discussed below, the Subpoena is unreasonable, unduly burdensome, overly broad, and requests information that is protected from disclosure. A diligent good faith attempt to comply with the Subpoena would impede PwC's normal business operations and impose a significant and unjustifiable expense on PwC.

A. **The Subpoena Imposes an Undue Burden on PwC Because of Its Broad Scope and the Short Time Period Allotted for Compliance.**

The broad scope and short return date of the Subpoena render compliance with the Subpoena by May 16 unrealistic. The Subpoena requires PwC to search through numerous electronic databases to collect documents from PwC custodians at multiple locations. The FTC has recognized that an "abbreviated schedule insisted upon" by the issuer of requests for information may be "the source of the undue burden" on the recipient of such requests. Pl.'s

F.T.C.'s Opp'n to Defs.' Mot. to Compel [Dkt. 161] at 9, *FTC v. W. Ref., Inc.*, No. 1: 07-CV-00352-JB-A (D.N.M. May 2, 2007).

Given the number of engagements arguably covered by the Subpoena, PwC would need to identify, contact, and interview numerous potential document custodians to determine whether they have responsive documents. Potentially responsive documents would need to be gathered from individual professionals' computers and other sources; reviewed by PwC for responsiveness, privilege, or other confidential information that is protected from disclosure; redacted by PwC, as appropriate, to protect confidential, privileged, or private information; reviewed by PwC's clients for privilege or other protection from disclosure; and then processed by PwC for production.

Moreover, the numerous instructions in the Subpoena require significant additional time and resources by PwC in order to comply with the Subpoena. For example, the Subpoena directs PwC to perform a "complete search" of all PwC files rather than a reasonable search for responsive information as required by law; to redact all Sensitive Personally Identifiable Information and Sensitive Health Information; to produce documents in both native format and in image format with extracted text and extensive metadata information; to confer with the FTC before utilizing de-duplication software and services; to produce an extensive privilege log; and to submit an index identifying documents and their custodians. These instructions are unreasonable, especially under a compressed timetable. The Subpoena should be quashed.

**B. The Subpoena Impermissibly Seeks Production of Irrelevant, Immaterial Documents.**

The majority of the documents sought by the FTC are not likely to be material or relevant to the proceeding. A subpoena issued by a federal agency is unenforceable if it is "unduly burdensome or unreasonably broad." See *F.T.C. v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir.



1977) (en banc), *cert. denied*, 431 U.S. 974 (1977); 16 C.F.R. § 3.31(c)(2) (“The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the Administrative Law Judge if he or she determines that . . . [t]he burden and expense of the proposed discovery . . . outweigh its likely benefit.”). Similarly, a request for documents or information is reasonable, relevant and enforceable if the document requests are “adequate, but not excessive, for the purposes of the relevant inquiry.” *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1030 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 1071 (1979) (quoting *Okla. Press Publ’g Co. v. Walling*, 327 U.S. 186, 209 (1946)).

The scope of the Subpoena is excessive:

- Request No. 1 seeks all draft engagement letters and all correspondence and communications regarding engagement letters. PwC has agreed to produce final engagement letters, but the burden associated with collecting not only all draft engagement letters but also every piece of correspondence regarding such letters is unreasonable, especially given the questionable relevance of those documents.
- Request Nos. 2, 3, 4, 6, and 8 seek “all” documents regarding certain PwC engagements, the 1990 Lease and Transfer Agreement, and the acquisition of Palmyra. Such broad requests may capture many documents, but they are irrelevant to the FTC’s antitrust analysis. PwC has already produced nearly 600 pages of documents to the FTC and has further agreed to produce (subject to claims of privilege) the work papers from four different engagements, including two Lease Analysis engagements and two engagements regarding the acquisition of Palmyra.

- Request No. 5 seeks every document in PwC’s possession dating back to 2008 regarding healthcare services. The scope of this request is unconscionably broad: PwC is one of the largest accounting firms in the United States, with tens of thousands of employees supporting its nationwide audit, tax, and consulting practices. Whether given three weeks, three months, or three years, this request would be virtually impossible to satisfy.
- Request No. 7 seeks studies, analyses, and reports prepared for—and paid for by—other general acute care hospitals in Georgia since 2008. These documents are confidential, and they often incorporate proprietary material. On top of that, the burden associated with collecting these documents renders this request unreasonable.

Because the Subpoena is overbroad, it should be quashed.

**C. PwC’s Efforts to Comply with the Subpoena Would Obstruct Its Normal Business Operations.**

The Subpoena is unduly burdensome because even a good faith effort at compliance “threatens to unduly disrupt or seriously hinder” PwC’s normal operations. *FTC. v. Church & Dwight Co.*, 747 F. Supp. 2d 3, 8 (D.D.C. 2010) (quoting *Texaco*, 555 F.2d at 882). The tasks to be undertaken to compile a response to the Subpoena in the time allotted would require PwC personnel to divert their attention away from the day-to-day operations of PwC, resulting in continued disruptions to PwC’s business operations. Accordingly, the Subpoena should be quashed.

**D. The Subpoena Requests Information That Is Protected from Disclosure.**

Many of the documents requested by the Subpoena are subject to various privileges and protections, including the attorney work product doctrine and attorney-client privilege. Certain

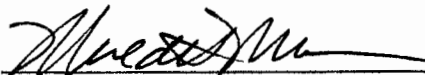
responsive documents may be subject to privileges or other protections from disclosure asserted by PwC. Additionally, PwC has been instructed by its clients to withhold documents based on those clients' assertions of privilege, and have timely invoked the attorney-client privilege and the attorney work product doctrine in response to the Subpoena. See 16 C.F.R. § 3.34(c) ("Such motions [to limit or quash] shall set forth all assertions of privilege."); 16 C.F.R. § 3.38A(a) ("Any person withholding material responsive to a subpoena issued pursuant to § 3.34 . . . shall assert a claim of privilege or any similar claim not later than the date set for production of the material."). In addition, several of the documents requested may be protected from disclosure under 26 U.S.C. §§ 6713 and 7216 and 26 C.F.R. § 301.7216-3(b).

#### IV. CONCLUSION

In the event that the FTC seeks to withdraw the modifications to the Subpoena or attempts to renew the deferred requests, PwC respectfully requests that the Administrative Law Judge quash or limit the Subpoena based on the objections set forth above and modify the return date of the Subpoena to provide a reasonable time for compliance.

Dated: May 6, 2013

Respectfully submitted,

By: 

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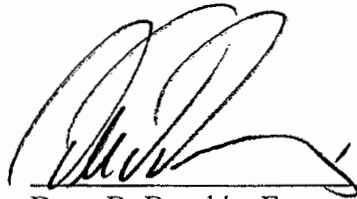
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*Counsel for PricewaterhouseCoopers LLP*

**STATEMENT OF DREW D. DROPKIN PURSUANT TO 16 C.F.R. § 3.22(g)**

I am a Counsel with King & Spalding LLP, counsel for PricewaterhouseCoopers LLP (“PwC”). I submit this statement in connection with PwC’s Motion to Quash or Limit the Subpoena *Duces Tecum* (the “Motion”). On April 25, 2013, the FTC emailed a copy of the Subpoena to PwC’s counsel. On May 1, May 2, and May 3, 2013, I conferred with Joshua Smith, counsel for the FTC, by telephone in a good faith attempt to resolve the issues set forth in this Motion. Mr. Smith and I were able to negotiate the modification and deferral of certain requests in the Subpoena. In the event that the FTC attempts to withdraw those modifications or renew the deferred requests, however, the issues raised in this Motion will be ripe for consideration, because Mr. Smith and I were unable to resolve our disputes regarding the deferred requests and regarding the unmodified version of the Subpoena.

Dated: May 6, 2013



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(404) 572-4600

# **EXHIBIT A**



# SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO PricewaterhouseCoopers, LLP c/o Elizabeth Tanis, Esq. King & Spalding LLP 1180 Peachtree Street, N.E. Atlanta, GA 30309	2. FROM  <p style="text-align: center;"><b>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</b></p>
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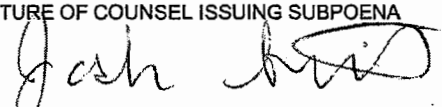
This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION  Federal Trade Commission 601 New Jersey Avenue NW Washington, DC 20001	4. MATERIAL WILL BE PRODUCED TO Joshua Smith, Complaint Counsel  5. DATE AND TIME OF PRODUCTION May 16, 2013
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6. SUBJECT OF PROCEEDING  
  
In the Matter of Phoebe Putney Health System, Inc., et al., Docket No. 9348

7. MATERIAL TO BE PRODUCED  
  
Documents & materials responsive to the attached Subpoena Duces Tecum Requests for Production

8. ADMINISTRATIVE LAW JUDGE  The Honorable D. Michael Chappell  Federal Trade Commission Washington, D.C. 20580	9. COUNSEL AND PARTY ISSUING SUBPOENA  Jeffrey Perry or designee Federal Trade Commission 601 New Jersey Avenue NW Washington, DC 20001 (202) 326-2331
--	--

DATE SIGNED 04/25/2013	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
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### GENERAL INSTRUCTIONS

#### APPEARANCE

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.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 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 counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

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:*

April 25, 2013

.....  
(Month, day, and year)

Devon Kelly

.....  
(Name of person making service)

Litigation Support Specialist

.....  
(Official title)



**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	)	<b>DOCKET NO. 9348</b>
	)	
Phoebe North, Inc.	)	
a corporation, and	)	
	)	
HCA Inc.	)	
a corporation, and	)	
	)	
Palmyra Park Hospital, Inc.	)	
a corporation, and	)	
	)	
Hospital Authority of Albany-Dougherty County.	)	

**COMPLAINT COUNSEL’S SUBPOENA *DUCES TECUM* TO  
PRICEWATERHOUSECOOPERS, LLP**

Pursuant to the Federal Trade Commission’s Rules of Practice, 16 C.F.R. §§ 3.31 and 3.34, and the Revised Scheduling Order entered by Chief Administrative Law Judge Chappell on April 4, 2013, Complaint Counsel hereby requests that PricewaterhouseCoopers, LLP produce the following in accordance with the Definitions and Instructions set forth below:

1. All documents relating to any of the Company’s engagement contracts or retainer agreements with Phoebe Putney, the Authority, or Langley & Lee, LLC, including, but not limited to: (i) all final and draft agreements; and (ii) all communications and correspondence relating to any of the Company’s final or draft engagement contracts or retainer agreements with Phoebe Putney, the Authority, or Langley & Lee.
  
2. All documents relating to the Company’s “Albany-Dougherty County Hospital Authority Lease Analysis” dated May 31, 2005, including all documents furnished for the preparation of the Analysis, and all workpapers or supplemental documents or

**Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers LLP (Docket No. 9348)**

studies that the Company prepared or considered in connection with that Analysis.

3. To the extent not produced in response to the other Specifications contained in this Subpoena, all documents relating to any study, analysis, or report issued by the Company, at the request of Phoebe Putney, the Authority, Langley & Lee, LLC, or Dougherty County regarding the provision of healthcare services, its prices, its costs, or its quality.
4. To the extent not produced in response to the other Specifications contained in this Subpoena, all communications between the Company and Phoebe Putney, the Authority, Langley & Lee, LLC, or Dougherty County regarding the provision of healthcare services, its prices, its costs, or its quality.
5. To the extent not produced in response to the other Specifications contained in this Subpoena, all documents relating to notes, interviews, data compilations, or other internal-Company material regarding the provision of healthcare services, its prices, its costs, or its quality.
6. All documents relating to the terms, operation, performance of, or amendments to the Lease and Transfer Agreement dated December 11, 1990, as amended, between the Authority and Phoebe Putney Memorial Hospital, Inc.
7. All documents that constitute a study, analysis, or report regarding the provision of healthcare services, its prices, its costs, or its quality, and prepared by the Company for general acute care hospitals in Georgia other than Phoebe Putney or Palmyra.
8. All documents and communications relating to the relevant transaction.

**DEFINITIONS**

- A. 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. 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 terms "Commission" or "FTC" mean the Federal Trade Commission.
- C. The terms "the Company" or "you" mean PricewaterhouseCoopers, LLP, 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.

**Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers LLP (Docket No. 9348)**

- D. 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 solely relating 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 Complaint Counsel’s need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Complaint Counsel representative identified on the last page of this Subpoena. The Complaint Counsel 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 requests identified by Complaint Counsel representatives; or
    - (c) include other proposals consistent with Complaint Counsel policy and the facts of the case.
- E. The terms “each,” “any,” and “all” mean “each and every.”
- F. The term “entity” means any natural person, corporation, company, partnership, joint

**Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers LLP (Docket No. 9348)**

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.

- G. The term “hospital” means a facility that provides the relevant service as defined herein.
- H. 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.
- I. The terms “or” and “and” have both conjunctive and disjunctive meanings.
- 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 “Phoebe Putney” 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.
- L. The term “relevant service” means 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.
- 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 Systems, Inc.*, Case No 1:11-cv-00058 (WLS) (M.D. Ga.); and (iii) any other instance in which either the Authority or Phoebe Putney considered purchasing Palmyra.

**INSTRUCTIONS**

- I.1. All documents should be produced within 21 days of the issuance of this Subpoena.
- I.2. 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

**Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers LLP (Docket No. 9348)**

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.

- I.3. Unless modified by agreement with Complaint Counsel, this Subpoena requires a complete search of all the files of the Company. The Company shall produce all responsive documents, wherever located, that are in the actual or constructive possession, custody, or control of the Company and its representatives, attorneys, and other agents, including, but not limited to, consultants, accountants, lawyers, or any other person retained by, consulted by, or working on behalf or under the direction of the Company.
- I.4. This Subpoena is continuing in nature and shall be supplemented in the event that additional responsive documents are created, prepared, or received between the time of the Company's initial response and trial.
- I.5. The Company need not produce documents that were already produced to the Commission in response to the Subpoena *Duces Tecum*, issued to the Company by the Commission on or about March 30, 2011, FTC File No. 111-0067.
- I.6. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). For purposes of this Subpoena, 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 Subpoena, 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.
- I.7. Forms of Production: The Company shall submit documents as instructed below absent written consent signed by Complaint Counsel.
  1. All information produced in electronic format shall be scanned for and free of viruses. Complaint Counsel will return any infected media for replacement, which may affect the timing of the Company's compliance with the Subpoena.
  2. 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:

**Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers LLP (Docket No. 9348)**

- (a) Submit Microsoft Access, Excel, and PowerPoint in native format with extracted text and metadata;
  - (b) Submit all other documents other than those identified in subpart (2)(a) in image format with extracted text and metadata; and
  - (c) Submit all hard copy documents in image format accompanied by OCR.
3. For each document submitted in electronic format, include the following metadata fields and information:
  - (a) For 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
  - (d) For hard copy documents: beginning Bates or document identification number, ending Bates or document identification number, page count, and custodian.
4. 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 Complaint Counsel 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.
5. Submit electronic files and images as follows:

**Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers LLP (Docket No. 9348)**

- (a) For any production 10 gigabytes or more, use IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 external enclosure;
  - (b) For productions less than 10 gigabytes, CD-R CD-ROMs 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. Complaint Counsel 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

**Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers LLP (Docket No. 9348)**

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 Complaint Counsel 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 Complaint Counsel representative will provide a sample index upon request.

- I.8. If any documents are withheld from production based on 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 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, and denote all attorneys with an asterisk. 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 Complaint Counsel 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-



**Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers LLP (Docket No. 9348)**

party, such as internal law firm memoranda, may be omitted from the log.

- I.9. 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 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.
- I.10. 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 with this Subpoena, notarized, and submitted along with the responsive materials.
- I.11. Any questions you have relating to the scope or meaning of anything in this Subpoena or suggestions for possible modifications thereto should be directed to Josh Smith at (202) 326-3018. The response to the Subpoena shall be addressed to the attention of Josh Smith, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

**Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers LLP (Docket No. 9348)**

**CERTIFICATION**

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Subpoena *Duces Tecum* has been prepared by me or under my personal supervision from records of PricewaterhouseCoopers, LLP, 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 the Commission uses such copies in any court or administrative proceeding, PricewaterhouseCoopers, LLP, will not object based upon the Commission not offering the original document.

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

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

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

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

**Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers LLP (Docket No. 9348)**

**CERTIFICATE OF SERVICE**

This is to certify that on April 25, 2013, I delivered via electronic mail and Federal Express Complaint Counsel's Subpoena *Duces Tecum* to:

Elizabeth Tanis, Esq.  
*King & Spalding LLP*  
1180 Peachtree Street, N.E.  
Atlanta, GA 30309-3521  
(404) 572-4660  
[etanis@kslaw.com](mailto:etanis@kslaw.com)

*Counsel for PricewaterhouseCoopers, LLP*

This is to certify that on April 25, 2013, I delivered via electronic mail a copy of Complaint Counsel's Subpoena *Duces Tecum* to:

Lee K. Van Voorhis, Esq.  
Katherine I. Funk, Esq.  
Teisha C. Johnson, Esq.  
Brian Rafkin, Esq.  
Jeremy Cline, Esq.  
Brian Burke, Esq.  
Jennifer Semko, Esq.  
John Fedele, Esq.  
Baker & McKenzie, LLP  
815 Connecticut Avenue, NW  
Washington, DC 20006  
(202) 835-6162  
[lee.vanvoorhis@bakermckenzie.com](mailto:lee.vanvoorhis@bakermckenzie.com)  
[katherine.funk@bakermckenzie.com](mailto:katherine.funk@bakermckenzie.com)  
[teisha.johnson@bakermckenzie.com](mailto:teisha.johnson@bakermckenzie.com)  
[brian.rafkin@bakermckenzie.com](mailto:brian.rafkin@bakermckenzie.com)  
[jeremy.cline@bakermckenzie.com](mailto:jeremy.cline@bakermckenzie.com)  
[brian.burke@bakermckenzie.com](mailto:brian.burke@bakermckenzie.com)  
[jennifer.semko@bakermckenzie.com](mailto:jennifer.semko@bakermckenzie.com)  
[john.fedele@bakermckenzie.com](mailto:john.fedele@bakermckenzie.com)

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

**Subpoena *Duces Tecum* Issued to PricewaterhouseCoopers LLP (Docket No. 9348)**

Emmet J. Bondurant, Esq.  
Frank M. Lowrey, Esq.  
Ronan P. Doherty, Esq.  
Michael A. Caplan, Esq.  
Bondurant, Mixson & Elmore LLP  
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Atlanta, GA 30309  
(404) 881-4126  
[bondurant@bmelaw.com](mailto:bondurant@bmelaw.com)  
[lowrey@bmelaw.com](mailto:lowrey@bmelaw.com)  
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*Counsel for Respondent*  
*Hospital Authority of Albany-Dougherty County*

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Jennifer Rie, Esq.  
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[agoldstein@stblaw.com](mailto:agoldstein@stblaw.com)  
[jrie@stblaw.com](mailto:jrie@stblaw.com)

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

April 25, 2013

By: s/ Maria DiMoscato  
Maria DiMoscato  
Attorney

# **EXHIBIT B**



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

Bureau of Competition  
Mergers IV

Joshua B. Smith  
Attorney

Email  
[jsmith3@ftc.gov](mailto:jsmith3@ftc.gov)

Direct Dial  
202-326-3018

Fax  
202-326-2286

May 3, 2013

**VIA E-MAIL**

Drew D. Dropkin, Esq.  
Elizabeth V. Tanis, Esq.  
King & Spalding  
1180 Peachtree Street, NE  
Atlanta, GA 30309

RE: In the Matter of Phoebe Putney Health System, Inc., et al., Docket No. 9348

Dear Mr. Dropkin:

This letter responds to our recent discussions regarding suggested modifications to the subpoena *duces tecum* issued to PricewaterhouseCoopers, LLP ("PWC") on April 25, 2013. Based upon the representations you made during our conversations, we make the modifications and deferrals listed below.

Our agreement to modify the subpoena is based on the accuracy and completeness of the information we have received from you to date. If such information is inaccurate or incomplete, we reserve the right to reexamine any issues affected by any modification described below. Our agreement to modify the subpoena is conditioned on PWC's full compliance with the subpoena as modified by this letter and any subsequent modification letters.

**Subpoena Specification 1**

PWC may limit its response to only final engagement agreements.

**Subpoena Specifications 2**

PWC may provide (1) the working papers for the engagement related to the 2005 Phoebe Putney Hospital Authority Lease Analysis and (2) the sources referenced in Appendix B of the Phoebe Putney Hospital Authority Lease Analysis. PWC may defer responding to the remainder of this specification at this time.

**Subpoena Specifications 3 and 4**

PWC may provide the working papers for the facility engagement and the implementation engagement with Phoebe Putney that began in 2011 and the engagement with Langley & Lee, LLC relating to a follow up study to the 2005 Lease Analysis, as you described those engagements. PWC may defer responding to the remainder of these specifications at this time.

**Specification 5**

PWC is not required to respond to this specification.

**Specification 6**

If PWC has or had an engagement related to the Lease and Transfer Agreement other than the engagements referenced above in Specifications 2 – 4, then PWC may provide the working papers for the engagement(s) and defer responding to the remainder of this specification at this time. If PWC has not had an engagement related to the Lease and Transfer Agreement other than the engagements referenced above in Specifications 2 – 4, then PWC is not required to respond to this specification at this time.

**Specification 7**

In lieu of responding fully to this specification at this time, PWC may provide a list of the studies, analyses, or reports regarding the provision of healthcare services, its prices, its costs, or its quality, and prepared by PWC for general acute care hospitals in Georgia other than Phoebe Putney or Palmyra. The list will include the names of the client and the hospital and the name and date of the study, analysis or report.

**Specification 8**

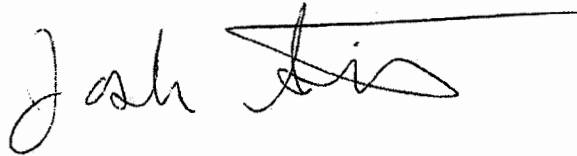
PWC may defer from responding to this specification at this time.

\* \* \* \*

Drew D. Dropkin, Esq.  
King & Spalding  
May 3, 2013  
Page 2

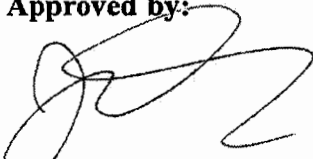
Please do not hesitate to contact me if you have any questions. My colleagues and I remain available at any time to discuss additional modifications you have proposed or may wish to propose in the future.

Kind regards,

A handwritten signature in cursive script that reads "Josh Smith". The signature is written in black ink and is positioned to the right of the typed name.

Josh Smith

Approved by:

A handwritten signature in cursive script that reads "Jeffrey Perry". The signature is written in black ink and is positioned above the typed name.

Jeffrey Perry  
Assistant Director  
Mergers IV



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

ORIGINAL



\_\_\_\_\_)  
In the Matter of )  
)  
PHOEBE PUTNEY HEALTH )  
SYSTEM, INC., and )  
)  
PHOEBE PUTNEY MEMORIAL )  
HOSPITAL, INC., and )  
)  
PHOEBE NORTH, INC., and )  
)  
HCA INC., and )  
)  
PALMYRA PARK HOSPITAL, INC., and )  
)  
HOSPITAL AUTHORITY OF, )  
ALBANY-DOUGHERTY COUNTY, )  
Respondents. )  
\_\_\_\_\_)

DOCKET NO. 9348

**PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL**

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm Chappell  
D. Michael Chappell  
Chief Administrative Law Judge

Date: April 21, 2011

## ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

**IT IS HEREBY ORDERED THAT** this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL-FTC Docket No. 9348" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL-FTC Docket No. 9348" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

# **EXHIBIT C**

**From:** [Smith, Joshua](#)  
**To:** [Dropkin, Drew](#); [Tanis, Beth](#)  
**Cc:** [Razi, Sara](#); [Dimoscato, Maria](#)  
**Subject:** RE: In re Phoebe Putney (FTC Docket No. 9348) - Subpoena Modification  
**Date:** Friday, May 03, 2013 5:02:15 PM

---

Mr. Dropkin,

Further to the Modification Letter sent to you in the email below, we will additionally state that PWC may defer from responding to Specification 7 at this time.

Josh Smith

---

**From:** Smith, Joshua  
**Sent:** Friday, May 03, 2013 2:56 PM  
**To:** 'ddropkin@kslaw.com'; etanis@kslaw.com  
**Cc:** Perry, Jeffrey  
**Subject:** In re Phoebe Putney (FTC Docket No. 9348) - Subpoena Modification

Mr. Dropkin,

Please find attached a letter modifying the subpoena issued to PWC on April 25, 2013. I also attach a protective order from Judge Chappell, for your information.

Please do not hesitate to call me with any questions.

Josh Smith  
U.S. Federal Trade Commission  
Bureau of Competition  
Mergers IV Division  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20001  
[jsmith3@ftc.gov](mailto:jsmith3@ftc.gov)  
tel +1 (202) 326-3018  
fax +1 (202) 326-2286

# **EXHIBIT D**

# KING & SPALDING

King & Spalding LLP  
1180 Peachtree Street N.E.  
Atlanta, GA 30309-3521  
Tel: +1 404 572 2788  
Fax: +1 404 572 5100  
www.kslaw.com

Drew Dropkin  
Counsel

May 6, 2013

## VIA EMAIL AND U.S. MAIL

Joshua Smith, Esq.  
Federal Trade Commission  
601 New Jersey Avenue NW  
Washington, DC 20001  
jsmith3@ftc.gov

**Re: In re Phoebe Putney Health System Inc., et al.  
Docket No. 9348**

**April 25, 2013 Subpoena Duces Tecum to PricewaterhouseCoopers  
LLP**

Dear Josh:

Subject to any claims of privilege or other protection from disclosure that might be asserted by PwC or its clients (*see* 16 C.F.R. § 3.38A(a)), PwC agrees to produce documents pursuant to the Federal Trade Commission's subpoena duces tecum dated April 25, 2013 (the "Subpoena"), as modified by your May 3, 2013 modification letter and as modified by your subsequent May 3, 2013 email regarding Specification 7.

This letter sets forth the general and specific objections of PricewaterhouseCoopers LLP ("PwC") to the Subpoena as originally drafted and issued.

### GENERAL OBJECTIONS

PwC asserts the following general objections, which are hereby incorporated by reference into PwC's specific objections to each document request of the Subpoena.

1. PwC objects to the document requests, definitions, and instructions in the Subpoena as overly broad and unduly burdensome.
2. PwC objects to the document requests, definitions, and instructions in the Subpoena because the enormous expense of the proposed discovery outweighs its likely benefit.



3. PwC objects to the document requests, definitions, and instructions in the Subpoena on the ground that they unreasonably require full production of documents and information by May 16, 2013.
4. PwC objects to the document requests, definitions, and instructions in the Subpoena on the ground that they request documents or information that are irrelevant to this adjudicative proceeding and are not reasonably calculated to lead to the discovery of admissible evidence.
5. PwC objects to the document requests, definitions, and instructions in the Subpoena because compliance would unduly disrupt and seriously hinder normal operations of PwC's business.
6. PwC objects to the document requests, definitions, and instructions in the Subpoena to the extent that they seek the disclosure of information or production of documents subject to the attorney-client privilege, the attorney work product privilege, the common interest privilege, or any other applicable privilege, protection, or immunity from disclosure.
7. PwC objects to the document requests, definitions, and instructions in the Subpoena to the extent that they require PwC to do more than is required by the applicable rules of procedure.
8. PwC objects to the document requests, definitions, and instructions in the Subpoena because they fail to specify with reasonable particularity the material to be produced. PwC will construe the words in the Subpoena according to their commonly understood meanings.
9. PwC objects to Instruction I.2. of the Subpoena because it is vague and ambiguous.
10. PwC objects to Instruction I.3. of the Subpoena, which requires a "complete search" of all the files of the Company and production of all responsive documents wherever located. Such instruction is contrary to the legal requirement of a reasonable search for responsive information and to any notion of de-duplication as set forth in Instruction I.7.4. of the Subpoena.
11. PwC objects to Instruction I.4. of the Subpoena, which requires a continuing supplementation of any document production, as unduly burdensome, unreasonable, and demanding more than is required by the applicable rules of procedure.
12. PwC objects to the document requests, definitions, and instructions in the Subpoena because the discovery sought is unreasonably cumulative and duplicative, and is obtainable from other sources that are more convenient, less burdensome, and less expensive.

13. PwC objects to the document requests, definitions, and instructions in the Subpoena because the FTC has had ample opportunity by discovery in the action to obtain the information sought.
14. PwC objects to the document requests, definitions, and instructions in the Subpoena because the Subpoena is improper under 15 U.S.C. § 49.

### SPECIFIC OBJECTIONS

The following specific objections fully incorporate, are subject to, and are made without waiver of the foregoing general objections.

***Request 1: All documents relating to any of the Company's engagement contracts or retainer agreements with Phoebe Putney, the Authority, or Langley & Lee, LLC, including but not limited to: (i) all final and draft agreements; and (ii) all communications and correspondence relating to any of the Company's final or draft engagement contracts or retainer agreements with Phoebe Putney, the Authority, or Langley & Lee.***

***Modification: PwC may limit its response to only final engagement agreements.***

### RESPONSE

PwC incorporates by reference all of its general objections set forth above.

As modified, PwC objects to Request No. 1 to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product doctrine, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, protection, immunity, or confidentiality, including all applicable privileges, protections, immunities, or confidentiality asserted at the instruction of PwC's client(s).

With respect to the unmodified version of Request No. 1, PwC objects to Request No. 1 to the extent that it is overbroad and requests documents that are irrelevant to this adjudicative proceeding and are not reasonably calculated to lead to the discovery of admissible evidence, including, in particular, non-final drafts of engagement letters and retainer agreements and every piece of communication or correspondence relating to every draft or final engagement letter or retainer agreement. PwC objects to Request No. 1 to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product doctrine, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, protection, immunity, or confidentiality, including all applicable privileges, protections, immunities, or confidentiality asserted at the instruction of PwC's client(s).

Subject to and without waiving the foregoing general and specific objections, PwC already has produced to the FTC the engagement letter dated December 30, 2010 between PwC

and PPHS (bearing production numbers PwC-206 to PwC-219) and the engagement letter dated February 24, 2011 between PwC and PPMH (bearing production numbers PwC-91 to PwC-98).

**Request 2:** *All documents relating to the Company's "Albany-Dougherty County Hospital Authority Lease Analysis" dated May 31, 2005, including all documents furnished for the preparation of the Analysis, and all workpapers or supplemental documents or studies that the Company prepared or considered in connection with that Analysis.*

**Deferral:** *PWC may provide (1) the working papers for the engagement related to the 2005 Phoebe Putney Hospital Authority Lease Analysis and (2) the sources referenced in Appendix B of the Phoebe Putney Hospital Authority Lease Analysis. PWC may defer responding to the remainder of this specification at this time.*

#### RESPONSE

PwC incorporates by reference all of its general objections set forth above.

With respect to the non-deferred portion of Request No. 2, PwC objects to Request No. 2 to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product doctrine, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, protection, immunity, or confidentiality, including all applicable privileges, protections, immunities, or confidentiality asserted at the instruction of PwC's client(s).

With respect to the deferred portion of Request No. 2, PwC objects to Request No. 2 to the extent that it is overbroad and unduly burdensome in scope and in that PwC cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to Request No. 2 by May 16, 2013, as required by the Subpoena. PwC objects to Request No. 2 to the extent it requests documents that are irrelevant to this adjudicative proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. PwC objects to Request No. 2 to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product doctrine, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, protection, immunity, or confidentiality, including all applicable privileges, protections, immunities, or confidentiality asserted at the instruction of PwC's client(s).

Subject to and without waiving the foregoing general and specific objections, PwC already has produced to the FTC the publicly released report entitled "Albany-Dougherty County Hospital Authority Lease Analysis" (bearing production numbers PwC-1 to PwC-31).

**Request 3:** *To the extent not produced in response to the other Specifications contained in this Subpoena, all documents relating to any study, analysis, or report issued by the Company, at the request of Phoebe Putney, the Authority, Langley & Lee,*

***LLC, or Dougherty County regarding the provision of healthcare services, its prices, its costs, or its quality.***

***Deferral:*** ***PWC may provide the working papers for the facility engagement and the implementation engagement with Phoebe Putney that began in 2011 and the engagement with Langley & Lee, LLC relating to a follow up study to the 2005 Lease Analysis, as you described those engagements.<sup>1</sup> PWC may defer responding to the remainder of these specifications at this time.***

## RESPONSE

PwC incorporates by reference all of its general objections set forth above.

With respect to the non-deferred portion of Request No. 3, PwC objects to Request No. 3 to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product doctrine, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, protection, immunity, or confidentiality, including all applicable privileges, protections, immunities, or confidentiality asserted at the instruction of PwC's client(s).

With respect to the deferred portion of Request No. 3, PwC objects to Request No. 3 to the extent that it is overbroad and unduly burdensome in scope and in that PwC cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to Request No. 3 by May 16, 2013, as required by the Subpoena. PwC objects to Request No. 3 to the extent it requests documents that are irrelevant to this adjudicative proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. PwC objects to Request No. 3 to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product doctrine, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, protection, immunity, or confidentiality, including all applicable privileges, protections, immunities, or confidentiality asserted at the instruction of PwC's client(s).

Subject to and without waiving the foregoing general and specific objections, PwC already has produced to the FTC the publicly released report entitled "Albany-Dougherty County Hospital Authority Lease Analysis" (bearing production numbers PwC-1 to PwC-31) and the draft report entitled "Project Scan Due Diligence" (bearing production numbers PwC-32 to PwC-71).

***Request 4:*** ***To the extent not produced in response to the other Specifications contained in this Subpoena, all communications between the Company and Phoebe Putney, the Authority, Langley & Lee, LLC, or Dougherty County regarding the provision of healthcare services, its prices, its costs, or its quality.***

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<sup>1</sup> To clarify, the "follow up" engagement to the 2005 Lease Analysis was performed for Perry & Walters, LLP rather than for Langley & Lee, LLC.

***Deferral:*** *PWC may provide the working papers for the facility engagement and the implementation engagement with Phoebe Putney that began in 2011 and the engagement with Langley & Lee, LLC relating to a follow up study to the 2005 Lease Analysis, as you described those engagements.<sup>2</sup> PWC may defer responding to the remainder of these specifications at this time.*

RESPONSE

PwC incorporates by reference all of its general objections set forth above.

With respect to the non-deferred portion of Request No. 4, PwC objects to Request No. 4 to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product doctrine, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, protection, immunity, or confidentiality, including all applicable privileges, protections, immunities, or confidentiality asserted at the instruction of PwC's client(s).

With respect to the deferred portion of Request No. 4, PwC objects to Request No. 4 to the extent that it is overbroad and unduly burdensome in scope and in that PwC cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to Request No. 4 by May 16, 2013, as required by the Subpoena. PwC objects to Request No. 4 to the extent it requests documents that are irrelevant to this adjudicative proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. PwC objects to Request No. 4 to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product doctrine, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, protection, immunity, or confidentiality, including all applicable privileges, protections, immunities, or confidentiality asserted at the instruction of PwC's client(s).

***Request 5:*** *To the extent not produced in response to the other Specifications contained in this Subpoena, all documents relating to notes, interviews, data compilations, and other internal-Company material regarding the provision of healthcare services, its prices, its costs, or its quality.*

***Modification:*** *PWC is not required to respond to this specification.*

RESPONSE

PwC incorporates by reference all of its general objections set forth above.

As modified, Request No. 5 has been withdrawn by the FTC.

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<sup>2</sup> To clarify, the "follow up" engagement to the 2005 Lease Analysis was performed for Perry & Walters, LLP rather than for Langley & Lee, LLC.

With respect to the unmodified version of Request No. 5, PwC objects to Request No. 5 to the extent that it is overbroad and unduly burdensome in scope and in that PwC cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to Request No. 5 by May 16, 2013, as required by the Subpoena. PwC objects to Request No. 5 to the extent it requests documents that are irrelevant to this adjudicative proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. PwC objects to Request No. 5 to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product doctrine, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, protection, immunity, or confidentiality, including all applicable privileges, protections, immunities, or confidentiality asserted at the instruction of PwC's client(s).

***Request 6: All documents relating to the terms, operation, or performance of, or amendments to the Lease and Transfer Agreement dated December 11, 1990, as amended, between the Authority and Phoebe Putney Memorial Hospital, Inc.***

***Deferral: If PWC has or had an engagement related to the Lease and Transfer Agreement other than the engagements referenced above in Specifications 2 – 4, then PWC may provide the working papers for the engagement and defer responding to the remainder or this specification at this time. If PWC has not had an engagement related to the Lease and Transfer Agreement other than the engagements referenced above in Specifications 2 – 4, then PWC is not required to respond to this specification at this time.***

#### RESPONSE

PwC incorporates by reference all of its general objections set forth above.

With respect to the non-deferred portion of Request No. 6, PwC objects to Request No. 6 to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product doctrine, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, protection, immunity, or confidentiality, including all applicable privileges, protections, immunities, or confidentiality asserted at the instruction of PwC's client(s).

With respect to the deferred portion of Request No. 6, PwC objects to Request No. 6 to the extent that it is overbroad and unduly burdensome in scope and in that PwC cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to Request No. 6 by May 16, 2013, as required by the Subpoena. PwC objects to Request No. 6 to the extent it requests documents that are irrelevant to this adjudicative proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. PwC objects to Request No. 6 to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product doctrine, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege,

protection, immunity, or confidentiality, including all applicable privileges, protections, immunities, or confidentiality asserted at the instruction of PwC's client(s).

**Request 7:** *All documents that constitute a study, analysis, or report regarding the provision of healthcare services, its prices, its costs, or its quality, and prepared by the Company for general acute care hospitals in Georgia other than Phoebe Putney or Palmyra.*

**Deferral:** *PWC may defer from responding to Specification 7 at this time.*

RESPONSE

PwC incorporates by reference all of its general objections set forth above.

Request No. 7 has been deferred in its entirety.

With respect to the deferred portion of Request No. 7, PwC objects to Request No. 7 to the extent that it is overbroad and unduly burdensome in scope and in that PwC cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to Request No. 7 by May 16, 2013, as required by the Subpoena. PwC objects to Request No. 7 to the extent it requests documents that are irrelevant to this adjudicative proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. PwC objects to Request No. 7 to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product doctrine, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, protection, immunity, or confidentiality, including all applicable privileges, protections, immunities, or confidentiality asserted at the instruction of PwC's client(s).

**Request 8:** *All documents and communications relating to the relevant transaction.*

**Deferral:** *PWC may defer from responding to this specification at this time.*

RESPONSE

PwC incorporates by reference all of its general objections set forth above.

Request No. 8 has been deferred in its entirety.

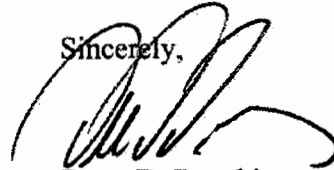
With respect to the deferred portion of Request No. 8, PwC objects to Request No. 8 to the extent that it is overbroad and unduly burdensome in scope and in that PwC cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to Request No. 8 by May 16, 2013, as required by the Subpoena. PwC objects to Request No. 8 to the extent it requests documents that are irrelevant to this adjudicative proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. PwC objects to Request No. 8 to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product doctrine, the common interest privilege, 26

Mr. Joshua D. Smith  
May 6, 2013  
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U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, protection, immunity, or confidentiality, including all applicable privileges, protections, immunities, or confidentiality asserted at the instruction of PwC's client(s).

Subject to and without waiving the foregoing general and specific objections, PwC has produced to the FTC several hundred pages of documents potentially responsive to Request No. 8 (bearing production numbers PwC-1 to PwC-90, PwC-99 to PwC-205, and PwC-220 to PwC-589).

Sincerely,



Drew D. Dropkin

cc: Elizabeth V. Tanis, Esq. (via email only)  
Emmet J. Bondurant, Esq. (via email only)  
Frank M. Lowrey, Esq. (via email only)  
Ronan P. Doherty, Esq. (via email only)  
Michael A. Caplan, Esq. (via email only)  
Lee K. Van Voorhis, Esq. (via email only)  
Katherine I. Funk, Esq. (via email only)  
Brian Burke, Esq. (via email only)  
Jennifer Semko, Esq. (via email only)  
Teisha C. Johnson, Esq. (via email only)  
Brian Raffkin, Esq. (via email only)  
Jeremy Cline, Esq. (via email only)  
John Fedele, Esq. (via email only)



# **EXHIBIT E**

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of	)	
	)	
PHOEBE PUTNEY HEALTH SYSTEM, INC. <i>et al.</i> ,	)	Docket No. 9348
	)	Public
Respondents	)	
	)	

**PROPOSED ORDER**

On April 25, 2013, Complaint Counsel served a Subpoena *Duces Tecum* (the "Subpoena") on PricewaterhouseCoopers LLP ("PwC").

Complaint Counsel subsequently agreed to certain modifications and deferrals of the Specifications set forth in the Subpoena, and PwC agreed to produce documents—subject to any claims of privilege or other protection from disclosure that might be asserted by PwC or its clients (*see* 16 C.F.R. § 3.38A(a))—responsive to the non-deferred Specifications in the Subpoena.

To preserve its objections to the Subpoena as originally drafted and issued, PwC filed a Motion to Quash or Limit Subpoena *Duces Tecum* ("the Motion") on May 6, 2013. PwC indicated that its Motion would be ripe for adjudication only if Complaint Counsel attempted to withdraw the modifications or renew the deferred Specifications. [Complaint Counsel has attempted to withdraw the modifications and/or renew the deferred Specifications. Accordingly, this Motion is now ripe for adjudication.]

Because the Subpoena as originally drafted and issued seeks documents or information that are not reasonably expected to yield information relevant to this proceeding (*see* 16 C.F.R. § 3.31(c)(1)), is unreasonably cumulative and duplicative (*see* 16 C.F.R. § 3.31(c)(2)(i)), seeks documents or information that is obtainable from other sources (*see* 16 C.F.R. § 3.31(c)(2)(i)), does not provide sufficient time for compliance (*see* 16 C.F.R. § 3.31(c)(2)(ii)), and imposes an unreasonable burden and expense on PwC (*see* 16 C.F.R. § 3.31(c)(2)(iii)), the Subpoena is quashed. (*See* 16 C.F.R. § 3.34(c).)

ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Dated: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of May, 2013, I caused the original and twelve (12) copies of the Motion to Quash or Limit with attached Exhibits to be filed with the Secretary of The Federal Trade Commission by hand delivery and electronic delivery to:

Donald S. Clark  
Secretary  
FEDERAL TRADE COMMISSION  
Room H-113  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
[dclark@ftc.gov](mailto:dclark@ftc.gov)

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

The Honorable D. Michael Chappell  
Administrative Law Judge  
FEDERAL TRADE COMMISSION  
Room H-110  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
[oalji@ftc.gov](mailto:oalji@ftc.gov)

and by hand delivery, U.S. Mail, and by electronic mail to the following:

Jeffrey K. Perry, Esq.  
Joshua Smith, Esq.  
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[jsmith3@ftc.gov](mailto:jsmith3@ftc.gov)

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Bureau of Competition  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

*Complaint Counsel, Bureau of Competition, Federal Trade Commission*

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

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Washington, D.C. 20005

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

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1201 Peachtree Street, Suite 3900  
Atlanta, GA 30309

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

Dated: May 6, 2013

KING & SPALDING LLP



Meredith Moss  
WDC Bar No. 484108  
*Counsel for PricewaterhouseCoopers LLP*