ORIGINAL

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of	
Phoebe Putney Health System, Inc.,	
Phoebe Putney Memorial Hospital, Inc.,	
Phoebe North, Inc.,	
HCA, Inc.,	Docket No. 9348
Palmyra Park Hospital, Inc., and	
Hospital Authority of Albany-Dougherty County,	
Respondents.	

MOTION TO QUASH SUBPOENA *DUCES TECUM*

Pursuant to 16 C.F.R. § 3.34(c) and Rule 3.34(c) of the Rules of Practice for Adjudicative Proceedings before the United States Federal Trade Commission ("FTC Rules of Practice"), Blue Cross and Blue Shield of Georgia, Inc. ("BCBS"), a non-party to this proceeding, files the following Motion to Quash Subpoena.

I. INTRODUCTION AND STATEMENT OF FACTS

On April 26, 2013, Respondents Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Hospital Authority of Albany-Dougherty County (collectively referred to herein as "Respondents") served a subpoena *duces tecum* ("Respondents' Subpoena") upon BCBS.[1] A copy of Respondents' Subpoena is attached hereto as Exhibit A.

[1] Pursuant to 16 C.F.R. § 3.34(c) and FTC Rule of Practice 3.34(c), any motion to limit or quash a subpoena must be filed within the earlier of ten days after service or the time of compliance. Respondents' Subpoena was served on BCBS by Federal Express on April 26, 2013. Pursuant to

A. BCBS Previously Produced Documents and Data in Connection with this Investigation.

The investigation at issue here concerns an agreement entered in December 2010 for the acquisition of the Palmyra Medical Center by the Hospital Authority of Albany-Dougherty County (the "Transaction"). The Federal Trade Commission ("FTC") opened a non-public preliminary investigation of the Transaction in December 2010, believing that the Transaction created a "virtual monopoly for inpatient general acute care services sold to commercial health plans and their customers in Albany, Georgia and its surrounding area." The FTC subsequently converted that investigation to a formal investigation in February 2011. (Compl. at 2.)

On February 22, 2011, the FTC issued a Civil Investigative Demand ("CID") to WellPoint, Inc. ("WellPoint"), the ultimate parent company of BCBS, and requested certain documents from WellPoint, including among other things contracts with hospitals in the relevant geographic area, documents reflecting negotiations of those contracts, data regarding inpatient admissions, information regarding products offered, documents relating to price increases, and documents relating to comparisons of hospitals. (Affidavit of Michelle M. Rothenberg-Williams ("Rothenberg-Williams Aff."), attached hereto as Exhibit B, ¶ 3 & Ex. A (Civil Investigative Demand).)

In response to the CID, WellPoint and the FTC negotiated certain modifications to reduce the burden placed on WellPoint in responding to the CID. Among other things, the parties agreed to limit the geographic area implicated by the CID to Dougherty County and the contiguous counties. They also agreed to limit the relevant time period to January 1, 2008 through March 22, 2011. (Rothenberg-Williams Aff. ¶ 4 & Ex. B (WellPoint's submission in

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its terms BCBS must comply on or before May 21, 2013. Thus, BCBS's motion to quash or limit must be filed on or before May 9, 2013. This motion is therefore timely.

response to CID) at Attachment 1[2].) In May of 2011, WellPoint produced several CDs of data and documents, and below is a brief description of the documents produced:

- Participating Hospital Agreements/Preferred Provider Agreements between BCBSGA and BCBSHP and the following hospitals:
  - Calhoun Memorial Hospital
  - Archbold Medical Center
  - South Georgia Surgical Associates
  - Palmyra Medical Center
  - Phoebe Health System
  - Phoebe Putney Memorial Hospital
  - Baptist Hospital Worth County;
- Correspondence regarding contracting between BCBSGA and BCBSHP, on the one hand, and HCA, Inc. and Palmyra Medical Center, on the other;
- Documents, including nearly 1800 emails and attachments, related to contracting and contract negotiations conducted by BCBSGA and BCBSHP;
- Inpatient admissions data;
- Fee schedule information for BCBSGA and BCBSHP; and
- Lists of network hospitals for particular products offered by BCBSGA and BCBSHP.

(Rothenberg-Williams Aff. ¶ 5 & Ex. B (WellPoint's submission in response to CID).) BCBS has been informed by counsel for the FTC that the documents and data produced by WellPoint in May 2011 were provided to Respondents. (Rothenberg-Williams Aff. ¶ 6.)

In April of 2013, the FTC served a subpoena *duces tecum* ("FTC's Subpoena") on BCBS, essentially requesting that BCBS update the documents it produced in May of 2011. (Rothenberg-Williams Aff. ¶ 7 & Ex. C (FTC Subpoena).) Consistent with the agreement reached in connection with the CID, the FTC limited the implicated geographic area to include the counties of Baker, Dougherty, Lee, Mitchell, Terrell, and Worth. (Rothenberg-Williams Aff. Ex. C at Definition 9.) Further, the FTC has agreed to apply to FTC's Subpoena the same modifications negotiated by the parties in connection with the CID. (Rothenberg-Williams Aff. ¶ 8 & Ex. D (May 3, 2013 Letter).) Accordingly, using the agreed-upon modifications, BCBS

[2] The exact modifications agreed to by the parties are memorialized in a letter dated April 6, 2011, which is attached to WellPoint's submission in response to the CID as Attachment 1.

intends to conduct a reasonable and diligent search and to produce all relevant, non-privileged documents to the FTC in a timely manner. BCBS understands that all documents produced by BCBS in response to the subpoena will be provided to Respondents. (Rothenberg-Williams Aff. ¶ 8.)

B. Respondents Have Refused to Agree to Any Meaningful Limitation of its Expansive and Broad-Ranging Document Requests.

On March 14, 2013, following a lengthy stay of proceedings, the FTC recommenced its investigation and directed the Administrative Law Judge to issue a Revised Scheduling Order, indicating that the discovery period would close on May 29, 2013 and that an evidentiary hearing would begin no later than July 15, 2013. (*See* Order Granting Complaint Counsel's Mot. to Lift Stay.) Respondents immediately moved to have the hearing rescheduled for December, 2013 and to have the discovery period extended accordingly. On April 22, 2013, the FTC denied Respondents' motion, finding that Respondents failed to show good cause for rescheduling the hearing because it had been aware of this proceeding and the expedited discovery requirements for over two years. (*See* Order Denying Resp.'s Mot. to Reschedule Hearing Date.) A week later, with one month left in the discovery period, Respondents propounded expansive and broad-ranging subpoenas to a multitude of providers and hospitals in Georgia and surrounding areas, including BCBS.

BCBS reviewed Respondents' Subpoena and determined that it would be impossible to search for, locate, review, and produce the documents within the period permitted for discovery or within the requested timeframe because of the scope of Respondents' Subpoena and the limited timeframe in which to respond. In addition, BCBS determined that such a search would be unduly burdensome and expensive. In an attempt to limit the scope of Respondents' Subpoena and to meet its obligation to confer with opposing counsel, counsel for BCBS

contacted counsel for Respondents and informed him that BCBS had previously produced documents in connection with this investigation that are responsive to Respondents' Subpoena and that BCBS intends to update that production in a timely manner, as requested by the FTC in FTC's Subpoena. Counsel for BCBS suggested that, given the limited time remaining in the discovery period, Respondents accept its previous production, together with its supplemental production, as a full and complete response to Respondents' Subpoena. It became clear in these communications that Respondents had conducted only a limited review of the documents previously produced by WellPoint and that, even if BCBS could comply with Respondents' overly broad subpoena in the limited timeframe provided, Respondents would not be able to review the requested documents in advance of the hearing. Nonetheless, counsel for Respondents rejected BCBS's proposal and further refused to agree to limit Respondents' Subpoena in any meaningful way.

Given Respondents' previous unsuccessful attempts to extend discovery and reschedule the hearing date and its reluctance to limit the scope of this broad-ranging Subpoena, it appears that Respondents' Subpoena is a poorly veiled attempt to achieve a delay that they could not otherwise obtain. Such conduct should not be permitted.

II. ARGUMENT AND CITATION OF AUTHORITY

The FTC's Rules of Practice and relevant federal regulations provide that "[p]arties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent." FTC Rule of Practice 3.31(c)(1); 16 C.F.R. § 3.31(c)(1). Further, the Administrative Law Judge may limit the use of discovery if he determines that:

(i) The discovery sought from a party or third party is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(iii) The burden and expense of the proposed discovery on a party or third party outweigh its likely benefit.

FTC Rule of Practice 3.31(c)(2); 16 C.F.R. § 3.31(c)(2).

Because BCBS has previously produced documents in connection with this investigation that are responsive to Respondents' Subpoena, Respondents' Subpoena is unreasonably cumulative and duplicative.

Further, the requests are drafted so broadly as to render compliance nearly impossible. For example, Request No. 2 requires BCBS to produce "all documents relating to the criteria or factors used by [BCBS] in selecting which health care facility to contract with in the State of Georgia, and all documents that apply those criteria." Request No. 9 requires BCBS to produce "all proposals by BCBS or any other payor to employers, sponsors, employer groups, unions, agencies, counties, or municipalities that discuss any health care facility or hospital located in the Geographic Area." Request No. 18 requires BCBS to produce "[a]ll documents relating to cost-shifting by any hospital in the State of Georgia."[3] And these are just a few examples of the overly broad nature of Respondents' requests.

In order to comply with these requests, BCBS would be required to search through numerous electronic databases and to conduct numerous custodian interviews to collect documents from various custodians at multiple locations. BCBS would then have to review the documents for responsiveness and privilege, redact all sensitive health information, create a

[3] Specific responses and objections to each document request are included below. *See infra* Section III.

comprehensive privilege log, and comply with the elaborate instructions contained in Respondents' Subpoena regarding production. These efforts would require significant resources from BCBS and would disrupt its normal business operations. Responding to these requests is an unreasonable and monumental undertaking that could not be completed within the current period permitted for discovery. Accordingly, the burden and expense required to comply with Respondents' Subpoena far outweighs any benefit that Respondents could bope to obtain, particularly in light of the fact that BCBS has previously produced documents that are likely responsive to Respondents' Subpoena.

For these reasons, BCBS respectfully requests that Respondents' Subpoena be quashed in its entirety.

III. RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS

BCBS incorporates by reference the arguments made in its Motion to Quash Subpoena *Duces Tecum*. In addition, BCBS hereby adopts and incorporates by reference the following General Objections into each of its specific objections to Respondents' Subpoena.

GENERAL OBJECTIONS

1. BCBS objects to Respondents' Subpoena to the extent that it seeks to impose obligations on BCBS that exceed or modify the requirements of the FTC's Rules of Practice, the FTC's governing regulations, and other applicable rules of procedure.

2. BCBS objects to Respondents' Subpoena on the grounds that is overbroad and seeks the production of documents that are neither relevant to the subject matter of the pending investigation, nor reasonably calculated to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent.

3. BCBS objects to Respondents' Subpoena on the grounds that it is duplicative and harassing because the subpoena seeks information and documents that are publicly available and already are or should be in Respondents' possession, custody, or control.

4. BCBS objects to Respondents' Subpoena to the extent it seeks documents that are protected by the attorney-client privilege, work product doctrine, the common interest privilege, and other applicable privileges, immunities, and duties of confidentiality belonging to BCBS.

5. BCBS objects to Respondents' Subpoena on the grounds that it seeks information or documents that constitute, contain, or refer to trade secrets or other confidential business and commercial information of BCBS. BCBS further objects to Respondents' Subpoena to the extent that it seeks information or documents that are subject to confidentiality provisions or obligations between BCBS and others that may not be disclosed without notice to and/or consent of the parties to such contracts or otherwise.

6. BCBS objects to Respondents' Subpoena to the extent that it seeks documents or information that contain or comprise personal health information that is privileged and confidential under federal or state law that prohibits unauthorized disclosure.

7. BCBS objects to the definition of the term "Geographic Area." In its Complaint, the FTC stated that "[t]he relevant geographic market in which to analyze the effects of the Transaction is *no broader than* the six-county region consisting of Dougherty, Terrell, Lee, Worth, Baker, and Mitchell Counties in Georgia." (Compl. ¶ 51.) Further, in FTC's Subpoena to BCBS, the FTC defined the term "relevant area" as "the area encompassing" the same six counties.

8. BCBS objects to Instruction B on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive.

9. BCBS's objections as set forth herein are based upon information presently known to BCBS. BCBS reserves the right to rely on any facts, documents, or other evidence which may develop or subsequently come to its attention; to assert additional objections should BCBS discover additional information or grounds for objections; and to supplement or amend these objections at any time.

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS

Subject to and without waiving the foregoing General Objections, BCBS objects and responds to the Document Requests as follows.

Request No. 1:

All contracts between Your Company and any health care facility in the State of Georgia, including all amendments, appendices, and related documents reflecting any contract terms including any analyses, reports, or correspondence relating to any contract, proposed contract, or contract negotiations.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 1 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive. BCBS further objects to Request No. 1 on the grounds that it is unreasonably cumulative and duplicative.

Subject to and without waiving its General Objections and the foregoing objections, BCBS states that it has previously produced documents responsive to Request No. 1. In particular, BCBS produced Participating Hospital Agreements and Preferred Provider Agreements with Calhoun Memorial Hospital; Archbold Medical Center; South Georgia Surgical

Associates; Palmyra Medical Center; Phoebe Health System; Phoebe Putney Memorial Hospital; and Baptist Hospital Worth County. In addition, BCBS produced documents relating to the development and negotiation of the aforementioned agreements.

Request No. 2:

All documents relating to the criteria or factors used by Your Company in selecting which health care facility to contract with in the State of Georgia, and all documents that apply those criteria.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 2 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive.

Request No. 3:

All documents relating to competition between and among payors in the State of Georgia, including but not limited to, the desirability or necessity of entering into contracts with any individual health care facility or hospital system.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 3 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive.

Request No. 4:

All documents relating to the Transaction, including but not limited to, all documents sent to or received from the Federal Trade Commission and all documents relating to any communications between You and the Federal Trade Commission or any existing or potential customer regarding the Transaction.

RESPONSE:

Subject to and without waiving its General Objections, BCBS states that, upon information and belief, a copy of the CID submitted to WellPoint in 2011, along with all

documents produced in response to that CID, have been provided to Respondents. BCBS further states that a copy of its submission in response to the CID, including correspondence regarding modifications to the CID, is attached as Exhibit B to the Affidavit of Michelle M. Rothenberg-Williams, attached hereto as Exhibit B. Finally, BCBS states that, upon information and belief, a copy of the subpoena issued by the FTC to BCBS in April of 2013, along with all documents produced in response to that subpoena, have been or will be provided to Respondents.

Request No. 5:

All documents relating to competition between health care facilities in the State of Georgia, including but not limited to, market studies, quality assessments, forecasts, and surveys.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 5 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive. BCBS further objects to Request No. 5 on the grounds that it is unreasonably cumulative and duplicative.

Subject to and without waiving its General Objections and the foregoing objections, BCBS states that it has previously produced documents responsive to Request No. 5. In particular, BCBS states that it has produced information related to the quality of the hospitals in the six-county geographic area defined by the FTC, as well as comparisons of quality, cost, price, services, and consumer preferences among those hospitals.

Request No. 6:

All documents describing, discussing, summarizing, or analyzing the utilization of hospitals in the Geographic Area by enrollees in any health plan that You sponsor or administer.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 6 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive.

Request No. 7:

All documents relating to the shift, diversion, or referral, or impediments to the shift, diversion, or referral, of patients or any category of patients to or from any hospital or any health care facility in the Geographic Area by any payor, including but not limited to, Your Company.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 7 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive.

Request No. 8:

All documents relating to any complaints by Your Company or any other payor that any health care facility in the Geographic Area is raising the rates on its charge master.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 8 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive.

Request No. 9:

All proposals by Your Company or any other payor to employers, sponsors, employer groups, unions, agencies, counties, or municipalities that discuss any health care facility or hospital located in the Geographic Area.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 9 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive.

Request No. 10:

All documents relating to the basis upon which (i) employers select or are perceived to select among payors or health plans, (ii) enrollees select or are perceived to select among payors or health plans, or (iii) Your Company or any other payor offers different reimbursement rates to health care facilities based on the quality of care provided at that facility.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 10 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive.

Request No. 11:

For each year during the relevant period, provide individual claim level, annual electronic inpatient files in delimited text format that include the following individual data elements for each inpatient discharge at all hospitals in the State of Georgia:

(a) a numerical patient identifier that masks the true identity (name) of the patient;

(b) a unique claim number for that inpatient episode;

(c) all submitted data elements included on the UB-92 or UB-04 depending on which form of the claim was submitted to You by the hospital, with all data elements identified by name and a full and complete definition for each data element;

(d) the Diagnosis Related Group ("DRG") version and number assigned;

(e) the allowed amount of the claim as determined by You, the amount You paid the hospital for that claim, and whether the hospital was paid under a per-diem, DRG, capitation, percentage of charges, or some other type of reimbursement methodology;

(f) the amount of patient copay, deductible, and any other out-of-pocket responsibility;

(g) the commercial name of the health plan product in which the patient was enrolled, including whether that product is an HMO, PPO, or POS product, the number of tiers used to identify in-network facilities to the extent any such product contained tiers, whether that product is a commercial product sold to employers or whether it is a product sold to beneficiaries of Government insurance programs such as Medicare or Medicaid, and if so, which Government program;

(h) whether the hospital was paid as an "in-network" or "out-of-network facility," and if paid as an "in-network facility," the "tier" in which the hospital was assigned;

(i) the identity of the patient's admitting physician and, if different, the identity of the patient's primary treating physician;

(j) all crosswalk or lookup files necessary to translate encoded or numeric data fields to their English meaning, as well as an English description of the possible values for any encoded data element;

(k) the name(s) of the employee(s) at the health plan responsible for compiling and maintain this data file during the relevant period; and

(l) the name(s) of the employee(s) at the managed care plan principally responsible for analyzing the data over the relevant period and who made comparisons of different hospitals' reimbursement rates or prices.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 11 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive. BCBS further objects to Request No. 11 on the grounds that it is unreasonably cumulative and duplicative.

Subject to and without waiving its General Objections and the foregoing objections, BCBS states that it has previously produced data responsive to Request No. 11. In particular, BCBS states that for the period of time January 1, 2008 through March 22, 2011, for any patient residing in any county in Georgia, except for those counties in the Metro Atlanta area, BCBS produced detailed data on each inpatient admission and outpatient treatment episode.

Request No. 12:

All documents relating to studies, analyses, or comparisons of hospital reimbursement rates in the Geographic Area, including any studies, analyses, or comparisons of the reimbursement rates of hospitals in the Geographic Area to hospitals outside the Geographic Area.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 12 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive.

Request No. 13:

All documents relating to whether Your Company passes on, would pass on, or has passed on, increases or reductions in hospital reimbursement rates, including by Phoebe or Palmyra, to health plan members and/or subscribers.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 13 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive.

Request No. 14:

All documents relating to past, current, or threatened antitrust or competition-related litigation in the State of Georgia involving Your Company, including litigation related to most-favored nation clauses.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 14 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive.

Request No. 15:

All documents relating to how Your Company sets pricing (insurance premiums) to its health plan subscribers and/or members, including but not limited to, whether it separately sets prices on a local, regional, statewide, or national basis.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 15 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive.

Request No. 16:

For any of Your health plans where Palmyra was "in-network" and Phoebe was "out-of-network" and any of Your health plans where both Phoebe and Palmyra were "in network," all documents relating to or comparing health plan member and/or subscriber usage of Palmyra versus Phoebe, including all documents discussing the difference in cost, if any, to both the health plan and to the health plan members and/or subscribers in utilizing Phoebe in lieu of Palmyra or Palmyra in lieu of Phoebe.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 16 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive.

Request No. 17:

All documents relating to most-favored-nation agreements, including Your Company's efforts to obtain most-favored-nation agreements with any hospital in the State of Georgia, and the extent to which Your Company has been affected by other payors' most-favored-nation agreements with hospitals in the State of Georgia.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 17 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive.

Request No. 18:

All documents relating to cost-shifting by any hospital in the State of Georgia.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 18 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive.

Request No. 19:

All documents relating to competition to You from the Phoebe Health Plan.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 19 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive.

Request No. 20:

Documents sufficient to show the number of Your members and/or subscribers residing in the State of Georgia for each health plan product offered by You, organized by County.

RESPONSE:

In addition to its General Objections, BCBS objects to Request No. 20 on the grounds that it is overbroad, seeks information that is not relevant nor reasonably calculated to yield relevant information, unduly burdensome, harassing, and oppressive. BCBS further objects to Request No. 20 on the grounds that it is unreasonably cumulative and duplicative.

Subject to and without waiving its General Objections and the foregoing objections, BCBS states that it has previously produced data responsive to Request No. 20. In particular, BCBS produced documents showing the number of lives covered by each health insurance product, organized by county.

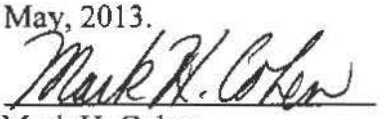
IV. CONCLUSION

For all of the foregoing reasons, BCBS respectfully requests that the Administrative Law Judge quash Respondent's Subpoena in its entirety.

V. CERTIFICATE OF CONFERENCE

Pursuant to FTC Rule of Practice 3.34(c) and 16 C.F.R. § 3.34(c), counsel for BCBS hereby certify that they have conferred with counsel for Respondents by phone and by e-mail in a good faith attempt to resolve by agreement the issues raised herein. On Friday, May 3, 2013, Mark Cohen, counsel for BCBS, and John Fedele, counsel for Respondents, conferred by telephone in an attempt to resolve BCBS's objections to Respondents' Subpoena. Following that telephone conference, on Monday, May 6, 2013, counsel for the parties exchanged e-mails, and, on Tuesday, May 7, 2013, the parties had a second telephone conference. Despite these efforts, counsel have been unable to reach agreement on the disputed issues.

Respectfully submitted, this 9th day of May, 2013.



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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of May, 2013, a true and correct copy of the foregoing *Motion to Quash Subpoena Duces Tecum* was filed electronically with the FTC E-Filing System and will be delivered to:

Donald S. Clark
Office of the Secretary
Federal Trade Commission
Room H113
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
dclark@ftc.gov

I further certify that on the 9th day of May, 2013, a true and correct copy of the foregoing *Motion to Quash Subpoena Duces Tecum* was delivered via electronic mail and by Federal Express to the following:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
Room H1110
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
oalj@ftc.gov

I further certify that on the 9th day of May, 2013, a true and correct copy of the foregoing *Motion to Quash Subpoena Duces Tecum* was delivered via electronic mail to the following:

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New York, NY 10017-3954

Lindsey B. Mann

TROUTMAN SANDERS LLP
Counsel for BCBS

EXHIBIT A

To Motion to Quash Subpoena *Duces Tecum*

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 Blue Cross Blue Shield of Georgia, Inc.
C/O Morgan Kendrick, CEO, Or Person
Authorized to Receive Service
3350 Peachtree Rd. Ne
Atlanta, GA, 30326

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

Baker & McKenzie LLP
815 Connecticut Avenue, NW
Washington, DC 20006

4. MATERIAL WILL BE PRODUCED TO

John J. Fedele, Respondents

5. DATE AND TIME OF PRODUCTION

May 21, 2013 - 5:00p.m. EDT

RECEIVED
APR 29 2013
President

6. SUBJECT OF PROCEEDING

Docket 9348, In the matter of Phoebe Putney Heath System, et.al.

7. MATERIAL TO BE PRODUCED

Documents and 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

Lee Van Voorhis
815 Connecticut Avenue, NW
Washington, DC 20006
202-835-6162

DATE SIGNED

04/26/2013

SIGNATURE OF COUNSEL ISSUING SUBPOENA

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.*

(X) *by registered mail.*

( ) *by leaving copy at principal office or place of business, to wit:*

on the person named herein on:

(Month, day, and year)

April 26, 2013

(Name of person making service)

Brian E. Rafkin, Esquire

(Official title)

Attorney

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

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

RESPONDENTS' SUBPOENA *DUCES TECUM* TO
Blue Cross Blue Shield of Georgia, Inc.

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. §§ 3.31 and 3.34, and the Scheduling Order entered by Chief Administrative Law Judge Chappell on April 4, 2013, Respondents, Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Hospital Authority of Albany-Dougherty County ("Phoebe") hereby request that Blue Cross Blue Shield of Georgia, Inc. produce the documents set forth below in accordance with the Definitions and Instructions set forth below:

DEFINITIONS

A. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, you 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.

B. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

C. The term "communication" means any transfer of information, written, oral, or by any other means.

D. The terms "constitute," "contain," "discuss," "analyze," or "relate to" mean constituting, reflecting, respecting, regarding, concerning, pertaining to, referring to, relating to, stating, describing, recording, noting, embodying, memorializing, containing, mentioning, studying, assessing, analyzing, or discussing.

E. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in your possession, custody, or control. 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 your possession, custody, or control.

F. The terms "each," "any," and "all" mean "each and every."

G. The term "Geographic Area" means the geographic area including the following counties in Alabama, Florida, and Georgia: Alabama: Barbour, Henry, Houston, Lee, and Russell; Florida: Gadsen, Jackson, Jefferson, Hamilton, Leon, and Madison; Georgia: Bibb, Bleckley, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Grady, Harris, Houston, Irwin, Jeff Davis, Lanier, Lee, Lowndes, Macon, Marion, Miller, Mitchell, Muscogee, Peach, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Talbot, Taylor, Telfair, Terrell, Thomas, Tift, Turner, Twiggs, Upson, Webster, Wilcox, and Worth.

H. The term "hospital" means a health care facility providing care through specialized staff and equipment on either an in-patient or out-patient basis.

I. The term "health care facility" means a hospital, health maintenance organization facility, ambulatory care center, first aid or other clinic, urgent care center, free-standing emergency care center, imaging center, ambulatory surgery center and all other entities that provide health care services.

J. The term "health plan" means any health maintenance organization, preferred provider arrangement or organization, managed health care plan of any kind, self-insured health benefit plan, other employer or union health benefit plan, Medicare, Medicaid, TRICARE, or private or governmental health care plan or insurance of any kind.

K. The term "including" shall mean "including without limitation."

L. The term "insurance premiums" means the fees paid for coverage of medical benefits for a defined benefit period.

M. The term "Palmyra" means HCA/Palmyra, Palmyra Medical Center, and Palmyra Park Hospital doing business as Palmyra Medical Center and its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

N. The term "payor" means a person other than a natural person that pays any health care expenses of any other person, and all of its directors, officers, employees, agents and representatives. This payor includes, but is not limited to: Blue Cross and Blue Shield, commercial insurance companies, health maintenance organizations, preferred provider organizations, competitive medical plans, union trust funds, multiple employer trusts, corporate or governmental self-insured health benefits plans, Medicare, or Medicaid.

O. The term "person" or "persons" means natural persons, groups of natural persons acting as individuals, groups of natural persons acting in a collegial capacity (*e.g.*, as a committee, board, panel, etc.), associations, representative bodies, government bodies, agencies, or any other commercial entity, incorporated business, social or government entity.

P. The term "Phoebe" means Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., Phoebe Health Partners.

Q. The term "reimbursement rate" means the rate paid to a health care provider for performing a certain procedure.

R. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, reflecting, describing, analyzing, identifying, or stating.

S. The term "Transaction" means the Hospital Authority of Albany-Dougherty County's acquisition of Palmyra Park Hospital, which was consummated in December 2011.

T. The term "You" and "Your" mean Blue Shield of Georgia, Inc. and all of its subsidiaries, affiliates or predecessors.

U. Unless otherwise defined, all words and phrases used in this First Request for the Production of Documents shall be accorded their usual meaning as defined by Webster's New Universal Unabridged Dictionary, Fully Revised and Updated (2003).

INSTRUCTIONS

A. All responsive documents should be produced by May 21, 2013.

B. 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.

C. Unless modified by agreement with Respondents, this Subpoena requires a complete search of all Your files. You shall produce all responsive documents, wherever located, that are in the actual or constructive possession, custody, or control of Your 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 You.

D. This subpoena is governed by the terms of the attached Protective Order Governing Discovery Material issued on April 21, 2011.

E. To protect patient privacy, You 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 request, You 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, You shall redact the PII or SHI but is not required to replace it with an alternate identifier.

F. Forms of Production: Your Company shall submit documents as instructed below absent written consent signed by Respondents.

(1) 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:

(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 (1)(a) in image format with extracted text and metadata; and

(c) Submit all hard copy documents in image format accompanied by OCR.

(2) 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.

(3) Submit electronic files and images as follows:

(a) For productions over 10 gigabytes, use SATA, IDE, and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 external enclosure;

(b) For productions under 10 gigabytes, CD-R CD-ROM and DVD-ROM for Windows-compatible personal computers, 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.

(4) All documents responsive to this request, 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 Your Company's files and shall not be shuffled or otherwise rearranged;

(b) 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, Your Company must submit the original document, a like-colored photocopy, or a JPEG format image);

(c) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;

(d) Shall be marked on each page with corporate identification and consecutive document control numbers; and

(e) 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.

G. If you object to responding fully to any of the below requests for documents based on a claim of privilege, You shall provide pursuant to 16 C.F.R. § 3.38A, for each such interrogatory, a schedule containing the following information: (a) the date of all responsive documents, (b) the sender of the document, (c) the addressee, (d) the number of pages, (e) the subject matter, (f) the basis on which the privilege is claimed, (g) the names of all persons to whom copies of any part of the document were furnished, together with an identification of their employer and their job titles, (h) the present location of the document and all copies thereof, and (i) each person who has ever had possession, custody, or control of the documents.

H. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business but Your 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. Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to John Fedele at (202) 835-6144. The response to the request shall be addressed to the attention of John Fedele, Baker & McKenzie LLP, 815 Connecticut Ave. NW, Washington, D.C. 20006, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to Baker & McKenzie.

DOCUMENTS TO BE PRODUCED

1. All contracts between Your Company and any health care facility in the State of Georgia, including all amendments, appendices, and related documents reflecting any contract terms including any analyses, reports, or correspondence relating to any contract, proposed contract, or contract negotiations.

2. All documents relating to the criteria or factors used by Your Company in selecting which health care facility to contract with in the State of Georgia, and all documents that apply those criteria.

3. All documents relating to competition between and among payors in the State of Georgia, including but not limited to, the desirability or necessity of entering into contracts with any individual health care facility or hospital system.

4. All documents relating to the Transaction, including but not limited to, all documents sent to or received from the Federal Trade Commission and all documents relating to any communications between You and the Federal Trade Commission or any existing or potential customer regarding the Transaction.

5. All documents relating to competition between health care facilities in the State of Georgia, including but not limited to, market studies, quality assessments, forecasts, and surveys.

6. All documents describing, discussing, summarizing, or analyzing the utilization of hospitals in the Geographic Area by enrollees in any health plan that You sponsor or administer.

7. All documents relating to the shift, diversion, or referral, or impediments to the shift, diversion, or referral, of patients or any category of patients to or from any hospital or any health care facility in the Geographic Area by any payor, including but not limited to, Your Company.

8. All documents relating to any complaints by Your Company or any other payor that any heath care facility in the Geographic Area is raising the rates on its charge master.

9. All proposals by Your Company or any other payor to employers, sponsors, employer groups, unions, agencies, counties, or municipalities that discuss any health care facility or hospital located in the Geographic Area.

10. All documents relating to the basis upon which (i) employers select or are perceived to select among payors or health plans, (ii) enrollees select or are perceived to select among payors or health plans, or (iii) Your Company or any other payor offers different reimbursement rates to health care facilities based on the quality of care provided at that facility.

11. For each year during the relevant period, provide individual claim level, annual electronic inpatient files in delimited text format that include the following individual data elements for each inpatient discharge at all hospitals in the State of Georgia:

    (a) a numerical patient identifier that masks the true identity (name) of the patient;

    (b) a unique claim number for that inpatient episode;

    (c) all submitted data elements included on the UB-92 or UB-04 depending on which form of the claim was submitted to You by the hospital, with all data elements identified by name and a full and complete definition for each data element;

    (d) the Diagnosis Related Group ("DRG") version and number assigned;

    (e) the allowed amount of the claim as determined by You, the amount You paid the hospital for that claim, and whether the hospital was paid under a per-diem, DRG, capitation, percentage of charges, or some other type of reimbursement methodology;

    (f) the amount of patient copay, deductible, and any other out-of-pocket responsibility;

    (g) the commercial name of the health plan product in which the patient was enrolled, including whether that product is an HMO, PPO, or POS product, the number of tiers used to identify in-network facilities to the extent any such product contained

tiers, whether that product is a commercial product sold to employers or whether it is a product sold to beneficiaries of Government insurance programs such as Medicare or Medicaid, and if so, which Government program;

(h) whether the hospital was paid as an "in-network" or "out-of-network facility," and if paid as an "in-network facility," the "tier" in which the hospital was assigned;

(i) the identity of the patient's admitting physician and, if different, the identity of the patient's primary treating physician;

(j) all crosswalk or lookup files necessary to translate encoded or numeric data fields to their English meaning, as well as an English description of the possible values for any encoded data element;

(k) the name(s) of the employee(s) at the health plan responsible for compiling and maintaining this data file during the relevant period; and

(l) the name(s) of the employee(s) at the managed care plan principally responsible for analyzing the data over the relevant period and who made comparisons of different hospitals' reimbursement rates or prices.

12. All documents relating to studies, analyses, or comparisons of hospital reimbursement rates in the Geographic Area, including any studies, analyses, or comparisons of the reimbursement rates of hospitals in the Geographic Area to hospitals outside the Geographic Area.

13. All documents relating to whether Your Company passes on, would pass on, or has passed on, increases or reductions in hospital reimbursement rates, including by Phoebe or Palmyra, to health plan members and/or subscribers.

14. All documents relating to past, current, or threatened antitrust or competition-related litigation in the State of Georgia involving Your Company, including litigation related to most-favored nation clauses.

15. All documents relating to how Your Company sets pricing (insurance premiums) to its health plan subscribers and/or members, including but not limited to, whether it separately sets prices on a local, regional, statewide, or national basis.

16. For any of Your health plans where Palmyra was "in-network" and Phoebe was "out-of-network" and any of Your health plans where both Phoebe and Palmyra were "in network," all documents relating to or comparing health plan member and/or subscriber usage of Palmyra versus Phoebe, including all documents discussing the difference in cost, if any, to both the health plan and to the health plan members and/or subscribers in utilizing Phoebe in lieu of Palmyra or Palmyra in lieu of Phoebe.

17. All documents relating to most-favored-nation agreements, including Your Company's efforts to obtain most-favored-nation agreements with any hospital in the State of

Georgia, and the extent to which Your Company has been affected by other payors' most-favored-nation agreements with hospitals in the State of Georgia.

18. All documents relating to cost-shifting by any hospital in the State of Georgia.

19. All documents relating to competition to You from the Phoebe Health Plan.

20. Documents sufficient to show the number of Your members and/or subscribers residing in the State of Georgia for each health plan product offered by You, organized by County.

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 the records of Blue Shield of Georgia, Inc. and is complete and correct to the best of my knowledge and belief.

Where copies rather than original documents have been submitted, the copies are true, correct, and complete copies of the original documents. If Respondents use such copies in any court or administrative proceeding, Blue Shield of Georgia, Inc. will not object based upon Respondents not offering the original document.

_____ _____

(Signature of Official) (Title/Company)

_____ _____

(Typed Name of Above Official) (Office Telephone)

Dated: April 26, 2013

Respectfully submitted,

By /s/ Lee K. Van Voorhis

Lee K. Van Voorhis, Esq.
Katherine I. Funk, Esq.
Brian F. Burke, Esq.
Jennifer A. Semko, Esq.
John J. Fedele, Esq.
Teisha C. Johnson, Esq.
Brian Rafkin, Esq.
Jeremy W. Cline, Esq.
Baker & McKenzie LLP
815 Connecticut Avenue, NW
Washington, DC 20006
Counsel For Phoebe Putney Memorial Hospital, Inc. and Phoebe Putney Health System, Inc.

Emmet J. Bondurant, Esq.
Frank M. Lowrey, Esq.
Michael A. Caplan, Esq.
Bondurant, Mixson & Elmore LLP
1201 W. Peachtree Street, Suite 3900
Atlanta, Georgia 30309
Counsel for Respondent Hospital Authority of Albany-Dougherty County

CERTIFICATE OF SERVICE

I hereby certify that this 26th day of April, 2013, I delivered via FedEx this Subpoena *Duces Tecum* to:

Blue Cross Blue Shield of Georgia, Inc.
C/O Morgan Kendrick, CEO, Or Person Authorized to Receive Service
3350 Peachtree Rd. Ne
Atlanta, GA, 30326

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

Edward D. Hassi, Esq.
Trial Counsel
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
ehassi@ftc.gov

Jeff K. Perry, Esq.
Assistant Director
Federal Trade Commission
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agoldstein@stblaw.com
425 Lexington Avenue
New York, NY 1001703954
(212) 455-7680

This 26th day of April, 2013.

By:

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

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:

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 B

To Motion to Quash Subpoena *Duces Tecum*

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., Phoebe North, Inc., HCA, Inc., Palmyra Park Hospital, Inc., and Hospital Authority of Albany-Dougherty County, Respondents.	)	Docket No. 9348

AFFIDAVIT OF MICHELLE M. ROTHENBERG-WILLIAMS

PERSONALLY APPEARED before the undersigned attesting officer, duly authorized to administer oaths in the State of Georgia, MICHELLE M. ROTHENBERG-WILLIAMS, who having been first duly sworn, deposes and states as follows:

1.

I am over the age of 21 years and competent to testify as a witness. I have personal knowledge of the facts set forth in this Affidavit or, for purposes hereof, have made due inquiries of other persons with such personal knowledge, and make this Affidavit for use in the above-captioned proceeding.

2.

I am employed by the WellPoint Companies, Inc. as Managing Associate General Counsel. The WellPoint Companies, Inc. is an affiliate of WellPoint, Inc. ("WellPoint"), the

ultimate parent company of Blue Cross and Blue Shield of Georgia, Inc. ("BCBSGA") and Blue Cross Blue Shield Health Plan of Georgia, Inc. ("BCBSHP") (collectively, "BCBS").

3.

On February 22, 2011, the Federal Trade Commission ("FTC") issued a Civil Investigative Demand ("CID") to WellPoint and requested certain documents from WellPoint, including among other things contracts with hospitals in the relevant geographic area, documents reflecting negotiations of those contracts, data regarding inpatient admissions, information regarding products offered, documents relating to price increases, and documents relating to comparisons of hospitals. A copy of the Civil Investigative Demand is attached hereto as Exhibit A.

4.

In response to the CID, WellPoint and the FTC negotiated certain modifications to reduce the burden placed on WellPoint in responding to the CID. Among other things, the parties agreed to limit the geographic area that was implicated by the CID to Dougherty County and the contiguous counties. They also agreed to limit the relevant time period to January 1, 2008 through March 22, 2011. A copy of WellPoint's submission in response to CID, including correspondence memorializing the parties' modifications, is attached hereto as Exhibit B.

5.

In May of 2011, WellPoint produced several CDs of data and documents, and below is a brief description of the documents produced:

- Participating Hospital Agreements/Preferred Provider Agreements between BCBSGA and BCBSHP and the following hospitals:
    - Calhoun Memorial Hospital
    - Archbold Medical Center
    - South Georgia Surgical Associates
    - Palmyra Medical Center

    - Phoebe Health System
    - Phoebe Putney Memorial Hospital
    - Baptist Hospital Worth County;
- Correspondence regarding contracting between BCBSGA and BCBSHP, on the one hand, and HCA, Inc. and Palmyra Medical Center, on the other;
- Documents, including nearly 1800 emails and attachments, related to contracting and contract negotiations conducted by BCBSGA and BCBSHP;
- Inpatient admissions data;
- Fee schedule information for BCBSGA and BCBSHP; and
- Lists of network hospitals for particular products offered by BCBSGA and BCBSHP.

6.

BCBS has been informed by counsel for the FTC that the documents and data produced by WellPoint in May 2011 were provided to Respondents.

7.

In April of 2013, the FTC served a subpoena *duces tecum* ("FTC's Subpoena") on BCBS, essentially requesting that BCBS update the documents it produced in May of 2011. A copy of FTC's Subpoena to BCBS is attached hereto as Exhibit C.

8.

Consistent with the agreement reached in connection with the CID, FTC's Subpoena limits the relevant geographic area to the counties of Baker, Dougherty, Lee, Mitchell, Terrell, and Worth. Further, the FTC has agreed to apply to FTC's Subpoena the same modifications negotiated by the parties in connection with the CID. Accordingly, using the agreed-upon modifications, BCBS intends to conduct a reasonable and diligent search and to produce all relevant, non-privileged documents to the FTC in a timely manner. A copy of a letter memorializing the parties' modifications is attached hereto as Exhibit D. BCBS understands that all documents produced by BCBS in response to FTC's Subpoena will be provided to Respondents.

9.

On April 29, 2013, BCBS received a subpoena *duces tecum* propounded by Respondents Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Hospital Authority of Albany-Dougherty County ("Respondents' Subpoena"). I have reviewed Respondents' Subpoena. Compliance with Respondents' Subpoena will require BCBS to search for, review, and produce documents and data and will result in a large economic and administrative burden on BCBS. Moreover, if BCBS is compelled to comply with the requests contained in Respondents' Subpoena as stated, it would require a period of time far in excess of the deadline of May 21, 2013 contained in Respondents' Subpoena.

FURTHER AFFIANT SAYETH NOT.

MICHELLE M. ROTHENBERG-WILLIAMS

Sworn to and subscribed before me
this 9 day of May, 2013.

NOTARY PUBLIC
My Commission expires: 1/24/2016

NORA L MATHIS
NOTARY PUBLIC
CHEROKEE COUNTY, GEORGIA
MY COMMISSION EXPIRES JANUARY 24, 2016

EXHIBIT A

To Affidavit of Michelle M. Rothenberg-Williams

CIVIL INVESTIGATIVE DEMAND
ISSUED TO WELLPOINT, INC.
FTC File 111-0067

Unless modified by agreement with the staff of the Federal Trade Commission, each Specification of this Civil Investigative Demand ("CID") requires a complete search of "the Company" as defined in the Definitions and Instructions which appear after the following Specifications. If the Company believes that the required search or any other part of the CID can be narrowed in any way that is consistent with the Commission's need for information, you are encouraged to discuss such questions and possible modifications with the Commission representative identified in this CID. All modifications to this CID must be agreed to in writing.

SPECIFICATIONS

1. Submit, for each year from 2004 to the present, all contracts now in effect or that were in effect at any time since January 1, 2004, with hospitals in the relevant area, and each physician organization under contract with the Company whose contract was negotiated by or in conjunction with any such hospital (such as, but not limited to, a hospital-owned medical group practice, or hospital-affiliated physician-hospital organization), including any amendments or modifications thereto.

2. Submit, for each hospital contract provided or identified in response to Specification 1, a description of any services associated with covered treatments or diagnoses for which payments are made to another provider, and include the identity of each such provider by each service identified.

3. Submit, for each year from 2004 to the present, all documents relating to the development or negotiation of the contracts provided or identified in response to Specification 1, including, but not limited to, communications with hospitals, internal Company decisions regarding negotiating positions and proposed and final reimbursement rates, computer spreadsheets and programs the Company uses in connection with pricing decisions, training manuals or other internal documents that describe the Company's methods and procedures for determining proposed and final reimbursement rates, planned contracts (including contracts not entered into, not yet finalized or in force, or no longer in force), and amendments or modifications to existing contracts. Also provide a description of the ways in which these documents and information sources are used in the rate-setting process; and identify the Company's specific financial and operational benchmarks and requirements that impact the determination of the Company's proposed and final reimbursement rates.

4. Submit, for each year from 2006 to the present, for each inpatient admission, or outpatient treatment episode, for any patient residing in the relevant area, and in any county in Georgia, except for those counties in the Metro Atalanta area:

a. the identity of the hospital, healthcare facility, or physician practice at which the patient was treated, including the owner of the hospital, healthcare facility, or physician practice, the address of the hospital, healthcare facility, or physician practice including ZIP code, and any hospital, healthcare facility, or physician practice identification number used for reimbursement purposes;

b. a unique patient identifier, different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient (to protect patient privacy, the Company shall mask personal identifying information, such as the patient's name or Social Security number, by substituting a unique patient identifier);

c. the patient's residence 5-digit ZIP code;

d. the patient's age (in years), gender, and race;

e. the patient's newborn status;

f. whether the treatment episode was inpatient or outpatient, if inpatient, the date of admission and date of discharge, and if outpatient, the date of treatment;

g. the primary associated DRG and ICD9 diagnosis and procedure codes, and any secondary DRG and ICD9 diagnosis and procedure codes;

h. whether the treatment provided was for an emergency;

i. the source of the patient (such as by referral from another hospital, or by a physician who does not admit the patient);

j. the specific name of the entity and type of health plan offered by the Company (such as HMO, POS, PPO, ASO, etc.) that was the principal source of payment;

k. for each product listed in Specification 4(j), identify whether this product is offered through a managed care contract with Medicare, Medicaid, or other public health insurance program;

l. whether the hospital, healthcare facility, or physician practice identified in response to Specification 4(a) was a participating provider under the patient's health plan and, if the patient's health plan had different tiers of participating providers, which tier the hospital, healthcare facility, or physician practice was in;

m. whether there was a capitation arrangement with a health plan, if any, covering the patient (identify the arrangement);

n. the billed charges of the hospital, healthcare facility, or physician practice, allowed charges under the patient's health plan, the amount of charges actually paid by the health plan, whether the amount of charges actually paid by the health plan includes any adjustments under any stop-loss provisions, and any additional amounts paid by the patient;

o. any breakdown of the hospital's, healthcare facility's, or physician practice's charges by any categories of hospital services rendered to the patient (such as medical/surgical, obstetrics, pediatrics, or ICU) for which the Company provides reimbursement to the hospital, healthcare facility, or physician practice at different per diem or other rates;

p. the identity of the patient's admitting physician and, if different, the identity of the treating physician;

q. the amount of any reimbursement by the Company to any physicians, separately from any reimbursement to the hospital, healthcare facility, or physician practice for any physician services associated with the admission or treatment, or for any services associated with covered treatments or diagnoses identified in Specification 4(n); and

r. the patient's status (*e.g.*, normal discharge, deceased, transferred to another hospital, etc.) upon discharge.

5. Identify, for each hospital under contract with the Company in the relevant area since January 1, 2004, and for each such hospital each physician organization under contract with the Company whose contract was negotiated by or in conjunction with the hospital, each person who is or was responsible for the Company's negotiation of contracts with the hospital or physician organization, the health plans or products for which each such person negotiates, and the time periods of that person's responsibilities.

6. Describe, for each health insurance product (such as HMO, POS, PPO, ASO, etc.) offered by the Company in the relevant area since January 1, 2006:

a. the name of the plan as it is referred to in the Company's claims data provided in response to Specification 4;

b. the number of covered lives in the plan, stated by county, if possible;

c. the counties in which the plan is offered;

d. the hospitals and physicians that are included in the plan or are preferred providers in the plan (if the plan is tiered, describe the hospitals and physicians in each tier); and, for each physician, the physician's specialty, employer, and affiliated hospital; and

e. the services or procedures covered by the plan and, for each service or procedure:

(i) all deductibles, co-pays, or co-insurance that apply and how these differ across tiers or between preferred and non-preferred providers; and

(ii) any other inducements offered to plan patients to use certain providers.

7. Submit all documents relating to the impact of hospital and other provider price increases, or the actual or contemplated changes in the composition of a provider network, in the relevant area during the relevant time period, on the price or quality of the health plan products offered by the Company, or other persons, to employers, employees, or other customers.

8. Submit all documents relating to (a) the quality of any hospital in the relevant area, and (b) any comparisons of quality, cost, price, variety or breadth of services, or consumer preference between or among any hospitals in the relevant area.

9. Submit all documents analyzing or discussing the effect of any merger, joint venture, acquisition, consolidation, or divestiture of hospitals in the relevant area, including both the relevant transaction and other transactions, on the hospitals' prices, costs, services, quality, or any other aspect of competitive performance, including, but not limited to, documents comparing the actual cost savings or other benefits of such transactions to those previously projected, and documents discussing how such benefits were or might be achieved.

10. Submit all information described in Instruction U below relating to, and other instructions necessary for the Commission to use or interpret, the databases or other data compilations submitted in response to this CID, to the extent such documentation is not contained in documents submitted in response to this CID.

11. Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this CID and a copy of all instructions prepared by the Company relating to the steps taken to respond to this CID. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each Specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

DEFINITIONS AND INSTRUCTIONS

For the purposes of this CID, the following definitions and instructions apply:

A. The term "the Company" means WellPoint, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

B. 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 the Company and any other person.

C. 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 enviroumental, 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 Commission's need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission representatives identified on the last page of this CID. The Commission 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 specifications identified by Commission representatives; or

(c) include other proposals consistent with Commission policy and the facts of the case.

(3) If the Company intends to utilize any De-duplication or Near-de-duplication 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 CID, or if the Company's computer systems contain or utilize such software, the Company must contact Commission representatives 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 CID.

D. The term "person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

E. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating, but not merely referring to.

F. The terms "and" and "or" have both conjunctive and disjunctive meanings.

G. The terms "each," "any," and "all" mean "each and every."

H. The term "entity" means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such.

I. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

J. The term "relevant service" means the provision of general acute care hospital services including (1) inpatient services; (2) outpatient services; (3) emergency room services; (4) gastroenterological services; and (5) diagnostic imaging and scanning services including magnetic resonance imaging ("MRI"). The relevant service encompasses 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 but excludes treatments of mental illness or substance abuse, long-term services such as skilled nursing care, and services provided by a non-employee physician or non-owned physician organizations.

K. The term "relevant area" means the area encompassing the following counties in the State of Georgia: Atkinson, Baker, Ben Hill, Berrien, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crisp, Decatur, Dooly, Dougherty, Early, Echols, Grady,

Houston, Irwin, Lanier, Lee, Lowndes, Macon, Marion, Miller, Mitchell, Quitman, Pulaski, Randolph, Schley, Seminole, Stewart, Sumter, Terrell, Thomas, Tift, Turner, Webster, Wilcox, and Worth.

L. The term "Metro Atlanta" area means the area encompassing the following counties in the State of Georgia: Fulton, DeKalb, Gwinnett, Cobb, Clayton, Cherokee, Douglas, Fayette, Rockdale, Hall, Coweta, Paulding, Forsyth, and Bartow.

M. The term "health plan" means any health maintenance organization, preferred provider arrangement or organization, managed health care plan of any kind, self-insured health benefit plan, other employer or union health benefit plan, Medicare, Medicaid, TRICARE, or private or governmental health care plan or insurance of any kind.

N. The term "hospital" means a facility that provides the relevant service as defined herein.

O. The term "provider" means a facility that provides any of the relevant services as defined herein, including, but not limited to, hospitals, physician group practices, or other healthcare facilities.

P. The term "physician group" means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, or employees, or in which only one physician practices medicine

Q. The term "operate" with reference to a hospital facility means to directly or indirectly own or lease the facility or unit, manage its operations on behalf of another person under a management contract, have the power to appoint the majority of the facility's governing board or body, or otherwise directly or indirectly control the facility or unit.

R. The term "relevant transaction" means and includes the proposed joinder or acquisition by the Hospital Authority of Albany - Dougherty County (the "Hospital Authority") of Palmyra Park Hospital, Inc. d/b/a Palmyra Medical Center ("Palmyra"), from HCA Inc., and all related transactions or agreements.

S. 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, 2006, to the present. Where information is requested, provide it separately 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.

T. This CID shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this CID produced or obtained by the Company up to forty-five (45) calendar days prior to the date of the Company's full compliance with this CID.

U. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). For purposes of this CID, 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 CID, 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.

V. Forms of Production: The Company shall submit documents as instructed below absent written consent signed by an Assistant Director of the Commission's Bureau of Competition.

(1) 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:

(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 (1)(a) in image format with extracted text[1] and metadata; and

(c) Submit all hard copy documents in image format accompanied by OCR.

(2) For each document submitted in electronic format, include the following metadata fields and information:

(a) For loose 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),

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[1]"Extracted text" is a term of art that refers to the underlying text of a native file that allows the native file to be converted into another searchable format.

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.

(3) 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 CID, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative 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 CID.

(4) Submit data compilations in Excel spreadsheet or in delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact.

(5) Submit electronic files and images as follows:

(a) For productions over 10 gigabytes, use IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 external enclosure;

(b) For productions under 10 gigabytes, CD-R CD-ROM 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. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this CID.**

W. All documents responsive to this CID, regardless of format or form and regardless of whether submitted in hard copy or electronic format:

(1) 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:

(a) 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

(b) 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;

(2) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;

(3) 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 must submit the original document, a like-colored photocopy, or a JPEG format image);

(4) Shall be marked on each page with corporate identification and consecutive document control numbers;

(5) 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

(6) Shall be accompanied by an index that identifies: (a) the name of each person from whom responsive documents are submitted; and (b) 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 Commission 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 Commission representative will provide a sample index upon request.

X. If any documents are withheld from production based upon 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 (hereinafter "Complete 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. Denote all attorneys with an asterisk and state the representation. 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 Commission staff, the Commission, 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 nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged 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-party, such as internal law firm memoranda, may be omitted from the log.

In place of a Complete Log of all documents withheld from production based on a claim of privilege, the Company may elect to submit a Partial Privilege Log ("Partial Log") for each person searched by the Company whose documents are withheld based on such claim and a Complete Log for a subset of those persons, as specified below:

(1) The Partial Log will contain the following information: (a) the name of each person from whom responsive documents are withheld on the basis of a claim of privilege; and (b) the total number of documents that are withheld under a claim of privilege (stating the number of attachments separately) contained in each such person's files. Submit all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made.

(2) Within five (5) business days after receipt of the Partial Log, Commission staff may identify in writing five individuals or ten percent of the total number of persons searched, whichever is greater, for which the Company will be required to produce a Complete Log in order to certify compliance with this CID.

(3) For the Company to exercise the option to produce a Partial Log, the Company must provide a signed statement in which the Company acknowledges and agrees that, in consideration for being permitted to submit a Partial Log:

(a) the Commission retains the right to serve a discovery request or requests regarding documents withheld on grounds of privilege in the event the Commission seeks relief through judicial or administrative proceedings;

(b) the Company will produce a Complete Log of all documents withheld from production based on a claim of privilege no later than fifteen (15) calendar days after such a discovery request is served, which will occur promptly after the filing of the Commission's complaint; and

(c) the Company waives all objections to such discovery, including the production of a Complete Log of all documents withheld from production based on a claim of privilege, except for any objections based strictly on privilege.

(4) The Company shall retain all privileged documents that are responsive to this CID until the completion of any investigation of the relevant transaction.

(5) The Commission will retain the right to require the Company to produce a Complete Log for all persons searched in appropriate circumstances.

Y. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

Z. 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.

AA. In order for the Company's response to this CID to be complete, the attached certification form must be executed by the official supervising compliance with this CID, notarized, and submitted along with the responsive materials.

Any questions you have relating to the scope or meaning of anything in this CID or suggestions for possible modifications thereto should be directed to Stephen Sockwell at (202) 326-2950. The response to the CID shall be addressed to the attention of Stephen Sockwell, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission's offices at 601 New Jersey Ave N.W., Washington, DC 20580. Please notify the staff listed above in advance of each such delivery.

EXHIBIT B

To Affidavit of Michelle M. Rothenberg-Williams

DONAHUE, DURHAM & NOONAN, P.C.

Michael G. Durham
Extension 111
mdurham@ddnctlaw.com

Concept Park
741 Boston Post Road
Suite 306
Guilford, CT 06437
Tel (203) 458-9168
Fax (203) 458-4424

June 9, 2011

Attorney Goldie V. Walker
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20001

RE: FTC File No. 111-0067 (Proposed acquisition by Hospital Authority Of Albany-Dougherty County of Palmyra Park Hospital, Inc. d/b/a Palmyra Medical Center from HCA, Inc.)
Civil Investigation Demand Issued To WellPoint, Inc.

Dear Attorney Walker:

As you know, our firm is outside counsel to WellPoint, Inc. ("WellPoint") in connection with the above Civil Investigation Demand ("CID") and I have been working with Attorney Katherine D. Mayberry from WellPoint to prepare its rolling compliance with the CID.

Enclosed please find WellPoint's compliance with the CID, as modified by Attorney Sockwell's April 6, 2011 letter, including WellPoint's CD marked WLPPPCID#3_002 (Document Bates Nos. 001013-001377).

WellPoint's compliance, including its production of CDs of data and documents on May 3, 2011 and May 20, 2011, is being provided in accordance with Section 57 of Title 15 of the United States Code and is subject to all of the Court's Orders, including the Protective Order Governing Discovery Materials issued by Chief Administrative Law Judge D. Michael Chappell on April 21, 2011 in In The Matter Of Phoebe Putney Health System, Inc., et al, Docket No. 9348. WellPoint requests that its disclosures and documents be afforded all of the protections of confidentiality available under the Court's Orders, including the cited April 21, 2011 Protective Order, and under Section 57b-2 of Title 15 and Title 16. WellPoint also requests that all of its materials produced in response to the CID be returned to my office at the termination of the Federal Trade Commission's statutory investigation. WellPoint reserves all of its rights to challenge in Court the authority for and the scope of the CID.

RECD 6.13.11 KS

Very truly yours,

Michael G. Durham

MGD/csr
enc

cc: Attorney Katherine D. Mayberry
Attorney Stephen W. Sockwell, Jr.

JUNE 9, 2011 COMPLIANCE WITH CIVIL INVESTIGATIVE DEMAND ISSUED TO WELLPOINT, INC. FTC File No. 111-0067

CIVIL INVESTIGATIVE DEMAND
ISSUED TO WELLPOINT, INC.
FTC File No. 101-0167

Unless modified by agreement with the staff of the Federal Trade Commission, each Specification of this Civil Investigative Demand ("CID") requires a complete search of "the Company" as defined in the Definitions and Instructions which appear after the following Specifications. If the Company believes that the required search or any other part of the CID can be narrowed in any way that is consistent with the Commission's need for information, you are encouraged to discuss such questions and possible modifications with the Commission representative identified in this CID. All modifications to this CID must be agreed to in writing.

GENERAL COMPLIANCE STATEMENT. WellPoint, Inc. ("WellPoint") hereby provides its compliance with the February 22, 2011 Civil Investigative Demand, as modified by Attorney W. Stephen Sockwell's April 6, 2011 letter (Attachment 1 hereto). WellPoint's compliance, including the Company's production of CDs of data and documents on May 3, 2011 and May 20, 2011, as identified herein, is subject to all of the court's orders, including the Protective Order Governing Discovery Material issued by Chief Administrative Law Judge D. Michael Chappell on April 21, 2011 in In The Matter Of Phoebe Putney Health System, Inc., et al, Docket No. 9348 (Attachment 2 hereto), and should otherwise be afforded all of the protections of confidentiality available under Section 57b-2 of Title 15 and under Title 16.

SPECIFICATIONS

1. Submit, for each year from 2004 to the present, all contracts now in effect or that were in effect at any time since January 1, 2004, with hospitals in the relevant area, and each physician organization under contract with the Company whose contract was negotiated by or in conjunction with any such hospital (such as, but not limited to, a hospital-owned medical group practice, or hospital-affiliated physician-hospital organization), including any amendments or modifications thereto.

RESPONSE:

See Blue Cross and Blue Shield of Georgia, Inc. ("BCBSGa") and Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. ("BCBSHPGa") hospital contracts contained on CD marked as WLPPPCID#1 (Document Bates Nos. 000001 - 000012) produced by the Company on May 20, 2011. Please also see the General Compliance Statement hereinabove.

2. Submit, for each hospital contract provided or identified in response to Specification 1, a description of any services associated with covered treatments or diagnoses for which payments are made to another provider, and include the identity of each such provider by each service identified.

RESPONSE:

None.

3. Submit, for each year from 2004 to the present, all documents relating to the development or negotiation of the contracts provided or identified in response to Specification 1, including, but not limited to, communications with hospitals, internal Company decisions regarding negotiating positions and proposed and final reimbursement rates, computer spreadsheets and programs the Company uses in connection with pricing decisions, training manuals or other internal documents that describe the Company's methods and procedures for determining proposed and final reimbursement rates, planned contracts (including contracts not entered into, not yet finalized or in force, or no longer in force), and amendments or modifications to existing contracts. Also provide a description of the ways in which these documents and information sources are used in the rate-setting process; and identify the Company's specific financial and operational benchmarks and requirements that impact the termination of the Company's proposed and final reimbursement rates.

RESPONSE:

See BCBSGa and BCBSHPGa documents contained on CD marked as WLPPPCID#3 (Document Bates Nos. 000001-001012) produced by the Company on May 20, 2011; and documents on CD marked as WLPPPCID#3_002 (Document Bates Nos. 001013-001377) produced with this supplemental compliance. Please also see the General Compliance Statement hereinabove.

4. Submit, for each year from 2006 to the present, for each inpatient admission, or outpatient treatment episode, for any patient residing in the relevant area, and in any county in Georgia, except for those counties in the Metro Atlanta area:

   a. the identity of the hospital, healthcare facility, or physician practice at which the patient was treated, including the owner of the hospital, healthcare facility, or physician practice, the address of the hospital, healthcare facility, or physician practice including ZIP code, and any hospital, healthcare facility, or physician practice identification number used for reimbursement purposes;

   b. a unique patient identifier, different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient (to protect patient privacy, the Company shall mask personal identifying

information, such as the patient's name or Social Security number, by substituting a unique patient identifier);

c. the patient's residence 5-digit ZIP code;

d. the patient's age (in years), gender, and race;

e. the patient's newborn status;

f. whether the treatment episode was inpatient or outpatient, if inpatient, the date of admission and date of discharge, and if outpatient, the date of treatment;

g. the primary associated DRG and ICD9 diagnosis and procedure codes, and any secondary DRG and ICD9 diagnosis and procedure codes;

h. whether the treatment provided was for an emergency;

i. the source of the patient (such as by referral from another hospital, or by a physician who does not admit the patient);

j. the specific name of the entity and type of health plan offered by the Company (such as HMO, POS, PPO, ASO, etc.) that was the principal source of payment;

k. for each product listed in Specification 4(j), identify whether this product is offered through a managed care contract with Medicare, Medicaid, or other public health insurance program;

l. whether the hospital, healthcare facility, or physician practice identified in response to Specification 4(a) was a participating provider under the patient's health plan and, if the patient's health plan had different tiers of participating providers, which tier the hospital, healthcare facility, or physician practice was in;

m. whether there was a capitation arrangement with a health plan, if any, covering the patient (identify the arrangement);

n. the billed charges of the hospital, healthcare facility, or physician practice allowed charges under the patient's health plan, the amount of charges actually paid by the health plan, whether the amount of charges actually paid by the health plan includes any adjustments under any stop-loss provisions, and any additional amounts paid by the patient;

o. any breakdown of the hospital's, healthcare facility's, or physician practice's charges by any categories of hospital services rendered to the patient (such as medical/surgical, obstetrics, pediatrics, or ICU) for which the Company provides reimbursement to the hospital, healthcare facility, or physician practice at different per diem or other rates;

p. the identity of the patient's admitting physician and, if different, the identity of the treating physician;

q. the amount of any reimbursement by the Company to any physicians, separately from any reimbursement to the hospital, healthcare facility, or physician practice for any physician services associated with the admission or treatment, or for any services associated with covered treatments or diagnoses identified in Specification 4(n); and

r. the patient's status (*e.g.*, normal discharge, deceased, transferred to another hospital, etc.) upon discharge.

RESPONSE:

See BCBSGa and BCBSHPGa confidential and sensitive personal data contained on the CD produced by the Company on May 3, 2011. Please also see the General Compliance Statement hereinabove.

5. Identify, for each hospital under contract with the Company in the relevant area since January 1, 2004, and for each such hospital each physician organization under contract with the Company whose contract was negotiated by or in conjunction with the hospital, each person who is or was responsible for the Company's negotiation of contracts with the hospital or physician organization, the health plans or products for which each such person negotiates, and the time periods of that person's responsibilities.

RESPONSE:

To be provided.

6. Describe, for each health insurance product (such as HMO, POS, PPO, ASO, etc.) offered by the Company in the relevant area since January 1, 2006:

a. the name of the plan as it is referred to in the Company's claims data provided in response to Specification 4;

b. the number of covered lives in the plan, stated by county, if possible;

c. the counties in which the plan is offered;

d. the hospitals and physicians that are included in the plan or are preferred providers in the plan (if the plan is tiered, describe the hospitals and physicians in each tier); and, for each physician, the physician's specialty, employer, and affiliated hospital; and

e. the services or procedures covered by the plan and, for each service or procedure:

i. all deductibles, co-pays, or co-insurance that apply and how these differ across tiers or between preferred and non-preferred providers; and

ii. any other inducements offered to plan patients to use certain providers.

RESPONSE:

See BCBSGa and BCBSHPGa documents contained on CD marked as WLPPPCID#6 (Document Bates Nos. 0001-00169) produced by the Company on May 20, 2011. Please also see the General Compliance Statement hereinabove.

7. Submit all documents relating to the impact of hospital and other provider price increases, or the actual or contemplated changes in the composition of a provider network, in the relevant area during the relevant time period, on the price or quality of the health plan products offered by the Company, or other persons, to employers, employees, or other customers.

RESPONSE:

None.

8. Submit all documents relating to (a) the quality of any hospital in the relevant area, and (b) any comparisons of quality, cost, price, variety or breadth of services, or consumer preference between or among any hospitals in the relevant area.

RESPONSE:

See BCBSGa documents contained on CD marked as WLPPPCID#8 (Bates Nos. 00001-00006) produced by the Company on May 20, 2011. Please also see the General Compliance Statement hereinabove.

9. Submit all documents analyzing or discussing the effect of any merger, joint venture, acquisition, consolidation, or divestiture of hospitals in the relevant area, including both the relevant transaction and other transactions, on the hospitals' prices, costs, services, quality, or any other aspect of competitive performance, including, but not limited to, documents comparing the actual cost savings or other benefits of such transactions to those previously projected, and documents discussing how such benefits were or might be achieved.

RESPONSE:

None.

10. Submit all information described in Instruction U below relating to, and other instructions necessary for the Commission to use or to interpret, the databases or other data compilations submitted in response to this CID, to the extent such documentation is not contained in documents submitted in response to this CID.

RESPONSE:

None.

11. Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this CID and a copy of all instructions prepared by the Company relating to the steps taken to respond to this CID. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each Specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

RESPONSE:

The information sought by this Request is privileged as the Company's attorneys have coordinated and prepared the Company's compliance with this CID.

DEFINITIONS AND INSTRUCTIONS

For the purpose of this CID, the following definitions and instructions apply:

A. The term "the Company" means WellPoint, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

B. 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 the Company and any other person.

C. 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 Commission's need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission representatives identified on the last page of this CID. The Commission 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 specifications identified by Commission representatives; or

(c) include other proposals consistent with Commission policy and the facts of the case.

(3) If the Company intends to utilize any De-duplication or Near-de-duplication 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 CID, or if the Company's computer systems contain or utilize such software, the Company must contact Commission representatives to determine, with the assistance of the appropriate governmental technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this CID.

D. The term "person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

E. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating, but not merely referring to.

F. The terms "and" and "or" have both conjunctive and disjunctive meanings.

G. The terms "each", "any", and "all" mean "each and every".

H. The term "entity" means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such.

I. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

J. The term "relevant service" means the provision of general acute care hospital services, including (1) inpatient services; (2) outpatient services; (3) emergency room services; (4) gastroenterological services; and (5) diagnostic imaging and scanning services including magnetic resonance imaging ("MRI"). The relevant service encompasses 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, but excludes treatments of mental illness or substances abuse, long-term services such as skilled

nursing care, and services provided by a non-employee physician or non-owned physician organizations.

K. The term "relevant area" means the area encompassing the following counties in the State of Georgia: Atkinson, Baker, Ben Hill, Berrien, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crisp, Decatur, Dooly, Dougherty, Early, Echols, Grady, Houston, Irwin, Lanier, Lee, Lowndes, Macon, Marion, Miller, Mitchell, Quitman, Pulaski, Randolph, Schley, Seminole, Stewart, Sumter, Terrell, Thomas, Tift, Turner, Webster, Wilcox and Worth.

L. The term "Metro Atlanta" area means the area encompassing the following counties in the State of Georgia: Fulton, DeKalb, Gwinnett, Cobb, Clayton, Cherokee, Douglas, Fayette, Rockdale, Hall, Coweta, Paulding, Forsyth and Bartow.

M. The term "health plan" means any health maintenance organization, preferred provider arrangement or organization, managed health care plan of any kind, self-insured health benefit plan, other employer or union health benefit plan, Medicare, Medicaid, TRICARE, or private or governmental health care plan or insurance of any kind.

N. The term "hospital" means a facility that provides relevant service as defined herein.

O. The term "provider" means a facility that provides any of the relevant services as defined herein, including, but not limited to, hospitals, physician group practices, or other healthcare facilities.

P. The term "physician group" means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, or employees, or in which only one physician practices medicine.

Q. The term "operate" with reference to a hospital facility means to directly or indirectly own or lease the facility or unit, manage its operations on behalf of another person under a management contract, have the power to appoint the majority of the facility's governing board or body, or otherwise directly or indirectly control the facility or unit.

R. The term "relevant transaction" means and includes the proposed joinder or acquisition by the Hospital Authority of Albany – Dougherty County (the "Hospital Authority") of Palmyra Park Hospital, Inc. d/b/a Palmyra Medical Center ("Palmyra"), from HCA, Inc., and all related transactions or agreements.

S. 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, 2006, to the present. Where information is requested, provide it separately 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.

T. This CID shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this CID produced or obtained by the Company up to forty-five (45) calendar days prior to the date of the Company's full compliance with this CID.

U. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information ("Sensitive PII") or Sensitive Health Information ("SHI"). For purposes of this CID, 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 CID, 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.

V. Forms of Production: The Company shall submit documents as instructed below absent written consent signed by the Assistant Director of the Commission's Bureau of Competition.

(1) Documents stored in electronic or hard copy formats 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:

(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(1)(a) in image format with extracted text[1] and metadata; and

(c) Submit all hard copy documents in image format accompanied by OCR.

(2) For each document submitted in electronic format, include the following metadata fields and information:

(a) For loose 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;

[1] "Extracted text" is a term of art that refers to the underlying text of a native file that allows the native file to be converted into another searchable format.

(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.

(3) 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 CID, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use of such software or services when producing materials in response to this CID.

(4) Submit data compilations in Excel spreadsheets or in delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact.

(5) Submit electronic files and images as follows:

(a) For productions over 10 gigabytes, use IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 external enclosure;

(b) For productions under 10 gigabytes, CD-R, CD-ROM 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. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this CID.**

W. All documents responsive to this CID, regardless of format or form and regardless of whether submitted in hard copy or electronic format:

(1) 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:

(a) 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

(b) 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;

(2) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;

(3) 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 must submit the original document, a like-colored photocopy, or a JPEG format image);

(4) Shall be marked on each page with corporate identification and consecutive document control numbers;

(5) 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

(6) Shall be accompanied by an index that identifies: (a) the name of each person from whom responsive documents are submitted; and (b) 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 Commission 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 Commission representative will provide a sample index upon request.

X. 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 (hereinafter "Complete 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. Denote all attorneys with an asterisk and state the representation. 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 Commission staff, the Commission, 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 nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged 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-party, such as internal law firm memoranda, may be omitted from the log.

In place of a Complete Log of all documents withheld from production based on a claim of privilege, the Company may elect to submit a Partial Privilege Log ("Partial Log") for each person searched by the Company whose documents are withheld based on such claim and a Complete Log for a subset of those persons, as specified below:

(1) The Partial Log will contain the following information: (a) the name of each person from whom responsive documents are withheld on the basis of a claim of privilege; and (b) the total number of documents that are withheld under a claim of privilege (stating the number of attachments separately) contained in each such person's files. Submit all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made.

(2) Within five (5) business days after receipt of the Partial Log, Commission staff may identify in writing five individuals or ten percent of the total number of persons searched, whichever is greater, for which the Company will be required to produce a Complete Log in order to certify compliance with this CID.

(3) For the Company to exercise the option to produce a Partial Log, the Company must provide a signed statement in which the Company acknowledges and agrees that, in consideration for being permitted to submit a Partial Log:

(a) the Commission retains the right to serve a discovery request or requests regarding documents withheld on grounds of privilege in the event the Commission seeks relief through judicial or administrative proceedings;

(b) the Company will produce a Complete Log of all documents withheld from production based on a claim of privilege no later than fifteen (15) calendar days after such a discovery request is served, which will occur promptly after the filing of the Commission's complaint; and

(c) the Company waives all objections to such discovery, including the production of a Complete Log of all documents withheld from production based on a claim of privilege, except for any objections based strictly on privilege.

(4) The Company shall retain all privileged documents that are responsive to this CID until the completion of any investigation of the relevant transaction.

(5) The Commission will retain the right to require the Company to produce a Complete Log for all persons searched in appropriate circumstances.

Y. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

Z. 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 or the content of such documents.

AA. In order for the Company's response to this CID to be complete, the attached certification form must be executed by the official supervising compliance with this CID, notarized, and submitted along with the responsive materials.

ATTACHMENT 1

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

Bureau of Competition
W. Stephen Sockwell
Direct Dial
(202) 326-2950

April 6, 2011

VIA E-MAIL

Katherine D. Mayberry, Esquire
Senior Legal Counsel
WellPoint, Inc.
120 Monument Circle
Indianapolis, Indiana

RE: Phoebe Putney Hospital System/Palmyra Medical Center, FTC File No. 111-0067

Dear Kathy:

This letter responds to your e-mail dated March 17, 2011, concerning the Civil Investigative Demand ("CID") issued to WellPoint Inc. ("WellPoint") in the Federal Trade Commission's (the "Commission's") investigation of the above-captioned matter. Your e-mail requested certain modifications to the CID. This letter also reflects subsequent discussions. We agree to the following modifications:

Response time: We agree to accept a rolling submission of data and documents.

Scope of production: WellPoint's production need be only for the state of Georgia. WellPoint does not need to produce corporate level documents that do not deal with the relevant area, as set forth in the CID.

Instruction C (documents): We agree to limit the scope of custodians who are to be searched to people in the provider contracting, actuarial, and marketing functions.

Instruction K (relevant area): Except for Specifications 4 and 6 of the CID, the county scope is modified to Dougherty County and the contiguous counties.

Instruction V (format of production): WellPoint may produce documents in their native format.

Instruction S (time period): Except for Specifications 1 and 3, WellPoint can produce documents from January 1, 2008, to March 22, 2011. We make this modification as an accommodation to reduce WellPoint's search burden. However, we may have need of additional

data, or documents, beyond this time to complete our analysis. Therefore, we are willing to defer the requirement that WellPoint currently produce documents or data from 2006 forward, unless we notify you of this requirement.

Specification 4: WellPoint may use search terms consistent with those that WellPoint used in responding to the Commission's CID issued in its *ProMedica Health System/St. Luke's Hospital*, File No. 101-0167, investigation.

Specifications 7-9: WellPoint may produce only management-level correspondence, reports, and other documents responsive to these specifications.

If you have questions, or need to discuss any other aspects of WellPoint's submission, please give me a call and we can discuss any issues.

Kind regards,

W. Stephen Sockwell
Attorney

Approved by:

Matthew J. Reilly
Assistant Director
Mergers IV

ATTACHMENT 2

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	DOCKET NO. 9348
PHOEBE NORTH, INC., and	
HCA INC., and	
PALMYRA PARK HOSPITAL, INC., and	
HOSPITAL AUTHORITY OF, ALBANY-DOUGHERTY COUNTY, Respondents.	

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:

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

To Affidavit of Michelle M. Rothenberg-Williams

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

Blue Cross & Blue Shield of Georgia, Inc. &
Blue Cross & Blue Shield Health Plans of Georgia, Inc.
c/o Michelle Rothenberg-Williams, Esq.
350 Peachtree Road
Atlanta, GA 30326

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

Stephen Sockwell, Complaint Counsel

5. DATE AND TIME OF PRODUCTION

May 16, 2013

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

4/25/13

SIGNATURE OF COUNSEL ISSUING SUBPOENA

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.

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	)	DOCKET NO. 9348
PHOEBE NORTH, INC., and	)	
HCA INC., and	)	
PALMYRA PARK HOSPITAL, INC., and	)	
HOSPITAL AUTHORITY OF, ALBANY-DOUGHERTY COUNTY, Respondents.	)	

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:

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.

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

COMPLAINT COUNSEL'S SUBPOENA *DUCES TECUM* TO
BLUE CROSS & BLUE SHIELD OF GEORGIA, INC. AND
BLUE CROSS & BLUE SHIELD HEALTH PLANS OF GEORGIA, INC.

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. §§ 3.31 and 3.34, and the Scheduling Order entered by Chief Administrative Law Judge Chappell on April 4, 2013, Complaint Counsel hereby requests that Blue Cross & Blue Shield of Georgia, Inc. and Blue Cross & Blue Shield Health Plan of Georgia, Inc. produce the following in accordance with the Definitions and Instructions set forth below:

1. Submit all contracts currently in effect or having been in effect at any time since January 1, 2011, with hospitals in the relevant area, and with each physician organization whose contract with the Company was negotiated by or in conjunction with any such hospital (such as, but not limited to, a hospital-owned medical group practice, or hospital-affiliated physician-hospital organization), including any amendments or modifications thereto.

2. Submit, for each hospital contract provided or identified in response to Specification 1, a listing of which physician services (if any) are included in the hospital's payment for an inpatient admission, and which physician services are billed separately.

3. Submit, for each year from 2011 to the present, all documents relating to the development or negotiation of the contracts provided or identified in response to Specification 1, including, but not limited to, communications with hospitals, internal Company documents or analyses relating to negotiating positions and proposed and final reimbursement rates, computer spreadsheets and programs the Company uses in connection with pricing decisions, training manuals or other internal documents that describe the Company's methods and procedures for determining proposed and final reimbursement rates, planned contracts (including contracts not entered into, not yet finalized or in force, or no longer in force), and amendments or modifications to existing contracts.

4. Submit all documents relating to the efforts or plans of any hospital in the relevant area to induce, impose, or otherwise secure, its exclusive participation in the Company's preferred provider network or the exclusion of another hospital or provider from the Company's network.

5. Submit all documents that relate to changes in hospital charges or reimbursement rates for provision of relevant services in the relevant area at any time after Phoebe Putney acquired Palmyra Park Hospital.

6. Submit all documents relating to (a) enhancements or changes in hospital quality or quality of relevant services offered by hospitals in the relevant area, (b) the transfer, relocation, limitation, diminution, or elimination of any relevant service offered at either the former Palmyra Park Hospital, currently known as Phoebe North, or Phoebe Putney Memorial Hospital, or (c) changes or shifts in the provision of, or consolidation of, relevant services provided by the former Palmyra Hospital and Phoebe Putney Memorial Hospital.

7. All documents that relate to reimbursement programs or initiatives of the Company to encourage or incentivize hospitals in the relevant area to meet standards of quality set forth by the Company.

DEFINITIONS

1. The term "the Company" means Blue Cross & Blue Shield of Georgia, Inc. and Blue Cross & Blue Shield Health Plan of Georgia, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

2. 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 the Company and any other person.

3. 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.

4. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating, but not merely referring to.

5. The term "person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust

6. The terms "and" and "or" have both conjunctive and disjunctive meanings.

7. The terms "each," "any," and "all" mean "each and every."

8. The term "relevant service" means inpatient general acute care hospital services (*e.g.*, the provision of hospital care for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities, excluding the treatment of mental illness or substance abuse, or long-term services such as skilled nursing care), collectively and individually.

9. The term "relevant area" means the area encompassing the counties of Baker, Dougherty, Lee, Mitchell, Terrell, and Worth in the state of Georgia

INSTRUCTIONS

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

I.2. 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.3. This Subpoena is continuing in nature and shall be supplemented in the event that additional documents responsive to this request are created, prepared, or received between the time of the Company's initial response and trial.

I.4. 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 request, 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.5. Forms of Production: The Company shall submit documents as instructed below absent written consent of Complaint Counsel.

1. The Company shall encrypt any data and information before producing to Complaint Counsel. Using NIST FIPS-Compliant[1] cryptographic hardware or software modules is strongly encouraged.

   (a) For any production over 10 gigabytes, use IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data; data can be provided on a FIPS-Compliant encrypted hard drive;

   (b) For productions under 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

[1] The National Institute of Standards and Technology (NIST) issued the Federal Information Processing Standard (FIPS) Publications 140-1 and 140-2 that details certified cryptographic modules for use by the U.S. Federal government and other regulated industries that collect, store, transfer, share and disseminate sensitive but unclassified information. More information about FIPS 140-1 and 140-2 can be found at http://csrc.nist.gov/groups/STM/index.html.

(c) **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. Each submission responsive to the Subpoena shall be accompanied with a letter that includes all of the following:

   (a) Volume name;
   (b) A description of encryption software/hardware used;

   (c) The total number of files; and

   (d) A list of data fields in the order in which they appear in the data files.

3. The password for any encrypted data and information shall be provided **separately**, via email, to the representative(s) identified in the final Instruction of this Subpoena.

4. For Request 1 and to the extent any other responsive data exists electronically, provide (a) such data in delimited text or Microsoft Excel format with all underlying data un-redacted and all underlying formulas and algorithms intact; and (b) the entire file or record, including but not limited to, the data or data fields requested.

5. 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:

   (a) Submit Microsoft Access, Excel, and PowerPoint documents in native format with extracted text and metadata;

   (b) Submit all other documents other than those identified in subpart (1)(a) in image format with extracted text and metadata; and

   (c) Submit all hard copy documents in image format accompanied by OCR.

6. 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.

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

I.7. 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 such documents have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the request(s) to which they are responsive, and identify persons having knowledge of the content of such documents.

I.8. 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.9. Any questions relating to the scope or meaning of anything in this Subpoena or suggestions for possible modifications thereto should be directed to Stephen Sockwell at (202) 326-2950. The response to the Subpoena shall be addressed to the attention of Stephen Sockwell, Federal Trade Commission, Suite 5249, 601 New Jersey Avenue, NW, Washington, DC 20580,

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 the records of Blue Cross & Blue Shield of Georgia, Inc. and Blue Cross & Blue Shield Health Plan of Georgia, Inc. and is complete and correct to the best of my knowledge and belief.

Where copies rather than original documents have been submitted, the copies are true, correct, and complete copies of the original documents. If Complaint Counsel uses such copies in any court or administrative proceeding, Blue Cross & Blue Shield of Georgia, Inc. and Blue Cross & Blue Shield Health Plan of Georgia, Inc. will not object based upon Complaint Counsel not offering the original document.

_____ _____

(Signature of Official) (Title/Company)

_____ _____

(Typed Name of Above Official) (Office Telephone)

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:

Blue Cross & Blue Shield of Georgia, Inc. and Blue Cross & Blue Shield Health Plan of Georgia, Inc.
c/o Michelle Rothenberg-Williams
3350 Peachtree Rd.
Atlanta, Georgia 30326
(404) 842-8798
michelle.rothenberg-williams@wellpoint.com

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

By: s/ Maria DiMoscato
Maria DiMoscato
Attorney

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)

EXHIBIT D

To Affidavit of Michelle M. Rothenberg-Williams

United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV

May 3, 2013

VIA E-MAIL

Michelle M. Rothenberg-Williams, Esq.
Managing Associate General Counsel
Blue Cross and Blue Shield of Georgia
3350 Peachtree Road, N.E.
Atlanta, Georgia 30326

Re: In the Matter of Phoebe Putney Health System, Inc., FTC Docket No. 9348

Dear Michelle,

This letter confirms our conversation today relating to your request for certain modifications to the Part III Subpoena *Duces Tecum* ("SDT") issued to Blue Cross and Blue Shield of Georgia ("BCBS of GA") on April 25, 2013 in the above-captioned matter. Complaint Counsel agrees to modify the SDT as follows:

Applicability of Previous Civil Investigative Demand Modifications: To the extent they are applicable, Complaint Counsel agrees to extend the modifications set forth in the April 6, 2011 letter to Katherine D. Mayberry from W. Stephen Sockwell to the SDT.

Time Period: BCBS of GA shall produce documents from January 1, 2011 to present.

Scope of Custodians: Complaint Counsel agrees to limit the scope of custodians who are to be searched to those employees in the provider contracting, actuarial, and marketing functions in the relevant area set forth in Definition 9 of the SDT.

Scope of Search: Complaint Counsel agrees to limit the scope of search to self-selection by the relevant custodians of responsive documents, including e-mails and central or shared files. We make this modification as an accommodation to reduce BCBS of GA's search burden. We are willing to defer the requirement that BCBS of GA make a complete search of all files as set forth in Instruction I.2 of the SDT.

Specification 3: BCBS of GA shall produce responsive documents relating to Phoebe Putney Memorial Hospital and Palmyra Park Hospital, currently known as Phoebe North. Complaint Counsel agrees to defer the requirement that BCBS of GA produce responsive documents relating to any other hospitals and physician organizations in the relevant area set forth in Definition 9 of the SDT.

Please call me at (202) 326-2335 with any questions. Thank you for your continued assistance in this matter.

Sincerely,

Jennifer K. Schwab
Complaint Counsel

cc: Diane L. Weinstein, Esq.
Michael G. Durham, Esq.
Mark H. Cohen, Esq.

CERTIFICATE FOR ELECTRONIC FILING

I hereby certify that the electronic copy filed through FTC E-File is a true and correct copy of the paper original of the foregoing Motion to Quash Subpoena *Duces Tecum*.

May 9, 2013.

Lindsey B. Mann

TROUTMAN SANDERS LLP
Counsel for BCBS