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.,	Docket No. 9348
HCA, Inc.,	
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 and Rule 3.34(c) of the Rules of Practice for Adjudicative Proceedings before the United States Federal Trade Commission ("FTC Rules of Practice"), Peach State Health Plan ("Peach State"), a non-party to this proceeding, files the following Motion to Quash the Subpoena *Duces Tecum* issued to Peach State by Respondents Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and the Hospital Authority of Albany-Dougherty County (the "Phoebe Respondents").

I. INTRODUCTION

On April 29, 2013, the Phoebe Respondents served a Subpoena *Duces Tecum* (the "Subpoena") on Peach State.[1] A copy of the Subpoena is attached hereto as Exhibit 1. Peach

[1] Any motion to limit or quash a subpoena must be filed within the earlier of ten days after service or the time of compliance. 16 C.F.R. § 3.34 and FTC Rule of Practice 3.34(c). The subpoena was served on Peach State by registered mail on April 29, 2013. Pursuant to the terms of the subpoena, compliance is required on or before May

State moves to quash or limit the Subpoena on three grounds. First, the Subpoena is overly broad and unduly burdensome. Second, the timing of the Subpoena and the short time frame for response make compliance with the Subpoena impossible. Third, some of the documents requested to be produced are confidential and proprietary in nature and must be protected from discovery.

II. PROCEDURAL HISTORY

The investigation at issue in this matter concerns an agreement entered into in December 2010 for the acquisition of the Palmyra Medical Center by the Hospital Authority of Albany-Dougherty County. The FTC, believing that this acquisition 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" opened a preliminary investigation of the acquisition in December 2010. [Compl. at 2.] That investigation was converted to a formal investigation in February 2011. [Id.]

On July 15, 2011, the Commission granted an unopposed motion by the Respondents to stay these proceedings. That stay remained in effect until March 14, 2013, whereupon the investigation recommenced and the Commission directed the issuance of a Revised Scheduling Order. Pursuant to the Revised Scheduling Order, discovery in this proceeding closes on May 29, 2013.

Now, with one month left in the discovery period, the Phoebe Respondents have issued sweeping and extensive subpoenas to a number of providers and hospitals in Georgia, including Peach State. Counsel for Peach State conferred with counsel for the Phoebe Respondents in an

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21, 2013. As such, Peach State's motion to quash or limit must be filed on or before May 9, 2013 and this motion is therefore timely.

effort to limit the scope of the subject subpoena by agreement of the parties. That effort was ultimately unsuccessful.

III. ARGUMENT AND CITATION OF AUTHORITY

A. Overview

Administrative Law Judges in FTC proceedings should quash or limit any subpoena that is unduly burdensome or requires the disclosure of privileged or confidential and proprietary information. 16 C.F.R. §3.31(c)(2)(iii) (use of subpoena and other discovery methods "shall be limited by the Administrative Law Judge" where the "burden and expense of the proposed discovery outweigh its likely benefit"); 16 C.F.R. §3.31(d) (authorizing Administrative Law Judges to "deny discovery or make any other order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent undue delay in the proceeding."); see also Fed. R. Civ. P. 45(c)(3) (a court "must quash or modify the subpoena that... requires disclosure of privileged or other protected matter ... [or] subjects a person to undue burden"). Moreover, Administrative Law Judges have the power to modify subpoenas and limit the scope of permissible discovery. 16 C.F.R. §3.31(d); see also Fed. R. Civ. P. 26(c) (court may grant a protective order to protect a party from annoyance, embarrassment, oppression, or undue burden or expense).

Information is not discoverable if it is not relevant. Fed. R. Civ. P. 26(b)(1). Additionally, discovery requests are overbroad, even if some responsive information is conceivably relevant, when only a fraction of the documents requested are relevant. *Nugget Hydroelectric, L.P. v. Pacific Gas & Elec. Co*, 981 F.2d 429, 438-39 (9th Cir. 1992). The Subpoena in this case calls for a non-party to produce what is likely to amount to hundreds of

thousands of pages of documents, none of which the Phoebe Respondents have shown to be relevant.

B. Objections to Scope of Subpoena

First, and importantly, Peach State is not a party to this proceeding. The Subpoena would be burdensome even if it was issued against a party. The fact that it was issued against a non-party renders it even more unreasonably burdensome.

The Subpoena demands production of documents from January 1, 2008 to the present – a period of over 5 years. [Subpoena at p. 3, ¶B.] Moreover, the specific requests are drafted so broadly as to require the production of nearly all of Peach State's records and claims history for the past five years. For example, Request No. 1 requires the production of all contracts, including amendments, appendices and "related documents" between Peach State and any health care facility in the state of Georgia. Request No. 9 requires the production of "all proposals by [Peach State] 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. 11, which has twelve sub-parts, requires the production of all electronic inpatient files for "each inpatient discharge at all hospitals in the state of Georgia." To emphasize, this one request calls for Peach State to produce records related to all inpatient discharges at all hospitals in the state of Georgia for the past five years. It is no exaggeration to say that it would take Peach State weeks (if not months) to locate, review and produce documents responsive to this single request. In short, responding to these requests would be a massive task that would disrupt Peach State's business operations and, in any event, could not possibly be completed within the current period permitted for discovery.

Further, the Subpoena also requests production of documents containing privileged or confidential and commercially sensitive information, including competitive sensitive pricing information and Peach State trade secrets, disclosure of which should not be required. For example, Request No. 2 requires the production of "all documents relating to the criteria or factors used by [Peach State] in selecting which health care facility to contract with in the State of Georgia, and all documents that apply those criteria." Similarly, Request No. 3 demands the production of "documents relating to...the desirability or necessity of entering into contracts with any individual health care facility or hospital system." These two requests essentially call for Peach State to produce all documents and information pertaining to how and why it chooses to enter into competitive business contracts. This information is proprietary to Peach State and the Phoebe Respondents have given no legitimate justification as to why they should be entitled to receive it.

Based on the above, it is clear that the undue burden and expense to Peach State of complying with the subpoena certainly outweighs any benefit that the Phoebe Respondents could hope to obtain from the production of the requested documents. As such, the Phoebe Respondents' Subpoena should be quashed in its entirety pursuant to 16 C.F.R. §§ 3.31(c)(2)(iii) and 3.31(d).

IV. CONCLUSION

For these reasons, Peach State respectfully requests that the Phoebe Respondents' Subpoena be quashed 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 Peach State hereby certify that they have conferred with counsel for the Phoebe Respondents by phone and

by e-mail in a good faith attempt to resolve by agreement the issues raised herein. On Wednesday, May 8, 2013, Erin Graham, counsel for Peach State, and John Fedele, counsel for Respondents, conferred by telephone in an attempt to resolve Peach State's objections to the Phoebe Respondents' Subpoena. Despite these efforts, counsel have been unable to reach agreement on the disputed issues.

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

/s/ Erin E. Graham
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Counsel for Peach State

CERTIFICATE OF SERVICE

I hereby certify that I have this date filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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

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

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

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

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This 9th day of May, 2013.

TROUTMAN SANDERS LLP

/s/ Erin E. Graham

EXHIBIT 1

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 Peach State Health Plan

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 Peach State Health Plan 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 **Peach State Health Plan** 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 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.

15. 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.

16. 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.

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

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

19. 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 Peach State Health Plan 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, Peach State Health Plan 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

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Subpoena *Duces Tecum* Issued to Peach State Health Plan (FTC Docket 9348)

CERTIFICATE OF SERVICE

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

Peach State Health Plan
C/O Patrick M. Healy, CEO, Or Person Authorized to Receive Service
3200 Highlands Parkway, Suite 300, Smyrna, GA 30082

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

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This 26th day of April, 2013.

By:

/s/ Jeremy Cline
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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.