



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

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

**RESPONDENT PALMYRA PARK HOSPITAL, INC.'S RESPONSES AND OBJECTIONS
TO COMPLAINT COUNSEL'S FIRST REQUEST FOR ADMISSIONS**

Pursuant to Rule 3.32(b) of the Federal Trade Commission's Rules of Practice (the "Rules"), and the Revised Scheduling Order entered by Chief Administrative Law Judge Chappell on April 4, 2013, Respondent Palmyra Park Hospital, Inc. ("Palmyra") hereby responds and objects to Complaint Counsel's First Request for Admissions (each a "Request," and collectively the "Requests") as set forth below.

The Requests were served on HCA Inc. ("HCA"), indirect parent of Palmyra, the direct owner and operator of the facility, Palmyra Medical Center (the "Hospital"), that is the subject of the Requests. As direct owner and operator, Palmyra has the requisite knowledge and information to respond and object to the Requests. Rather than interpose a blanket objection to the Requests as served on HCA and/or demand service on the appropriate party, in the interest of

time Palmyra hereby responds and objects as if the Requests were properly and timely directed to, and served on, Palmyra in the first instance.¹

The following responses are made solely for the purposes of this proceeding. Each response is subject to all objections as to relevance, materiality, and admissibility, and to any and all objections on any ground that would require exclusion of any response if it were introduced in court.

No incidental or implied admissions are intended by these responses. The fact that Palmyra has objected or responded to any Request shall not be deemed an admission that Palmyra accepts or admits the existence of any facts set forth or assumed by such Request or that such objection or response constitutes admissible evidence. The fact that Palmyra has responded in whole or in part to any Request is not intended to and shall not be construed to be a waiver by Palmyra of any part of any objection to any Request.

GENERAL OBJECTIONS

The following General Objections apply to each and every Request and are hereby incorporated by reference into each of the following responses. The assertion of the same, similar, or additional objections or the provision of partial responses in response to an individual Request does not waive any of Palmyra's General Objections as set forth below.

1. Palmyra objects to the Requests to the extent they seek information that is protected from disclosure under the attorney-client privilege, the work product doctrine, the joint-defense doctrine, the common-interest doctrine, or any other applicable privilege, law, rule, or immunity.

2. Palmyra objects to the Requests to the extent they seek trade secret, proprietary,

¹ HCA and Palmyra reserve all rights with respect to these issues.

confidential, financial or commercially sensitive information, the disclosure of which could negatively impact Palmyra's competitive or business position or result in a breach by Palmyra of an obligation to a third-party to maintain such information confidential. Such information will be produced under the Protective Order entered in this proceeding.

3. Palmyra objects to the Requests to the extent they seek information that is not relevant to the subject matter of this proceeding and not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any Respondent.

4. Palmyra objects to the Requests to the extent they are overbroad, unduly burdensome, or require unreasonable efforts or expense on behalf of Palmyra.

5. Palmyra objects to the Requests to the extent they are vague or ambiguous.

6. Palmyra objects to the Requests to the extent they require responses greater than, beyond the requirements of, and/or at variance to the Rules.

7. Palmyra objects to the Requests to the extent they seek to impose an obligation on Palmyra to provide information for or on behalf of any person or entity other than Palmyra, and/or seek information that is not in Palmyra's possession, custody, or control.

8. Palmyra objects to the Requests to the extent the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. *See* 16 C.F.R. § 3.31(c)(1)(i). Palmyra already has produced in the underlying investigation or in the current proceeding documents or information that provide information sufficient to respond to parts or all of certain Requests. Palmyra further states that, in addition to the following responses, information relating to the Requests may be found in the documents produced by, responses supplied by, information received or gleaned from, or

testimony taken of, any party or person in connection with the underlying investigation or the current proceeding.

9. Palmyra objects to the Requests to the extent they do not adequately define terms used in them.

10. Palmyra objects to the Requests to the extent they seek legal conclusions and/or would require Palmyra to reach a legal conclusion in order to prepare a response to any Request.

11. Palmyra objects to the Definitions to the extent that certain Definitions imply legal conclusions. For example, by responding to or using the definitions "relevant area" or "relevant service," Palmyra is not admitting that the defined "relevant area" constitutes a relevant geographic market or that the defined "relevant service" constitutes a relevant product market.

12. Palmyra objects to the definition of "Palmyra" as overbroad, vague and ambiguous. As noted above, for purposes of these Responses and Objections, "Palmyra" means Palmyra Park Hospital, Inc. and the "Hospital" means Palmyra Medical Center.

13. Palmyra objects to the definition of "HCA" as overbroad, vague and ambiguous.

14. Palmyra objects to the definition of "relevant transaction" as overbroad, unduly burdensome, vague, ambiguous, and as seeking information that is not relevant to the subject matter of this proceeding and not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any Respondent. For purposes of these Responses and Objections, Palmyra is interpreting "relevant transaction" to mean the transaction contemplated by the Asset Purchase Agreement by and among The Hospital Authority of Albany-Dougherty County, Phoebe Putney Health System, Inc., Phoebe North, Inc., and Palmyra Park Hospital, Inc., dated as of December 21, 2010 (the "Purchase Agreement").

RESPONSES

The following responses are based on Palmyra's current knowledge. Additional information may be in documents that Palmyra has not yet reviewed or received, or with witnesses Palmyra has not yet interviewed and/or deposed. Palmyra reserves the right to supplement its responses up to and through any hearing in this matter.

Subject to and without waiving the General Objections, or any other objections or claims of privilege, Palmyra hereby responds and objects to the Requests as follows.

REQUEST FOR ADMISSION NO. 1:

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

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Palmyra objects to the term "inpatient general acute care hospital services sold to commercial health plans" to the extent it implies a legal conclusion that such service constitutes a relevant product market. Subject to and without waiving the foregoing objection, Palmyra denies.

REQUEST FOR ADMISSION NO. 2:

Admit that the Georgia counties of Baker, Dougherty, Lee, Mitchell, Terrell, and Worth constitute a relevant geographic market in which to evaluate the effects of the relevant transaction.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Palmyra objects to this Request to the extent that it seeks a legal conclusion. Subject to and without waiving the foregoing objection, Palmyra denies. The Hospital competed in at least the 10-county area encompassing Baker, Calhoun, Crisp, Dougherty, Lee, Mitchell, Randolph, Sumter, Terrell, and Worth counties, and for some medical services, hospitals outside of this 10-county region also admit patients who live within the area.

REQUEST FOR ADMISSION NO. 3:

Admit that, in the ordinary course of business prior to the relevant transaction, Palmyra tracked, utilized, or otherwise reviewed market shares that are calculated based on Palmyra's inpatient discharges.

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Palmyra admits that the Hospital, like every other hospital in the country, reviewed such measures, among many others.

REQUEST FOR ADMISSION NO. 4:

Admit that, in the ordinary course of business prior to the relevant transaction, Palmyra tracked, utilized, or otherwise reviewed market shares that are calculated based on patient days.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Palmyra admits that the Hospital, like every other hospital in the country, reviewed such measures, among many others.

REQUEST FOR ADMISSION NO. 5

[REDACTED]

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Palmyra admits that [REDACTED]
[REDACTED]
[REDACTED]

REQUEST FOR ADMISSION NO. 6:

[REDACTED]
[REDACTED]
[REDACTED]

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Palmyra objects to [REDACTED] as vague and ambiguous. Subject to and without waiving the foregoing objection, Palmyra denies. [REDACTED]
[REDACTED]

REQUEST FOR ADMISSION NO. 7:

[REDACTED]
[REDACTED]

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Palmyra objects to [REDACTED] as vague and ambiguous. Subject to and without waiving the foregoing objections, Palmyra denies and states that [REDACTED]
[REDACTED]

REQUEST FOR ADMISSION NO. 8:

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

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Palmyra objects to this Request to the extent that it seeks a legal conclusion. Palmyra also objects to this Request as vague and ambiguous as to the term "primary competitor" and objects to the term "inpatient general acute care services" to the extent it implies a legal conclusion that such service constitutes a relevant product market. Subject to and without waiving the foregoing objections, Palmyra states that with respect to inpatient services, Phoebe Putney was the Hospital's principal competitor, but the Hospital also competed with other general acute care hospitals including, among others, Tift Regional, Crisp Regional, and Archbold Hospital.

REQUEST FOR ADMISSION NO. 9:

[REDACTED]
[REDACTED]

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Palmyra objects to this Request as vague and ambiguous [REDACTED]
[REDACTED] Subject to and without waiving the foregoing objection, Palmyra denies, and states that [REDACTED]
[REDACTED]
[REDACTED]

REQUEST FOR ADMISSION NO. 10:

[REDACTED]
[REDACTED]

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Palmyra objects to this Request as vague and ambiguous [REDACTED]
[REDACTED] Subject to

and without waiving the foregoing objections, Palmyra admits [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

REQUEST FOR ADMISSION NO. 11:

[REDACTED]
[REDACTED]

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Palmyra objects to this Request as vague and ambiguous [REDACTED]
[REDACTED] Subject to and without waiving the foregoing objections,
Palmyra denies, but admits that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

REQUEST FOR ADMISSION NO. 12:

Admit that Georgia's Certificate of Need statutes make it more difficult for health care providers to enter the market for inpatient general acute care hospital services in Georgia than it would be absent those statutes, including within the geographic area that encompasses Dougherty, Terrell, Lee, Worth, Baker, and Mitchell counties.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Palmyra objects to this Request as vague and ambiguous with respect to the definitions of "more difficult," "health care providers" and "absent those statutes." Palmyra further objects to the list of identified counties to the extent it implies a legal conclusion that they constitute a relevant geographic market. Subject to and without waiving the foregoing objections, Palmyra admits that it may be more difficult to open a new general acute care hospital in a state that has a Certificate of Need statute as compared to a state that does not have Certificate of Need requirements.

REQUEST FOR ADMISSION NO. 13:

Admit that, prior to the relevant transaction, Palmyra competed with Phoebe Putney for inclusion in commercial health plan networks offered for sale to employers and residents of Dougherty, Terrell, Lee, Worth, Baker, and Mitchell counties.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Palmyra objects to the list of identified counties to the extent it implies a legal conclusion that they constitute a relevant geographic market. Palmyra objects to the term “competed” to the extent it implies a legal conclusion. Subject to and without waiving the foregoing objections, Palmyra admits that the Hospital competed with Phoebe Putney and other hospitals and medical providers for inclusion in commercial health plan networks offered for sale to employers and residents in at least the 10-county area encompassing Baker, Calhoun, Crisp, Dougherty, Lee, Mitchell, Randolph, Sumter, Terrell, and Worth counties, and for some medical services, hospitals outside of this 10-county region.

REQUEST FOR ADMISSION NO. 14:

Admit that, through negotiations with commercial health plans prior to the relevant transaction, HCA attempted to obtain the most favorable reimbursement rates possible for inpatient acute care services provided by Palmyra.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Palmyra objects to this Request as vague and ambiguous as to the term “most favorable . . . possible” as it relates to obtaining reimbursement rates. Subject to and without waiving the foregoing objections, Palmyra admits that, on its behalf, HCA-affiliated entities attempted to obtain the best reimbursement rates that they could for Palmyra, just as they do for all of their other owned or operated hospitals.

REQUEST FOR ADMISSION NO. 15:

Admit that, during the two-year period prior to the relevant transaction, Palmyra’s overall market share for inpatient services, as measured in the ordinary course of business, increased.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Palmyra objects to the term “inpatient services” to the extent it implies a legal conclusion that such service constitutes a relevant product market. Palmyra further objects to this Request as vague and ambiguous with respect to when the two-year period begins. Subject to and without waiving the foregoing objections, Palmyra states that the Hospital’s market share – if measured as a percentage of inpatient admissions – increased slightly between 2008 and 2010, but the Hospital remained an underperforming hospital relative to the average performance of other HCA hospitals.

REQUEST FOR ADMISSION NO. 16:

Admit that, prior to the relevant transaction, Palmyra posted its emergency department wait time online, on electronic billboards, and made it available via text message.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Palmyra admits that, prior to the relevant transaction, the Hospital posted its emergency department wait time on its website and on electronic billboards, and also made it available via text message.

REQUEST FOR ADMISSION NO. 17:

[REDACTED]

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Palmyra admits that, prior to the relevant transaction, [REDACTED]

REQUEST FOR ADMISSION NO. 18:

Admit that, prior to the relevant transaction, Palmyra would at times decide not to pursue payment from indigent patients even for services rendered in response to a non-life-threatening condition.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Palmyra admits that, prior to the relevant transaction, the Hospital would at times – depending on the circumstances – work with patients to establish a payment plan, and in some cases, if a patient was in need of a surgery that may not be considered life-threatening, work with the patient to write the bill off.

REQUEST FOR ADMISSION NO. 19:

Admit that, prior to the relevant transaction, Palmyra obtained a Certificate of Need for Level I obstetric services but was unable to provide those services because of legal action taken by Phoebe Putney.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Palmyra admits that the Georgia Department of Community Health approved the Hospital's CON application to establish a Level I obstetric service, but that it was unable to provide those services due to continuing legal action with respect to the CON.

REQUEST FOR ADMISSION NO. 20:

[REDACTED]

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Palmyra admits that [REDACTED]

REQUEST FOR ADMISSION NO. 21:

[REDACTED]

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

Palmyra admits that, [REDACTED]

REQUEST FOR ADMISSION NO. 22:

Admit that, prior to the relevant transaction, Palmyra launched a dedicated inpatient pediatric unit.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Palmyra admits that, prior to the relevant transaction, the Hospital launched a dedicated inpatient pediatric unit.

REQUEST FOR ADMISSION NO. 23:

[REDACTED]

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Palmyra admits that, prior to the relevant transaction, [REDACTED]
[REDACTED]
[REDACTED]

REQUEST FOR ADMISSION NO. 24:

Admit that, prior to the relevant transaction, Palmyra operated a childhood obesity program.

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Palmyra admits that, prior to the relevant transaction, the Hospital started a childhood obesity program, which brought no revenue to the Hospital.

REQUEST FOR ADMISSION NO. 25:

Admit that, prior to the relevant transaction, Palmyra achieved Center of Excellence status for its bariatric services.

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Palmyra admits that, prior to the relevant transaction, the Hospital achieved Center of Excellence status for its bariatric services in late 2009.

REQUEST FOR ADMISSION NO. 26:

Admit that, prior to the relevant transaction, all of the patient rooms at Palmyra were private.

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

Palmyra admits that, prior to the relevant transaction, the Hospital could offer private rooms throughout the entire Hospital.

REQUEST FOR ADMISSION NO. 27:

Admit that, in the year prior to December 21, 2010, Palmyra's financial condition, as evaluated in the ordinary course of business, did not indicate that Palmyra was at risk of financial

failure or closing for at least five years absent the relevant transaction.

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Palmyra objects to this Request as vague and ambiguous with respect to the definitions of “financial failure” and “closing,” and with respect to when the five-year term begins. Subject to and without waiver of the foregoing objections, Palmyra admits that the Hospital was not at risk of financial failure or closing in the year prior to December 21, 2010, but states that the Hospital remained an underperforming hospital relative to the average performance of other HCA hospitals.

REQUEST FOR ADMISSION NO. 28:

Admit that, in the year prior to December 21, 2010, Palmyra’s organizational performance and financial condition, as evaluated in the ordinary course of business, did not indicate that Palmyra’s quality of care would decline absent the relevant transaction.

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Palmyra objects to this Request as vague and ambiguous with respect to the definitions of “organizational performance” and “financial condition.” Subject to and without waiver of the foregoing objections, Palmyra states that the Hospital would have continued its focus on providing quality care, however, the Hospital remained an underperforming hospital relative to the average performance of other HCA hospitals, which over time – absent the relevant transaction – could have impacted services provided and eventually could have impacted quality and/or willingness of physicians to stay on staff.

REQUEST FOR ADMISSION NO. 29:

Admit that, as a result of the relevant transaction, HCA no longer negotiates managed care contracts with health plans for healthcare services provided at Palmyra.

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

Palmyra admits that, since December 15, 2011, neither Palmyra nor any HCA entities own any assets associated with the Hospital. As noted in Simpson Thacher’s letter to the Commission, dated March 27, 2013, HCA’s involvement with Palmyra is limited to a few transition service agreements and obligations that were entered into as part of the Purchase Agreement.

REQUEST FOR ADMISSION NO. 30:

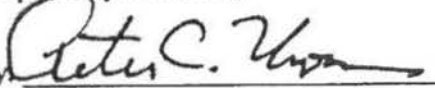
Admit that, as a result of the relevant transaction, HCA no longer has financial or operational control, or involvement with, Palmyra.

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

Palmyra admits that, since December 15, 2011, neither Palmyra nor any HCA-affiliated entities have any financial or operational control over the Hospital or own any assets associated with the Hospital. As noted in Simpson Thacher's letter to the Commission, dated March 27, 2013, HCA's involvement with Palmyra is limited to a few transition service agreements and obligations that were entered into as part of the Purchase Agreement. Palmyra further states, upon information and belief, that the Hospital assets are now part of a single licensed hospital, not a separately-licensed entity, that cannot lawfully, practically or safely be operated as a separate hospital, with a separate medical staff, or other divisions. (See 4/16/2013 1:11 PM email from Frank M. Lowrey to the Middle District of Georgia and counsel for all parties re: FTC v. Phoebe Putney 1:11cv58).

Dated: May 14, 2013

Respectfully submitted,

By 

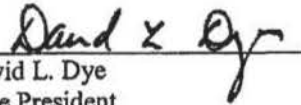
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CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that I have read and know the contents of the foregoing responses to the Request For Admissions, which were prepared from records of Palmyra Park Hospital, Inc. with assistance and guidance from outside counsel, and the responses are true and correct to the best of my present knowledge, information and belief.



David L. Dye
Vice President
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CERTIFICATE OF SERVICE

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

Donald S. Clark
Secretary
Federal Trade Commission
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I also certify that I caused to be delivered via electronic mail and hand delivery a copy that is a true and correct copy of the original of the foregoing PUBLIC document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Rm. H-110
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I further certify that I caused to be delivered via electronic mail a .pdf copy that is a true and correct copy of the original of the foregoing PUBLIC document to:

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Dated: May 14, 2013

/s/ Jeffrey Coviello
Jeffrey Coviello, Esq.

*Attorney for HCA Inc. and Palmyra
Park Hospital, Inc.*

PUBLIC

CERTIFICATE FOR ELECTRONIC FILING

I hereby certify that the electronic copy of the foregoing PUBLIC document is a true and correct copy of the paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: May 14, 2013

By:

/s/ Jeffrey Coviello
Jeffrey Coviello, Esq.

*Attorney for HCA Inc. and Palmyra
Park Hospital, Inc.*