

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

ORIGINAL



)
IN THE MATTER OF)
)
PROPOSED ACQUISITION BY)
)
THE HOSPITAL AUTHORITY OF)
)
ALBANY-DOUGHERTY COUNTY OF)
)
PALMYRA PARK MEDICAL CENTER, INC.)
)
FROM PWC INC.)

File No. 111-0067

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

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Pursuant to Section 2.7(d)(1) of the Federal Trade Commission's ("FTC" or "Commission") Rules of Practice, 16 C.F.R. § 2.7(d)(1), PricewaterhouseCoopers LLP ("PwC" or "the Company") hereby files its Petition to Quash or Limit the Subpoena *Duces Tecum* (the "Subpoena"), FTC File No. 111-0067, served on PwC on March 30, 2011.

PRELIMINARY STATEMENT

The Subpoena issued pursuant to the FTC's investigation (the "Investigation") of The Hospital Authority of Albany-Dougherty County's (the "Authority") proposed acquisition of Palmyra Park Hospital, Inc. ("Palmyra") from HCA Inc. ("HCA") (the "Transaction") commands PwC to achieve the impossible: collect, review, process and produce what could potentially be tens of thousands of pages of documents, dating from over seven years ago, in a one week time frame. PwC has every intention of cooperating with the FTC with respect to the Subpoena. But the enormous burden, time and expense required to respond to the Subpoena as it is currently written are unreasonable and simply cannot be done within the time frame specified by the Subpoena. PwC is in the process of negotiating with the FTC Staff over the breadth of the subpoena in a good faith effort to cooperate with the FTC. As of the time of the filing of this Petition, however, a definitive agreement is not in place with the FTC as to the scope of the Subpoena and the timing of PwC's compliance with it. Therefore, PwC hereby petitions to quash or alternatively to limit the Subpoena.

FACTUAL BACKGROUND

A. The Activities of PwC

PwC is a Delaware limited liability partnership that provides public accounting and other services. PwC entered into engagements with the Authority and Phoebe Putney Health Systems,

Inc. (“PPHS”) to provide services concerning PPHS’ subsidiary entity, Phoebe Putney Memorial Hospital (“PPMH”), and Palmyra.

B. The Subpoena

On March 30, 2011, the Commission served the Subpoena on PwC. The Subpoena is broad and calls for the production of documents by April 7, 2011, a mere one week from the date of service.¹ In addition, the Subpoena requests documents dating back over seven years. As demonstrated below, the volume of the information requested, the nature of the information requested, the extremely short time frame provided, and the large size and scope of PwC’s operations dictate that the April 7 deadline cannot be met and that the Subpoena is over broad and unduly burdensome. In addition, many of the documents arguably requested by the Subpoena are subject to various privileges and protections, including the attorney work product doctrine and attorney-client privilege.

ARGUMENT

Pursuant to its investigations under the FTC Act, the FTC is authorized to issue subpoenas *duces tecum* to require the production of documentary evidence. 15 U.S.C. § 49. However, compulsory process issued by the FTC is not self-executing and the FTC must petition a district court of the United States to seek enforcement of a subpoena. *See D.R. Horton, Inc. v. Leibowitz*, No. 4:10-CV-547-A, 2010 WL 4630210, at *2 (N.D. Tex. Nov. 3, 2010).² A federal agency’s use of compulsory process is enforceable in court only when the “disclosure sought [is not] unreasonable.” *Okla. Press Publ’g Co. v. Walling*, 327 U.S. 186, 208 (1946). In turn,

¹ The Subpoena is attached at Exhibit A.

² See also *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1024 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 1071 (1979) (“The federal courts stand guard . . . against abuses of [federal agencies’] subpoena-enforcement processes. . . .”) (internal citations omitted).

compulsory process is reasonable and thus enforceable where the requests are “reasonably relevant [to the federal agency’s investigation] . . . and not unduly burdensome to produce.” *F.T.C. v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992) (internal quotation marks and citations omitted).

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

A. The Subpoena Imposes an Undue Burden on PwC Because the Time Period Allotted for Compliance Is Unachievable.

The broad scope and short return date of the Subpoena render compliance with the Subpoena by April 7 unrealistic and impossible. The Subpoena requires PwC to search through numerous electronic databases to collect documents from PwC custodians at multiple locations going back seven years. The FTC has recognized that an “abbreviated schedule insisted upon” by the issuer of requests for information may be “the source of the undue burden” on the recipient of such requests. Pl.’s F.T.C.’s Opp’n to Defs.’ Mot. to Compel at 9, *FTC v. W. Ref., Inc.*, No. 1: 07-CV-00352-JB-ACT (D.N.M. May 2, 2007).

Given the large number of engagements arguably covered by the Subpoena, PwC would need to identify, contact and interview numerous potential document custodians to determine whether they have responsive documents. Potentially responsive documents would need to be gathered from personal computers and other sources and then reviewed for responsiveness, privilege or other confidential information that is protected from disclosure. Moreover, the numerous instructions in the Subpoena as to how responsive information must be produced require significant additional time and resources by PwC in order to comply with the Subpoena.

For example, the Subpoena requires PwC to redact all Sensitive Personally Identifiable Information and Sensitive Health Information; produce documents in both native format and in image format with extracted text and extensive metadata information; contact a Commission representative to address utilization of de-duplication software and services; produce an extensive privilege log; submit an index identifying the documents and their custodians; and produce a copy of all instructions prepared by the Company relating to the steps taken to respond to the Subpoena and a listing of the persons whose files were searched. Such a compressed time frame to accomplish this is unreasonable. *See* 16 C.F.R. § 2.7(b)(1) (“Civil investigative demands for the production of documentary material shall . . . prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled.”); Pl.’s F.T.C.’s Opp’n to Defs.’ Mot. to Compel at 11, *FTC v. W. Ref., Inc.*, No. 1: 07-CV-00352-JB-ACT (D.N.M. May 2, 2007) (arguing that production of documents in four days was an “impossible burden” to meet).

The Commission’s own rationale for denying PPHS’ and HCA’s petitions to quash or limit subpoena *duces tecum* and civil investigative demand demonstrates the unreasonableness of the time set forth in the Subpoena for compliance. In its March 10, 2011 letter denying PPHS’ and HCA’s petitions, the Commission explained that those entities “would undoubtedly be granted more time to comply with the subpoenas and CIDS if they were to give Commission staff additional time to conduct its investigation,” *i.e.*, the Commission’s decision not to extend the compliance date “was directly connected to the hospitals’ refusal to defer consummation of the transaction under investigation beyond March 31.”³ In contrast, PwC is a third party and has no influence on when the Transaction will consummate. The Commission’s basis for denying

³ The Commission’s March 10, 2011 letter can be found at: <http://www.ftc.gov/os/quash/110311pphs.pdf>.

PPHS' and HCA's petitions, therefore, has no application here. The Commission also reasoned that denial of PPHS' and HCA's petitions was appropriate because "much of the material demanded by the subpoenas and CIDs was originally requested in voluntary access letters dated December 29, 2010, and February 4, 2011. The hospitals have had sufficient time to gather and produce this information."

PwC, in contrast, received no notification whatsoever of the request for material demanded in the Subpoena and, instead, was given a one-week response deadline the first time it was told that the FTC wanted it to produce documents. Indeed, the Commission provided PPHS and HCA with two weeks to comply with the subpoenas -- twice the amount of time allowed PwC here. Thus, the Subpoena should be quashed because its time demands are unreasonable.

B. The Subpoena Is Overly Broad.

The Subpoena requests a vast amount of data, requiring the production of materials dating back over seven years, as well as documents, information and data not likely to be material and/or relevant to the Investigation. A subpoena issued by a federal agency is unenforceable if it is "unduly burdensome or unreasonably broad." *See F.T.C. v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir.) (en banc), *cert. denied*, 431 U.S. 974 (1977). Similarly, a request for documents or information is reasonable, relevant and enforceable if the specifications are "adequate, but not excessive, for the purposes of the relevant inquiry." *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1030 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 1071 (1979) (quoting *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 209 (1946)). The scope of the Subpoena is excessive.

For instance, Specification 2 of the Subpoena requires PwC to produce "all documents" relating to communications between the Company and PPHS, PPMH, the Authority, or

Dougherty County “in connection with healthcare services, prices, or costs, in Dougherty County, Georgia.” Specification 3 similarly requests “all documents” relating to notes, interviews, data compilations, and other internal-Company material in connection with any request by PPHS, PPMH, the Authority, or Dougherty County “regarding healthcare services, prices, or costs, in Dougherty County, Georgia.” Such broad document requests will no doubt yield many documents that are technically responsive, but are irrelevant to the FTC’s antitrust analysis. Moreover, the Subpoena calls for the production of documents dating back over a seven year period of time. The more documents that fall within the net cast by this overly broad Subpoena, the greater the burden and expense that PwC will incur in processing and reviewing the documents and the longer the process will take.

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

The Subpoena is unduly burdensome because even a good faith effort at compliance “threatens to unduly disrupt or seriously hinder” PwC’s normal operations. *FTC. v. Church & Dwight Co.*, Misc. No. 10-149 (EGS/JMF), 2010 WL 4283998, at *4 (D.D.C. Oct. 29, 2010) (quoting *Texaco*, 555 F.2d at 882). The tasks to be undertaken to compile a response to the Subpoena require PwC personnel to divert their attention away from the day-to-day operations of PwC, resulting in continued disruptions to PwC’s business operations. Expecting PwC to devote these kinds of resources to the FTC’s investigation of the antitrust consequences of the Transaction is not reasonable and poses an undue burden on PwC.

D. The Subpoena Requests Information that is Protected from Disclosure.

Many of the documents requested by the Subpoena are subject to various privileges and protections, including the attorney work product doctrine and attorney-client privilege, because PwC was engaged by counsel for the Authority or PPHS. These privileges and protections exist

under an FTC subpoena. *See* 16 C.F.R. § 2.7(d) (“Such petition [to limit or quash] shall set forth all assertions of privilege.”); 16 C.F.R. § 2.8A(a) (“Any person withholding material responsive to an investigational subpoena or civil investigative demand issued pursuant to § 2.7 . . . shall assert a claim of privilege or any similar claim not later than the date set for the production of material.”). In addition, several of the documents requested may be protected from disclosure under 26 U.S.C. §§ 6713 and 7216, and 26 C.F.R. § 301.7216-3(b).

GENERAL AND SPECIFIC OBJECTIONS

PwC incorporates by reference the arguments made in its Petition to Quash or Limit Subpoena *Duces Tecum* and makes the following general objections. Each general objection is hereby incorporated by reference into each specification of the Subpoena.

1. PwC objects to the specifications, definitions, and instructions in the Subpoena as overly broad and unduly burdensome.
2. PwC objects to the specifications, definitions, and instructions in the Subpoena on the ground that they unreasonably require full production of documents and information by April 7, 2011.
3. PwC objects to the specifications, definitions, and instructions in the Subpoena on the ground that they request documents or information that are irrelevant to the FTC’s investigation.
4. PwC objects to the specifications, definitions, and instructions in the Subpoena because compliance would unduly disrupt and seriously hinder normal operations of PwC’s business.
5. PwC objects to the specifications, definitions, and instructions in the Subpoena to the extent that they seek the disclosure of information or production of documents subject to the attorney-client privilege, the attorney work product privilege, the common interest privilege, or any other applicable privilege or immunity.

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

1. *All documents relating to any study, analysis or report issued by the Company, at the request of Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., the Hospital Authority of Albany-Dougherty County, or Dougherty County, regarding the provision of healthcare services, its prices, or its costs, in Dougherty County, Georgia.*

OBJECTION

PwC incorporates by reference all of its general objections set forth above. PwC objects to this Specification to the extent that it is overbroad and unduly burdensome in scope and in that PwC cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the seven days required by the Subpoena. PwC objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation. PwC objects to this Specification to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, immunity, or confidentiality.

2. *All documents relating to communications between the Company and Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., the Hospital Authority of Albany-Dougherty County, or Dougherty County, in connection with healthcare services, prices, or costs, in Dougherty County, Georgia.*

OBJECTION

PwC incorporates by reference all of its general objections set forth above. PwC objects to this Specification to the extent that it is overbroad and unduly burdensome in scope and in that PwC cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the seven days required by the Subpoena. PwC objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation. PwC objects to this Specification to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, immunity, or confidentiality.

3. *All documents relating to notes, interviews, data compilations, and other internal-Company material in connection with any request by Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., the Hospital Authority of Albany-Dougherty County, or Dougherty County, regarding healthcare services, prices, or costs, in Dougherty County, Georgia.*

OBJECTION

PwC incorporates by reference all of its general objections set forth above. PwC objects to this Specification to the extent that it is overbroad and unduly burdensome in scope and in that PwC cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the seven days required by the Subpoena.

PwC objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation. PwC objects to this Specification to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, immunity, or confidentiality.

4. *All documents relating to the terms of the lease between the Hospital Authority of Albany-Dougherty County and Phoebe Putney Memorial Hospital, Inc.*

OBJECTION

PwC will produce the publicly released report entitled "Albany-Dougherty County Hospital Authority Lease Analysis." With respect to the other documents requested in Specification No. 4, PwC incorporates by reference all of its general objections set forth above. PwC objects to this Specification to the extent that it is overbroad and unduly burdensome in scope and in that PwC cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the seven days required by the Subpoena. PwC objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation. PwC objects to this Specification to the extent it seeks the production of documents subject to the attorney-client privilege, the attorney work product privilege, the common interest privilege, 26 U.S.C. §§ 6713 and 7216, 26 C.F.R. § 301.7216-3(b), or any other applicable privilege, immunity, or confidentiality.

CONCLUSION

For all of the foregoing reasons, PwC respectfully requests that the Commission quash the Subpoena. In the alternative, PwC respectfully requests that the Commission modify the return date of the Subpoena to provide a reasonable time for compliance and to limit the Subpoena based on the objections set forth above.

Dated: April 6, 2011

Respectfully submitted,

By:  _____

Elizabeth V. Tanis, Esq.
Meredith Moss, Esq.
Ryan J. Szczepanik, Esq.

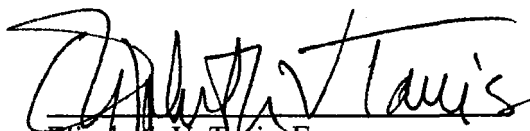
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Counsel for Petitioner

STATEMENT OF ELIZABETH V. TANIS PURSUANT TO 16 C.F.R. 2.7(d)(2)

I am Partner with King & Spalding LLP, counsel for PricewaterhouseCoopers LLP (“PwC”). I submit this statement in connection with PwC’s Petition to Quash or Limit the Subpoena *Duces Tecum* (the “Petition”). On March 30, 2011, the FTC served the Subpoena *Duces Tecum*; FTC File No. 111-0067 on PwC. On April 5, 2011 and April 6, 2011, counsel for PwC conferred with Goldie Walker, counsel for the Commission, by telephone and e-mail in a good faith attempt to resolve the issues set forth in the Petition. Counsel for PwC and counsel for the Commission, however, have not been able to resolve by agreement the issues raised in the Petition.

Dated: April 6, 2011



Elizabeth V. Tanis, Esq.
KING & SPALDING LLP
1180 Peachtree Street
Atlanta, GA 30309
(404) 572-4600

EXHIBIT A



SUBPOENA DUCES TECUM

1. TO PricewaterhouseCoopers LLP 1901 6th Avenue North Suite 1600 Birmingham, Alabama 35203	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
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This subpoena requires you to appear and testify at the request of the Federal Trade Commission at a hearing [or deposition] in the proceeding described in Item 6.

3. LOCATION OF HEARING Federal Trade Commission 601 New Jersey Avenue, N.W. Suite 5257 Washington, D.C. 20001	4. YOUR APPEARANCE WILL BE BEFORE Goldie Walker or other designated counsel 5. DATE AND TIME OF HEARING OR DEPOSITION April 7, 2011*
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6. SUBJECT OF INVESTIGATION

Proposed Acquisition by the Hospital Authority of Albany-Dougherty County of Palmyra Park Medical Center, Inc. from HCA, Inc., FTC File No. 111-0067. See the attached Resolution authorizing use of Compulsory Process.

7. RECORDS YOU MUST BRING WITH YOU

Provide the responses to the specifications of the attachment. *In lieu of personal appearance, you may submit the requested material along with the certification attesting to the completeness of the response.

8. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN Matthew Reilly, Records Custodian Goldie Walker, Deputy Records Custodian	9. COMMISSION COUNSEL Goldie Walker, Esq. (202) 326-2919
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DATE ISSUED 3/30/11	COMMISSIONER'S SIGNATURE 
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GENERAL INSTRUCTIONS

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.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within 20 days after service or, if the return date is less than 20 days after service, prior to the return date. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission. Send one copy to the Commission Counsel named in Item 9.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel 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 Commission Counsel.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)

SUBPOENA DUCES TECUM
ISSUED TO PRICEWATERHOUSECOOPERS, LLP
FTC File No. 111-0067

Unless modified by agreement with the staff of the Federal Trade Commission, each specification of this Subpoena *Duces Tecum* requires a complete search of "the Company" as defined in the Definitions and Instructions, wherever those files may be located. If the Company believes that the required search or any other part of this Subpoena may be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss any questions and possible modifications with the Commission representative identified on page eight. All modifications to this Subpoena must be agreed to in writing.

SPECIFICATIONS

Submit the following documents, in the form maintained by the Company, prepared or in use by the Company in whole or in part, for the period January 1, 2004, through the present:

1. All documents relating to any study, analysis or report issued by the Company, at the request of Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., the Hospital Authority of Albany-Dougherty County, or Dougherty County, regarding the provision of healthcare services, its prices, or its costs, in Dougherty County, Georgia.
2. All documents relating to communications between the Company and Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., the Hospital Authority of Albany-Dougherty County, or Dougherty County, in connection with healthcare services, prices, or costs, in Dougherty County, Georgia.
3. All documents relating to notes, interviews, data compilations, and other internal-Company material in connection with any request by Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., the Hospital Authority of Albany-Dougherty County, or Dougherty County, regarding healthcare services, prices, or costs, in Dougherty County, Georgia.
4. All documents relating to the terms of the lease between the Hospital Authority of Albany-Dougherty County and Phoebe Putney Memorial Hospital, Inc.

DEFINITIONS AND INSTRUCTIONS

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

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

foregoing.

- B. The terms “and” and “or” have both conjunctive and disjunctive meanings.
- 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. 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 relating solely 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 Subpoena. 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 need for information.
- D. The term “relating to” means in whole or in part constituting, containing, concerning,

discussing, describing, analyzing, identifying, or stating, but not merely referring to.

- E. 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.
- F. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information (“PII”) or Sensitive Health Information (“SHI”). The term 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. The term 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.
- G. Submit all responsive documents as follows:
 - 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 text¹ 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 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,

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.

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. If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this Subpoena, or if the Company's computer systems contain or utilize such software, the Company must contact 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 Subpoena.
4. For each Specification marked with an asterisk (*), and to the extent any other responsive data exists electronically, provide such data in Excel spreadsheet 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 Subpoena.

6. All documents responsive to this Subpoena, regardless of format or form and regardless of whether submitted in hard copy or electronic format:
 - (a) Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files and shall not be shuffled or otherwise rearranged. For example:
 - i. If in their original condition hard copy documents were stapled, clipped or otherwise fastened together or maintained in file folders, binders, covers or containers, they shall be produced in such form, and any documents that must be removed from their original folders, binders, covers or containers in order to be produced shall be identified in a manner so as to clearly specify the folder, binder, cover or container from which such documents came; and
 - ii. If in their original condition electronic documents were maintained in folders or otherwise organized, they shall be produced in such form and information shall be produced so as to clearly specify the folder or organization format;
 - (b) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;
 - (c) Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (*e.g.*, a chart or graph), makes any substantive information contained in the document unintelligible, the Company 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 any copies submitted in lieu of originals 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 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.

- H. If a document is 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 of the attorney at the time the documents was created. Describe the subject matter 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 claimed privilege. 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.

In place of a Complete Log of all documents withheld from production based upon 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 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.
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 Subpoena.

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 retains all privileged documents that are responsive to this Subpoena until the completion of any investigation and administrative or court proceedings of the relevant transaction.
 5. The Commission retains the right to require the Company to produce a Complete Log for all persons searched in appropriate circumstances.
- I. 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.
- J. 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.
- K. Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this Subpoena and produce a copy of all instructions prepared by the Company relating to

the steps taken to respond to the Subpoena. 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 person(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.

- L. 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, notarized, and submitted along with the responsive materials.

Any questions you have relating to the scope or meaning of anything in this Subpoena or suggestions for possible modifications should be directed to Goldie Walker at 202-326-2919. Address the response to this Subpoena to the attention of Ms. Goldie Walker, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, D.C. 20580, and have it delivered between 8:30 a.m. and 5:00 p.m. on any business day at the New Jersey Avenue address.

CERTIFICATION

This response to the Subpoena *Duces Tecum* of the Federal Trade Commissions was prepared and assembled under my supervision in accordance with the definitions and instructions contained in that subpoena. The documents provided are, to the best of my knowledge, a full and complete response to the specifications of the subpoena. Where copies rather than original documents have been submitted, the copies are true, correct, and complete.

TYPE OR PRINT NAME

TITLE

DATE

(Signature)

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

**RESOLUTION AUTHORIZING USE OF
COMPULSORY PROCESS IN A NONPUBLIC INVESTIGATION**

File No. 111 0067

Nature and Scope of Investigation:

To determine whether the proposed acquisition by The Hospital Authority of Albany-Dougherty County and/or Phoebe Putney Health System, Inc. of Palmyra Park Hospital, Inc. from HCA, Inc. is in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the proposed acquisition, if consummated, would be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to said transaction.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.* and supplements thereto.

By direction of the Commission.



Donald S. Clark
Secretary

Issued: February 8, 2011

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of April, 2011, I caused the original and twelve (12) copies of the Petition to Quash or Limit with attached Exhibits to be filed by hand delivery with the Secretary of The Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C., 20580; and one (1) copy of the same to be filed by hand delivery with Goldie Walker, Esq., 601 New Jersey Avenue, N.W., Washington, D.C., 20580.

Dated: April 6, 2011

