

HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY, GEORGIA

MINUTES OF AUGUST 26, 2013 MEETING

(Open Session)

Attendees: Authority Board Members: Ralph Rosenberg; John Hayes; Lamar Reese; Fred Ghiglieri; Rev. Eugene Sherman; Dr. Michael N. Laslie; Rev. H.B. Johnson and Dr. Steven Kitchen (arrived at 4:20 p.m.); Legal Counsel: James E. Reynolds, Jr. and Ed Wilkin, Also present were: Joel Wernick; Kerry Loudermilk; Joe Austin; Dawn Benson; Tom Sullivan; Tim Trottier and, Records, Annette Allen and Mary Barfield.

Absent Authority Members: Dr. Charles Lingle

Call to Order:

The meeting was called to order by Chairman Rosenberg at 4:00 P.M. in the Willson Board Room of Phoebe's Main Campus.

Open Meeting and Establish a Quorum:

Chairman Rosenberg thanked all the members for their attendance and established that a quorum was present.

Approval of the Agenda:

The proposed Agenda was reviewed and a motion was made by John Hayes and seconded by Rev. Johnson, to adopt the Agenda as presented. The motion was approved by all Authority Members in attendance.

Approval of the Minutes:

The proposed Minutes of the open sessions of the May 9, June 11 and August 2, 2013 meetings had been provided to the Members prior to the meeting and the same was considered for approval. Dr. Laslie made a motion, seconded by Dr. Sherman to approve the Minutes as previously provided. The motion passed unanimously by vote of all Members in attendance.

Financial Reports for Authority and for Phoebe Putney Memorial Hospital:

Kerry Loudermilk, Chief Financial Officer for Phoebe, presented the financial statements of the Authority, Phoebe Putney Memorial Hospital and Phoebe North for year to date through July, 2013. Questions and discussion followed. A motion was made by Lamar Reese and seconded by Fred Ghiglieri, to approve and accept the Financial Statements of the entities as presented. Copies of the reports are attached.

Phoebe Putney Memorial Hospital CEO Report:

Mr. Tim Trotter, Vice President of PPMH, Inc., introduced Mr. Tedrick Brown, MBA, Director of Post Acute Care, who spoke extensively regarding Phoebe Home Care operations. A copy of his presentation is attached. Mr. Wernick followed with some additional comments and observations concerning this component of service to the community by the Hospital.

Closing of the Meeting:

A motion was made by Fred Ghiglieri and seconded by John Hayes to close the meeting in order to engage in privileged consultation with legal counsel concerning existing claims and litigation and related confidential matters and for discussions concerning proprietary strategic plans and issues for PPMH.

Mr. Rosenberg polled the individual Authority Members with respect to their vote on the motion and their votes are shown below:

Ralph Rosenberg	Yes
Fred Ghiglieri	Yes
Lamar Reese	Yes
Rev. Sherman	Yes
Dr. Michael Laslie	Yes
John Hayes	Yes
Rev. H. B. Johnson	Yes
Dr. Steven Kitchen	Yes

The motion having passed, the meeting closed.

Open Session Reconvened:

Following a motion by Fred Ghiglieri, seconded by Lamar Reese, the Open Session portion of the Meeting reconvened at 5:10 P.M., the Members having voted to do so.

Resolution to Authorize Execution of FTC Settlement Documents:

The Members had previously discussed proposed settlement with the FTC and had been provided with copies of the proposed FTC Settlement Documents and an accompanying Resolution. By motion of Dr. Sherman, seconded by Dr. Laslie, and unanimous vote of all Members in attendance, the attached Resolution relative to authorizing execution of the Settlement Documents with the FTC, was approved.

Adjournment:

There being no other business brought before the Authority, the meeting adjourned at 5:15 P.M.



 Mary S. Barfield, Recorder

STATE OF GEORGIA
COUNTY OF DOUGHERTY

AFFIDAVIT RELATIVE TO CLOSED MEETING

Personally appeared before the undersigned, RALPH S. ROSENBERG, who having been duly sworn, deposes and states as follows:

1. I am over the age of 18 years, I am suffering under no disabilities and I am competent to testify to the matters contained herein.
2. I am the Chairperson of the Board of the Hospital Authority of Albany-Dougherty County, Georgia (the "Authority").
3. On the 26th day of August, 2013, at a meeting of the Authority Board, a motion was duly approved in a roll call vote for the Authority Board to go into closed session for the purposes of engaging in privileged consultation with legal counsel.
4. To the best of my knowledge and belief, the business conducted during the closed portion of the meeting was devoted solely to the above matters for which the meeting was closed.

This the 26th day of August, 2013.

Ralph S. Rosenberg
Chairperson

Sworn to and subscribed before me this
26th day of August, 2013.

Mary S. Barfield
NOTARY PUBLIC (SEAL)
Dougherty County, Georgia
My Commission expires: _____



AGENDA

HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY, GEORGIA

Meeting of August 26, 2013

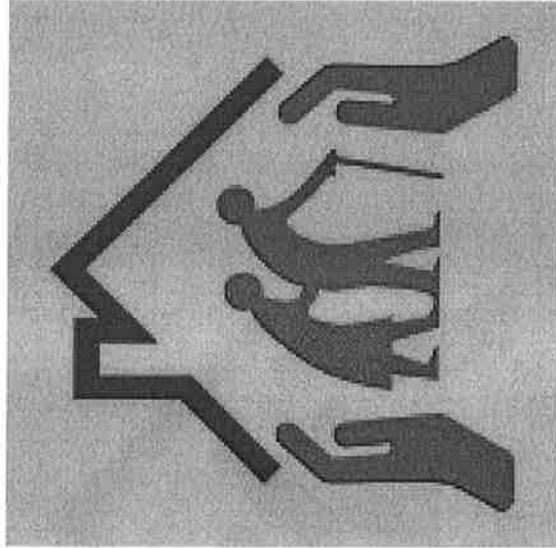
4:00 P.M.

(Wilson Board Room)

- | | | |
|-------|---|-------------------------------------|
| I. | Open meeting and establish quorum | Ralph Rosenberg |
| II. | Consider Approval of Agenda | Ralph Rosenberg |
| III. | Consideration of Open Session Minutes of May 9, June 11 and August 2, 2013 meetings (Drafts previously provided to Members) | Ralph Rosenberg |
| IV. | Financial Reports for the Authority and for Phoebe Putney Memorial Hospital, Inc. ("PPMH") | Kerry Loudermilk |
| V. | CEO Report from PPMH | Joel Wernick |
| VI. | Motion and vote to close meeting in order to consult with legal counsel pertaining to pending or potential claims and litigation as well as other legally confidential matters

Reconvening in open session following vote to do so | Ralph Rosenberg |
| VII. | Consideration of approval and authorization of Settlement Documents with FTC | Jay Reynolds/Ed Wilkin/Frank Lowrey |
| VIII. | Additional Business, if any | Ralph Rosenberg |
| IX. | Adjournment | Ralph Rosenberg |

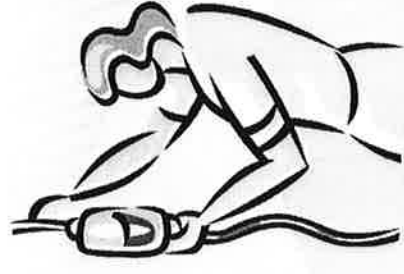
PHOEBE HOME CARE



AUGUST 2013



SERVICES AVAILABLE

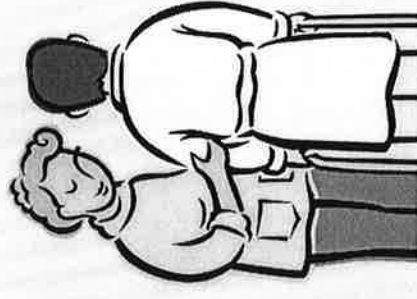


× Skilled Nursing Care

- ✓ Assess blood pressure, pulse and respiratory status
- ✓ IV therapy, continuous antibiotics/TPN enteral feeding
- ✓ Monitor nutrition, hydration, bowel and bladder functions
- ✓ Diabetic teaching - check glucose levels and administer insulin

× Physical Therapy

- ✓ Gait training
- ✓ Bed mobility transfers
- ✓ Strengthening and therapeutic exercises
- ✓ Proper application and use of prosthetic devices



× Speech Therapy

- ✓ Language and communication retraining
- ✓ Dysphasia - impairment of the ability to communicate resulting from brain injury

SERVICES CONT'D

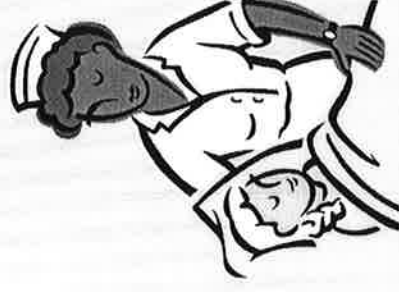
× Occupational Therapy

- ✓ ADL (activities of daily living)
- ✓ Muscle re-education
- ✓ Fine motor coordination
- ✓ Sensory and neuro development treatment
- ✓ Orthotics/splinting



× Home Health Aide Service

- ✓ Bathing
- ✓ Dressing
- ✓ Other personal care tasks.



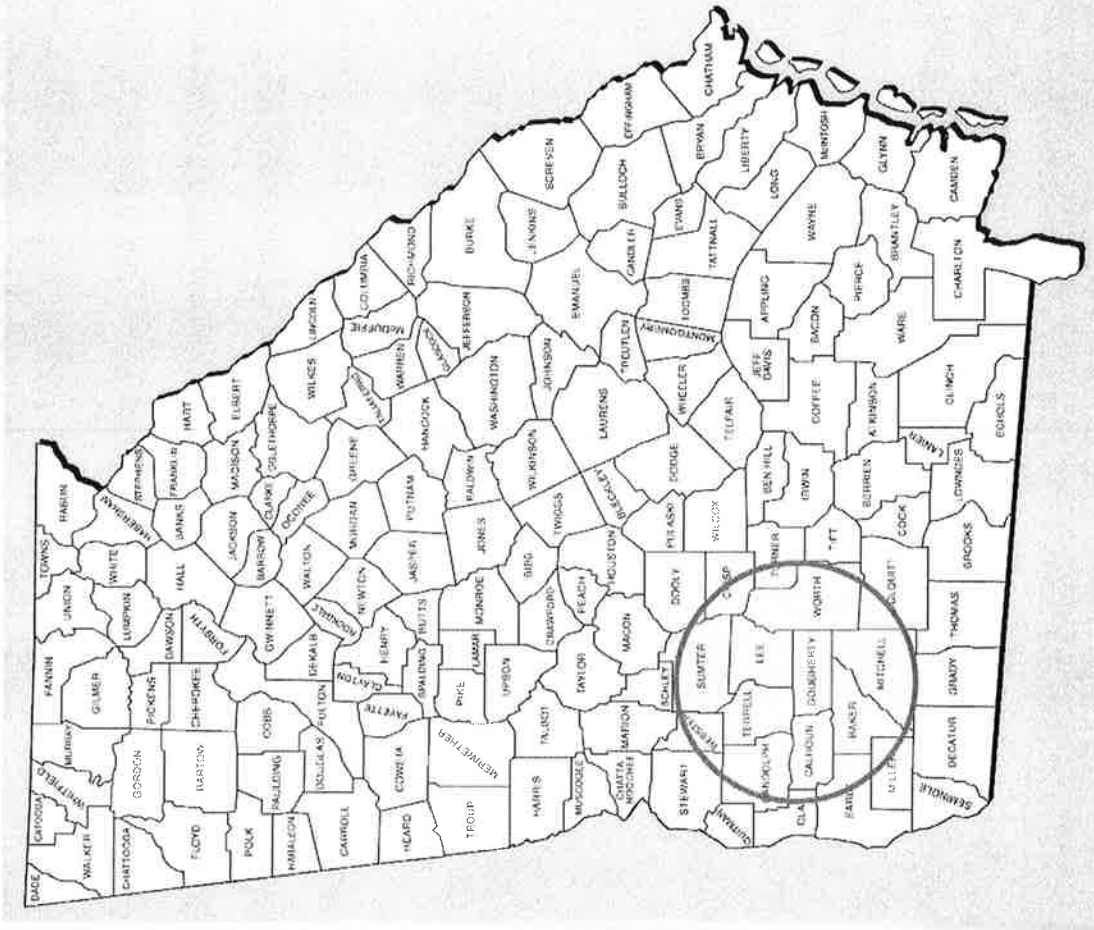
× Telehealth

- ✓ A registered nurse remotely monitors the patient's pulse ox, blood pressure, weight, and vital signs.
- ✓ The patient answers questions on the telehealth device each morning, and then sends the data to the nurse in the office.

SERVICE AREA

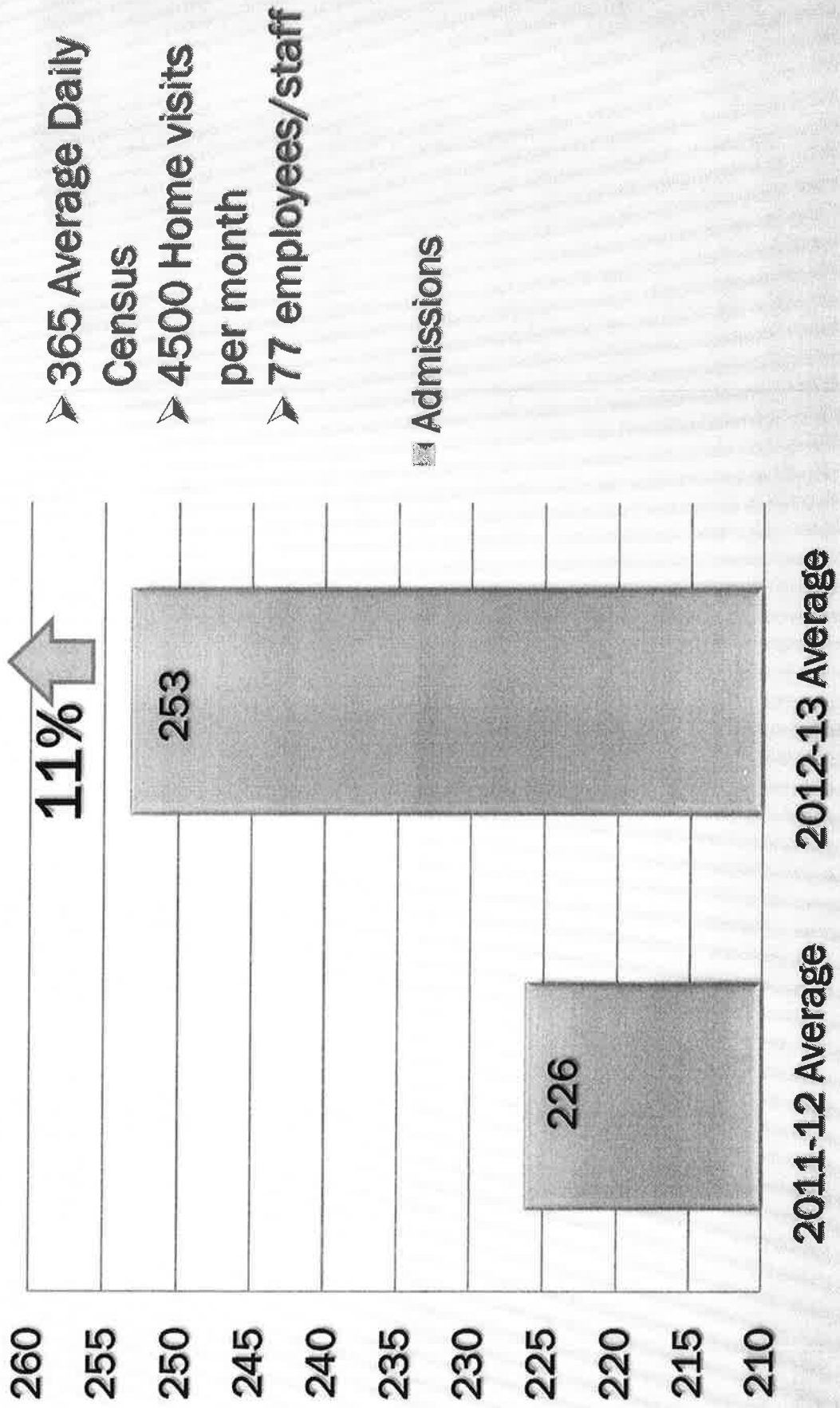
16 COUNTIES IN SW GEORGIA

- × Baker
- × Calhoun
- × Clay
- × Colquitt
- × Crisp
- × Dougherty
- × Early
- × Lee
- × Miller
- × Mitchell (high tech only)
- × Quitman
- × Randolph
- × Seminole
- × Sumter
- × Terrell
- × Worth

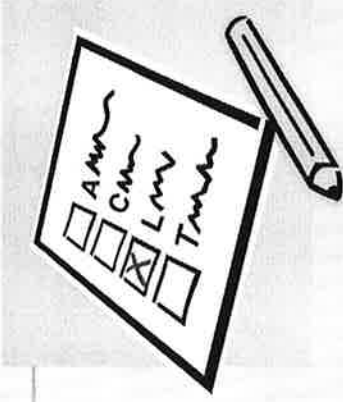


ADMISSIONS

Admissions continue to trend upward!

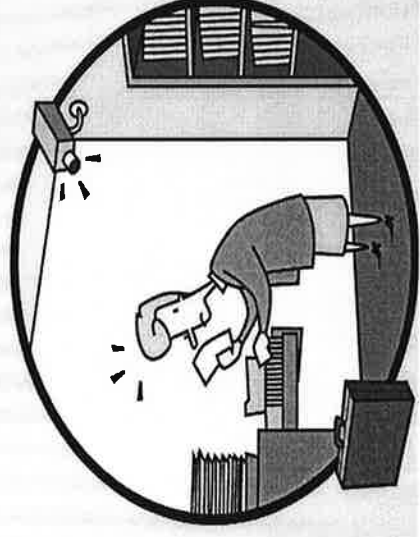


ADMINISTRATIVE REVIEW



Surveys and Regulatory Compliance

- × On April 1-3, 2013, Medicare certification/State Survey was completed for Phoebe Home Care with NO Deficiencies.
- × PPMH has completed accreditation survey through DNV Healthcare. They are the leading accrediting entity of US hospitals and they are compliant with the Medicare Conditions of Participation.



ADMINISTRATIVE REVIEW

Phoebe Home Care Staffing Plan for 2013:

Growth Trends:

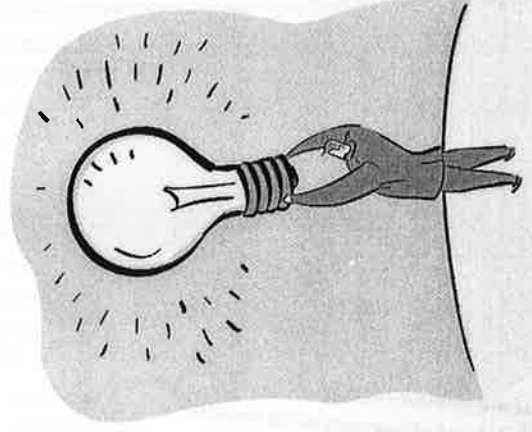
- + Hire additional employees for Americus and Cuthbert
- + Boost PRN Staffing
- + Community/Physician Liaison position – Vacant
- + Continue to hire field staff due to growth and turnover
- + Care Transition Coordinator to work at Hospital and supplement the Central Intake Team

AGENCY GOALS FOR 2013



- * Retain staff and decrease staff turnover
- * Improve continuity of care
- * Growth (improve referrals)
- * Improvement of outcomes with the goal to be higher than state and/or national benchmarks
- * Reviewing opportunities for possibility of reopening branch office in Sylvester and other areas.

* Any Suggestions?



**HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY, GEORGIA
STATEMENTS OF REVENUES, EXPENSES AND
CHANGES IN UNRESTRICTED NET ASSETS
07/31/2013**

	Unaudited 7/31/2013 YTD	Audited FY 2012	Audited FY 2011
OPERATING REVENUE:			
Net patient service revenue		\$35,292,985	
Other revenue		605,734	
Total Operating Revenue	-	35,898,719	-
OPERATING EXPENSES:			
Salaries and Wages		11,975,422	
Employee health and welfare		4,146,124	
Medical supplies and other		12,584,774	
Professional services	2,155,597	2,781,463	4,380,735
Purchased services	2,545	5,489,805	
Depreciation and amortization		2,626,654	
Total Operating Expenses	2,158,142	39,604,242	4,380,735
Operating Loss	-2,158,142	-3,705,523	-4,380,735
NONOPERATING INCOME (EXPENSES):			
Contributions from Phoebe Putney Memorial Hospital, Inc.	1,693,400	4,956,150	941,356
Lease Revenue	100,000	1	1
Interest Expense		-350,000	
Total Nonoperating Income	1,793,400	4,606,151	941,357
EXCESS OF REVENUE OVER EXPENSE	-364,742	900,628	-3,439,378

Phoebe Putney Memorial Hospital
31-Jul-13

Operating Summary (in thousands)	Actual	Budget	Variance
Revenues	\$1,401,362	\$1,400,934	\$428
Deductions	893,860	866,579	27,280
Other Operating Revenue	17,455	14,835	2,620
Net Operating Revenue	\$524,957	\$549,190	(\$24,232)
Expenses	477,961	472,743	5,218
Operating Income (Loss) Before Intercompany Intercompany	\$46,996 47,331	\$76,446 55,502	(\$29,450) -8,171
Operating Income (Loss) Non-Operating Income	(\$335) 2,866	\$20,944 2,061	(\$21,279) 805
Investment Income	8,448	-2,751	11,199
Interest Expense	7,468	7,120	348
Net Investment Income (Loss) Net Income	980 \$3,511	-9,871 \$13,134	10,851 (\$9,623)
Statistics	Actual	Budget	Variance
Admissions	22,759	24,753	-1,994
Patient Days	121,416	122,832	-1,416
ALOS	5.33	4.96	0.37
Equivalent OP Days	141,595	149,133	-7,538
E.C. Visits	103,152	101,106	2,046

**HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY, GEORGIA
OPEN SESSION RESOLUTION CONCERNING APPROVAL AND
RATIFICATION OF FTC SETTLEMENT, AUGUST 26, 2013**

WHEREAS, on December 21, 2010 the Hospital Authority of Albany-Dougherty County, Georgia (the "Authority") adopted Resolutions authorizing the Authority to enter into an Asset Purchase Agreement (the "APA"), whereby the Authority planned to acquire (the "Acquisition") nearly all of the assets of Palmyra Park Hospital, Inc./Hospital Corporation of America located in Albany, Georgia; and

WHEREAS, the Federal Trade Commission ("FTC") issued an Administrative Complaint April 20, 2011, alleging that the proposed Acquisition by the Authority would likely violate certain provisions of Federal anti-trust laws; and

WHEREAS, the Authority and other Respondents answered the Administrative Complaint and denied the allegations contained therein and asserted affirmative defenses, including the defense that the FTC had no jurisdiction in the matter due to the applicability of the State Action Doctrine; and

WHEREAS, in July, 2011 the FTC stayed the administrative proceeding resulting from the filing of its Administrative Complaint, pending resolution of Federal Court litigation which it had commenced in the Federal District Court for the Middle District of Georgia, seeking a Temporary Restraining Order and an Injunction, which would enjoin the Acquisition; and

WHEREAS, after a hearing and briefing, the U.S. District Court for the Middle District of Georgia dismissed the Federal action which had been brought by the FTC on the grounds that State Action Immunity applied; and

WHEREAS, FTC appealed the District Court's decision to the Court of Appeals for the Eleventh Circuit, which Court, in a unanimous three Judge decision, affirmed the District Court's decision; and

WHEREAS, following the decision of the Eleventh Circuit, the injunction enjoining the Acquisition was dissolved, and on December 15, 2011, the Acquisition was consummated as originally contemplated in the APA; and

WHEREAS, subsequent to consummation of the Acquisition and when under no legal prohibition precluding the same, the Authority entered into a Lease and Transfer Agreement with Phoebe Putney Memorial Hospital, Inc. ("PPMH") which, among other things, leased to PPMH the operating the assets of the Authority that had been the subject of the Acquisition; and

WHEREAS, following the Eleventh Circuit Court's decision, the FTC petitioned the United States Supreme Court for a Writ of Certiorari, which was granted, and after consideration of the matter, the Supreme Court ruled the Acquisition does not enjoy State Action Immunity and it reversed the Court of Appeals and District Court decisions; and

WHEREAS, on March 14, 2013, following the decision of the Supreme Court, the FTC lifted its stay of the Administrative proceedings and ordered a hearing on the anti-trust merits of the Acquisition to commence on August 5, 2013; and

WHEREAS, the parties, through counsel, have been engaged in intensive discussions and negotiations intended to attempt to settle and resolve the matter without the necessity of a full Administrative hearing, and respective counsel, subject to approval by all parties, reached an agreement as to the terms of an Agreement Containing Consent Order and/or Decision and Order (collectively, the "Settlement Documents"), a copy of which is attached hereto; and

WHEREAS, at this juncture, all parties believe it is in the best interests of healthcare in our region and it is the most appropriate and expeditious resolution of all issues pending in the Administrative action to resolve and settle the same without the expenditure of further time and monies; and

WHEREAS, the Authority Members have previously and from time to time, conferred extensively with Authority's legal counsel and have attempted to consider the positive and negative implications of entering into the Settlement Documents with the FTC, which positive implications include, but are not limited to, the opportunity to proceed to better provide high quality healthcare for our community at reasonable cost, the savings of considerable expense and time which would otherwise be expended in further litigation and administrative proceedings, the ability for the Authority and its lessee to better focus on carrying out the mission of the Authority and make capital improvements which have been held in abeyance, and other such advantages in bringing the multi-year controversy with the Federal Trade Commission to a final conclusion through and as contemplated by the proposed Settlement Documents; and

WHEREAS, the Authority and its respective Members have previously reviewed and considered the Settlement Documents, although no binding or official action has heretofore been taken by the Authority with respect to the Settlement Documents; and

WHEREAS, the Settlement Documents presented at this Open Session meeting in conjunction with this Resolution fully set forth the terms and conditions of the settlement.

NOW THEREFORE, IT IS HEREBY RESOLVED, that in order to better carry out the principal mission of the Authority in providing quality health care at reasonable cost for our citizens, the Settlement Documents, copies of which were provided to the Members of the Authority prior to and during this meeting, are hereby approved, accepted and ratified by the Authority, all consistent with the recommendations of legal counsel to the Authority, and the proper officers of the Authority are hereby authorized and directed to ratify and to execute and deliver the Settlement Documents as the valid and binding agreements of the Authority and to take all related action necessary or appropriate in order to effectuate the intent of this Resolution.

SO RESOLVED AND ADOPTED by the HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY, GEORGIA, this 26th day of August, 2013.


Secretary to the Hospital Authority of
Albany-Dougherty County, Georgia

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

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In the Matter of)	
)	
Phoebe Putney Health System, Inc.)	
a corporation, and)	
)	
Phoebe Putney Memorial Hospital, Inc.)	
a corporation, and)	DOCKET NO. 9348
)	
Phoebe North, Inc.)	
a corporation, and)	
)	
HCA Inc.)	
a corporation, and)	
)	
Palmyra Park Hospital, Inc.)	
a corporation, and)	
)	
Hospital Authority of Albany-Dougherty County.))	
<hr/>)	

AGREEMENT CONTAINING CONSENT ORDER

The agreement herein (“Consent Agreement”), by and between Respondent Phoebe Putney Health System, Inc. (“PPHS”), a corporation, Respondent Phoebe Putney Memorial Hospital, Inc. (“PPMH”), a corporation, Respondent Phoebe North, Inc. (“PNI”), a corporation, (hereinafter collectively referred to as “Respondent Phoebe Putney”), Respondent HCA Inc. (“HCA”), a corporation; Respondent Palmyra Park Hospital, Inc. (“Palmyra”), a corporation, and Respondent Hospital Authority of Albany-Dougherty County (“Hospital Authority”), by their duly authorized officers, hereafter sometimes referred to as Respondents, and their attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission’s Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent PPHS is a not-for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its headquarters address located at 417 Third Avenue, Albany, Georgia 31701.

2. Respondent PPMH is a not-for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, and is a 691-bed general acute-care hospital located at 417 Third Avenue, Albany, Georgia 31701.

3. Respondent PNI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, and was created for the purpose of managing the Palmyra assets during the interim period after Respondent Hospital Authority acquired Respondent Palmyra, with its headquarters address located at 417 Third Avenue, Albany, Georgia 31701.
4. Respondent Hospital Authority is organized and exists pursuant to the Georgia Hospital Authorities Law, O.C.G.A. §§ 31-7-70 et seq., a statute that governs 159 counties over the entire state of Georgia, where at least 92 hospital authorities currently exist. Respondent Hospital Authority maintains its principal place of business at 417 Third Avenue, Albany, Georgia 31701.
5. Respondent HCA is a for-profit health system that owns or operates 164 hospitals in 20 states and Great Britain. HCA is incorporated in the State of Delaware. Its offices are located at One Park Plaza, Nashville, Tennessee 37203.
6. Respondent Palmyra was a corporation doing business as Palmyra Park Hospital, Inc., and was, prior to the acquisition by Respondent Hospital Authority, a 248-bed general acute care hospital owned by Respondent HCA, incorporated in the State of Georgia, and was located at 2000 Palmyra Road, Albany, Georgia 31701.
7. Respondent Hospital Authority proposed to acquire nearly all of the assets of Respondent Palmyra from Respondent HCA (the “Transaction”).
8. At the time that the Transaction was entered into and consummated, Respondent Phoebe Putney and Respondent Hospital Authority believed in good faith that federal antitrust law did not apply to the Transaction by virtue of the United States Supreme Court’s state-action doctrine, as then interpreted by the United States Court of Appeals for the Eleventh Circuit.
9. The Commission issued an administrative complaint in this matter on April 20, 2011 (“Complaint”), alleging, *inter alia*, that the proposed Transaction threatened substantial harm to competition in the relevant market for inpatient general acute-care hospital services paid for by commercial health plans (Paragraph 47 of the Complaint) in a geographic market no broader than the six-county region consisting of Dougherty, Terrell, Lee, Worth, Baker, and Mitchell Counties in Georgia (Paragraph 51 of the Complaint) in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and – if consummated – Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45. The Commission also alleged that the Transaction was for all practical purposes a merger to monopoly (Paragraph 58 of the Complaint).
10. Respondents were served with a copy of the Complaint and filed Answers denying the charges and asserting affirmative defenses.
11. On April 20, 2011, the Commission also filed in the U.S. District Court for the Middle District of Georgia a complaint for temporary restraining order and preliminary injunction. After first granting the Commission’s requested temporary restraining order, the Court dismissed the action on grounds of state-action immunity.

The Commission appealed to the Court of Appeals, which affirmed the District Court and dissolved its injunction pending appeal. On December 15, 2011, Respondents consummated the Transaction.

12. The Commission petitioned the United States Supreme Court for a writ of certiorari, which was granted on June 25, 2012. On February 19, 2013, the Court ruled unanimously that the Transaction does not enjoy state-action immunity; accordingly, it reversed the Court of Appeals' decision and remanded the case for further proceedings in the District Court. On May 15, 2013, the District Court issued a Temporary Restraining Order, and on June 5, 2013, entered a Stipulated Preliminary Injunction Order.
13. On March 14, 2013, the Commission lifted its stay of the administrative proceedings and ordered that a hearing on the antitrust merits commence on or before August 5, 2013.
14. Respondents admit all of the jurisdictional facts set forth in the Complaint.
15. For the sole purpose of this proceeding and achieving compromise through this Consent Agreement, Respondent Phoebe Putney and Respondent Hospital Authority stipulate that the effect of the consummated Transaction may be substantially to lessen competition within the relevant service and geographic markets alleged in the Complaint.
16. Subject to the waivers in Paragraph 18, Respondents and Commission staff intend that the terms of this Consent Agreement in any other proceeding shall not be (i) given preclusive effect, (ii) treated as prima facie evidence, or (iii) admissible as evidence in any form for any reason.
17. For the sole purpose of this Consent Agreement, Respondent Phoebe Putney and Respondent Hospital Authority waive their defenses to the allegations of the Complaint, *PROVIDED, HOWEVER*, that in the event the Commission does not accept this Consent Agreement or withdraws its acceptance, as provided in Paragraph 21 below, the terms of this Consent Agreement shall be of no further force and effect. *PROVIDED FURTHER*, that, except for the waivers in Paragraph 18 below, Respondent Phoebe Putney and Respondent Hospital Authority reserve all rights to defend the Transaction as lawful in any other proceeding irrespective of whether the Commission finalizes the attached Decision and Order, terminating the administrative proceeding relating to this matter, Docket Number 9348.
18. Respondents waive:
 - a. any further procedural steps in this proceeding;
 - b. the requirement that the Commission's Decision and Order, attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;

- c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order entered pursuant to this Consent Agreement; and
 - d. any claim under the Equal Access to Justice Act.
19. This Consent Agreement does not constitute an admission by Respondent HCA and Respondent Palmyra that the law has been violated as alleged in the Complaint, or that the facts alleged in the Complaint, other than the jurisdictional facts, are true.
20. This Consent Agreement shall not become part of the public record of the proceeding unless and until the Consent Agreement is accepted by the Commission. If accepted by the Commission, this Consent Agreement will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either issue and serve its Decision and Order in disposition of the proceeding or withdraw its acceptance of this Consent Agreement and so notify Respondents, in which event it will take such action as it may consider appropriate, including returning the matter to adjudication.
21. This Consent Agreement contemplates that, if it is accepted by the Commission, the Commission may make information public with respect thereto. If such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to Respondents, issue and serve the attached Decision and Order providing for relief in disposition of the proceeding.
22. When final, the Decision and Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order shall become final upon service. Delivery of the Decision and Order to Respondents by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a) – including, but not limited to, delivery to any office within the United States of Lee K. Van Voorhis, Baker & McKenzie LLP, Frank M. Lowrey, Bondurant, Mixson & Elmore LLP, and Kevin J. Arquit, Simpson Thacher & Bartlett LLP, or of any other lawyer or law firm listed as Counsel for Respondents on this Consent Agreement – shall constitute service as to the Respondent. Respondents waive any right they may have to any other manner of service. Respondents also waive any right they may otherwise have to service of any Appendices incorporated by reference into the Decision and Order, and agree that they are bound to comply with and will comply with the Decision and Order to the same extent as if they had been served with copies of the Appendices, where Respondents are already in possession of copies of such Appendices.
23. The Complaint may be used in construing the terms of the Decision and Order, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order, or the Consent Agreement may be used to limit or contradict the terms of the Decision and Order.

24. By signing this Consent Agreement, Respondent Phoebe Putney and Respondent Hospital Authority each represents and warrants that it can accomplish the full relief contemplated for it by the attached Decision and Order and that all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement are within the control of the party to this Consent Agreement.
25. Respondent Phoebe Putney and Respondent Hospital Authority each has read the Complaint and the Decision and Order contained in this Consent Agreement. Respondent Phoebe Putney and Respondent Hospital Authority each understands that once the Decision and Order has been issued, each will be required to file one or more compliance reports showing that it has fully complied with the Decision and Order as applied to that Respondent.
26. Respondent Phoebe Putney and Respondent Hospital Authority each agrees to comply with the terms of the proposed Decision and Order applicable to it from the date it signs this Consent Agreement. Each further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order after it becomes final.
27. Respondent Palmyra and Respondent HCA each has read the Complaint and the Decision and Order contained in this Consent Agreement. Each understands that once the Decision and Order has been issued, they will be dismissed from this matter with prejudice and have no obligations under the Decision and Order. In the event that the Commission does not accept this Consent Agreement or the attached Decision and Order as to Respondent Palmyra or Respondent HCA, each such Respondent reserves all rights to defend the Transaction as lawful in any proceeding.

PHOEBE PUTNEY HEALTH SYSTEM, INC.

By: _____
Joel Wernick
Chief Executive Officer
Phoebe Putney Health System, Inc.
Dated: _____

PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.

By: _____
Joel Wernick
Chief Executive Officer
Phoebe Putney Memorial Hospital, Inc.
Dated: _____

PHOEBE NORTH, INC.

By: _____

Joel Wernick
Chief Executive Officer
Phoebe North, Inc.

Dated: _____

Lee K. Van Voorhis, Esq.
Baker & McKenzie LLP
Counsel for Phoebe Putney Health System, Inc.
Phoebe Putney Memorial Hospital, Inc., and
Phoebe North, Inc.

Dated: _____

HCA INC.

By: _____

Scott Noonan
Vice President, Operations
HCA Inc.

Dated: _____

Kevin J. Arquit
Simpson Thacher & Bartlett LLP
Counsel for HCA Inc. and Palmyra Park Hospital, Inc.

Dated: _____

HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY

By: _____

Ralph S. Rosenberg
Chairman of the Board
Hospital Authority of Albany-Dougherty County

Dated: _____

Frank M. Lowrey IV
Bondurant, Mixson & Elmore LLP
Counsel for Hospital Authority of Albany-Dougherty County

Dated: _____

FEDERAL TRADE COMMISSION

By:

Maria DiMoscato
Attorney
Bureau of Competition

APPROVED:

By:

Jeffrey H. Perry
Assistant Director
Bureau of Competition

Sara Y. Razi
Deputy Assistant Director
Bureau of Competition

Norman Armstrong, Jr.
Deputy Director
Bureau of Competition

Deborah L. Feinstein
Director
Bureau of Competition

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

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

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In the Matter of)
)
Phoebe Putney Health System, Inc.)
 a corporation, and)
)
Phoebe Putney Memorial Hospital, Inc.)
 a corporation, and)
)
Phoebe North, 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

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having heretofore issued its Complaint charging Respondent Phoebe Putney Health System, Inc. (“PPHS”), Respondent Phoebe Putney Memorial Hospital, Inc. (“PPMH”), Respondent Phoebe North, Inc. (“PNI”), (hereinafter collectively referred to as “Respondent Phoebe Putney”), Respondent HCA Inc. (“HCA”), Respondent Palmyra Park Hospital, Inc. (“Palmyra”), and Respondent Hospital Authority of Albany-Dougherty County (“Hospital Authority”), with a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Respondents having been served with a copy of that Complaint, together with a notice of contemplated relief and having filed their answers denying said charges; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with § 3.25(c) of its Rules; and the Commission having thereafter considered the matter and having thereupon accepted the executed Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional and factual findings and enters the following Order:

1. Respondent PPHS is a not-for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its headquarters address located at 417 Third Avenue, Albany, Georgia 31701.
2. Respondent PPMH is a not-for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, and is a 691-bed general acute care hospital located at 417 Third Avenue, Albany, Georgia 31701.
3. Respondent PNI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, and was created for the purpose of managing the Palmyra assets during the interim period after Respondent Hospital Authority acquired Respondent Palmyra Hospital, with its headquarters address located at 417 Third Avenue, Albany, Georgia 31701.
4. Respondent Hospital Authority is organized and exists pursuant to the Georgia Hospital Authorities Law, O.C.G.A. §§ 31-7-70 et seq., a statute that governs 159 counties over the entire state of Georgia, where at least 92 hospital authorities currently exist. Respondent Hospital Authority maintains its principal place of business at 417 Third Avenue, Albany, Georgia 31701.
5. Respondent HCA is a for-profit health system that owns or operates 164 hospitals in 20 states and Great Britain. HCA is incorporated in the State of Delaware. Its offices are located at One Park Plaza, Nashville, Tennessee 37203.
6. Respondent Palmyra was a corporation named Palmyra Park Hospital, Inc., and was, prior to the acquisition by Respondent Hospital Authority, a 248-bed

general acute care hospital owned by Respondent HCA, incorporated in the State of Georgia, and was located at 2000 Palmyra Road, Albany, Georgia 31701.

7. Respondent Hospital Authority proposed to acquire nearly all of the assets of Respondent Palmyra from Respondent HCA (the “Transaction”).
8. Respondents admit all of the jurisdictional facts set forth in the Complaint.
9. For the sole purpose of this proceeding and achieving compromise through the Consent Agreement, Respondent Phoebe Putney and Respondent Hospital Authority have stipulated that the effect of the consummated Transaction may be substantially to lessen competition within the relevant service and geographic markets alleged in the Complaint.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “PPHS” or “Respondent PPHS” means Phoebe Putney Health System, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Phoebe Putney Health System Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “PPMH” or “Respondent PPMH” means Phoebe Putney Memorial Hospital, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Phoebe Putney Memorial Hospital, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “PNI” or “Respondent PNI” means Phoebe North, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Phoebe North, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Respondent Phoebe Putney” means, collectively, Respondent PPHS, Respondent PPMH, and Respondent PNI.

- E. "HCA" or "Respondent HCA" means HCA Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address located at One Park Plaza, Nashville, Tennessee 37203.
- F. "Palmyra" or "Respondent Palmyra" means Palmyra Park Hospital, Inc., which was a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its headquarters address located at 2000 Palmyra Road, Albany Georgia 31701.
- G. "Hospital Authority" or "Respondent Hospital Authority" means Hospital Authority of Albany-Dougherty County, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Hospital Authority of Albany-Dougherty County, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- H. "Commission" means The Federal Trade Commission.
- I. "CON" means a certificate of need issued by the Georgia Department of Community Health as provided by O.C.G.A. §§ 31-6-1 to 31-6-70.
- J. "General Acute Care Hospital" means an inpatient general acute care hospital that provides a broad cluster of basic medical and surgical diagnostic and treatment services that include overnight hospital stay, as described in Paragraph 48 of the Complaint.
- K. "Physician" means a doctor of medicine ("MD") or a doctor of osteopathic medicine ("DO").
- L. "Physician Group Practice" means a bona fide, integrated firm in which five (5) or more Physicians practice medicine together as partners, shareholders, owners, members, or employees.
- M. "Six-County Region" means the six-county region of Dougherty, Terrell, Lee, Worth, Baker, and Mitchell Counties in Georgia, as described in Paragraph 51 of the Complaint.

II.

IT IS FURTHER ORDERED that for a period of ten (10) years from the date this Order becomes final Respondent Phoebe Putney and Respondent Hospital Authority shall not, without providing advance written notification to the Commission in the manner described in this Paragraph II., directly or indirectly, acquire:

- A. All or any part of a General Acute Care Hospital in the Six-County Region;
- B. All or a controlling interest in any inpatient or outpatient clinic or facility in the Six-County Region that (1) may not be part of a General Acute Care Hospital but provides any of the services provided by Respondent Phoebe Putney or Respondent Hospital Authority in the Six-County Region, and (2) may or may not require a CON; and
- C. All or a controlling interest in a Physician Group Practice in the Six-County Region.

Said advance written notification shall contain (i) either a detailed term sheet for the proposed acquisition or the proposed agreement with all attachments, and (ii) documents that would be responsive to Item 4(c) and Item 4(d) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a, and Rules, 16 C.F.R. § 801-803, relating to the proposed transaction (hereinafter referred to as “the Notification”).

PROVIDED, HOWEVER, that (i) no filing fee will be required for the Notification, (ii) an original and one copy of the Notification shall be filed only with the Secretary of the Commission and need not be submitted to the United States Department of Justice, and (iii) the Notification is required from Respondent Phoebe Putney and Respondent Hospital Authority and not from any other party to the transaction. Respondent Phoebe Putney and Respondent Hospital Authority shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent Phoebe Putney and Respondent Hospital Authority shall not consummate the transaction until thirty days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

PROVIDED FURTHER, HOWEVER, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

PROVIDED FURTHER, HOWEVER, that prior notification shall not be required by this Paragraph II. for an acquisition, if (1) Respondent Phoebe Putney or Respondent Hospital Authority will hold, following the acquisition, no more than one percent of the outstanding securities or other equity interest in an entity described in this Paragraph II., or (2) Respondent Phoebe Putney or Respondent Hospital Authority acquires any additional ownership interest in an entity that it already controls.

III.

IT IS FURTHER ORDERED that until the earlier of five (5) years from the date this Order becomes final or the issuance of a CON for a General Acute Care Hospital in the Six-County Region, Respondent Phoebe Putney and Respondent Hospital Authority shall not file, formally or informally, directly or indirectly, with the Georgia Department of Community Health, its members, the Attorney General or any person in the Georgia Attorney General's office, objections to or negative comments about, an application by any person or entity for a CON filed with the Georgia Department of Community Health – or any successor department or organization – or any appeals therefrom, for a General Acute Care Hospital in the Six-County Region.

PROVIDED, HOWEVER, that nothing in Part III. of this Order shall prohibit Respondent Phoebe Putney and Respondent Hospital Authority from providing information in response to a formal request from the Georgia Department of Community Health.

PROVIDED FURTHER, HOWEVER, that Respondent Phoebe Putney and Respondent Hospital Authority shall submit to the Commission (i) the request for comments from the Georgia Department of Community Health within ten (10) days of its receipt, and (ii) a copy of the response to such request, within five (5) days of its submission to the Georgia Department of Community Health.

IV.

IT IS FURTHER ORDERED that for a period of five (5) years from the date this Order becomes final, if Respondent Phoebe Putney or Respondent Hospital Authority file objections to an application by any person or entity for a CON filed with the Georgia Department of Community Health – or any successor department or organization – or any appeals therefrom, for an inpatient or outpatient clinic, facility or service in the Six-County Region, that may or may not be part of a General Acute Care Hospital, but provides any of the services provided by Respondent Phoebe Putney or Respondent Hospital Authority in the Six-County Region, such Respondent shall submit such objection to the Commission within five (5) days of its submission.

V.

IT IS FURTHER ORDERED that beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondent Phoebe Putney and Respondent Hospital Authority each shall submit to the Commission a verified written report setting forth in detail the manner and form in which they have complied, are complying, and will comply with this Order. Respondent Phoebe Putney and Respondent Hospital Authority each shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order and copies of all written communications to and from all persons relating to this Order. Additionally, Respondent Phoebe Putney and Respondent Hospital Authority each shall include in their compliance reports whether or not they made any acquisitions pursuant to Paragraph II, including acquisitions subject to the final proviso to Paragraph II, and shall include a description of such acquisitions.

VI.

IT IS FURTHER ORDERED that Respondent Phoebe Putney and Respondent Hospital Authority each shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of such Respondent;
- B. Any proposed acquisition, merger or consolidation of Respondent; or
- C. Any other change in the Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent Phoebe Putney and Respondent Hospital Authority, Respondent Phoebe Putney and Respondent Hospital Authority shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of Respondent Phoebe Putney or Respondent Hospital Authority and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent Phoebe Putney and Respondent Hospital Authority relating to compliance with this Order, which copying services shall be provided by Respondent Phoebe Putney and Respondent Hospital Authority at its expense; and

B. to interview officers, directors, or employees of Respondent Phoebe Putney and Respondent Hospital Authority, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date on which it became final.

IX.

IT IS FURTHER ORDERED that the Complaint is dismissed as to Respondent HCA and Respondent Palmyra.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: