

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

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

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.))	

**ORDER GRANTING RESPONDENTS' UNOPPOSED
MOTION TO STAY PROCEEDING**

On July 1, 2011, Respondents filed an unopposed Motion to Stay the proceedings in this matter under Commission Rule 3.22(a). On July 7, 2011, the Administrative Law Judge certified that motion to the Commission. For the reasons that follow, the Commission has determined to grant the Motion.

The administrative trial in this matter is scheduled to begin on September 19, 2011. Respondents assert that “there is no benefit to undergoing the burdens and expense of continuing this administrative proceeding given” the pendency of an appeal to the Eleventh Circuit in collateral federal court litigation on the “critical issue” in this proceeding, namely state action immunity. (Motion ¶ 8.) Respondents assert that if the Eleventh Circuit were to rule in the

FTC's favor, these administrative "proceedings can resume with no prejudice." (*Id.*) Complaint Counsel does not oppose Respondents' Motion.

The Commission's Rules of Practice allow the Commission to stay the administrative proceedings while a collateral federal court proceeding is ongoing upon a showing of good cause. *See* Rule 3.41(f), 16 C.F.R. § 3.41(f) ("The pendency of a collateral federal court action that relates to the administrative adjudication shall not stay the proceeding unless a court of competent jurisdiction, or the Commission for good cause, so directs."). While the Commission has a strong interest in completing Part 3 proceedings expeditiously,¹ here the Commission finds good cause to grant a stay of this proceeding. The applicability of the state action doctrine is a key issue in this proceeding and will be addressed by the Eleventh Circuit on an expedited basis. The Eleventh Circuit's grant of an injunction pending appeal will help ensure that the status quo is preserved and the proposed acquisition is not consummated. Under these circumstances, staying these proceedings will avoid a waste of resources and will not prejudice either side.

Accordingly,

IT IS ORDERED THAT Respondents' Unopposed Motion to Stay be, and it hereby is, GRANTED.

By the Commission, Commissioner Rosch abstaining.

Donald S. Clark
Secretary

ISSUED: July 15, 2011

¹ *See* Rule 3.1, 16 C.F.R. § 3.1 ("[T]he Commission's policy is to conduct [adjudicative] proceedings expeditiously."); Rule 3.41(b), 16 C.F.R. § 3.41(b) ("Hearings shall proceed with all reasonable expedition . . ."); Rules of Practice Amendments, 61 Fed. Reg. 50,640 (FTC Sept. 26, 1996) ("[A]djudicative proceedings shall be conducted expeditiously and . . . litigants shall make every effort to avoid delay at each stage of a proceeding.").