

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

FEDERAL TRADE COMMISSION)	
and THE STATE OF GEORGIA,)	
)	
Plaintiffs,)	
v.)	No. 11-cv-58 (WLS)
)	
PHOEBE PUTNEY)	
HEALTH SYSTEM, INC.,)	
PHOEBE PUTNEY MEMORIAL)	
HOSPITAL, INC.,)	
PHOEBE NORTH, INC.,)	
HCA INC.,)	
PALMYRA PARK HOSPITAL INC., and)	
HOSPITAL AUTHORITY OF ALBANY-)	
DOUGHERTY COUNTY,)	
)	
Defendants.)	

**PLAINTIFF FEDERAL TRADE COMMISSION’S
MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiff, the Federal Trade Commission (the “FTC” or “Commission”), by its designated attorneys, respectfully moves the Court pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), and Section 16 of the Clayton Act, 15 U.S.C. § 26, for a preliminary injunction enjoining Defendants Phoebe Putney Health System, Inc. (“PPHS”), Phoebe Putney Memorial Hospital, Inc. (“PPMH”), Phoebe North, Inc. (“Phoebe North”), (collectively, “Phoebe Putney”); Defendants HCA Inc. (“HCA”) and Palmyra Park Hospital, Inc. (“Palmyra”); and Defendant Hospital Authority of Albany-Dougherty County (the “Authority”), including their domestic and foreign agents, divisions, parents, subsidiaries, affiliates, partnerships, or joint ventures, from any further integration of the assets and operations of

Phoebe North (formerly Palmyra) with those of Phoebe Putney, and requiring them to preserve the *status quo* at Phoebe North.

Plaintiff has filed in this Court an Amended Complaint seeking a temporary restraining order and a preliminary injunction pending the outcome of the Commission's ongoing expedited administrative proceeding, and any appeals, regarding whether the Transaction¹ violates Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45. Discovery in the administrative proceeding is ongoing, and the merits trial to determine the legality of the Transaction is set to begin on August 5, 2013. Preliminary injunctive relief is necessary to prevent further competitive harm during the Commission's administrative proceeding and any appeals.

This motion is supported by a memorandum of points and authorities and attached exhibits, not previously moved into evidence, which are being filed separately under seal.

Plaintiff respectfully requests the opportunity to present oral argument in support of this motion.

The undersigned attorneys notified the Defendants' attorneys prior to the filing of the present motion. Defendants have indicated that they will oppose this motion.

A proposed preliminary injunction order is attached.

¹ The term "Transaction" refers to the three-step transaction that transferred control of Palmyra to Phoebe Putney, consisting of the following steps: (1) the Authority purchased Palmyra's assets from HCA using PPHS's money; (2) the Authority immediately gave control of Palmyra to Phoebe Putney under a management agreement; and (3) Phoebe Putney entered into a lease giving it control of the Palmyra assets for 40 years.

Respectfully submitted this 9th day of April, 2013.

s/Jeffrey H. Perry
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PHOEBE NORTH, INC.,)	
HCA INC.,)	
PALMYRA PARK HOSPITAL INC., and)	
HOSPITAL AUTHORITY OF ALBANY-)	
DOUGHERTY COUNTY,)	
)	
Defendants.)	

**[PROPOSED] TEMPORARY RESTRAINING AND PRELIMINARY INJUNCTION
ORDER**

Plaintiff, the Federal Trade Commission (the “Commission” or “FTC”), by its designated attorneys, having filed an Amended Complaint for Temporary Restraining Order and Preliminary Injunction, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and Section 16 of the Clayton Act, 15 U.S.C. § 26 (2006), and

Whereas, the Court has considered the amended complaint, declarations, exhibits, arguments, memoranda, and other evidence filed in support of Plaintiff’s application, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. The Plaintiff's Amended Complaint for Temporary Restraining Order and Preliminary Injunction and accompanying evidence and argument, which the Court finds to be credible and persuasive, raise questions going to the merits so serious, substantial, difficult, and doubtful as to make them fair ground for investigation through an adjudicative proceeding at the Commission.

2. After weighing the equities and considering the Commission's likelihood of success on the merits, the Court finds that Plaintiff has made a proper showing that issuance of a temporary restraining order and preliminary injunction is in the public interest.

3. This Court has jurisdiction over the subject matter of this case and jurisdiction over the parties.

4. Venue and service of process are proper.

I.

ASSET MAINTENANCE²

IT IS ORDERED that for the duration of this Order,

A. Defendants are hereby restrained and enjoined from:

1. further consolidating, integrating, or otherwise combining the former Palmyra Park Hospital, Inc., now "Phoebe North," into Defendants' hospital system;
2. selling or transferring any assets of Phoebe North;
3. causing or permitting the destruction, removal, wasting, or deterioration, or otherwise impairing the viability, competitiveness, or marketability of Phoebe North, except for ordinary wear and tear;
4. eliminating, transferring, diminishing, or consolidating any clinical service or

² The definitions for the terms used herein are found in Appendix A, attached hereto.

department that is offered at Phoebe North, or otherwise changing the *Status Quo*;

5. modifying, changing, or canceling any physician privileges at Phoebe North; *PROVIDED, HOWEVER*, that Defendants may revoke the privileges of any individual physician consistent with the practices and procedures in effect at Palmyra on the day before the Transaction;
6. terminating employees or reducing employee compensation levels currently in effect at Phoebe North, *PROVIDED, HOWEVER*, that Defendants may terminate employees for cause consistent with the practices and procedures in effect at Palmyra on the day before the Transaction; and
7. terminating, or causing or allowing termination of any contract between any Health Plan and Phoebe North or Defendants that relates to Phoebe North. For any contract between a Health Plan and Defendants that relates to Phoebe North which expires during the term of this Order, Defendants shall offer to continue to accept the same terms of the contract for the remaining term of this Order.

B. Defendants shall:

1. provide sufficient funding, working capital, and administrative services needed to maintain the *Status Quo* at Phoebe North.
2. maintain the viability, competitiveness, and marketability of Phoebe North.

II.

MONITOR AND REPORTING

IT IS FURTHER ORDERED that:

- A. A Monitor shall be appointed to monitor and verify Defendants' compliance with this Order pursuant to the terms in Appendix B, attached hereto.
- B. Within one (1) month from the date of the issuance of this Order, and every thirty (30) days thereafter, Defendants and the Monitor shall provide to the Commission's staff a detailed description of the manner and form in which Defendants have complied, and are continuing to comply, with this Order. Concurrently, Defendants shall provide a copy of the report to the Monitor.

III.

DURATION OF ORDER

IT IS FURTHER ORDERED that this Order shall remain in effect until either (1) the completion of all legal proceedings by the Commission challenging the Transaction, including all appeals, or (2) such time as further ordered by the Court, upon the request of the Commission.

IV.

JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes and for the full duration of this Order.

SO ORDERED, this ___ day of _____ 2013

The Honorable W. Louis Sands
United States District Court Judge

APPENDIX A

The following definitions shall apply to this Order:

A. “Acute Care Hospital” means a health-care facility licensed as a hospital, other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized professional staff, that provides 24-hour inpatient care, that may also provide outpatient services, and having as a primary function the provision of General Acute Care Inpatient Hospital Services.

B. “Defendants” means Phoebe Putney Health System, Inc. (“PPHS”), Phoebe Putney Memorial Hospital, Inc. (“PPMH”), Phoebe North, Inc. (“Phoebe North”) (collectively, “Phoebe Putney”); HCA Inc. (“HCA”); Palmyra Park Hospital, Inc. (“Palmyra”); and the Hospital Authority of Albany Dougherty County (the “Authority”), including, but not limited to, their respective parents, directors, officers, employees, agents, attorneys, and representatives; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by, and the respective directors, officers, employees, partners, agents, attorneys, and representatives of each.

C. “General Acute Care Inpatient Hospital Services” means a broad cluster of basic medical and surgical diagnostic and treatment services for the medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities, that include an overnight stay in the hospital by the patient. General Acute Care Inpatient Hospital Services include what are commonly classified in the industry as primary, secondary, and tertiary services, but exclude: (i) services at hospitals that serve solely military and veterans; (ii) services at outpatient facilities that provide outpatient services only; (iii) those specialized services known in the industry as quaternary services; and (iv) psychiatric, substance abuse, and rehabilitation services.

D. “Health Plan” means any Person that pays, or arranges for payment, for all or any part of any General Acute Care Inpatient Hospital Services for itself or for any other Person.

Health Plan includes any Person that develops, leases, or sells access to Acute Care Hospitals.

E. “Monitor” means any Person retained pursuant to this Order to serve as the Monitor, with the responsibility for monitoring and verifying Defendants’ compliance with this Order.

F. “Person” means any natural person, corporation, partnership, association, governmental organization, or other legal entity, including all officers, members, predecessors, assigns, divisions, affiliates and subsidiaries.

G. “Phoebe North” means Phoebe North, Inc., located at 2000 Palmyra Road, Albany, Georgia 31701, formerly Palmyra Park Hospital, Inc., owned and operated prior to the Transaction by HCA, its parents, directors, officers, employees, agents, attorneys, and representatives; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by, and the respective directors, officers, employees, partners, agents, attorneys, and representatives of each. Phoebe North also means all activities relating to the provision of General Acute Care Inpatient Hospital Services and other related health-care services conducted by Palmyra on the day before the Transaction, including, but not limited to, all health-care services, including outpatient services, offered at Phoebe North.

H. “*Status Quo*” refers to the state of Phoebe North as of April 9, 2013.

I. “Transaction” refers to the three-step transaction, consummated on or about December 15, 2011, that transferred control of Palmyra to Phoebe Putney, consisting of the following steps: (1) the Authority purchased Palmyra’s assets from HCA using PPHS’s money; (2) the Authority immediately gave control of Palmyra to Phoebe Putney under a management

agreement; and (3) Phoebe Putney entered into a lease giving it control of the Palmyra assets for 40 years.

APPENDIX B

A Monitor shall be appointed pursuant to the following terms:

1. Within ten (10) days after the entry of this Order, Defendants shall propose a Monitor, acceptable to this Court and the Commission's staff.
2. The Monitor, who shall act in a fiduciary capacity for the benefit of the Court and the Commission, shall serve at the expense of Defendants for the duration of this Order or until such other time as this Court terminates or modifies such obligation.
3. The Monitor shall monitor and verify Defendants' compliance with this Order. Defendants shall facilitate the ability of the Monitor to comply with the duties and obligations set forth in this Order; shall take no action that interferes with or hinders the Monitor's authority, rights, or responsibilities as set forth in this Order; and shall cooperate with any reasonable request of the Monitor. Subject to any demonstrated legally recognized privilege, Defendants shall provide the Monitor full and complete access to Defendants', including Phoebe North's, personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information related to Defendants' compliance with their obligations under this Order as the Monitor may reasonably request.
4. Within five (5) days after this Court's and the Commission staff's approval of the Monitor, Defendants shall execute an agreement that confers on, and transfers to, the Monitor all the rights and powers necessary to permit the Monitor to monitor the operation and maintenance of Phoebe North as a viable and competitive

business, and to monitor Defendants' compliance with the terms of this Order, in a manner consistent with the purposes of this Order.

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2013, I filed the foregoing with the Clerk of Court via the CM/ECF system, which will automatically send electronic mail notification of such filing to the CM/ECF registered participants as identified on the Notice of Electronic Filing.

s/ Maria M. DiMoscato
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