



## **IndDoc responds to proposed settlement agreement with Phoebe Putney Health System in letter to FTC**

Comments address concerns with CON, promotes competition in healthcare

ATLANTA- September 30, 2013 - The Independent Doctors of Georgia (IndDoc), along with several other independent physician groups, submitted a letter, available [here](#), to the Federal Trade Commission (FTC) to voice concerns regarding the proposed settlement agreement with the Phoebe Putney Health System. The letter was submitted as part of the proposed agreement's public comment period, after which the Commission will decide whether to make the proposed consent order final.

In August 2013, Phoebe Putney Health System and the Albany-Dougherty County Hospital Authority agreed to settle FTC charges that the acquisition of Palmyra Park Hospital was detrimental to competition in six Georgia counties. Phoebe Putney and the hospital authority agreed that they will not acquire a hospital, an inpatient or outpatient facility or a physician group of five or more doctors within a six-county area (Baker, Dougherty, Lee, Mitchell, Terrell and Worth counties). In addition, Phoebe Putney and the hospital authority will not be allowed to oppose a certificate of need (CON) application for any additional general hospital in those six counties for five years.

“The proposed settlement of the Phoebe case by the FTC does not go far enough to protect patients’ right to choose their doctor and hospital,” states Victor Moldovan, who serves as IndDoc’s legal counsel and authored the comments. “It does not reopen Palmyra Park as a competitor to Phoebe and does not ensure other providers will be able to compete with Phoebe.” Moldovan continues, “Without competition the prices will go up and choice will go down. IndDoc has offered suggestions to the FTC to redo the proposed settlement that if accepted will encourage competition and choice.”

In the public comment letter, IndDoc states that descriptions of Georgia’s CON law in the Analysis are incorrect, particularly regarding requirements of CON approval. Citing DCH rules, IndDoc clarifies that an existing hospital can be sold, and the right to operate transferred to a buyer without CON approval. IndDoc also counters the Analysis’ mention of Phoebe and Palmyra Park being ‘grandfathered’ as a factor for justification as irrelevant. IndDoc contends that ‘grandfathered facilities’ have the same rights as any other health care provider that has received a CON, including the right to sell the facility without getting a new CON. IndDoc carefully outlines each CON discrepancy and urges the FTC to revisit them before the Agreement is made final.

IndDoc submitted the letter in response to increasing concerns from members and other independent physicians regarding consolidation in the health care market. IndDoc says that this consolidation is felt deeply by independent physicians in rural areas where there is often one

dominant provider. According to members, independent physicians are under pressure to consolidate and frequently feel powerless working in a system where different methods can be used to shut them out of opportunities, jobs, and referrals.

IndDoc commented that the proposed agreement fails to acknowledge and address tools used to control the health care marketplace, citing “hospital physician organizations”, such as Phoebe Health Partners (PHP), as an example. As a remedy, IndDoc suggests the FTC should consider appropriate steps to limit Phoebe’s ability to use PHP as a tool for market manipulation and anti-competitive effects. Other suggestions to protect competition in the area include FTC notification if Phoebe intends to acquire or employ any physician in the area, not just those that have five or more members. IndDoc also offers that precluding Phoebe from hiring any physician from outside the area for a service that is already being provided by an independent physician for five years would help level the playing field.

IndDoc says it appreciates the FTC’s efforts in challenging the merger (of Phoebe and Palmyra Park) because competition in the area allows patients to receive the best quality care at the lowest price. IndDoc states that limiting competition will leave increasing healthcare costs unchecked and urges the FTC to take this opportunity to limit anti-competitive activities for the benefit of patients and consumers.

Full text of the Analysis of Proposed Agreement Containing Consent Order to Aid Public Comment In the Matter of Phoebe Putney Health System, Inc., et al., Docket No. 9348, can be found here: <https://www.federalregister.gov/articles/2013/08/29/2013-21158/phoebe-putney-health-system-inc-et-al-analysis-of-proposed-agreement-containing-consent-order-to-aid>.

IndDoc is a trade association that is made up of over 500 independent physicians and affiliated professionals in the State of Georgia. As part of its mission, it advocates for independent physicians and independent physician groups and promotes competition in the healthcare. For more information, please visit [www.inddoc.com](http://www.inddoc.com).

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