OFFICE OF THE ATTORNEY GENERAL
STATE OF GEORGIA

IN THE MATTER OF THE SALE OF ROCKDALE MEDICAL CENTER FROM HOSPITAL AUTHORITY OF ROCKDALE COUNTY AND ROCKDALE MEDICAL CENTER, INC., AS SELLERS, TO SIGNATURE ROCKDALE HOLDINGS, LLC, AS PURCHASER.	* * * * * * * *	NO. AG 07-01

REPORT OF FINDINGS

I.

A. BACKGROUND

ROCKDALE MEDICAL CENTER

Rockdale Medical Center is a 138-bed acute care facility located at 1412 Milstead Avenue, NE, in Conyers, Rockdale County, Georgia (the facility is referred to herein as the "Hospital"). The Hospital provides a variety of inpatient and outpatient medical services, including surgical services, cardiovascular services, diagnostic imaging services, cancer care, emergency care, and rehabilitation services. The Hospital's primary service area is Rockdale County.

The Hospital is owned by the Hospital Authority of Rockdale County ("RHA"), a hospital authority organized under the laws of Georgia, and leased to Rockdale Medical Center, Inc. ("RMC"), a Georgia nonprofit corporation. (RHA and RMC are collectively referred to herein as "Sellers.")[1]

---

[1] Because it appears that the governing boards of the two entities acted in concert in regard to this transaction, they will be collectively referred to as "the Hospital Boards" or "the Boards."

B. THE DISPOSITION PROCESS

1. The Decision to Sell the Hospital.

In explaining the factors that led the Boards to consider selling the Hospital, testimony offered on behalf of the Sellers at the first public hearing held on November 14, 2007, was that in fiscal year 2005, the Hospital began experiencing serious financial issues and suffered a substantial loss. Mr. Richard Simons, Chair of the Board of Directors of RMC and a member of the RHA Board and Ms. Ethel Boyle, Chair of the RHA Board, testified that the debt incurred in the expansion of the Hospital in 2002, along with a significant loss in accounts receivable when the Hospital converted to a new computer system, caused the Hospital to suffer a loss of approximately $15 million in 2005. These losses resulted in a covenant default under the financial agreements related to the Hospital's outstanding bond indebtedness.

In 2002, the Hospital embarked on a Master Facility Plan to update the Hospital and to add a new "East Tower." Since then, the Hospital has had difficulty in meeting the bond covenants[2] of the debt it incurred to fund the Master Facility Plan. Despite being successful in meeting its bond covenants for Fiscal Year 2006, the Hospital determined that it must have an infusion of capital to secure the long-term financial stability needed to deliver patient services.

The Boards employed Kaufman Hall, a health-care consulting company, to study the Hospital's ongoing finances and to propose business strategies and plans going forward. The Boards reviewed the findings from Kaufman Hall's study and the audit of the Hospital's finances for fiscal year 2005 that were performed by an independent auditor, Perkins, Hill and Associates.

[2] According to testimony at the public hearings, the Hospital is required under the bond documents to maintain a 1.2 debt service coverage, which means it has to generate cash flow equal to 1.2 times its debt service.

After looking at the results of the study and the audit, it was determined that the management of the Hospital needed to be replaced.

Brim Health Care was then engaged by the Boards as a consultant to propose an improvement plan for the Hospital and to manage its operations. A new chief financial officer for the Hospital was hired. Increased patient volume was a key component of Brim's plan (also referred to herein as the "Brim Improvement Plan"), but it was later determined that the necessary projected volumes were not attainable.

Concerning the process that the Boards went through to identify and evaluate the strategic options for the future of the Hospital, Mr. Simons testified at the November 2007 public hearing that the Boards considered whether the Hospital should remain an independent entity or secure a capital partner. To evaluate the sale option, the Boards engaged an investment banking firm, Houlihan, Lokey, Howard and Zukin ("Houlihan Lokey") to conduct a financial evaluation for the sale of the Hospital and also to identify potential health care providers that would be appropriate capital partners for the Hospital. Thereafter, the Boards engaged Stroudwater Associates ("Stroudwater"), a national health care consulting firm, as a consultant to assist in identifying and evaluating options, including the sale option.

Mr. Simons further testified that as this process evolved from January 2006 until November of 2006, Board members had formal and informal discussions with County Commissioners. According to his testimony, the County Commission agreed to back the Series

2002 bonds, which afforded the Hospital time to explore all the other options.[3] He further stated that the Commission was unable to commit any direct financing or funding to help with the recurring financial shortfall. By December 2006, after considering Stroudwater's analysis of the Hospital's finances and the future prospects, including the impact of the Brim Improvement Plan, the Boards determined that the Hospital's ability to survive as an independent facility and to continue to satisfy the bond covenants did not appear to be reasonably achievable without a capital partner or additional outside sources of capital.

Mr. David L. Whelan, president of Stroudwater and Sellers' financial consultant, provided updated financial information at the February 2008 public hearing, and stated that based on audited financial statements for fiscal year 2007, the economic reasons for finding a capital partner are still relevant. Given the current financial state of the Hospital and the current state of the financing markets, Mr. Whelan opined that it would be "virtually impossible" for RHA to issue more debt on its current operations.[4]

2. The Selection Process.

According to public hearing testimony, in January 2007, after meeting again with Stroudwater, the Boards began to seriously consider a sale or the addition of a capital partner due to the possibility of the Hospital's second bond default at the end of the fiscal year. The Boards

---

3 In March 2007, to avoid a default for being out of compliance with the debt-to-capitalization covenant related to its SunTrust Letter of Credit for the Series 2002 bonds, the Hospital moved its Letter of Credit to Wachovia Bank, which did not require a debt-to-capitalization covenant. The County agreed to guarantee the Series 2002 bonds in order to obtain Wachovia's agreement to the transfer of the Letter of Credit.

4 In response to a citizen's question at the February 2008 public hearing, Mr. Whelan explained that while the bond covenants require that the Hospital have 60 days of cash on hand, and it currently had 173, the average hospital that has a BBB bond rating typically has about 200 days in cash on hand.

adopted a resolution authorizing and directing Stroudwater and the Boards' attorneys to actively seek proposals from interested health care providers.

In seeking proposals, the Boards, with input from the medical staff, developed a set of criteria which was to be based on "more than just price." The Boards wanted to make sure that the candidate was a "good fit" for the community. The criteria, in addition to fair market value, included the potential purchaser's ability to ensure sufficient capital investment in equipment and infrastructure for the Hospital, to maintain and expand the services of the Hospital, and to attract new physicians. The criteria also included the protection of staff continuity and privileges; the ability to maintain "significant local input" into the governance of the Hospital; the long-term financial viability of the Hospital; the maintenance of indigent care in accordance with Georgia law; and a right of first refusal to reacquire the Hospital.

In February 2007, Houlihan Lokey began the process of sending information to health care providers, both profit and non-profit entities, with the intention of conducting a "blind" bid process to identify those having interest within the general terms of their proposals. This process was utilized so that the candidates and the details of each candidate's proposal would remain unknown to other candidates to ensure a fair bid process. Mr. Simons testified that of the 22 parties initially contacted, 13 requested the Request for Proposal information and six of those 13 submitted a response which included the general terms under which they would proceed with the proposed transaction.

The Hospital Boards appointed a joint strategic planning committee with members from the Hospital Boards and from the medical staff to work with Stroudwater in evaluating and ranking the candidates' proposals. Ms. Boyle served as the Chair of this committee and Mr. Simons served as a member. The evaluation included meeting with the candidates and visiting three of the candidates' facilities. Mr. Simons testified at the November 2007 public hearing that the County Commissioners and the public were made aware in May 2007 and again in June 2007 that the strategic planning process was in progress. The list of candidates was eventually narrowed to two, one of which was Signature Rockdale Holdings, LLC ("Signature" will be used collectively herein to reference Purchaser, Purchaser's parent company, Signature Hospital Holdings, LLC, doing business as Signature Hospital Corporation and another affiliate, Signature Hospital, LLC), and each was asked to independently make presentations to the full Boards.

3. The Initial Selection of Signature.

When asked why Signature was selected as the Purchaser, Mr. Simons testified at the November 2007 public hearing that Signature offered the highest financial value and it best met the criteria the Hospital had established. The Boards were impressed with Signature's other hospitals, with Signature's access to capital through their affiliation with Goldman Sachs (there was testimony at the public hearing that Goldman Sachs, a global investment banking, securities and investment management firm, owns about 95-96% of the parent company), and with Signature's significant management and leadership experience in hospital operations and strategies. Mr. Simons stated that Signature offered a "unique … opportunity for this community." He stated that Signature was not only paying fair market value for the Hospital, but was also committing to a number of additional financial and human investments in the Hospital.

At the November 2007 public hearing, Mr. Charles R. Miller, Signature's CEO, stated that Signature's corporate focus has been on "price, quality and service." Mr. Miller stated that, in its other hospitals, Signature Hospital Corporation has developed programs to encourage greater efficiency, to reduce errors and to improve quality of care. At that public hearing, Mr.

James C. Hoffman, Senior Vice President for Acquisition and Development for Signature, testified that Signature's overall strategic plan for the Hospital includes developing and promoting "centers of excellence" in key service lines, focusing on measurably improving the quality of care and patient satisfaction and partnering with the physicians in Rockdale County to deliver the best possible care.

4. <u>The Decision to Continue with the Sale to Signature</u>.

At the two public hearings which were held in this matter, it was emphasized that the proposed transaction had a "human value" as well as a "financial value"; Ms. Boyle stated, "'[t]his is about more than just bricks and mortar. This is about human beings." At the February 2008 public hearing, Ms. Boyle recounted that in December 2007, when Signature came to the Boards with a request for a change in terms (*see* "The Modification to the Proposed Transaction," at p. 12 below) the Boards evaluated the change in terms, listed the pros and cons of the new offer, the reasons to continue with Signature, and the reasons to terminate the discussion. The Boards went back to the original criteria and compared Signature's amended offer with the previous offers of the other buyers, and Signature, again, came out in front.

Tom Schmidt, member of the Rockdale Medical Center Board, finance and strategic planning committees, and also a financial advisor with Edward Jones Investments, testified at the February 2008 hearing that the Boards considered going back to some of the original bidders after Signature proposed the new payment terms, but decided that the risk of that action outweighed the benefit of continuing with Signature. Going back to any of the bidders would have essentially required Sellers to start the entire process over again, including due diligence, with the risk of losing the Signature proposal and its resulting uncertainty.[5]

David Whelan, Sellers' financial consultant, participated in the process to review the modified Signature proposal and stated that the Boards' evaluation process was appropriate and thorough, taking into consideration the original proposals that were made by other bidders as well as the revised proposal by Signature and the risks associated with different courses of action. Mr. Whelan pointed out that the second ranked bidder, a public company, had indicated in its final presentation to the Boards that its written proposal, if submitted, would probably have to be reduced (and this was prior to the subsequent tightening of credit).

C. THE TRANSACTION AS INITIALLY PROPOSED

After Signature was identified as the leading candidate, a proposed Asset Purchase Agreement ("APA" or the "Agreement") was negotiated. On August 28, 2007, the Hospital Boards unanimously voted to enter into a non-binding letter of intent regarding the sale of the Hospital to Signature.

Sellers propose to sell the Hospital to Signature Rockdale Holdings LLC, a Delaware limited liability company ("Signature" or "Purchaser"). Signature's parent company is Signature Hospital Holdings, LLC. Signature Hospital Holdings is a party to the Asset Purchase Agreement (the "APA" or the "Agreement") as an "affiliate guarantor," for the purpose of guaranteeing Signature's obligations under the Agreement. Signature Hospital Corporation is a two-year old privately held, for-profit limited liability company based in Houston, Texas, with

---

[5] A member of the Hospital's medical staff testified at the February 2008 hearing that, in the interim period between the first and second hearings, Rockdale's CFO had left that position to take a similar position at a local hospital and that several physicians and staff members had left and were now employed by other hospitals in the area.

combined annual revenues of approximately $200 million, that owns and operates hospitals located in Texas, Arkansas[6] and West Virginia.

The proposed sale includes substantially all the assets of the Hospital, including Sellers' interest in a medical office building located at 2800 Georgia Highway 138, SW, Conyers, and another medical office building located at 7138 Highway 212, Covington, Georgia (the "MOB"s or the "Browns Bridge and Heritage Medical Office Buildings"), owned and leased personal property, contracts, leases, accounts receivable, licenses, inventory, prepaid expenses, records, intellectual property, insurance proceeds, Sellers' ownership interest in Rockdale Diagnostics, LLC, and certain other assets as identified in the Agreement.

The purchase price for the hospital assets is Eighty-Seven Million, Seven Hundred Thousand Dollars ($87,700,000), which was initially proposed to be paid in cash, plus the Hospital's net working capital (approximately $7.4 million), plus reimbursement for pre-closing capital expenditures. In addition, Purchaser has committed to spend a minimum of $32.3 million of capital over the next five years for the benefit of the Hospital. Purchaser has also committed to allocate, on an annual basis, a portion of its annual capital budget to the Rockdale Medical Center Community Health Fund (the "Health Fund"). Purchaser will contribute to the Health Fund no less than $300,000 per year for the first five-year period following the consummation of the sale (the "Closing Date") and no less than $500,000 per year for the second five-year period following the Closing Date. The Health Fund will be directed by the Hospital's new governing board of trustees with local citizen and physician representatives, and will be used, in their

[6] According to testimony at the February 2008 hearing, Signature is in the process of selling its hospital located in Arkansas.

discretion, to promote health care services for residents of the communities historically served by Sellers.

In the proposed Asset Purchase Agreement, Signature covenants to provide care to all patients without regard to financial status on the same basis as is being currently provided by the Hospital, but in no event less than the amount required under O.C.G.A. § 31-7-75.1(d)(3), the Hospital Authorities Law. For 10 years following the Closing, Signature must (a) maintain substantially all the core acute care services provided by the Hospital as of the Closing Date, subject to then-existing medical technology and practice, and (b) use commercially reasonable efforts to expand the current scope of services provided by the Hospital.

Under the Agreement, RHA has a seven-year "right of first refusal." If Signature desires to accept a third party offer, it must first offer to sell the Hospital to RHA on the same terms and conditions as contained in the third party offer. There is also a "change in control" provision, under which RHA has the right to purchase all of the stock or other equity interest of Signature if Signature undergoes a change in control and management.

If the Hospital's sale is consummated, the lease with RMC will be terminated, leaving RHA with an amount of net cash proceeds. (As initially proposed, this amount was to be $55 to $60 million in cash; the modification to the manner of payment of the consideration will result in a cash amount of between $30 to $35 million.) The corpus of these proceeds will be held by RHA and invested for seven years, until the right of first refusal expires. RHA's bylaws have been revised to restrict use of the interest on these proceeds so as to be used only for charitable health care services in Rockdale County. A grant program will be funded by the interest accrued on the proceeds, and administered with citizen and local government input.

Signature has agreed to retain the Hospital's work force—the second largest in Rockdale County, with 824 full-time and part-time employees; Signature also has agreed to extend the privileges of the approximately 300 doctors that are currently on the medical staff and to assist in recruiting physicians and expanding services.

Under the Agreement, RHA will have right to name a member to Signature's board of directors. Under Signature's ownership, RMC will have a local board of trustees which will be responsible for feedback regarding the performance of the hospital, the CEO and the management team and oversight of the Hospital's medical staff. That board will be composed of the hospital CEO, three members of the active medical staff, and five representatives of the local community. RHA will have the right to appoint two of those five local representatives.

D. PROCEDURAL DEVELOPMENTS SUBSEQUENT TO THE NOVEMBER 14, 2007 PUBLIC HEARING

Under O.C.G.A. § 31-7-407.1, the Report of Findings was to be issued within 30 days of the public hearing held on November 14, 2007, which would have been Friday, December 14, 2007. On Friday, December 14, 2007, the Hearing Officer requested that counsel for Sellers and Purchaser to the proposed transaction confirm that the parties had elected to proceed with the transaction as initially submitted, which representation had been made in writing by counsel on December 10, 2007.

Counsel for Purchaser communicated to the Hearing Officer that Purchaser was unable to proceed with the transaction in regard to the form of consideration to be tendered for the proposed sale, as initially provided in the Asset Purchase Agreement. Since the parties were not able to move forward with the initially-proposed transaction, pursuant to O.C.G.A. § 31-7-407.1, the time for issuing the Report of Findings was extended for 30 days, or until January 14, 2008, to allow the parties to discuss and report on whether they were able to agree upon a modification to the initially-proposed transaction. In the interim, on December 21, 2007, and January 14, 2008, respectively, the parties jointly reported to the Hearing Officer that they intended to proceed with the transaction, that they had tentatively agreed upon a modification regarding the way the purchase price is to be paid, and that they intended to submit an appropriate Third Supplemental Notice to the Attorney General in compliance with the Hospital Acquisition Act (O.C.G.A. § 31-7-400, et seq.).

In their January 14, 2008, joint report to the Hearing Officer, the parties indicated that they expected to submit the supplemental filing no later than Friday, January 18, 2008. The parties requested that an additional public hearing be held concerning the modification to the proposed transaction. Therefore, on January 14, 2008, the Hearing Officer further extended the time for issuance of the Report of Findings until 30 days after the additional public hearing, assuming that parties elected to proceed with the transaction and its modification as proposed. The parties submitted a Third Supplemental Notice on January 18, 2008.

E. THE MODIFICATION TO THE PROPOSED TRANSACTION

At the second public hearing held on February 12, 2008, Mr. Robert M. Starling, chief financial officer for Signature Hospital Corporation, explained that it became necessary for Signature to propose a modification in the terms of the proposed transaction as a result of issues in the credit markets which began to surface in August 2007, but initially appeared to be isolated to subprime mortgages and were thought to impact primarily mortgage lenders. Merrill Lynch, Signature's original primary lender in this transaction, had initially indicated that the turmoil in the financial markets with respect to subprime loans would not impact this transaction, but informed Signature in the early part of December 2007 of changes in the structure of the transaction that would have significantly increased Signature's interest cost and other components of the overall cost of the acquisition. Therefore, after exploring other lending options, Signature terminated its relationship with Merrill Lynch, and secured CapitalSource Finance LLC ("CapitalSource") as its lender. Signature needed to ensure that there was adequate cash flow to operate the Hospital, to fulfill the commitments that it had made in connection with the capital requirements for the transaction and to be able to appropriately service the debt. Therefore, Signature determined that it needed to alter the way the consideration would be paid by proposing a subordinated note for a portion of the purchase price, which would provide for a deferment of both cash principal and interest payments through the term of the note but require payment of cash interest during the term of the note, under certain conditions.

Under the terms of modified proposed transaction, the purchase price for the Hospital assets would remain the same. The principal change is in the manner in which the purchase price is to be paid. Of the Eighty-Seven Million Seven Hundred Thousand Dollar ($87,700,000) purchase price, Sixty-Two Million Seven Hundred Thousand Dollars ($62,700,000), plus the amount of net working capital, plus reimbursement for Pre-Closing Capital Expenditures would be paid in cash at closing, and Twenty-Five Million Dollars ($25,000,000) would be paid pursuant to a Subordinated Secured Promissory Note (the "Note"). Signature's CFO explained at the hearing that the Note will bear interest at a floating market rate benchmarked to the London Inter-Bank Offered Rate (LIBOR), as published in the Wall Street Journal. The rate of interest earned on the Note will be LIBOR plus 5.5 percent with a maximum of ten percent. Signature must also pay some of the accrued interest in cash at various points throughout the life of the Note, provided that it meets certain financial coverage tests relating to its debt-to-equity ratio and total leverage, as specified in the Note (coverage definitions are contained within the Note). Accrued interest that is not paid (if the financial tests are not met) will become a payment-in-kind ("PIK") obligation earning interest at LIBOR plus 5-3/4 percent with a maximum of ten and a quarter percent. The Note has a five-year term, with the entire principal and all unpaid interest being due at the end of the five-year period.

The word "subordinated" in this context means that the Note would have a second priority behind the senior lender. The Note will be secured by second mortgages on the Hospital, as well as three other hospital properties owned by Signature in Texas and West Virginia (a fourth facility in Arkansas owned by Signature is in the process of being sold), pursuant to Subordinated Second Mortgages or subordinated Deeds of Trust, as applicable (collectively, the "Subordinated Mortgages"). The Subordinated Note and the Subordinated Mortgages will be subject to the terms and conditions of a Subordination and Intercreditor Agreement (the "Subordination Agreement") providing for the subordination of all obligations from Purchaser to Sellers to the obligations of Signature to CapitalSource. Signature Hospital, LLC will be the ultimate parent of the entities holding all of the hospital properties which secure the Subordinated Note pursuant to the Subordinated Second Mortgages. In the event of a liquidation of Signature's assets, the senior lenders would be paid first; Sellers would be paid second, including all the accrued interest that was due and owing. The remaining priorities would be payment to the other secured or unsecured creditors and finally, payment to the equity holders of Signature, such as Goldman Sachs.

As a result of the negotiations regarding the modification, the good faith deposit in escrow of One Million Dollars ($1,000,000) plus interest was disbursed to Sellers on December

24, 2007. This amount will be credited towards the purchase price at Closing.[7]

At the February 2008 public hearing, Mr. Hoffman described how the modification affects the commitments of Signature, post-Closing. There will be no changes to Signature's commitments to maintain certain core services (including OB services, emergency room services, and cardiac services) for a period of at least ten years. As in the initial APA, Signature remains committed to make capital expenditures in the amount of $32.3 million over five years both to maintain the existing facilities and services and to expand and add new services. Signature remains committed to hire all the employees of RMC as of the day of closing and to maintain the 2007 RMC approved budget and staffing ratios for a period of nine months after closing. The revised Agreement maintains RHA's right to name a member to Signature's board of directors, until the note is paid in full or for three years, whichever is longer (previously, that right expired after three years). Local input will be retained through the local board of trustees, including three members of the active medical staff, and five representatives of the local community, two of which are appointed by RHA. Signature further remains committed to establish the Rockdale Medical Center community healthcare fund in the amount of $4 million total, $300,000 a year for the first five years and $500,000 a year for the next five years to be used at the sole discretion of the local members of the board of trustees to promote healthcare and services to the residents and communities historically served by Rockdale Medical Center.

Likewise, Signature remains committed to provide indigent care on the same basis as currently provided by Rockdale Medical Center. Interest on net cash proceeds remaining after

---

[7] Signature has also agreed to reimburse Sellers for certain costs and attorneys' fees associated with the subordinated note agreement as well as any collateral documents that are required to be produced in connection with this transaction, and to pay certain incidental expenses and expert fees incurred by the Attorney General resulting from the second hearing.

the sale, now estimated to be $30 to $35 million (as opposed to the initially estimated $55 to $60 million under the all-cash transaction), the principal of which is being held for RHA to be able to exercise the right of first refusal for the first seven years, may only be used, under RHA's revised bylaws, for charitable health care services in Rockdale County.

Mr. Hoffman stated that in regard to the right of first refusal for Rockdale Hospital Authority to re-acquire the Hospital in the event that Signature elects to sell the Hospital, the effect of the modification is to provide that RHA, subject to the subordination agreement, will be able to use and to apply the total amount due on the Note to the purchase price to enable it exercise its right to re-acquire the Hospital. Likewise, in regard to the "change of control" provision, RHA could apply the outstanding amount of the Note and the interest to the purchase price of the Hospital, in the event RHA exercises that right, up to the time that the Note is paid in full. With regard to the provision that commits to having a representative appointed by Rockdale Hospital Authority on the corporate board of Signature, that right will exist as long as the Note is outstanding (previously it could have expired after three years).

At the February 2008 hearing, CEO Miller testified that the change in the method of payment is not a reflection of any problems that Signature is having in terms of its operations, its creditworthiness, or its desire to own and operate the Hospital and operate it in a manner that adds value to healthcare delivery in the community and assures safe, high-quality and affordable care, pursuant to its philosophy that "healthcare is best handled locally."

As a result of the proposed modification, a Revised Asset Purchase Agreement ("Revised APA") was negotiated. The Boards unanimously voted on January 17, 2008, to approve the transaction contemplated by the Revised APA, and to approve the Subordinated Secured Promissory Note and Intercreditor Agreement required by the transaction.

F. VALUATION ANALYSIS

Stroudwater, the consultant retained by the Hospital Boards, performed a financial analysis to determine the fair market value of the Hospital on a going-concern basis as of August 31, 2007. Pursuant to O.C.G.A. § 31-7-405(b), Ernst & Young was retained by the Attorney General as an independent financial advisory consultant to assist in the review of Stroudwater's fair market valuation analysis of the Hospital.

1. Analysis Concerning the Transaction as Initially Proposed.

The purchase price for the Hospital was to be $87.7 million, originally proposed to be paid in cash, plus net working capital. In its analysis, Stroudwater considered the Income, Market, and Cost approaches, with a primary concentration on the Market and Income Approaches, to estimate the fair market value of the Hospital. Stroudwater concluded that the range of the fair market value for the Hospital, as of the date of the report, was "equal or less than the transaction price" of $87.7 million plus net working capital. Mr. David Whelan, President of Stroudwater, testified at the November 14, 2007 public hearing that "the purchase price proposed is equal or greater than the fair market value of the hospital."

Stroudwater relied on revenue and EBITDA (Earnings Before Interest, Taxes, Depreciation, & Amortization) multiples using both the Guideline Company and Comparable Transactions methods to develop a fair market value range for the Hospital, rather than determining a specific value point estimate. The assets to be transferred in this transaction include the Hospital, two medical office buildings and a 65% ownership interest in a joint venture called Rockdale Diagnostics. Stroudwater valued the assets to be transferred by excluding the joint venture. Stroudwater did not, however, separately compute the value of the Hospital operations apart from the two medical office buildings. As discussed in more detail below, Ernst & Young, LLP ("Ernst & Young") analyzed the proposed consideration, and using data provided by Hospital management, calculated an estimated amount for the proposed consideration directly attributable to the Hospital operations of $92.5 million.

Using the Income Approach, Stroudwater's analysis provided values ranging from negative ($33.7) million up to $24.8 million. Using the Market Approach, Stroudwater's analysis indicated a value range of approximately $26.2 million to $76.5 million. Stroudwater did not provide a reconciliation of its various valuation approaches and the resultant wide range of estimated values for the Hospital.

It appears that the Hospital's declining financial performance can be attributed to the debt incurred for the Hospital's East Tower expansion and to insufficient capital needed to increase patient volume. In 2004, the Hospital issued $65 million in bonds to fund the East Tower expansion project. The expansion added 31 beds to the Hospital, bringing the total number of Hospital beds to 138 beds. The Stroudwater Report explains that the Hospital has lost money since 2004 and has not generated sufficient income to meet its debt obligations. The primary reason for the Hospital's underperformance and poor cash flow is insufficient patient volume. Although the Hospital invested a significant amount of capital in the expansion of the East Tower, the expansion did not result in an increase in the patient volume. Stroudwater contends that additional capital investment is necessary to increase patient volume but the Hospital is unable to make the necessary capital investments. Stroudwater therefore concluded that the Hospital cannot continue to operate without the aid of a capital partner or other supplemental funding.

Ms. Bridget Bourgeois, a partner at Ernst & Young in Corporate Finance, specializing in health care valuations, testified at the public hearings. Also, Ernst & Young performed independent research to test the range of fair market values contained in Stroudwater's valuation. As part of its analysis, Ernst & Young calculated an estimate for the proposed consideration directly attributable solely to the Hospital. To do so, Ernst & Young added the cash purchase consideration for the Hospital of $87.7 million to the Hospital's net working capital of approximately $7.4 million (based on September 30, 2007 financial data), and subtracted the estimated fair market value of the medical office buildings of $2.6 million. The estimated fair market value of the medical office buildings was prepared by Greystone Valuation Services, Inc. as of April 1, 2006. Ernst & Young did not make an adjustment for the Hospital's ownership interest in Rockdale Diagnostics. The ownership interest in Rockdale Diagnostics is not expected to materially impact the implied purchase price for the Hospital because of its small size and its financial losses for FY 2006 and FY 2007. Ernst & Young's calculations indicated that the estimated purchase consideration for Hospital operations alone was $92.5 million. Ernst & Young also reviewed the proposals submitted to the Boards by the six potential buyers during the auction process in its determination the fair market value of the Hospital. Discussions between Stroudwater and Ernst & Young regarding Stroudwater's valuation report revealed that the Hospital's auction process was not considered in Stroudwater's valuation. Nevertheless, Mr. Whelan testified at the public hearing that the purchase price for the Hospital was determined by an unrestricted auction and that the auction process is the "best determinative factor" of the market value of the Hospital. Ms. Bourgeois testified that the bids were at a "fairly reasonable close range," and noted in her report that the bidding "process represents market feedback of what a potential acquirer would potentially be willing to pay" for the Hospital. In addition to its review of the valuation prepared by Stroudwater, Ernst & Young reviewed the projections contained in the Brim Improvement Plan for the Hospital which was prepared as a goal for returning the Hospital to compliance with its debt covenants. The sensitivity analysis performed by Ernst & Young for the Hospital based on the projections contained in the Brim Improvement Plan and certain assumptions used in Stroudwater's analysis indicated an estimated value of $41.8 million to $55.6 million for the Hospital. Ernst & Young concluded that the purchase price offered by Signature for the Hospital is significantly higher than both the range of value in the Stroudwater analysis and the value range calculated based on the Brim Improvement Plan.

As part of its analysis, Ernst & Young also analyzed comparable Hospital transactions occurring from January 2004 through June 2007. Ernst & Young concluded that the proposed purchase price for the Hospital is above the median multiples observed for comparable Hospital transactions for that period and well within the range of multiples observed in the marketplace.

2. Analysis Concerning the Modification to the Proposed Transaction.

After the parties tentatively agreed to a change in manner of payment of the purchase price to $62.7 million in cash plus a $25 million subordinated secured note from the Purchaser, Stroudwater amended its valuation analysis to consider whether the revised manner of payment of the consideration for the Hospital changed the findings contained in Stroudwater's original analysis.

Mr. Whelan testified at the February 12, 2008 hearing that "the revised proposal with the revised payment terms still meets fair market value." In its amended valuation, Stroudwater performed two analyses to estimate the present value of the $25 million note from the Purchaser. First, Stroudwater used a fixed LIBOR rate of 4.37% plus 7.17% (or 11.54%). According to Stroudwater, the 7.17% added constitutes the historical average market rate for similar subordinated debt, using the highest market interest rate published by Standard & Poor's for subordinated debt over and above the LIBOR rate for the last three to four months. In the first scenario, Stroudwater assumed that no payments would be made until the Note becomes due in five years, resulting in a value of $23.4 million. In the second scenario, Stroudwater assumed that interest on the Note would be paid annually, resulting in a value of $23.8 million. Based upon this analysis, Stroudwater found that the total proposed purchase price for the Hospital is between approximately $86 million to $86.5 million before adding net working capital and making other adjustments. Stroudwater concluded that the proposed consideration is within the range of fair market value for the Hospital.

According to the testimony at the second public hearing, the Hospital continued to decline financially after the November 2007 hearing. Mr. Whelan and Ms. Boyle testified that the Hospital had barely met its bond covenants for 2007. In addition, the Hospital showed an operating loss of $7 million for the 2007 fiscal year. Mr. Whelan testified that if the Hospital is unsuccessful in obtaining a capital partner, the Hospital is at risk for a downgrade of its bond rating to a rating below investment grade. This would result in a significant interest rate increase to the Hospital on its existing variable rate bonds, leading to further financial difficulties for the Hospital.

Ernst & Young provided further independent financial advisory services to the Attorney General to assist in the review of Stroudwater's amended fair market valuation analysis. In its analysis, Ernst & Young performed independent research and sensitivity analyses related to Stroudwater's amended valuation analysis. Ernst & Young also performed independent calculations to assess the impact of the change of certain assumptions in Stroudwater's analysis. Specifically, Ernst & Young conducted independent market research of credit markets, industry capital structures, and recent trends in valuations of hospitals. Ernst & Young's independent research of the market revealed that the trend in hospital valuations over the past twelve months have been declining or, at best, holding steady. Since May 2007 publicly-traded hospital company valuations on average have declined by as much as 4% to 16%, and more recently, continued to experience a slight decline since August 2007.

Ernst & Young used future projected LIBOR rates for the next 5 years to test Stroudwater's debt value conclusion. Various scenarios, sensitivity analyses, and independent calculations using LIBOR futures were used by Ernst & Young to test the impact on Stroudwater's conclusions. Ernst & Young calculated range of approximately $22.7 million to $24 million as the present value of the Note. As Stroudwater's range of value for the debt is $23.4 million to $23.8 million, Ernst & Young found that Stroudwater's range of value falls within the range of Ernst & Young's independent calculations.

Ernst & Young concluded that the proposed purchase price for the Hospital of approximately $86 million to $86.5 million is near the median and well within the range of multiples obtained in their independent research of the market place.

G. NOTICE AND OPPORTUNITY FOR PUBLIC COMMENT

The Georgia Hospital Acquisition Act, O.C.G.A. § 31-7-400, *et seq*. (the "Act"), requires both a written notice filing (O.C.G.A. § 31-7-401) and a public hearing regarding the proposed transaction in the county in which the main campus of the hospital is located. O.C.G.A. § 31-7-405(a). The purpose of the public hearing is "to ensure that the public's interest is protected when the assets of a nonprofit hospital are acquired by an acquiring entity by requiring full disclosure of the purpose and terms of the transaction and providing an opportunity for local public input." O.C.G.A. § 31-7-406.

The Notice to Attorney General to Acquire or Dispose of Assets of a Hospital was filed by the parties on September 28, 2007. First and Second Supplemental Notices were filed on

October 25 and 31, 2007, respectively. A Third Supplemental Notice was filed on January 18, 2008, and three addenda that supplement the Third Notice were filed on February 5, February 8, and March 11, 2008, respectively. The record was reopened for the purpose of receiving Addendum C, containing completed versions of the Subordination and Intercreditor Agreement and Subordinated Note, draft forms of which had been previously filed. The documents in the combined filings consist of 15 volumes. The Notice, as supplemented, has been reviewed for sufficiency as to form and is deemed acceptable.

Pursuant to O.C.G.A. § 31-7-404, notice of the proposed transaction, containing the names of the parties and the date, time and place of a public hearing was published in the Rockdale Citizen on October 4, 2007, and again on October 11, 2007. A copy of the Notice was sent to the Chair of the Rockdale County Commission.

The first public hearing was held on Wednesday, November 14, 2007, at 5:30 p.m. at the Rockdale County Auditorium, 903 Main Street, Conyers, Georgia. Seventeen persons made comments at the public hearing. Several written and telephone comments were also received. Following the November 14 public hearing, the record was left open until Tuesday, November 20, at 5:00 p.m. to provide an opportunity for any member of the public or the parties to further comment on the proposed sale or to respond to the comments made at the hearing.

After it became evident that a second hearing would be held, a Notice of Public Hearing Concerning the Modification to the Pending Proposed Transaction for the Sale of Rockdale Medical Center was published in the Rockdale Citizen on January 24, 2008, and again on January 31, 2008, and a copy of that Notice was sent to the Chair of the Rockdale County Commission.

The second public hearing was held on February 12, 2008, at 5:30 PM, in the East Tower classroom at Rockdale Medical Center, Conyers, Georgia. Six persons made comments at the second public hearing, and additional comment was received in writing or by telephone. Following the February 12, 2008 hearing, the record was left open for further public comment until February 15, 2008 at 5:30 p.m. At both hearings, there were expressions of support and opposition to the sale.

II.

FINDINGS

The Hospital Acquisition Act (the "Act") involves a public interest determination in the Attorney General's review of a proposed disposition and acquisition of hospital assets. *See* O.C.G.A. § 31-7-400 *et seq.* and *Sparks v. Hosp. Auth. of City of Bremen and County of Haralson*, 241 Ga. App. 485 (1999) (physical precedent only). Under the Act, the disclosures required through the notice filing and public hearing process are linked to whether "appropriate steps have been taken to ensure that the transaction is authorized, to safeguard the value of charitable assets, and to ensure that any proceeds of the transaction are used for appropriate charitable health care purposes." O.C.G.A. § 31-7-406. The Act identifies 13 factors that are key considerations in determining whether the appropriate steps have been taken by the parties. The 13 factors are listed in Appendix A to this Report.

The 13 factors set forth in O.C.G.A. § 31-7-406 can be grouped into four categories relating to (a) the exercise of due diligence by the seller (factors number 1, 2, 3, 4 and 8); (b) valuation of the hospital assets (factors number 6, 7 and 10); (c) conflicts of interest (factors number 5 and 13); and (d) the charitable purpose of the proposed transaction (factors number 9, 11 and 12).

Under factor number 1, the disposition must be authorized by applicable law. Here, the Sellers are Rockdale Medical Center Authority, a hospital authority, and the Rockdale Medical Center, Inc., a non-profit tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. For purposes of factor number 1, the sale of the Hospital by RHA is permitted under the Hospital Authorities Law. O.C.G.A. § 31-7-75(6). RMC has the power to sell its assets pursuant to the Georgia Nonprofit Corporation Code. O.C.G.A. § 14-3-1202. The disposition of the hospital assets was approved by the governing boards of both RHA and RMC. Following the second public hearing, the parties jointly advised the Hearing Officer that upon consideration of the public comments made at the hearing, the parties intend to proceed with the transaction as modified, described and set forth in the public record as supplemented.

An issue has been raised through the public comment process concerning the partial financing aspects of the modification to the proposed transaction, which involve Sellers taking a subordinated note as part of the purchase price for the Hospital.

Counsel for Sellers have represented, in a letter brief submitted after the February 2008 hearing, that RHA has the authority to partially finance the sale to Signature. Under the Georgia Hospital Authorities Law, a hospital authority has such powers as are "necessary or convenient to carry out and effectuate the purposes and provisions" of the statute, and "to exercise any or all powers now or hereafter possessed by private corporations performing similar functions," including certain enumerated powers and those powers necessarily implied. O.C.G.A. § 31-7-75; 31-7-75(21).[8] *See generally Kendall v. Griffin-Spalding County Hosp. Auth.,* 242 Ga. App. 821 (2000). The Authorities Law is to be "liberally construed to effect the purposes hereof," although courts have avoided "ultra-liberal" or "subtle and forced" constructions. O.C.G.A. §

31-7-96; *Id*. at 822.

In addition to granting the specific power to "sell to others" lands, buildings, structures or facilities, O.C.G.A. § 31-7-75(6), the Authorities Law contemplates the extension of credit to others in connection with carrying out a project, which credit may be secured by "loan agreements, mortgages, security agreements," O.C.G.A. § 31-7-75 (8); the acceptance and retention of equitable interests, security interests and other interests in real or personal property "by mortgage,…loan agreement or other consensual transfer in order to secure the repayment of any moneys loaned or credit extended by the authority." O.C.G.A. § 31-7-75 (9). *See generally Richmond County Hosp. Auth. v. Richmond County*, 255 Ga. 183 (1985); *Bradfield v. Hosp. Auth. of Muscogee County*, 226 Ga. 575 (1970).

As counsel for Sellers have noted, the disposition of the assets of a hospital authority is also governed by the Hospital Acquisition Act, O.C.G.A. § 31-7-400, et seq., pursuant to which this proceeding is being conducted. *See also* O.C.G.A. § 31-7-89.1. In carrying out the Act, one of the stated factors to be considered is the risk to charitable assets if "the transaction is financed in part by the seller…." Accordingly, the Hospital Acquisition Act (which is expressly made applicable to sales by hospital authorities) contemplates circumstances under which partial seller financing might be implemented. Instructions regarding the notice to the Attorney General of the intent to acquire or dispose of assets of a hospital under the provisions of the Act include a requirement for a description of "how the acquisition cost is to be paid (e.g., cash, stock transfer, *promissory note*)." II.6. (Emphasis supplied.) Therefore, the disposition as

---

[8] *See* O.C.G.A. § 14-3-302(5)(corporation is authorized to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property).

proposed is authorized by applicable law.

With regard to factor number 2, it does not appear that the proposed disposition is inconsistent with the directives of any major donors who have contributed over $100,000.00.

The due diligence factors in number 3 and 4 focus on the process and procedures, including the use of expert assistance, employed by the Sellers in "deciding to dispose of hospital assets, selecting the acquiring entity, and negotiating the terms and conditions of the disposition." O.C.G.A. § 31-7-406(3). The decision to sell the Hospital was prompted by the deteriorating financial condition of the Hospital. Sellers considered options other than a sale, and decided to sell the Hospital. Mr. Tom Arnold, the former Chief Financial Officer for Rockdale Medical Center, commented at the November 2007 public hearing that the overwhelming financial reality is that it is "very doubtful that Rockdale Medical Center will be able to survive and compete in this market as a viable entity under its current ownership structure." Also at the first hearing, Sellers' financial consultant, Mr. Whelan, testified that Stroudwater's projections from November 2007 indicate that the Hospital would continue to have operating losses for some period of time unless the Hospital had access to capital. At the February 2008 hearing, Mr. Whelan testified that although it had barely met its bond covenants, the Hospital had sustained a $7 million loss for 2007.

In this instance, the Hospital Boards exercised appropriate due diligence in their selection process because the evidence shows that a formal, comprehensive request-for-proposal process was conducted by the Boards with the assistance of professional consultants. After conducting an unrestricted auction process, the field of 22 interested parties was narrowed to two. Finally, the Boards determined, based on criteria formulated for the Boards' evaluation of the proposals, that Signature had the most to offer in terms of sale price, capital commitment and benefit to the existing employees, staff and the community.

After Signature proposed a modification in how the purchase price would be paid, the Boards evaluated the change of terms, considered the pros and cons of accepting the modification, considered the original criteria and compared Signature's modified offer with the previous offer of the other potential buyers. In the Board's view, Signature's offer was still seen as the best offer, and the Boards unanimously voted to accept the modifications in the Revised Asset Purchase Agreement and the new payment terms. Sellers' financial consultant participated in the process to review the modified Signature proposal and confirmed Boards' conclusion that the Signature proposal was still be the best alternative and met the original selection criteria.

At the November 2007 hearing, those opposing the sale expressed concern that the public had been "shut out" of the process or had "no voice." However, testimony during the public hearing and correspondence received from counsel for the Sellers after the first hearing represented that the Boards had complied with the meeting notice requirements of the Georgia Open Meetings Act, that they had conducted those meetings in accordance with that Act and with the Hospital Authorities Law, and that they had notified the County Commission and the public of the ongoing strategic evaluation process on a number of occasions during the period from January 2007 until the initial Letter of Intent was signed with Signature on August 28, 2007.

At both hearings there was discussion concerning the possibility that the Hospital could remain under local control if the citizens were given the opportunity to vote for some form of local option sales tax. At the second hearing, Ms. Boyle testified that the former hospital authority chairman had had discussions with the County Commissioners and did not feel that they were willing to support any type of referendum to tax the people of Rockdale County to support the Hospital.

In response to questions from the public at the February 2008 hearing concerning whether a sale of assets or lease of space were considered as alternatives, Mr. Whelan stated that the Boards, in consultation with Stroudwater, had considered the sale of assets but the assets available for sale, in the million to $2 million range, would not "come close" to covering the cash needed for capital investments. Leasing existing space to physicians within the Hospital building, which was also suggested at the second public hearing, is not an option because the Hospital is financed with tax-exempt bonds, and the physicians are considered non-exempt.

Here, the deliberative process and the expert assistance employed by the Boards in making their decision to sell the Hospital and in selecting the purchase proposal of Signature demonstrate the exercise of due diligence, consistent with factors number 3 and 4.

The disclosure of any conflict of interest involving the Sellers, the Chief Executive Officer of the Hospital and the expert consultant for the Sellers is required to be considered under factor number 5. Conflict of interest certifications, as provided in the Instructions regarding the Notice to Attorney General, have been filed by members of the governing boards of the Sellers, by the Chief Executive Officer of the Hospital and by the Boards' expert consultant. Such certifications do not disclose any impermissible conflict of interest in the proposed transaction.

Factors number 6, 7 and 10 involve a determination of the value of the Hospital and the consideration to be paid in the proposed transaction. For the purposes of factor number 6, the sale of the Hospital to Signature, a for-profit purchaser, implicates a "fair value" determination. Factor number 6 requires consideration of:

> Whether the seller or lessor will receive fair value for its assets, including an appropriate control premium for any relinquishment of control or, in the case of a proposed disposition to a not-for-profit entity, will receive an enforceable commitment for fair and reasonable community benefits for its assets

O.C.G.A. § 31-7-406(6).

The use of the disjunctive "or" in factor number 6 distinguishes the valuation determination relating to the sale of hospital assets to a *for-profit* purchaser from the valuation determination relating to the sale of hospital assets to a *not-for-profit* purchaser. The question of "whether a seller or lessor will receive fair value for its assets" by necessity must apply to the sale of hospital assets to a for-profit purchaser, since this qualification precedes the clause *"or,* in the case of a proposed disposition to a *not-for-profit entity,* [the seller or lessor] will receive an enforceable commitment for fair and reasonable community benefits for its assets." (Italics and parenthetical supplied.)

While the term "fair value" is not defined in the Act, it is reasonable to conclude that fair value means "fair *market* value," since the Act is concerned with the sale or lease of real, personal and intangible property. Moreover, under a separate provision of the Act, board members and the chief executive officer of the nonprofit seller corporation must provide a certification "stating that the nonprofit corporation has received fair *market* value for its assets or, in the case of a proposed disposition to a not-for-profit entity or hospital authority, stating that the nonprofit corporation has received an enforceable commitment of fair and reasonable community benefits for its assets." O.C.G.A. § 31-7-403(b)(3). (Emphasis supplied.) The reference to "fair market value" in this separate, but related, provision of the Act with otherwise substantively similar language to the language of factor number 6 suggests that the term "fair value" in factor number 6 should be read as "fair market value," in order to apply the Act's provisions consistently, especially since "fair market value" is the more descriptive and specific term. Thus, when the provisions of the Act are read in *pari materia* and in context, the term "fair value" should be construed to mean "fair market value."

Initially, Ernst & Young estimated the amount for the proposed consideration directly attributable to the Hospital operations (not including the medical office buildings—MOBs) to be $92.5 million, including the purchase price of $87.7 million cash, plus the net working capital of approximately $7.4 million, and less the estimated fair market value of the MOBs of $2.6 million. It appeared to Ernst & Young that proposals submitted by other potential buyers were at a "fairly reasonable close range" with Signature's and that the purchase price offered by Signature was significantly higher than the range of values in both the Stroudwater analysis and implied in the Brim Improvement Plan. In addition, the purchase price was above the median multiples observed for comparable hospital transactions occurring from January 2004 through June 2007 and well within the range of multiples observed in the marketplace.

As discussed in the Valuation Analysis portion of this Report, a number of factors indicate that, despite the modification in how the purchase price will be paid, Sellers will still receive "fair value" for the sale of the Hospital in accordance with the requirements of factor number 6. Ernst & Young concluded that the proposed purchase price for the Hospital of approximately $86 million to $86.5 million is near the median and well within the range of multiples obtained in their independent research of the market place.

Factor 7 examines whether charitable assets are placed at "unreasonable risk" if the transaction is financed in part by Sellers. At the February 2008 hearing, Mr. Schmidt, a member of the RMC Board, testified that the Boards evaluated the risk associated with the new sale terms and determined that the partial financing terms were both reasonable and acceptable because Sellers had secured a second mortgage position (ahead of Goldman Sachs) and Sellers had negotiated an interest rate which is higher than it could get if it invested funds in government-backed securities. Ms. Boyle acknowledged that while there is a risk when part of the purchase price is received as a note rather than cash, the Boards had considered that risk and had decided that the fundamental value of the sale to the community had not changed, and that the transaction still maintained community involvement through the new board and through the establishment of the community health fund. The "human value" of retaining and attracting physicians and staff was still a significant factor in the Boards' decision. Weighing all these considerations, the charitable assets are not placed at "unreasonable risk" if the transaction is financed in part by the Sellers.

Since there is no separate management or services contract negotiated in conjunction with the proposed transaction, factor number 8 is not applicable to the determination of the Sellers' exercise of due diligence.

Factor number 9 concerns the use of the proceeds from the sale of the Hospital for appropriate charitable health purposes. The testimony at the November 2007 public hearing, and supplemental documents filed concerning the modification disclose that, under bylaws adopted by RHA on August 28, 2007, the interest (and after seven years, the principal) on the approximately \$30 to \$35 million, which RHA will retain in sales proceeds for exercise of the right of first refusal, may be used only for charitable health care services in Rockdale County. A grant program will be established, funded by these interest payments, with citizen and local government input. Thus, the proceeds from the sale of the Hospital will be used for appropriate charitable health care purposes.

Factor number 10 is satisfied by the fact that the Agreement provides a seven-year "right of first refusal" and a three-year "change in control" provision, discussed at the public hearings and previously in this Report. The modification to the proposed transaction with respect to the right of first refusal is that, subject to the subordination agreement, in the event that Signature elects to sell the Hospital, Rockdale would be able to apply the total amount due on the Note to the purchase price. With respect to the "change of control" provision, RHA can also apply the outstanding amount of the Note and the interest to the purchase price for re-acquisition of the Hospital, and the time for exercise of the right is extended until the Note is paid in full.

Collectively, factors number 11 and 12 focus on the purchaser's commitment to provide (a) continued access to affordable care, (b) the range of services historically provided by the seller, (c) health care to the disadvantaged, the uninsured and the underinsured and (d) benefits to the community to promote improved health care. Under the APA's "Public Interest Covenants," Schedule 7.1(1), Signature is to maintain for a period of 10 years substantially all the core acute care services that the Hospital currently provides. Signature will also use commercially reasonable efforts to expand the current scope of services provided by the Hospital. Signature is to provide emergency services in an emergency department that is open at all times (24 hours a day, seven days a week, including all holidays), and provide a level of emergency service that is, in all material respects, at least the same level of emergency service as the Hospital emergency department provided during the six-month period prior to the Closing Date. Signature has agreed to provide indigent care to all patients without regard to financial status on the same basis as provided by the Hospital as of the Closing Date (as described in the Hospital's indigent care policy, but in no event less than the amount required under Hospital Authorities Law, O.C.G.A. § 31-7-75.1(d)(3)). Signature has agreed to participate fully in the Medicare and Medicaid programs and to admit Medicare and Medicaid patients to all of its services, without discrimination. Signature has also committed to allocate funds of not less than $300,000 per year for the first five years and $500,000 per year for the second five-year period following the Closing Date for a Community Health Fund, to promote health care services for residents of the communities historically served by the Hospital.

At the February 2008 hearing, there was further discussion concerning indigent care, particularly the care of indigent inmates at the county jail. Mr. Hoffman confirmed that notwithstanding the fact that the Indigent Care Contract that currently exists between RHA and Rockdale County would terminate when the bonds are paid off as part of this transaction (indigent inmates are included in the definition of "indigent sick" in that contract), Signature remains committed in the Revised APA to provide indigent care on the same basis as currently provided by Rockdale Medical Center.[9] Further, Signature expects to become a significant taxpayer in Rockdale County, providing additional revenues to the county as a counterbalance to the termination of the Indigent Care Contract.[10]

Another concern expressed by public comments is that there is nothing in the sale agreement that provides an "enforceable" commitment that Signature will continue the same level of indigent and charity care that the Hospital currently provides. However, under the proposed Asset Purchase Agreement, as revised, the foregoing covenants survive the closing of the transaction. For 10 years after the Closing Date, Signature must annually certify to RHA that each of the Public Interest Covenants has been met, and such compliance is subject to independent audit. The Agreement further provides that performance of the covenants can be

[9] Mr. Hoffman pointed out that in 2007, Signature provided over $11 million in charity care at its other hospitals, which is 5.7 percent of net revenue, while RMC provided 4.7 percent of its net revenue in 2007.

[10] Mr. Hoffman testified that that the approximate value of inmate indigent care has been approximately $100,000 over the past year.

enforced by RHA through mediation, arbitration or court action. Thus, there is an enforceable commitment to provide health care to the disadvantaged, the uninsured and the underinsured and to provide benefits to the community to promote improved health care with sufficient safeguards to assure continued access to affordable care and to the range of services historically provided by the Sellers.

III.

CONCLUSION

Upon review of the public record and in accordance with the Hospital Acquisition Act, the Hearing Officer finds that the public record in this matter discloses that the parties have taken appropriate steps to ensure (a) that the transaction is authorized, (b) that the value of the charitable assets is safeguarded and (c) that any proceeds of the transaction are used for appropriate charitable health purposes.

This 13th day of March, 2008.

*s/R. O. Lerer*___________
R. O. LERER
Deputy Attorney General
Hearing Officer

::ODMA\PCDOCS\ATTORNEY GENERAL\475981\1

APPENDIX A

FACTORS TO BE ADDRESSED UNDER O.C.G.A. § 31-7-406

(1) Whether the disposition is permitted under Chapter 3 of Title 14, the 'Georgia Nonprofit Corporation Code, and other laws of Georgia governing nonprofit entities, trusts, or charities;

(2) Whether the disposition is consistent with the directives of major donors who have contributed over $100,000.00;

(3) Whether the governing body of the nonprofit corporation exercised due diligence in deciding to dispose of hospital assets, selecting the acquiring entity, and negotiating the terms and conditions of the disposition;

(4) The procedures used by the nonprofit corporation in making its decision to dispose of its assets, including whether appropriate expert assistance was used;

(5) Whether any conflict of interest was disclosed, including, but not limited to, conflicts of interest related to directors or officers of the nonprofit corporation and experts retained by the parties to the transaction;

(6) Whether the seller or lessor will receive fair value for its assets, including an appropriate control premium for any relinquishment of control or, in the case of a proposed disposition to a not-for-profit entity, will receive an enforceable commitment for fair and reasonable community benefits for its assets;

(7) Whether charitable assets are placed at unreasonable risk if the transaction is financed in part by the seller or lessor;

(8) Whether the terms of any management or services contract negotiated in conjunction with the transaction are reasonable;

(9) Whether any disposition proceeds will be used for appropriate charitable health care purposes consistent with the nonprofit corporation's original purpose or for the support and promotion of health care in the affected community;

(10) Whether a meaningful right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation has been retained if the acquiring entity subsequently proposes to sell, lease, or transfer the hospital to yet another entity;

(11) Whether sufficient safeguards are included to assure the affected community continued access to affordable care and to the range of services historically provided by the nonprofit corporation;

(12) Whether the acquiring entity has made an enforceable commitment to provide health care to the disadvantaged, the uninsured, and the underinsured and to provide benefits to the affected community to promote improved health care; and

(13) Whether health care providers will be offered the opportunity to invest or own an interest in the acquiring entity or a related party, and whether procedures or safeguards are in place to avoid conflicts of interest in patient referrals.