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February 10, 2012

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RE: Proposed Transactions Involving Columbia Polk General Hospital, Inc.,
Cedartown-Polk County Hospital Authority, Hospital Authority of Floyd
County, Polk Medical Center, Inc. and Floyd Healthcare Management, Inc.

Dear Messrs. Burris and Thomson:

This responds to your prior correspondence regarding a proposed transaction involving the above-referenced entities. In your respective letters dated December 20, 2011, and January 27, 2012,¹ you asked this Office to confirm that the Hospital Acquisition Act, O.C.G.A. § 31-7-400 *et. seq.* (the "Act"), does not apply to the proposed transaction. As you know, by letter dated September 20, 2011, this Office provided guidance to Mr. Burris regarding a proposed transaction involving the operation of Polk Medical Center (the "Hospital"). A copy of the letter of September 20, 2011, is enclosed. Mr. Thomson has asked this Office to address aspects of the transaction that were not addressed in our September 20, 2011, determination letter.

¹ At the request of this Office, Mr. Burris provided additional documentation and a formal response to Mr. Thomson's December 20, 2011 inquiry into the determination letter issued by this Office on September 20, 2011.

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The Hospital is currently owned by the Cedartown-Polk County Hospital Authority (the "Cedartown-Polk Authority") and leased to Columbia Polk General Hospital, Inc. ("Columbia Polk"). The lease of the Hospital to Columbia Polk will terminate on March 31, 2012.

It is my understanding that once the current lease with Columbia Polk terminates, all assets will be returned to the Cedartown-Polk Authority. The Cedartown-Polk Authority will subsequently lease all of its assets to the Hospital Authority of Floyd County (the "Floyd Authority") for a five (5) year term (the "5 Year Lease"). On November 28, 2011, Floyd Hospital Authority entered into a Management Services Agreement ("Management Agreement") with Polk Medical Center, Inc. ("PMCI"),² a Georgia nonprofit corporation, to manage the Hospital during the 5 Year Lease.

Mr. Thomson has expressed concerns on behalf of his client, Columbia Polk, that the lease to Floyd Authority and subsequent Management Agreement with PMCI may require review by our Office under the Act. It appears that all parties agree with our previous determination that the Act does not apply to the Cedartown-Polk Authority's termination of the lease and purchase of assets from Columbia Polk. Likewise, all parties appear to agree with our determination that the three-month extension of the current lease with Columbia Polk does not operate as a trigger to the Act's requirements. Therefore, I will not address either of these issues here.

Cedartown-Polk Authority's 5 Year Lease of Assets to Floyd Authority

The September 20, 2011, determination letter issued by our Office found that Cedartown-Polk Authority's lease of assets to Floyd Authority was excepted from review under the Act. We specifically found that O.C.G.A. § 31-7-89.1(c) creates an express exception for transactions involving the sale or lease of a hospital owned by a hospital authority if the sale or lease is made to "another hospital authority whose area of operation is a county contiguous to the county in which is located the hospital whose sale or lease is proposed" In this transaction, the Cedartown-Polk Authority will lease the property and assets of the Hospital to the Floyd Hospital Authority for a period of five years. The area of operation of the Floyd Hospital Authority is in Floyd County. The area of operation of the Authority is in Polk County. Floyd County is contiguous to Polk County. We therefore confirm our previous determination that the 5 Year Lease to Floyd Authority is excepted from review under the Act by O.C.G.A. § 31-7-89.1(c).

² Floyd Healthcare Management, Inc., d/b/a Floyd Medical Center, ("Floyd Medical Center") is the sole member of PMCI. Current Hospital employees will be hired by Floyd Medical Center and leased to Floyd Authority.

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Management Agreement with PMCI

Mr. Thomson has inquired whether the Management Agreement and Memorandum of Understanding between Floyd Authority and PMCI, when viewed as a whole, comply with the Act. Specifically, the question is whether the Management Agreement with PMCI indirectly operates as a lease of 50% or more of the Hospital's assets by Cedartown-Polk Authority to PMCI, a nonprofit corporation having its principal place of business outside of Polk County.³

A review of the substantive terms of the Management Agreement reveals that during the 5 Year Lease, the day-to-day operations of the Hospital will be managed by PMCI on behalf of Floyd Authority.⁴ The Agreement provides that the "Authority shall at all times during the Operating Period have ultimate control over the leased assets and operations of the Hospital." The Authority also retains the right to revoke PMCI's "control and authority for overseeing Medical Staff affairs, appointments and actions." Moreover, the Authority retains control over all appointments to the Hospital's medical staff, the granting of clinical privileges at the Hospital, and any actions taken with respect to Medical Staff members, including appeals and actions. All billings for services rendered at the Hospital are in the name of and for the account of the Authority. Likewise, all accounts receivable are collected in the name of and for the account of the Authority. Floyd Authority must also approve the annual budget. All licenses, permits and provider agreements will be in the name of Floyd Authority. It therefore appears that Floyd Authority has reserved control over all the general policies governing the operation of the Hospital.

Under the Hospital Authorities Law, a hospital authority may enter into contracts with others, without regard to location, for management services. O.C.G.A. § 31-7-75(24). There is nothing

³ O.C.G.A § 31-7-400(2) excludes from the requirements of the Act, the "restructuring of a hospital owned by a hospital authority involving a lease of assets to any not for profit or for profit entity which has a principal place of business located in the same county where the main campus of the hospital in question is located and which is not owned, in whole or in part, or controlled by any other for profit or not for profit entity whose principal place of business is located outside such county."

⁴ The Management Agreement also provides that PMCI cannot discontinue any services at the Hospital and must ensure that the emergency room is open and operating twenty-four hours a day, seven days a week.

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in the Hospital Acquisition Act which specifically addresses or defines management agreements. In this transaction, it appears that the Authority has retained ultimate control⁵ over the Hospital.

Where an Authority has entered into a management agreement and maintained ultimate control over the Hospital, the transaction is generally not subject to the Act. After careful review of the substantive terms of the Management Agreement in this transaction,⁶ we conclude that the 5 Year Lease transaction and Management Services Agreement you have described do not require review and approval by the Attorney General under the Hospital Acquisition Act.

Potential 35 Year Lease to PMCI

The Management Services Agreement provides that PMCI will manage the day-to-day operations of the current Hospital until a potential replacement hospital is constructed. If a replacement hospital is constructed, Cedartown-Polk Authority will lease the replacement hospital to PMCI for a term of thirty-five (35) years ("35 Year Lease"). Based upon the information we have received from Mr. Burris, it is our understanding that the 35 Year Lease has not been executed by the parties. Mr. Burris has also assured us that any agreements related to the 35 Year Lease are contingent upon the construction of a replacement hospital. It appears that the issue of whether the Act applies to the 35 Year Lease is not yet ripe for review by this Office, and therefore, we will not address the application of the Act to the 35 Year Lease at this time. I would, however, strongly encourage the parties to contact our Office in the event that a potential transaction arises related to the 35 Year Lease of the Hospital.⁷

Please note that in reaching our conclusions, we relied solely on the facts you presented; we did not perform a separate factual investigation. In addition, we have considered only

⁵ The Act defines "control" or "controlling interest" as "ownership of 50 percent or more of the assets of the entity in question or the ability to influence significantly the operations or decisions of the entity in question." O.C.G.A. § 31-7-400(4).

⁶ See generally *Aaron Rents, Inc. v. Fourteenth St. Venture*, 243 Ga. App. 746, 748 (2000), *aff'd sub nom. Accolades Apts. v. Fulton Cnty.*, 274 Ga. 28 (2001) ("[W]e must look to the substance of the agreement rather than mere nomenclature in determining the intent of the parties.").

⁷ Under O.C.G.A. § 31-7-407, the Attorney General has the authority to ensure compliance with the Act and may institute proceedings to enforce compliance in Superior Court. In addition, any disposition or acquisition of assets made in violation of the notice, disclosure, and certification requirements of this article shall be null and void and each acquiring entity engaging in such disposition or acquisition shall be subject to a fine up to \$50,000.00. O.C.G.A. § 31-7-412.

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whether the Act applies under the particular facts and circumstances you presented. We have not addressed other issues that may exist or the application of any other laws, rules or regulations to the transaction and have not anticipated any possible factual changes.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Adams Jacobs", written in a cursive style.

JULIE ADAMS JACOBS
Assistant Attorney General

enclosure