OFFICE OF THE ATTORNEY GENERAL
STATE OF GEORGIA

	*	
IN THE MATTER OF THE SALE OF	*	
MCDUFFIE REGIONAL MEDICAL	*	
CENTER, BY THE HOSPITAL	*	
AUTHORITY OF MCDUFFIE COUNTY,	*	
AS SELLER, TO UNIVERSITY	*	NO. AG 2012-01
MCDUFFIE COUNTY REGIONAL	*	
MEDICAL CENTER, INC.,	*	
AS PURCHASER	*	
	*	

REPORT OF FINDINGS

I.

BACKGROUND

MCDUFFIE REGIONAL MEDICAL CENTER

McDuffie Regional Medical Center (the "Hospital") is an acute care hospital licensed for 25 beds. The Hospital is located in Thomson, Georgia in McDuffie County and is operated by the Hospital Authority of McDuffie County (the "Authority"). The Hospital's primary service area is McDuffie County. It operates an emergency room 24 hours per day and sees an average of 12,000 patients per year, with annual admissions of approximately 770. The Hospital operates as a full-service community hospital with diagnostic imaging services, lab services and physical therapy. The Hospital has approximately 205 employees.

As proposed, University McDuffie County Regional Medical Center, Inc. (the "Purchaser"), a Georgia nonprofit corporation, wholly controlled by University Health, Inc. ("University"), a Georgia nonprofit corporation, will purchase the Hospital from the Authority. The proposed Asset Purchase Agreement includes all of the assets of the existing Hospital together with other personal property, and other real property, which includes undeveloped land in McDuffie County, Georgia.

The Hospital is a 25-bed acute care hospital that is over 50 years old. As part of the consideration for the transaction, University will undertake to construct and equip a new acute care hospital, licensed for a minimum of 25 beds (the "Replacement Hospital"), on property that

University has acquired near U.S. Interstate 20 and State Highway 17 in McDuffie County (the "Replacement Hospital Site").

In addition to the construction of a Replacement Hospital, University has made a number of commitments related to the transaction, including assuming certain liabilities associated with the Hospital, continuing to provide indigent and charity care services, maintaining an emergency room and participating in Medicare and Medicaid.

In the event that University fails to begin or complete construction of the Replacement Hospital, the Authority will retain the right to reacquire full ownership of the Hospital for nominal consideration and the assumption of all related liabilities once certain conditions have been satisfied. The Authority can also purchase the Replacement Hospital Site and all improvements for cost and the assumption of all related liabilities once certain conditions have been satisfied.

THE DISPOSITION PROCESS

As a result of declining revenues and patient volumes in 2009, the Hospital was forced to rely on its reserves to continue operating, and the Authority began considering various options for the Hospital. The Authority initially considered finding a new management company and raising money to build a new facility on the Knox Ltd. Bypass Property. As the Hospital's finances continued to deteriorate, the Authority determined that it would have to pursue the acquisition of the Hospital by another health care enterprise. University originally approached the Authority in the summer of 2010 about a possible acquisition, but University's first proposal did not include a provision whereby University would retain control of the old facility once the Replacement Hospital was built. The Authority expressed concern about the future of the old facility and wanted University to find a future use for the property. The Authority then invited University to revise its letter of interest.

In May of 2011, the Authority retained a consulting group, FTI Consulting ("FTI"), to help guide the Authority through a disposition process. Ian Briggs of FTI contacted HCA Doctors Hospital of Augusta, Georgia Health Sciences Hospital (formerly known as Medical College of Georgia Hospital), and Optim Healthcare and invited the organizations to present proposals. Additionally, Frontier Health in Fort Worth, Texas sent an unsolicited inquiry to FTI. In the selection process, the Authority considered a broad set of criteria, including commitments to McDuffie County, maintenance of the Hospital's charity care and indigent care policies, the impact on the Hospital's employees, ability and willingness to build a Replacement Hospital, plans for the existing hospital, and a commitment to maintain a level of local governance and community involvement.

After discussions, Optim Healthcare provided the Authority with a letter of interest and University submitted a revised letter of interest. With FTI's assistance, the Authority's Board ("Board") reviewed the two proposals and chose University as the successful bidder.

THE PROPOSED TRANSACTION

On October 17, 2011, the Board voted unanimously to approve the sale of the Hospital to University. At the time of the vote, University was under contract to purchase a 40-acre plot of land, # 00290-018-000, for $2,600,000 for the Replacement Hospital Site. However, University's Chief Executive Officer and President James R. Davis testified at the hearing that the original site's proximity to a gas station made it an undesirable location. Thereafter, University found and purchased the current site for the Replacement Hospital, plot 00390-005-C00A, from Ridge & Ridge Properties, LLC ("Ridge & Ridge").[1]

Under the terms of the transaction, University will purchase the existing Hospital from the Authority for $10.00 and other consideration. The Asset Purchase Agreement includes all of the assets of the existing Hospital. However, the Authority will retain all of its cash reserves, which as of February 29, 2012, were estimated to be approximately $2.6 million. As part of the consideration, University will undertake to construct a new hospital with a minimum of 25 beds

[1] Ridge & Ridge filed its Articles of Organization on January 27, 2012, and was jointly organized by David Holt and Laura Wiley. Ridge & Ridge purchased a 70-acre tract of land from the owner of the property, Milliken, for $575,000.00 on February 14, 2012. University contacted Ridge & Ridge about the possibility of purchasing a portion of the property to serve as the site for the Replacement Hospital. On March 2, 2012, University purchased 40 acres of the parcel for $1,200,000.00 from Ridge & Ridge. Ridge & Ridge's two partners, David Holt and Laura Wiley, will equally share the profits from the sale to University. Laura Wiley is married to Dr. Daryl C. Wiley, a Board member, who voted to approve the transaction. After University changed the site of the Replacement Hospital to the property owned by Ridge & Ridge, Dr. Wiley executed an Updated Certification, which is part of the Record. In the Updated Certification, Dr. Wiley attests that at the time of the Board's vote to approve the transaction, he and his wife did not contemplate that University would have an interest in purchasing property in which he and/or his wife might later hold an interest. He further attests that University approached Ridge & Ridge and that the approach did not occur until after the Board had voted to approve the sale of the Hospital.

that will provide medical/surgical services and a 24-hour emergency room. Additionally, the Authority can nominate at least 35% of the Purchaser's board ("Community Directors").[2]

Once the Hospital is relocated, University has agreed to help to find an appropriate non-competitive use for the existing Hospital. In the event that demolition of all or a portion of the existing Hospital is necessary, the Authority will reimburse University for the cost of the demolition as long as it occurs within five years of the closing date of the transaction and the Authority's liability shall not exceed $500,000.

In the event that University fails to commence construction on the Replacement Hospital by a certain date, or fails to complete construction by a certain date, the Authority will have the right and option to repurchase the purchased assets, including the Knox Ltd. Bypass Property, for nominal consideration and the assumption of all related liabilities once certain conditions have been satisfied. Additionally, the Authority can purchase the Replacement Hospital Site and all improvements for cost and the assumption of all related liabilities once certain conditions have been satisfied.

FINANCIAL ANALYSIS

Under O.C.G.A. § 31-7-406(6), a transaction involving the acquisition or disposition of the assets of a nonprofit hospital to a nonprofit entity requires the Attorney General to make a determination as to whether the seller "will receive an enforceable commitment for fair and reasonable community benefits for its assets."

The Authority engaged Pershing, Yoakley & Associates, P.C. ("PYA") to assess the anticipated community benefit resulting from the transaction. PYA reviewed the transaction under O.C.G.A. § 31-7-406(6), as discussed in the following valuation analysis.

VALUATION ANALYSIS

PYA's assessment of community benefit included quantitative and qualitative perspectives. PYA identified four main areas of focus in its analysis of qualitative and quantitative benefits to support its assertion that the affiliation of the Hospital and University would provide a community benefit.[3] David W. McMillan, a Principal at PYA, testified at the

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[2] The selection of the Community Directors shall be subject to the approval of the Purchaser's board of trustees, which shall not be unreasonably withheld.

[3] The four main areas discussed by PYA include: (1) quality and scope of services, which include the ability to recruit and retain physicians, resources to increase quality and reputation, and integration of care; (2) access to health services, which includes convenient, accessible site,

public hearing. PYA discussed five elements of community benefit described as "economic impact": (1) capital investment in new construction; (2) improved operating results; (3) employment; (4) reduction in risk; and (5) potential additional economic development.

Of the five elements discussed, PYA calculated value for two of the elements: capital investment in new construction and improved operating results. PYA found that investment in the Replacement Hospital would serve as the first and largest economic benefit to the McDuffie County community. To calculate this benefit, PYA relied upon University management's preliminary project cost estimates of \$26.6 million to \$30.8 million for the magnitude of the benefit. In order to validate University's preliminary estimate, PYA took into consideration "industry standards" that "suggest a construction and equipment cost of \$1.0 to \$1.2 million per bed, placing the total project cost at \$25.0 to \$30.0 million." PYA also calculated the incremental economic impact associated with the Replacement Hospital construction project, noting that over and above the direct investment, there is an additional economic benefit to the community from construction spending. To quantify this additional economic impact, PYA applied an economic multiplier, which is "the factor by which spending in one sector of the economy affects other sectors." PYA applied a construction industry earnings multiplier to the \$16.6 to \$19.2 million construction cost portion of the total project cost, which yielded an additional incremental economic impact of another \$16.6 to \$19.2 million, above the construction cost itself.

Next, PYA calculated the economic benefit of operational improvements. PYA found that construction of the Replacement Hospital that carries University's name and improved access to a larger population base and benefits from increased physician recruitment efforts will lead to operational improvements in operational efficiencies and patient volume. In this analysis, the difference in the present value of the cash flows lost or generated by the Hospital under the two scenarios, the baseline/stand-alone case and the University control case, represents the economic value of improvements under University control. Under the baseline/stand-alone case, PYA calculated the performance of the Hospital as a stand-alone entity operated by the Authority out of the existing facility and location as a negative (\$4.5) million. Under the University control

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commitment to charity care, primary and specialty care availability; (3) governance, which includes continued input from residents of McDuffie County in the operation of the hospital; and (4) economic benefits to the community.

case, PYA's calculations indicated that the present value of the Hospital's improved operations ranged from $1.5 million to $4.0 million. Since PYA found that the value under the baseline was negative, the resulting value of operational improvements under University's control became $6.0 to $8.5 million.

Based on its review of the Hospital's affiliation with University, PYA concluded that the affiliation would yield quantifiable economic benefit to the community ranging from $49.2 million to $58.5 million.[4]

The Attorney General was assisted by the firm Ernst & Young, LLP ("EY") in the review of PYA's determination of community benefits. The Attorney General engaged EY to provide financial and transactional advisory services, but not to provide a separate valuation or a fairness opinion. Bridget Bourgeois, a transaction valuation partner at EY, testified at the public hearing. EY's review focused on PYA's estimated incremental value of the economic impact. Regarding PYA's community benefit analysis as it pertains to economic value of the Replacement Hospital investment, EY noted that in order to validate University's preliminary project construction cost estimates of $26.6 million to $30.8 million, PYA cited an industry standard benchmark of $1.0 million to $1.2 million per bed to estimate the total project costs of $25.0 million to $30.0 million for constructing and equipping a new 25-bed Replacement Hospital. While EY noted that PYA's report does not disclose the specific source used, EY found PYA's use of an industry benchmark to corroborate University's preliminary estimates of the project cost for the Replacement Hospital to be reasonable.

Regarding PYA's community benefit analysis as it pertains to the economic value of construction spending, EY noted that PYA applied a construction industry earnings multiplier[5] of 2.0X to construction costs to estimate the incremental economic impact to the community directly related to the estimated construction spending of $16.6 million to $19.2 million. EY found that PYA applied a construction earnings multiplier from a reliable government source and concluded that applying an earnings multiplier to estimate incremental value to the community

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[4] In addition, PYA calculated an additional benefit stemming from the incremental economic impact of the employment promised to the Hospital's employees of $9.2 million. However, PYA did not include this amount in its conclusion.

[5] Applying an economic multiplier is a concept by which one can estimate impact to the economy by how spending in one sector affects other sectors. The earnings multiplier is from

associated with University's construction costs of the Replacement Hospital is a reasonable methodology.

Regarding PYA's community benefit analysis as it pertains to the economic value of operational improvements, EY noted that PYA's two hospital ownership scenarios utilized a five-year forecast of cash flow from operations under the assumptions that as a stand-alone entity, the Hospital would experience continued losses into perpetuity and that under University control, the Hospital would obtain increases in patient volume and operational efficiencies that would allow it to generate operating profits. EY noted that PYA assumed the same capital expenditures and depreciation expense for the Hospital in both scenarios. EY noted that typically a brand new facility would require less maintenance spending than a functionally obsolete older facility, so the corresponding capital expenditures and depreciation expense assumptions under the two scenarios typically would not be the same.

Under the discount rate[6] assumptions, PYA discounted the cash flows from operations under each scenario using a discount rate of 18.0% for the baseline/stand-alone case and 16.0% for the University control cases. EY noted that PYA developed discount rates based on the weighted cost of capital analysis for the baseline/stand-alone case using a capital structure comprised of 5.0% debt, 95.0% equity. However, EY noted that, during its interviews, the Authority confirmed that the Hospital's current capital structure is 100% equity. PYA's selected cost of debt of 5.22% was based on yields prevalent in the market for bonds with a Moody's Baa-credit rating. However, EY pointed out that this benchmark credit rating does not reflect the

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the Bureau of Economic Analysis of the United States Department of Commerce, a recognized source of data for economic analyses.

6 Discounting is a valuation technique used to address the concept of the time value of money, which means simply that the value of a dollar received today is worth more than the value of a dollar to be received at some future date. This concept is expressed through a required rate of return, or a discount rate, that is used to discount a stream of cash flows to present value. The time value of money is a fundamental finance principle used to indicate the relationship between time and money. The time value of money is expressed through a required rate of return, or a discount rate, that is used to discount a stream of future cash flows to present value. There is a direct relationship between the risk of receiving the future cash flow, the time it takes to receive the cash flow, and its present value. Thus, determining the appropriate discount rate to value a future cash flow stream is a key factor in determining the present value in today's dollars, whether they are earnings or obligations. Also, selecting the right perspective in the discount rate estimation (reflecting the stand-alone risk profile of the Hospital v. the risk profile of the

Hospital's financial distress and its lack of ability to borrow, as the Hospital's financial position and operating results would preclude it from being able to borrow at a Baa-rate. EY went on to note that PYA developed discount rates based on the weighted cost of capital analysis for the University control case using a capital structure of 5.0% debt, 95.0% equity. However, EY noted that the actual capital structure of University is approximately 70.0-75.0% equity, 25.0-30.0% debt.[7] In addition, EY found that PYA's selection of a cost of debt of 5.22% did not consider the credit risk profile of University. Given the purpose of PYA's analysis, EY indicated that it may be more appropriate to develop discount rates that considered the risk profile of the assumed owner of the Hospital under each scenario.

EY performed research and limited analyses to assess the impact on PYA's calculated values by changing certain assumptions with a focus in two principal areas: (1) conducting independent market research of discount rates; and (2) conducting sensitivity analyses of PYA's calculations using discount rates developed for each of the two scenarios that considered the risk profile of the entity assumed to own the Hospital.

Regarding PYA's community benefit analysis as it pertains to the baseline/stand-alone case, EY noted that there is no debt in the capital structure, and calculated a range of discount rates by performing a weight average cost of capital analysis for the Hospital and University using "company specific" cost of capital assumptions. Under the stand-alone, or baseline case, EY derived a range of baseline discount rates for the Hospital as a stand-alone entity based on its current capital structure of 100.0% equity. EY's calculations yielded a baseline weight average cost of capital of 13.5% to 17.5%, compared to PYA's 18.0%. All else equal, EY noted that using a lower discount rate would increase the present value of the Hospital's operating losses quantified by PYA.

Regarding PYA's community benefit analysis as it pertains to the University control case, EY derived a range of discount rates for the Hospital as part of the larger University organization, based on University's capital structure of approximately 70.0% to 75.0% equity and 30.0% to 25.0% debt. To reflect the risk profile of University, EY considered the credit

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buyer v. the risk profile of the hypothetical buyer with an optimal capital structure) is one of the issues EY believes warrants careful consideration in this determination.

[7] EY based its calculations on book values of debt and net assets as of December 31, 2010, and December 31, 2009, per University's audited financial statements included in the Notice to the Attorney General.

rating of its outstanding debt. In addition, since PYA's analysis included three cash flow scenarios (low/base/high) some of the risk associated with achieving the cash flows (typically considered the selection of the discount rate) has already been addressed by including, and equally weighing, the three cash flow scenarios. EY's calculations yielded a baseline weight average cost of capital of approximately 9.0% to 10.0%, as compared with PYA's 16.0%. Again, using a lower discount rate would increase the present value of the Hospital's cash flows.

EY performed sensitivity analyses by applying the discount rates developed from EY's independent market research to the cash flows used in PYA's analysis. Under the baseline/stand-alone case, EY applied its calculated weighted average cost of capital of 13.5% to 17.5%, to PYA's discounted cash flow analysis and calculated the value of the Hospital's operating losses as ($4.6) million to ($6.2) million, as compared to PYA's ($4.5) million. Under the University control case scenario, EY applied its calculated weighted average cost of capital of 9.0% to 10.0% to PYA's discounted cash flow analysis and calculated a value of the Hospital cash flows under University control under a low, base, and high range. Under the "low" case, EY calculated a range of $3.3 million to $4.0 million, as compared to PYA's $1.5 million. In the "base" case, EY calculated a range of $4.9 million to $5.8 million, compared to PYA's $2.3 million. In the "high" case, EY calculated a range of $8.1 million to $9.7 million, as compared to PYA's $4.0 million. EY's discount rate sensitivity analyses, using the cash flows employed by PYA, indicated a range for the operational improvements of $8.6 million to $14.3 million, as compared to PYA's conclusion of $6.0 million to $8.5 million.

Based on independent research and the limited analyses, EY assessed the impact of PYA's calculated estimated value at $49.2 million to $58.5 million of quantifiable community benefit. EY ultimately concluded that, while it cannot draw specific conclusions or findings regarding the total value of the community benefits expected to result from the proposed transaction as determined by PYA, the results of its independent research and sensitivity analyses confirmed that PYA used reasonable valuation methods and techniques to support its conclusion that significant community benefits will accrue to McDuffie County under the proposed transaction.

PUBLIC COMMENT

The public hearing was held on March 29, 2012, at 1:00 p.m. in McDuffie County, Georgia, at the Thomson-McDuffie County Government Center, 210 Railroad Street, Thomson, Georgia 30824. Fifteen persons made comments at the public hearing.[8] All were in favor of the transaction.

Prior to the public hearing, this Office received thirty-two written comments regarding the transaction, which included three petitions. Most of the comments, and all three petitions, were supportive of the transaction. However, a few written and unsigned comments expressed concern for the proposed transaction. Specifically, the unsigned letters expressed concern about: the land sale of the future hospital site to University; the closed door nature of the Board meetings; the new position of Doug Keir, the Hospital's former CEO, with University; and the possible future use of the existing hospital site by the YMCA, as Doug Keir's wife, DeDe Keir, is the Branch Director of the Thomson YMCA.

Following the public hearing, the record was held open until the close of business on Friday, April 6, 2012, for any further public comment. This Office received two written comments after the hearing. One was supportive of the transaction. However, the other written comment, which was unsigned, expressed concern regarding the circumstances of the land sale for the future hospital site. Specifically, the letter questioned why University was not using the "Knox Ltd. Bypass Property" as the future site of the Replacement Hospital, or why University had not purchased the land from Milliken when it was on the market, prior to it being bought by Ridge & Ridge.

Counsel for the Authority and University were requested to inform the undersigned in writing as to whether their respective clients intended to proceed with the proposed transaction as structured or modify the proposed transaction in some respect. By letter dated April 9, 2012, counsel for both parties have submitted a joint letter stating that their clients wish to proceed with the transaction as proposed, with the only change being the aforementioned amendment to the proposed Asset Purchase Agreement to reflect the change in location for the Replacement Hospital Site.[9]

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8 Among the persons providing public comments, Kenneth Usry, the Mayor of Thomson, spoke in favor of the transaction. His comments included information outlining how he was originally concerned about the existing hospital site turning into an empty building, but after speaking with University's CEO, James R. Davis, he was assured that University will continue to search for another use for the building.

9 The parties made another amendment to the Asset Purchase Agreement on April 25, 2012, to provide that in the event that University transfers the Hospital, or the Replacement

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 through 31-7-412; *Sparks v. Hospital Authority of City of Bremen and County of Haralson*, 241 Ga. App. 485 (1999) (physical precedent only). The Act requires a written notice filing 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. §§ 31-7-401, 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.

Under the Act, disclosure is 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 thirteen factors that are key considerations in determining whether the appropriate steps have been taken by the parties. *Id.* The thirteen factors are listed in Appendix A to this report.

The thirteen 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) conflicts of interest (factors number 5 and 13), (c) valuation of the hospital assets (factors number 6, 7 and 10), and (d) the charitable purpose of the proposed transaction (factors number 9, 11 and 12).

The Exercise of Due Diligence by the Seller

Factor number 1 is satisfied, as the disposition of the Hospital 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.

Hospital, to a party other than the Authority, University shall require the party to agree to continue the provision of indigent and charity care at the Hospital or Replacement Hospital.

The due diligence factors number 3 and 4 necessitate review of the process and procedures employed by the Seller "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 Authority exercised appropriate due diligence in its selection process because the evidence shows that a formal, comprehensive RFP was conducted by the Authority with the assistance of FTI. In addition to University, offers were solicited from three regional healthcare providers. Of the original solicitation group, the Authority received two proposals from potential purchasers. The deliberative process employed by the Authority in selecting the proposal of University demonstrates the exercise of due diligence, consistent with factors number 3 and 4.

With regard to factor number 8, there is an Interim CEO Services Agreement, dated January 24, 2012, ("CEO Agreement") in place currently, whereby University provides the Authority with an interim hospital chief executive officer, following the expiration of University's management agreement with Quorum Health Resources, LLC. Under the CEO Agreement, University provides an interim CEO, subject to the approval of the Authority, and the Authority pays University a monthly fee of $20,000.00 through the closing of the transaction. The Agreement defines the responsibilities of the parties and does not, by itself, transfer control of the Hospital to University such that it should have been reviewed under the Act. The terms of the CEO Agreement appear reasonable. Therefore, factor number 8 is satisfied.

Conflicts of Interest

The disclosure of any conflict of interest involving the Authority, the Chief Executive Officer of the Hospital and its expert consultant is to be considered under factor number 5. Conflict of interest certifications, as required by the Act and the notice filing requirements of the Attorney General, have been filed by members of the Board, by William Doupe, the Chair of the Authority, Douglas Charles Keir, the Authority's former Chief Executive Officer, Ian Briggs, Senior Managing Director of FTI Consulting, Burl E. Stamp, Principal for PYA and David McMillan, Principal for PYA.

Other than two, the certifications are all without exceptions. Robin S. Dudley, an Emeritus Board member,[10] disclosed that the proposed site of the Replacement Hospital is

[10] Emeritus Board members for the Authority are ineligible to vote. Therefore, Robin Dudley did not vote on the proposed transaction.

located across the street from property owned by her family. As discussed in Footnote 2, Dr. Daryl C. Wiley, Board member, disclosed that his wife is a partner in Ridge & Ridge, the corporation that sold University the site for the Replacement Hospital. As previously discussed however, at the time that the Board voted on the proposed acquisition, University was under contract to purchase a different piece of property for the Replacement Hospital, and Dr. Wiley attested that he did not contemplate that University would have an interest in purchasing property in which he and/or his wife might later hold an interest. The certifications are adequate and the two disclosures do not rise to the level of creating an impermissible conflict of interest in the proposed transaction and are disclosed as contemplated by O.C.G.A. § 31-7-403(a) & (b) and O.C.G.A. § 31-7-405(b).

With regard to factor number 13, the instant transaction involves the sale of a nonprofit hospital operated directly by a hospital authority to another nonprofit corporation. Health care providers will not be offered an opportunity to invest or own an interest in the Hospital as part of the transaction or after the transaction. Therefore, factor number 13 is not applicable.

Valuation of the Hospital Assets

The factors numbered 6, 7 and 10 involve a determination of the value of the hospital assets. The Authority should receive an enforceable commitment for fair and reasonable community benefits for its assets. *See* O.C.G.A. § 31-7-406(6).[11] Based on the record, including the analysis conducted by PYA on behalf of the Authority and the review by EY at the request of the Attorney General as described herein, the Authority will receive an enforceable commitment for fair and reasonable community benefits in exchange for its assets, as required by the Act.

The Authority is not providing any financing for the transaction. Therefore, factor number 7 is inapplicable. As to factor number 10, the Asset Purchase Agreement provides that in the event that University fails to construct the Replacement Hospital, the Authority will retain the right to acquire full ownership of the Hospital for nominal consideration and the assumption of all related liabilities once certain conditions have been satisfied. Thus, factor 10 is satisfied.

[11] No formal valuation was conducted regarding the value of the assets, but instead PYA conducted an analysis of community benefits. Even in transactions involving the acquisition of assets from a nonprofit corporation by a nonprofit corporation, a formal valuation is a preferred method of determining whether there are adequate community benefits conferred in light of the value of the assets transferred.

Charitable Purpose of the Proposed Transaction

With respect to the charitable purpose of the proposed transaction, factor number 9 requires that the disposition proceeds be used for charitable health care purposes consistent with the nonprofit's original purpose. University is paying consideration of $10.00 to the Authority, a $10.00 payment is nominal consideration, and therefore cannot properly be considered sales proceeds.[12]

The other two charitable purpose factors, numbers 11 and 12, concern 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. University has made express contractual commitments in the Asset Purchase Agreement to provide emergency services and continue the core services currently provided by the Hospital and to use its best efforts to remain enrolled in Medicare, Medicaid or any successor program. The Purchaser will also "provide indigent and charity care at the Hospital and the Replacement Hospital, including providing indigent persons with access to Hospital services, in full compliance with applicable Laws and without discrimination." Moreover, the Asset Purchase Agreement was amended on April 25, 2012, to provide that in the event that University transfers the Hospital, or the Replacement Hospital, to a party other than the Authority, University shall require the party to agree to continue the provision of indigent and charity care at the Hospital or Replacement Hospital. Thus, Factor 10 is satisfied.

The evidence, taken as a whole, demonstrates an enforceable commitment to improve health care in the community and to assure continued access to affordable care. The record, as a whole, demonstrates that the Authority has obtained from University 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.

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12 While the Authority is only receiving nominal cash consideration, it is worth noting that University will be assuming the Hospital's operating liabilities, trade payables and certain other liabilities of the Authority, and will be constructing and financing a Replacement Hospital on the property University purchased. The parties estimated that construction of a Replacement Hospital will cost between $25- $35 million dollars.

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 that the transaction, under the Asset Purchase Agreement, is authorized and that the value of the charitable assets is safeguarded.

This 30th day of April, 2012.

AUDREY M. SEIDLE
Assistant Attorney General
Hearing Officer

APPENDIX A

(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.