

OFFICE OF THE ATTORNEY GENERAL  
STATE OF GEORGIA

IN THE MATTER OF THE COMPLETE  
INTEGRATION OF ATHENS REGIONAL  
MEDICAL CENTER, INC. INTO PIEDMONT  
HEALTHCARE, INC.

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NO. AG 2016-2

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**REPORT OF FINDINGS**

**I.**

**BACKGROUND**

**ATHENS REGIONAL MEDICAL CENTER**

Athens Regional Medical Center, Inc. (“ARMC”) leases Athens Regional Medical Center (the “Hospital”) from the Hospital Authority of Clarke County (“HACC” or “Authority”), pursuant to a lease originally dated July 1, 1995.<sup>1</sup> The Hospital is licensed as a 359-bed acute care hospital located at 1199 Prince Avenue, Athens, Georgia, 30606. ARMC and affiliates provide comprehensive healthcare services. These include primary care, emergency services, ambulatory services, acute care and extensive non-acute services. The various services include the areas of cancer, heart and vascular, imaging, surgery ranging from outpatient to highly advanced invasive cardiac operations, women and children, home health, charity and indigent care, and detainee care on behalf of the Unified Government of Athens-Clarke County.

The Hospital has approximately 2,800 employees and contract personnel and a medical staff of approximately 390 physicians. The Hospital’s primary service area encompasses Athens-Clarke, Jackson, Madison, Oglethorpe, Oconee and Barrow Counties.

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<sup>1</sup> ARMC and HACC agreed to an amended lease in 2007 to extend the term through June 30, 2046. Related to the proposed transaction, the lease term will be extended to June 30, 2056.

ARMC proposes to completely integrate into Piedmont Healthcare, Inc., a Georgia nonprofit corporation (“Piedmont”), pursuant to a transaction in which ARMC will amend its bylaws and articles of incorporation to provide that Piedmont will become the sole member of ARMC.<sup>2</sup> Piedmont operates a number of other hospitals and other facilities and operations including hospitals in Fulton, Fayette, Coweta, Henry, Newton and Pickens Counties.

### **THE DISPOSITION PROCESS**

Beginning in 2014, ARMC began considering the proper course for its operations. At that time, ARMC experienced business difficulties related to the installation of a medical record technology solution. Related to those difficulties, ARMC accepted the resignation of its Chief Executive Officer and determined to engage Navigant Consulting to assist ARMC with management. As part of the engagement of Navigant, Dr. Charles Peck came to ARMC as an interim Chief Executive Officer. ARMC hired Dr. Peck on a permanent basis early in 2015.

ARMC charged Dr. Peck with helping ARMC develop a business strategy. As part of that process, Dr. Peck recommended to the Board that it consider affiliation alternatives instead of seeking to pursue continuing as an independent organization. ARMC engaged Cain Brothers, a national investment banking and advisory firm. Cain Brothers’ engagement led to ARMC developing objectives for a potential affiliation. Cain Brothers contacted various parties that it identified that may have interest in an affiliation transaction. Of the parties contacted, twenty-two parties entered into non-disclosure agreements with ARMC and fifteen parties actually submitted proposals. Of the fifteen proposals, seven were from for-profit entities and eight were from non-profit entities. Proposals were received from Adventist Health System, Carolinas

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<sup>2</sup> Under the proposed transaction, Athens Regional Health System, Inc. (“ARHS”), which currently controls and oversees the operations of ARMC and a number of affiliated entities, will merge into ARMC. ARMC, with Piedmont as its sole member, will become the sole corporate member of the affiliated entities. As currently structured, ARMC is controlled by ARHS. In

Healthcare System, Emory Healthcare, Northeast Georgia Health System, Novant Health, Piedmont Healthcare, Sentara Healthcare, University Health Care System, Ardent Health Services, Community Health Systems, HCA, IASIS Healthcare Corporation, LifePoint Hospitals, RegionalCare Hospital Partners, and University Health Services. ARMC considered the various proposals and narrowed the parties that it would consider further to three consisting of Emory Healthcare, Novant Health and Piedmont Healthcare. These three remaining parties are all non-profit entities. ARMC pursued a due diligence process with all three parties which included representatives of a number of interested groups within ARMC. ARMC ultimately selected Piedmont in December of 2015.

### **THE PROPOSED TRANSACTION**

As described above, the Affiliation Agreement (“Agreement”) provides for Piedmont to become the sole member of ARMC. ARMC proposes to completely integrate into Piedmont pursuant to a transaction in which ARMC will amend its bylaws and articles of incorporation to provide that Piedmont will become the sole member of ARMC.

### **BENEFITS 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.”

ARMC retained Ernst & Young (“EY”) to provide assistance in the assessment of its proposed relationship with Piedmont.<sup>3</sup> The scope of EY’s engagement included an independent assessment of the estimated community benefit to be derived from the proposed affiliation

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light of the current relationship and contemplated outcome, references herein to ARMC encompass ARHS and vice versa.

between ARMC, ARHS and Piedmont. In its report, EY valued the present value of the quantifiable community benefits to be in the range of \$380.0 million to \$452.0 million as a result of the defeasance of indebtedness, the seven year, incremental, capital expenditures commitment by Piedmont and estimated operational synergies. Additionally, EY identified additional qualitative benefits to the community, including the continued local availability of healthcare services, the quality and scope of the available services, the commitment to current employees and the medical community, the preservation of local governance participation and the alleviation of risk for the local government and taxpayers. Bridget Bourgeois of EY testified at the public hearing held on July 12, 2016.

In its analysis, EY calculated the quantifiable community benefits. There are typically three traditional approaches considered to determine value. The three approaches are (1) the Income Approach, (2) the Market Approach, and (3) the Cost (net asset value) Approach. The Income Approach is based on the concept that the value of a business, asset or service is the present worth of the expected future economic benefits to be derived by the owners. Under the Market Approach, value is derived through a comparison of the transaction prices of similar assets/services trading in the marketplace. In the Cost (net asset value) Approach, value is estimated based on the value of all of the subject underlying assets, both tangible and intangible.

EY relied solely upon the Income Approach in determining the quantitative community benefits. Under the Income Approach, EY calculated a range of values for three key elements of the proposed affiliation: 1) the defeasance by Piedmont of the Hospital Authority's indebtedness, 2) the value of Piedmont's seven year incremental capital expenditures commitment, and 3) the potential cost savings resulting from operational synergies.

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<sup>3</sup> Bridget Bourgeois provided a conflict of interest certification on behalf of EY in compliance with O.C.G.A. § 31-7-405(b).

In its analysis of the defeasance of the Authority's indebtedness, which consists of the Series 2007 and Series 2012 bonds, EY computed the present value by discounting the total amount of the outstanding bonds par value (\$195,480,000.00) and accrued interest to March 1, 2016 from two potential defeasement dates: January 1, 2017 and March 1, 2017<sup>4</sup>. EY utilized a discount rate of 2.8%, corresponding to yields as of March 1, 2016 on the Bank of America – Merrill Lynch US healthcare index AA rating segment. Based on the above, EY valued the community benefit associated with the defeasance of the Hospital Authority's indebtedness to be approximately \$185.0 million to \$196.0 million.

EY also valued Piedmont's seven year, incremental capital expenditures commitment in their report. Pursuant to the proposed affiliation agreement, Piedmont is committing to at least \$325 million in capital expenditures over a period of seven years. Of this commitment, \$75 million will be expended during the initial 24-month period on capital projects to benefit the Athens System's facilities and operations previously approved by the ARHS Board and Piedmont. When considering the community benefit of the capital expenditures commitment, EY first determined the incremental capital expenditures (i.e. the portion of the total capital expenditures commitment that goes above and beyond ARHS' capital spending levels without the proposed affiliation agreement). By comparing the two projected expenditure levels, EY calculated the incremental portion of the Capital Commitment at \$52.7 million in year 1, 34.1 million in year 2, 12.4 million in year 3 and approximately 25.5 to 26.3 million in years 4-7. EY then discounted those amounts to arrive at the present value of the incremental capital expenditure commitment. EY used a discount rate of 2.8% up to 8.0%, which corresponds to yields as of March 1, 2016 on the Bank of America-Merrill Lynch US healthcare AA rating index for the low end and Bank of America-Merrill Lynch US high yield healthcare: 20-25 year

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<sup>4</sup> January 1, 2017 is the date Piedmont anticipates completing the defeasement and March

maturity index and the weighted average cost of capital for the high end. Based on the above, EY estimated a range of value for the community benefit associated with Piedmont's capital expenditure commitment to be between \$156.0 million to \$186.0 million.

Lastly, EY analyzed the potential cost savings in annual medical and other supply cost associated with the operation synergy from the proposed affiliation. When a stand-alone hospital joins a larger organization, it generally benefits from improved cost savings by leveraging the buying power of the larger organization. To compute the potential cost savings, EY calculated the present value of the incremental expense savings related to medical cost and supply savings based on an assumed annual reduction of 5%. To do this, EY first used ARHS' budget for medical cost and extended the projections for five years, using an annual growth rate of 1.5%. EY then calculated the 5% potential cost savings for each year, which yielded a cash flow stream of \$5.1 million to \$5.5 million. Next, EY accounted for the 38.9% Georgia income tax rate, then applied a discount rate of 8.0% to 10.0%.<sup>5</sup> The discount rate compares the risk profile of an independent hospital with a hospital integrated into a larger system. EY concluded that the community benefit of the annual cost savings would be approximately \$39.0 million to \$70.0 million.

EY ultimately concluded that the quantifiable community benefit from the proposed affiliation would be in the range of \$380.0 million to \$452.0 million. This community benefit is measured by an elimination of the defeasance of the Hospital Authority's indebtedness, the incremental capital expenditure commitment of Piedmont and other potential operating cost savings.

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1, 2017 is the latest possible defeasement date.

<sup>5</sup> This range was an estimated weighted average cost of capital.

EY also identified a number of qualitative benefits. These benefits fall into five major categories: 1) continued availability of healthcare services, 2) quality and scope of available services, 3) reduction of risk to local government and taxpayers, 4) commitments to employees and the medical community, and 5) preservation of local governance participation. While the quantitative amount of these benefits are difficult to calculate, they still merit consideration.

The continued availability of healthcare services includes that ARMC is to operate as a fully licensed and accredited acute care hospital at its current location, to maintain its policies of charity and indigent care, and to continue its community based health programs and the commitment of the parties for ARMC to obtain a AA credit median net operating margin. All of these benefits will contribute to ARMC being a key safety net hospital to the Northeast Georgia Communities and to ensure ARMC' success.

Similar to the continued availability of healthcare services, is the qualitative benefits of the quality and scope of available services. First, ARMC is to become the hub healthcare provider of Piedmont in the region. Second, there is a commitment by the parties to further develop ARMC's capabilities in regards to medical residency programs which will help with the recruitment and retention of physicians. Third, the parties have committed to attaining national recognition for ARMC in regards to optimal clinical quality and performance for patients in the greater Athens area. Fourth, Piedmont has committed to providing resources to recruit and maintain a high level of quality physicians and medical staff.

The reduction of the risk to the local government and tax payers mostly revolves around the defeasance of the 2007 Series and 2012 Series Bonds. Piedmont has committed to defeasance of the bonds no later than 60 days following January 1, 2017. On the date the bonds are defeased, the County Contract, which obligates the local government to guarantee payment on the Hospital Authority's indebtedness, will be terminated. Additionally, should any payments have to be

made on the debt before the defeasance, Piedmont guarantees reimbursement to the Unified Government. Further, unrelated to the bonds, Piedmont has agreed to fund routine expenses anticipated to be incurred by the Hospital Authority under the amended lease.

Piedmont has also made commitments to the employees and medical community, including, making commercially reasonable efforts to not terminate employees of ARMC and ARHS for 12 months following the transaction, to not terminate, except for cause, the professional service agreements with anesthesiology, pathology, radiology and emergency room physician groups, and to not decrease the base salaries of non-management personnel at the transaction closing and until such time Piedmont has matched the wages of ARHS employees with Piedmont standards.

Lastly, the qualitative benefits include the preservation of local governance participation. The composition of the ARMC Board of Trustees and Foundation Board of Trustees will be heavily weighted toward the local community. Additionally, the local community will have representation on Piedmont's Board. The Hospital Authority will also be permitted to enforce the covenants obligations of Piedmont as well to monitor the performance of Piedmont. Finally, Piedmont is prohibited for 10 years from entering any transactions that would substantially affect the assets of ARMC and ARHS and, if Piedmont does enter into such an agreement, the Hospital Authority has a right of first refusal.

The Attorney General retained Deloitte Transactions and Business Analytics LLP ("Deloitte") in accordance with O.C.G.A. § 31-7-405(b), as an independent financial advisory consultant to assist in the review of the proposed affiliation between ARMC and Piedmont. The Attorney General engaged Deloitte to provide valuation advisory services, but not to provide a separate valuation or a fairness opinion. Mr. Jimmy Peterson, who specializes in healthcare valuations, testified at the hearing. As part of its engagement, Deloitte held discussions with



representatives of all the parties involved in the proposed transaction and performed independent research and analyses to assist in the review process of the conclusions contained in EY's independent assessment of the community benefit derived from the proposed affiliation.

In the course of its engagement, Deloitte analyzed EY's underlying valuation methodologies and assumptions, and performed a number of sensitivity analyses of EY's assessment of community benefit by changing certain assumptions employed by EY in its analysis. In its review, Deloitte agreed that the income approach to value considered by EY is consistent with generally accepted industry standards for valuation analysis, and found EY's decision to rely solely upon methodologies under the Income Approach reasonable.

In its analysis of EY's assessment of community benefits to be derived from the potential affiliation, Deloitte found that EY appropriately applied present value techniques to quantify the value of the defeasance of the Authority's indebtedness. Deloitte determined that EY's assumptions for the 2007 Series bonds were accurate, but found an increased quantifiable community benefit for the 2012 Series bonds; as the 2012 Series bonds were issued with an embedded call option, which grants the Authority the right to repurchase the 2012 Series bonds at a price equal to par value plus interest, in January 1, 2022, the issuer cannot yet exercise the call option. As the call option will not be available to Piedmont, for defeasances to occur before the deadline of 60 days after January 1, 2017, the bonds may have to be purchased on the open market. As a result, Deloitte estimated that the amount of defeasement at the market price of the outstanding bonds plus the present value of any accrued interest. Deloitte found that using the par value of the 2012 Series Bonds potentially underestimated the community benefit in the amount of approximately \$8 million. In addition, Deloitte found that EY's analysis did not include relief of the Authority's obligations related to long term non-cancelable contractual obligations such as capital leases and operating leases. As such, Deloitte calculated the present

value resulting from the relief of these contractual obligations to be in the range of \$19.0 million to \$21.1 million. Deloitte calculated the total other potential community benefits not reflected in EY's analysis to be in the range of \$27.0 million to \$29.1 million. Lastly, Deloitte found EY's analysis of the quantitative community benefits of the incremental value of the 7 year capital expenditure commitment and the potential reduction in annual medical and other supply cost not to be inconsistent with its expectations and typical in the valuation profession.

Furthermore, Deloitte also conducted independent research of valuation multiples for comparable hospital transactions. As EY did not value the hospital, it did not analyze comparable pricing multiples. Based on this independent analysis, Deloitte concluded that, based on the quantifiable community benefits to be received by ARMC, the implied multiples reasonably fall within the normal range of marketplace pricing multiples.

Based on its market research and sensitivity analyses, Deloitte concluded that the analyses used by EY in its Community Benefit Analysis appear reasonable and consistent with methodologies and approaches typically used in the industry and that the economics (specifically the capital commitment and defeasement of debt) of the proposed transaction appear to be accretive to the community.

#### **PUBLIC COMMENT**

The public hearing was held on July 12, 2016 at 12:00 p.m. at Athens Regional Medical Center in Athens-Clarke County, Georgia. Notice of the proposed transaction and the public hearing was provided as required by O.C.G.A. § 31-7-404.

The public comments received during the public hearing were all in favor of the proposed transaction. As required by O.C.G.A. § 31-7-405(b), Bridget Bourgeois of Ernst & Young, LLP testified on behalf of ARMC. As required by O.C.G.A. § 31-7-405(c), Jim

Hopkins, the Chair of the boards of ARHS and the Hospital Authority of Clarke County testified as did Kevin Brown, the Chief Executive Officer of Piedmont.

Following the public hearing, the record was held open until the close of business on Friday, July 15, 2016, for any further public comment. No written or other comments were received regarding the transaction after the hearing. Counsel for ARMC and Piedmont were requested to inform the undersigned in writing by July 15, 2016, as to whether their respective clients intended to proceed with the proposed transaction as structured or modify the proposed transaction in some respect. On July 15, 2016, counsel for both parties submitted a joint letter stating that their clients wish to proceed with the transaction as proposed.

## 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 are 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**

The disposition of the Hospital is authorized by applicable law as provided in factor number 1, and ARMC has taken the appropriate steps to provide for the complete integration into Piedmont. O.C.G.A. §§ 14-3-206, 14-3-302, 31-7-400 *et seq.* 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. ARMC provided specific testimony in this regard. (Transcript, p. 20, 33-34). The filing submitted by ARMC expressly states that “[a]pproximately 20 donors have made aggregate gifts of more than \$100,000 to Athens Regional Foundation, Inc.” The filing also indicates that “[t]here are no written agreements associated with such donations” and that “[t]he transaction is consistent with the intentions expressed by such donors.”

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). As previously discussed, ARMC conducted a formal process for the solicitation and selection of proposals which is the preferred approach. ARMC engaged professional assistance

from Navigant, Cain Brothers and Ernst & Young, LLP respectively related to consideration of its business operations, conducting a process for a transaction and for analyzing the benefits to be conferred as a result of the transaction. The record supports a finding that the governing body of ARMC “exercised due diligence 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 record further supports a finding of adequacy regarding “[t]he procedures used by the nonprofit corporation in making its decision to dispose of its assets” and that “appropriate expert assistance was used.” O.C.G.A. § 31-7-406(4).

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 exercise of due diligence by ARMC.

#### **Conflicts of Interest**

The disclosure of any conflict of interest involving the Sellers, 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 governing boards of ARMC and ARHS that voted in favor of the transaction, by the chief executive officer of ARMC and ARHS and by Bridget Bourgeois with Ernst & Young, LLP. The certifications in the record are adequate and the 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 transfer of control of a nonprofit corporation 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. Since this transaction involves the complete integration of one nonprofit into another nonprofit, ARMC should receive an enforceable commitment for fair and reasonable community benefits for its assets. *See* O.C.G.A. § 31-7-406(6). Based on the record, including the analysis conducted by Ernst & Young on behalf of ARMC and the review by Deloitte at the request of the Attorney General as described herein, ARMC will receive an enforceable commitment for fair and reasonable community benefits in exchange for its assets as required by O.C.G.A. § 31-7-406(6).

Since ARMC is not providing any financing for the transaction, factor number 7 is inapplicable. As to factor number 10, the Affiliation Agreement prohibits Piedmont from entering into a change of control, transfer or sale transaction related to ARMC or all or substantially all of ARMC's assets for a period of ten years following closing. (Affiliation Agreement, p. 45). Piedmont is permitted to enter into a change of control or asset sale related to substantially all of the Piedmont System. If Piedmont enters into such a transaction, it has to require the acquiring entity to assume the Affiliation Agreement and to perform all of the obligations of Piedmont under the Affiliation Agreement. (Affiliation Agreement, p. 46). During the initial ten years after closing, if Piedmont proposes to enter into a transaction to change its control to a for-profit entity or to sell its assets or substantially all of its assets to a for-profit entity, then a right of first refusal is triggered on behalf of HACC. (Affiliation Agreement, p.46). The proposed Affiliation Agreement is consistent with the purposes of factor number 10.

### **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. Piedmont and ARMC are both nonprofit corporations and Piedmont is not paying actual cash consideration to ARMC in exchange for its membership interest in ARMC. There are no proceeds from sale.

The other two charitable purpose factors, factor 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. The Affiliation Agreement requires that Piedmont "shall cause or permit ARMC and the ARHS Affiliates... to maintain and adhere to ARMC's policies on charity and indigent care in effect immediately prior to the Closing Date or, in the alternative, to adopt other policies and procedures that are at least as favorable to the indigent and uninsured of Athens-Clarke County as the policies in effect immediately prior to the Closing Date." (Affiliation Agreement, p. 40). Piedmont is obligated to ensure that ARMC continues to provide care through community-based health programs and is required to maintain participation in Medicare, Medicaid and Tri-Care. (Affiliation Agreement, p. 41). Piedmont is required to continue to provide certain described essential services including obstetrics, maternity, gynecology and related women's services, general surgery, and a comprehensive cardio-vascular program. Piedmont is also required to continue to operate the emergency department as a Level II Trauma Center. (Affiliation Agreement, p. 41). Piedmont also is obligated to continue ARMC's graduate medical education

programs and academic medicine initiatives and is committed to expend at least \$325,000,000 in capital expenditures for the benefit of the ARMC system. (Affiliation Agreement, pp. 42-43).

Piedmont is also required to maintain a community-based open medical staff at ARMC. (Affiliation Agreement, p. 44).

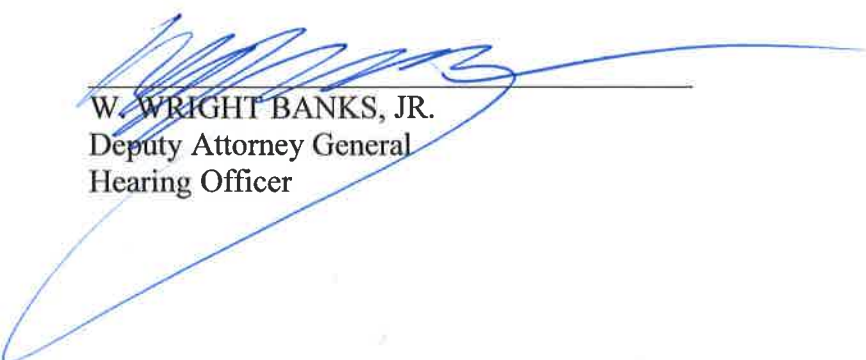
The obligations described herein and the record evidence that factors 11 and 12 are satisfied in this matter.

### III.

#### CONCLUSION

Upon review of the public record and in accordance with the Hospital Acquisition Act, the undersigned Hearing Officer finds that the public record in this matter discloses that the proposed transaction is appropriate in light of the factors set forth in the Act.

This 11<sup>th</sup> day of August, 2016.



W. WRIGHT BANKS, JR.  
Deputy 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.

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