

OFFICE OF THE ATTORNEY GENERAL
STATE OF GEORGIA

IN THE MATTER OF THE SALE OF
A MEMBERSHIP INTEREST IN THE
SPECIALTY HOSPITAL, LLC BY
FLOYD HEALTHCARE RESOURCES,
INC, AS SELLER, TO REHABCARE
HOSPITAL HOLDINGS, LLC, AS
PURCHASER.

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NO. AG 08-01

REPORT OF FINDINGS

I.

BACKGROUND

THE SPECIALTY HOSPITAL, LLC

The Specialty Hospital, LLC (“TSH”), is a twenty-four (24) bed long-term acute care hospital (“LTACH”) located at 304 Turner McCall Boulevard in Rome, Floyd County, Georgia. TSH operates as a “hospital within a hospital” and currently leases space on the fourth floor of Floyd Medical Center.¹ TSH is a specialty care hospital designed for extended stay patients. It provides inpatient hospital services to clinically complex patients suffering from multiple acute or chronic conditions. The services provided by TSH include comprehensive rehabilitation, respiratory therapy, head trauma treatment, and pain management. TSH’s primary service area encompasses Floyd County, Polk County, Bartow County, Gordon County, Chattooga County, Haralson County and Carroll County.

TSH is owned and operated by the Seller, Floyd Healthcare Resources, Inc. (“FHR”), a Georgia non-profit corporation. Floyd Healthcare Resources was incorporated in 1990 by the

¹ Floyd Medical Center, operated by Floyd Healthcare Management, is a three hundred and four (304) bed acute care hospital.

Hospital Authority of Floyd County (the “Hospital Authority”)² to serve as a holding company for medically-related business investments of the Floyd Healthcare System. In addition to TSH, Floyd Healthcare Resources owns a 41% interest in Rome Imaging Center Partnership and a 50% interest in Adairsville Medical Center Partners.

TSH filed for, and was granted, a Certificate of Need (“CON”) by the Georgia Department of Community Health to develop, construct and operate a forty-five (45) bed LTACH. The CON for the 45 bed LTACH is contingent upon the 24-bed LTACH relinquishing the beds it leases from Floyd Medical Center, and essentially merging its 24-bed CON into the 45-bed CON. As part of the proposed transaction, FHR will contribute the current 24-bed LTACH to the new free-standing 45-bed LTACH likely to be constructed on the grounds of Floyd Medical Center.

FHR proposes to sell an 80% membership interest in TSH to RehabCare Hospital Holdings, LLC (“RehabCare”), a publicly traded Delaware limited liability company. FHR and RehabCare will continue to operate the 24-bed LTACH as a “hospital within a hospital” and will contemporaneously construct and develop the new 45-bed free-standing LTACH. When the construction and licensing process is completed for the new 45-bed free-standing LTACH, the 24-bed LTACH will be closed. TSH will operate the new 45-bed free-standing LTACH. RehabCare will own an eighty percent (80%) membership interest and FHR will own a twenty percent (20%) membership interest in TSH.

THE DISPOSITION PROCESS

TSH currently leases space on the fourth floor of Floyd Medical Center. TSH began providing LTACH services in 2000 with 20 licensed beds and has since expanded to 24 licensed beds. The existing leased space at Floyd Medical Center is being operated at full capacity. The expansion of the existing “hospital within a hospital” is not feasible because Floyd Medical

² In 1990, the Floyd County Hospital Authority (the “Hospital Authority”) went through a restructuring. The Hospital Authority created two companies: Floyd Healthcare Management, Inc., a Georgia non-profit corporation, which operates Floyd Medical Center, and FHR, which is a holding company for certain medically related businesses, including, but not limited to, TSH. The Hospital Authority currently leases space to Floyd Healthcare Management, Inc. Floyd Healthcare Management subleases space for the LTACH to FHR. Floyd Healthcare Management and FHR are separate and distinct Georgia nonprofit corporations.

Center also needs additional beds. Mr. Kurt Stuenkel, President and CEO of FHR and Floyd Medical Center, testified at the April 22, 2008, public hearing that Floyd Medical Center's growing capacity constraints require the reclaiming of the 24 medical-surgical beds currently leased to TSH. Because of the small size of the current facility, TSH is unable to meet the needs of the Northwest Georgia community and loses many patients to Atlanta facilities.

TSH obtained a CON for a 45-bed free-standing LTACH with the intention of obtaining a joint venture partner. Mr. Stuenkel testified that FHR does not have the resources to finance the project. By seeking a joint venture partner, FHR can provide the community with a new facility without incurring all of the debt for its construction and FHR will continue to receive 20% of the revenues from TSH. Moreover, FRH board members will hold two of the five seats on the TSH Board.

A formal comprehensive Request for Proposal ("RFP") was sent to nine (9) healthcare companies that own or manage long term care hospitals. Three (3) companies, RehabCare, Capstone Healthcare Management, LLC ("Capstone"), and Milestone Healthcare ("Milestone"), expressed an interest in a joint venture with FHR to own and operate TSH. FHR formed a team to evaluate the potential purchasers based on a number of established criteria, including proposed financial arrangements and various governance issues. FHR met with each of the three potential partners. As Milestone did not wish to take an equity position in the joint venture, the FHR Board voted to enter into negotiations with Capstone and RehabCare. Capstone and RehabCare submitted proposals and made presentations before the Board of FHR. Both companies were interviewed and site visits were conducted at their facilities. The FHR Board unanimously determined that RehabCare had a better proposal than Capstone. RehabCare was chosen on the basis of its offer price, its experience, and the ability to meet the criteria of the RFP. Mr. Stuenkel testified that FHR had more confidence in RehabCare's "leadership, in the stability and in the structure of RehabCare..." Ultimately, the FHR Board voted to select RehabCare because its proposal offered the best price and terms.

THE PROPOSED TRANSACTION

The parties negotiated a Membership Purchase Agreement whereby RehabCare will purchase a membership interest in TSH. Under the terms of the Membership Purchase Agreement, FHR will transfer and assign all of its assets, properties and rights used in the

operation of TSH, including the CON for the construction of a 45-bed freestanding LTACH. FHR will then sell an eighty percent (80%) membership interest in TSH to RehabCare for Eight Million One Hundred Sixty Thousand Dollars (\$8,160,000). The purchase price will be paid in cash at the close of the sale. FHR will retain a 20% membership interest in TSH and have two members on the FHR Board.

The CON for the 45-bed free-standing facility was issued by the Georgia Department of Community Health on November 8, 2006, with a mandatory completion date of January 31, 2008. The mandatory completion date was subsequently extended to September 30, 2008, due to environmental clean-up issues regarding the previous potential building site. Mr. John Short, CEO and President of RehabCare, testified that he expects the completion date to be extended again. Construction is anticipated to begin in November 2008 and to be completed within 24 months thereafter. Mr. Short also testified that RehabCare has already arranged financing for the project and that it is in a position to pay for the construction project in cash if necessary. The site of the new free-standing 45 bed LTACH will likely be located on the campus of Floyd Medical Center.

As part of the Amended and Restated Operating Agreement, FHR negotiated a right of first refusal to repurchase TSH if RehabCare proposes to dispose of its membership interest. In addition, RehabCare has retained the right to require FHR to purchase all of its membership interest if TSH loses its CON for failure to complete construction of the 45-bed freestanding LTACH. FHR has retained the right to require RehabCare to purchase all of its membership interest in TSH if RehabCare takes any action to jeopardize FHR's tax-exempt status as a nonprofit entity. As part of the joint venture with RehabCare, FHR will continue to have input into the operations of TSH. The new Board of TSH will have a total of five board members; two of those seats will be held by board members of FHR. If RehabCare attempts to change the fundamental nature of TSH in any way, FHR's two board members will have "veto power," meaning that the FHR board members retain the right to block the action.

RehabCare will provide support and ancillary services to TSH. Under the Entity Support Services Agreement, RehabCare will receive \$480,504.00 annually, paid in monthly installments. The services provided by RehabCare will include: preparation of policies and procedures and treatment protocols; human resources, training and education; licensing and accreditation assistance; quality assurance and risk management; negotiation of purchasing

agreements; advice on information systems; financial services; operating and capital budget services; and general support services. Upon relocation to the new 45-bed freestanding facility, the service fee will be adjusted based the number of licensed beds with a cap of 150% of the then current service fee. The adjusted fee for the new free-standing facility will be calculated by (i) dividing the then current service fee by the number of licensed CON authorized beds at the Floyd Medical Center location, and (ii) multiplying the product by the number of CON authorized beds at the free-standing location.

VALUATION ANALYSIS

Marshall and Stevens Incorporated (“M&S”) performed a financial analysis appraisal on behalf of TSH to determine the value on a going-concern basis as of December 31, 2007 of the total common equity in TSH and to determine the value of an 80 percent equity interest in TSH. In its appraisal, M&S assumed that the assets and liabilities associated with FHR’s operation of TSH had been transferred to TSH (as provided in the Contribution Agreement).

Christopher Louis, Sr., Vice President of M&S, testified at the public hearing that M&S applied two approaches to determine the fair market value of TSH. M&S considered the market and the income approach in its analysis.³ In the income approach, M&S employed a Discounted Cash Flow (DCF) method whereby TSH’s debt-free net cash flows were projected for the years beginning with the year ending December 21, 2008, and projected through 2012, and then discounted to their present value. A terminal value, representing the value of TSH at the end of 2012, was estimated by applying a multiple (derived from the concluded discount rate and TSH’s projected long-term growth rate) to the 2013 projected debt-free net cash flow, and discounting the resulting product to present value. The sum of the present values of the debt-free cash flows for 2008 through 2012 was added to the terminal value to yield an indication of the fair market value of TSH’s invested capital.

M&S employed the market approach using the guideline companies method (“GCM”). Under the GCM, M&S used market multiples of Earnings Before Interest, Taxes, Depreciation and Amortization (“EBITDA”) based on market capitalizations and earnings of a group of publicly traded hospital companies believed to have some activity in the specialty hospital

³ M&S did not use the asset-based approach, nor did it apply the comparable transaction method of the market approach.

industry. M&S utilized the market multiples as a basis for selecting a multiple to apply to TSH's EBITDA for the fiscal year ended June 30, 2007, after adjusting the multiple to take into account the small size of TSH relative to the publicly traded guideline companies. M&S gave equal weight to its conclusions regarding the value for the owners' equity of TSH from both the income (\$10,020,000) and the market approach (\$10,330,000) and concluded that the total value of the owners' equity was \$10,175,000. M&S assumed that TSH will have net working capital of \$2,100,000 at the time of the closing based on the parties' acceptance that the amount is fairly stated and that the amount is in line with the guideline company industry requirements.

M&S did not initially include an appraisal of the 45-bed CON but supplemented its report at the request of this Office. M&S applied the cost approach to value the CON and concluded that the market value of the CON is \$88,000.

The Attorney General was assisted by the firm of Willamette Management Associates ("WMA") in the review of M&S' determination of fair market value. WMA noted that M&S's financial projections contemplating a steady increase in reimbursement rates at 3.0 percent per year and a sustained occupancy rate of 95 percent did not take into account for the historic occupancy rates of about 90 percent over the last three years and seasonal fluctuations impacting on occupancy levels. In addition, WMA's review of relevant industry data indicated Medicare reimbursement rates were unlikely to increase to 3.0 percent annually unless there were continued increases in TSH's Case Mix Index.

Regarding the working capital assumptions used by M&S, WMA noted that M&S concluded that the agreed upon amount of \$2.1 million was optimal. WMA further noted that at \$2.1 million, the net working capital to be conveyed under the terms of the transaction equates to 23.4 percent of annualized revenues for the six months ended December 31, 2007, whereas M&S assumed normal net working capital of 10 percent of revenues in its cash flow projections, indicating an inconsistency in M&S's assumptions. Based on these and other factors, WMA concluded that a 10 percent ratio of working capital to revenues, as utilized in M&S's DCF method, may not be adequate to support TSH's ongoing operations. WMA found that while the accounts receivable on TSH's balance sheet had increased to high levels in 2007, they may be overstated because they included accrued revenue from non-discharged patients, whereas, TSH's services are typically billed upon discharge. WMA noted that while TSH's management indicated delinquent accounts receivable had increased to unacceptable levels, TSH had recently

enhanced its accounts receivable collection efforts and instituted electronic billing for Medicare patients which should improve collections. WMA found that projected capital expenditures as utilized in M&S's DCF method may not be adequate to maintain the facilities in good working condition.

With respect to M&S' invested capital market multiple discount, WMA noted that it was internally inconsistent to apply a discount for size of the guideline companies based on equity returns to a multiple based on invested capital.

WMA found that M&S's appraisal methodology of using the cost associated with going through the CON application process to value the CON appeared conservative because the Georgia Department of Community Health frequently denies CON applications. The risks of defending a CON application on appeal or against other health care providers were not taken into consideration. WMA found that the cost approach is often used to value assets when there is no market transaction data available, and when it is impractical to estimate an income stream attributable to the asset in question. WMA's opinion was that it would be feasible to appraise both the existing business and the CON of TSH together by incorporating the costs, revenues and expenses associated with developing the new hospital into the projections used for the income approach. A valuation based on such a projection would inherently include the returns on all the assets to be employed by the new LTACH, including the CON, and as a result the indicated value would include the value of the CON.

Based on M&S's concluded value of invested capital (computed by adding the Hospital's debt to the concluded value of its equity) of \$10,307,327, and TSH's operating results for the twelve months ending on December 31, 2007, and number of licensed beds, the implied price-to-revenues multiple is 1.06. TSH currently has 24 licensed beds, which results in an implied price-to-bed ratio in the amount of \$429,472. WMA found that the ratios used by M&S indicate that the valuation given by M&S to TSH is at a premium to the market multiples indicated by the guideline transactions. Mr. Peter Ketchum of WMA testified at the public hearing that, although M&S applied aggressive assumptions in valuing the existing business and conservative assumptions in valuing the 45-bed CON, the valuation methodologies used by M&S are consistent with generally accepted industry standards and are appropriate for the circumstances.

PUBLIC COMMENT

The public hearing was held on April 22, 2008, at 5:30 p.m. at Floyd Corporate Support Center, 420 East Second Avenue, in Rome, Georgia. Only one member of the public, Susan Stovall, made a comment at the public hearing. Ms. Stovall supported the sale to RehabCare.

Following the public hearing, the record was held open until the close of business on April 25, 2008, for any further public comment. This Office did not receive any public comments after the public hearing. Counsel for Floyd Healthcare Resources and RehabCare were requested to inform this office in writing by April 25, 2008 as to whether their respective clients intended to proceed with the proposed transaction as structured or modify the proposed transaction in some respect. Counsel for both parties have written 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 *et seq.*; *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

Consistent with factor number 1, the disposition is authorized by applicable law since FHR may sell any part of its property pursuant to the Nonprofit Corporations Code and FHR has taken the appropriate corporate action to authorize the sale of an 80% membership interest in TSH. *See* O.C.G.A. §§ 14-3-302, 14-3-1202, 31-7-75(6). With respect to factor number 2, there are no major donors who have contributed over \$100,000 to the 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). Mr. Stuenkel’s testimony indicates that the decision to seek a joint venture partner was prompted by the growing need in the Northwest Georgia area for LTACH services, a demand which TSH cannot meet because of its small size. TSH currently leases beds from Floyd Medical Center. TSH began providing LTACH services in 2000 with 20 licensed beds and has since expanded to 24 licensed beds. The existing space at Floyd Medical Center is being operated at full capacity. The FHR Board recognized that the expansion of the existing “hospital within a hospital” would not be feasible because Floyd Medical Center is also in need of additional beds. Floyd Medical Center’s growing capacity constraints require the reclaiming of the 24 medical-surgical beds currently leased to TSH.

To satisfy the need for an expansion of TSH, the FHR Board voted to apply for a CON for a new freestanding 45-bed LTACH. The Board was aware when it applied for the new CON that FHR would not have the resources to finance the construction of the new freestanding facility, and obtained the CON for the purpose of selling TSH or seeking a joint venture partner. The Board ultimately decided to seek a joint venture partner on the basis that a joint venture would allow FHR to provide the community with a new facility without assuming the financial obligations of constructing a new facility. As stated above, the Board of FHR conducted a formal, comprehensive request for proposal process in selecting a joint venture partner. After conducting an unrestricted bid process, the Board voted to negotiate with two parties. After an extensive review process, the Board determined that RehabCare had the most to offer in terms of

sale price, capital commitment and benefit to the community. The deliberative process employed by the Board in selecting the proposal of RehabCare demonstrates the exercise of due diligence, consistent with factors number 3 and 4.

With regard to factor 8, the Seller entered into a services agreement with RehabCare for support services and ancillary services. The estimated cost of support services is \$480,504.00 annually, paid in monthly installments. Upon relocation to the new free-standing facility, the service fee will be adjusted based the CON authorized beds with a cap of 150% of the then current service fee. TSH previously used Fowler Healthcare Affiliates, Inc. as a management services provider. The proposed management fee to be paid to RehabCare appears to be significantly lower than the fees paid to Fowler Healthcare Affiliates, Inc.⁴ Thus, the services agreement with RehabCare appears to be reasonable.

Conflicts of Interest

The disclosure of any conflict of interest involving FHR, its chief executive officer and its expert consultant is required 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 board of FHR, by the chief executive officer of FHR and by FHR's expert consultant. Such certifications do not disclose any impermissible conflicting financial interest in the proposed transaction. With regard to factor number 13, RehabCare is a publicly traded corporation listed on the New York Stock Exchange with shares of stock available to, and actively traded by, members of the general public. RehabCare has confirmed, however, that it will not be offering health care providers an opportunity to invest or own an interest in TSH.

Valuation of the Hospital Assets

The value of the hospital and the amount of consideration to be paid in the proposed transaction must be weighed under factors number 6, 7 and 10. For the purposes of factor number 6, the sale of a membership interest in TSH to RehabCare, 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

⁴ WMA's independent research found that the proposed fee is approximately 5% of TSH's current revenues. If TSH is successful in increasing its revenues with the new 45 bed LTACH facility, the adjusted fee would be approximately 3.75%.

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] 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.”

The terms of the transaction support a finding that FHR will receive fair market value for the sale of its assets. A determination of the value of an 80% membership interest in TSH aids in the measurement of the consideration to be received by FHR, the nonprofit seller. The valuation analysis rendered by M&S indicates that the fair market value of TSH is within the range of the consideration to be paid by RehabCare for TSH. Mr. Ketchum testified that while

M&S applied “aggressive assumptions” in valuing the assets of TSH and “conservative assumptions” in valuing the 45-bed CON for the new LTACH, Marshall & Stevens’ valuation of TSH appears to be within a reasonable range of fair market value.

Since the Seller is not financing any portion of the proposed transaction, factor number 7 is not applicable. The proposed transaction complies with factor number 10 because the asset purchase agreement provides FHR with a right of first refusal to purchase TSH in the event RehabCare decides to consider a third-party offer to purchase the Hospital.

Charitable Purpose of the Proposed Transaction

With respect to the charitable purpose of the proposed transaction, factor number 9 requires that the disposition of proceeds be used for charitable health care purposes consistent with the nonprofit’s original purpose. Mr. Steunkel testified that FHR was formed by the Hospital Authority “to support the overall mission” of Floyd Medical Center. FHR plans to donate the proceeds from the sale of TSH to Floyd Medical Center for its continued healthcare expansion programs. Mr. Steunkel also testified that Floyd Medical Center currently provides “well over tens of millions of dollars in indigent care” to the community. Thus, the donation of proceeds is consistent with the original purpose of FHR because the proceeds will be used to support Floyd Medical Center.

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 CON for the freestanding 45-bed facility requires that TSH devote 3% of its gross revenue to charity care. RehabCare states that after the acquisition, TSH will maintain its average historical level of indigent and charity care and will commit to providing a minimum of 3% of gross revenues to charity care. Moreover, TSH must continue to provide charitable care because FHR, a nonprofit corporation, will continue to hold a 20% membership interest in TSH. As a nonprofit, tax-exempt organization, FHR is required to conduct business operations in a way that is consistent with its charitable purpose and mission. The Amended and Restated Operating Agreement provides that RehabCare will operate TSH in a manner that will ensure that TSH satisfies the community benefit standards of the Internal Revenue Code which provides FHR with tax exempt status as a charitable organization. RehabCare has also committed to provide

healthcare to individuals consistent with the anti-discrimination policy which ensures that all individuals who seek care are provided such care, regardless of age, sex, race, religion, national origin, handicap, or ability to pay.


The construction of the new 45-bed LTACH facility will provide TSH with the ability to serve more patients. RehabCare's strategic plan for TSH includes initiatives to improve patient quality and satisfaction. The increased patient volume will enable RehabCare to expand the clinical programs and services currently being provided by TSH. Thus, the record testimony and documents demonstrate sufficient safeguards to assure the community of continued access to affordable care and to the range of services historically provided by TSH. 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.

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 21ST day of May, 2008.


JULIE ADAMS JACOBS
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.