

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**The North Carolina Medical Care Commission  
809 Ruggles Drive  
Raleigh, North Carolina**

**MINUTES**

**CALLED MEETING OF THE EXECUTIVE COMMITTEE  
CONFERENCE TELEPHONE MEETING ORIGINATING  
FROM THE COMMISSION'S OFFICE**

**September 22, 2011**

**11:00 A.M.**

**Members of the Executive Committee Present:**

Lucy Hancock Bode, Chairman  
Joseph D. Crocker, Vice-Chairman  
Dr. George Binder  
Gerald P. Cox  
Charles T. Frock  
Dr. Robert E. Schaaf

**Members of the Executive Committee Absent:**

Dr. Carl K. Rust

**Members of Staff Present:**

Drexdal Pratt, DHSR Director/MCC Secretary  
Christopher B. Taylor, CPA, Assistant Secretary  
Alice S. Creech, Bond Program Assistant

**Others Present:**

Allen K. Robertson, Robinson Bradshaw & Hinson, P.A.  
Robert N. Willis, Jr., Duke University Health System

1. **Purpose of Meeting**

To consider approval of (1) the conversion of the Commission's Health Care Facilities Revenue Bonds (Duke University Health System) Series 2006, consisting of Series 2006A, Series 2006B and Series 2006C to "Bank-Bought Index Floating Rates," and (2) a First Supplemental Trust Indenture relating to the Commission's Health Care Facilities Revenue Bonds (Pungo District Hospital Corporation Project), Series 1997.

2. **Resolution of the North Carolina Medical Care Commission Approving the Conversion of the North Carolina Medical Care Commission Health Care Facilities Revenue Bonds (Duke University Health System) Series 2006, consisting of Series 2006A, Series 2006B and Series 2006C, to "Bank-Bought Index Floating Rates."** –

Remarks were made by Allen Robertson

**Executive Committee Action:** A motion was made by Mr. Joe Crocker, seconded by Mr. Gerald Cox and unanimously approved with Mrs. Lucy Bode and Dr. Robert Schaaf abstaining from the vote.

WHEREAS, the North Carolina Medical Care Commission (the "Commission") is a commission of the Department of Health and Human Services of the State of North Carolina and is authorized under Chapter 131A of the General Statutes of North Carolina, as amended (the "Act"), to borrow money and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of financing or refinancing health care facilities and to refund bonds previously issued by the Commission; and

WHEREAS, Duke University Health System, Inc. (the "Corporation") is a nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State of North Carolina and is a "non-profit agency" within the meaning of the Act; and

WHEREAS, on November 15, 2006, the Commission issued its Health Care Facilities Revenue Bonds (Duke University Health System) Series 2006, consisting of (a) Series 2006A in the aggregate principal amount of \$65,355,000, of which \$63,205,000 aggregate principal amount is outstanding (the "2006A Bonds"), (b) Series 2006B in the aggregate principal amount of \$65,360,000, of which \$63,210,000 aggregate principal amount is outstanding (the "2006B Bonds"), and (c) Series 2006C in the aggregate principal amount of \$20,000,000, of which \$19,300,000 aggregate principal amount is outstanding (the "2006C Bonds" and together with the 2006A Bonds and the 2006B Bonds, the "Bonds"), pursuant to Trust Agreements dated as of November 1, 2006 (collectively, the "Original Trust Agreements") between the Commission and The Bank of New York Trust Company, N.A., now known as The Bank of New York Mellon Trust Company, N.A., as trustee, and loaned the proceeds from the sale of the Bonds to the Corporation pursuant to Loan Agreements dated as of November 1, 2006 (collectively, the "Original Loan Agreements") between the Commission and the Corporation; and

WHEREAS, since they were issued, the Bonds have been bearing interest at an Index Put Rate (as defined in the Original Trust Agreements); and

WHEREAS, Bank of America, N.A. (the “Bank Holder”) has offered to purchase and hold the Bonds for seven years at a variable interest rate equal to 67% of one-month LIBOR plus 0.48%, subject to adjustment under certain circumstances; and

WHEREAS, to enable the Bank Holder to purchase and hold the Bonds, the Original Trust Agreements must be amended and restated to add a “Bank-Bought Index Floating Rate” mode and then the Bonds must be remarketed to the Bank Holder upon conversion to that mode; and

WHEREAS, the conversion of the Bonds to the Bank-Bought Index Floating Rate mode (the “Conversion”) will be treated as a “reissuance” (i.e., a deemed current refunding) of the Bonds for federal income tax purposes; and

WHEREAS, by a resolution adopted on July 28, 2011, the Commission preliminarily approved the Conversion, subject to compliance by the Corporation with the conditions set forth in such resolution, and the Corporation has complied with such conditions to the satisfaction of the Commission; and

WHEREAS, there have been presented at this meeting draft copies of the following documents relating to the Conversion:

(a) an Amended and Restated Trust Agreement dated as of October 6, 2011 (the “2006A Trust Agreement”), between the Commission and The Bank of New York Mellon Trust Company, N.A., as bond trustee (the “2006A Bond Trustee”), securing the 2006A Bonds;

(b) an Amended and Restated Loan Agreement dated as of October 6, 2011 (the “2006A Loan Agreement”), between the Commission and the Corporation, related to the 2006A Bonds;

(c) an Amended and Restated Supplemental Indenture for Obligation No. 23 dated as of October 6, 2011 (“Supplement No. 23”), between the Corporation and The Bank of New York Mellon Trust Company, N.A., in its capacity as master trustee (the “Master Trustee”), under the Master Trust Indenture dated as of April 13, 1999 (as supplemented, the “Master Indenture”), between the Corporation, Durham Therapies, Incorporated and The Bank of New York (the “Original Master Trustee”);

(d) Amended and Restated Obligation No. 23, dated as of October 6, 2011 (“Obligation No. 23”) from the Corporation to the Commission, and the Assignment of Obligation No. 23 from the Commission to the 2006A Bond Trustee;

(e) an Amended and Restated Tender Agent Agreement dated as of October 6, 2011 (the “2006A Tender Agreement”), among the 2006A Bond Trustee, the Corporation

and The Bank of New York Mellon Trust Company, N.A., as tender agent (the “2006A Tender Agent”), related to the 2006A Bonds;

(f) a Guaranty and Credit Agreement dated as of October 6, 2011 (the “2006A Guaranty Agreement”) between the Corporation and the Bank Holder;

(g) a Supplemental Indenture for Obligation No. 29 dated as of October 6, 2011 (“Supplement No. 29”), between the Corporation and the Master Trustee, under the Master Indenture;

(h) Obligation No. 29, dated as of October 6, 2011 (“Obligation No. 29”), from the Corporation to the Bank Holder;

(i) an Amended and Restated Trust Agreement dated as of October 6, 2011 (the “2006B Trust Agreement”), between the Commission and The Bank of New York Mellon Trust Company, N.A., as bond trustee (the “2006B Bond Trustee”), securing the 2006B Bonds;

(j) an Amended and Restated Loan Agreement dated as of October 6, 2011 (the “2006B Loan Agreement”), between the Commission and the Corporation, related to the 2006B Bonds;

(k) an Amended and Restated Supplemental Indenture for Obligation No. 24 dated as of October 6, 2011 (“Supplement No. 24”), between the Corporation and the Master Trustee, under the Master Indenture;

(l) Amended and Restated Obligation No. 24, dated as of October 6, 2011 (“Obligation No. 24”), from the Corporation to the Commission, and the Assignment of Obligation No. 24 from the Commission to the 2006B Bond Trustee;

(m) an Amended and Restated Tender Agent Agreement dated as of October 6, 2011 (the “2006B Tender Agreement”), among the 2006B Bond Trustee, the Corporation, and The Bank of New York Mellon Trust Company, N.A., as tender agent (the “2006B Tender Agent”), related to the 2006B Bonds;

(n) a Guaranty and Credit Agreement dated as of October 6, 2011 (the “2006B Guaranty Agreement”) between the Corporation and the Bank Holder;

(o) a Supplemental Indenture for Obligation No. 30 dated as of October 6, 2011 (“Supplement No. 30”), between the Corporation and the Master Trustee, under the Master Indenture;

(p) Obligation No. 30, dated as of October 6, 2011 (“Obligation No. 30”), from the Corporation to the Bank Holder;

(q) an Amended and Restated Trust Agreement dated as of October 6, 2011 (the “2006C Trust Agreement” and, collectively with the 2006A Trust Agreement and the 2006B Trust Agreement, the “Trust Agreements”), between the Commission and The

Bank of New York Mellon Trust Company, N.A., as bond trustee (the “2006C Bond Trustee” and, collectively with the 2006A Bond Trustee and the 2006B Bond Trustee, the “Bond Trustees”), securing the 2006C Bonds;

(r) an Amended and Restated Loan Agreement dated as of October 6, 2011 (the “2006C Loan Agreement” and, collectively with the 2006A Loan Agreement and the 2006B Loan Agreement, the “Loan Agreements”), between the Commission and the Corporation, related to the 2006C Bonds;

(s) an Amended and Restated Supplemental Indenture for Obligation No. 25 dated as of October 6, 2011 (“Supplement No. 25” and, collectively with Supplement No. 23 and Supplement No. 24, the “Bond Supplements”), between the Corporation and the Master Trustee, under the Master Indenture;

(t) Amended and Restated Obligation No. 25, dated as of October 6, 2011 (“Obligation No. 25” and, collectively with Obligation No. 23 and Obligation No. 24, the “Bond Obligations”), from the Corporation to the Commission, and the Assignment of Obligation No. 25 from the Commission to the 2006C Bond Trustee;

(u) an Amended and Restated Tender Agent Agreement dated as of October 6, 2011 (the “2006C Tender Agreement” and, collectively with the 2006A Tender Agreement and the 2006B Tender Agreement, the “Tender Agreements”), among the 2006C Bond Trustee, the Corporation and The Bank of New York Mellon Trust Company, N.A., as tender agent (the “2006C Tender Agent” and, collectively with the 2006A Tender Agent and the 2006B Tender Agent, the “Tender Agents”), related to the 2006C Bonds;

(v) a Guaranty and Credit Agreement dated as of October 6, 2011 (the “2006C Guaranty Agreement,” and collectively with the 2006A Guaranty Agreement and the 2006B Guaranty Agreement, the “Guaranty Agreements”), between the Corporation and the Bank Holder;

(w) a Supplemental Indenture for Obligation No. 31 dated as of October 6, 2011 (“Supplement No. 31,” and collectively with Supplement No. 29 and Supplement No. 30, the “Bank Supplements”; the Bond Supplements and the Bank Supplements being referred to collectively as the “Supplements”), between the Corporation and the Master Trustee, under the Master Indenture; and

(x) Obligation No. 31, dated as of October 6, 2011 (“Obligation No. 31,” and collectively with Obligation No. 29 and Obligation No. 30, the “Bank Obligations”; the Bond Obligations and the Bank Obligations being referred to collectively as the “Obligations”), from the Corporation to the Bank Holder;

NOW, THEREFORE, THE NORTH CAROLINA MEDICAL CARE COMMISSION DOES HEREBY RESOLVE, as follows:

Section 1. Capitalized words and terms used in this Final Resolution and not defined herein shall have the same meanings in this Final Resolution as such words and terms are given in the Master Indenture, the Trust Agreements and the Loan Agreements.

Section 2. Pursuant to the authority granted to it by the Act, the Commission hereby authorizes and approves the Conversion.

As set forth in the Original Trust Agreements and the Trust Agreements, the Bonds mature on June 1, 2039 and are subject to the Sinking Fund Requirements set forth in Schedule 1 hereto.

Section 3. The forms, terms and provisions of the Trust Agreements and the Loan Agreements are hereby approved in all respects, and the Chairman, Vice Chairman (or any other member of the Commission designated by the Chairman), Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the Trust Agreements and the Loan Agreements in substantially the forms presented at this meeting, together with such changes, modifications, insertions and deletions as they, with the advice of counsel, may deem necessary and appropriate, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 4. The forms of the Bonds of each Series set forth in the applicable Trust Agreement are hereby approved in all respects, and the Chairman or Vice Chairman (or any other member of the Commission designated by the Chairman) and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute, by manual or facsimile signature as provided in such forms of the Bonds of such Series, and to deliver to the applicable Bond Trustee for authentication on behalf of the Commission, the Bonds of such Series in definitive form, which shall be in substantially the forms presented at this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary, appropriate and consistent with the applicable Trust Agreement, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 5. The forms of the Supplements and the Obligations are hereby approved in substantially the forms presented to this meeting, together with such changes, modifications, insertions and deletions as the Chairman, Vice Chairman (or any other member of the Commission designated by the Chairman), Secretary or any Assistant Secretary of the Commission, with the advice of counsel, may deem necessary and appropriate, and the execution and delivery of the Trust Agreements by the Commission shall be conclusive evidence of the approval of the documents listed in this Section by the Commission.

Section 6. Lucy H. Bode, Chairman of the Commission, Drexal R. Pratt, Secretary of the Commission, Christopher B. Taylor, C.P.A., Assistant Secretary of the Commission, and Kathy C. Larrison, Auditor to the Commission, are each hereby appointed a Commission Representative as that term is defined in the Loan Agreements, with full power to carry out the duties set forth therein.

Section 7. The Chairman, Vice Chairman (or any other member of the Commission designated by the Chairman), Secretary and any Assistant Secretary of the Commission are each authorized and directed (without limitation except as may be expressly set forth herein) to take such action and to execute and deliver any such documents, certificates, undertakings, agreements or other instruments as they, with the advice of counsel, may deem necessary or appropriate to effect the Conversion.

Section 8. This Final Resolution shall take effect immediately upon its passage.

3. **Resolution of the North Carolina Medical Care Commission Approving and Authorizing Execution and Delivery of a First Supplemental Trust Indenture relating to the North Carolina Medical Care Commission Health Care Facilities Revenue Bonds (Pungo District Hospital Corporation Project), Series 1997** –  
Remarks were made by Allen Robertson

**Executive Committee Action:** A motion was made by Mr. Charles Frock, seconded by Mr. Joe Crocker and unanimously approved.

WHEREAS, the North Carolina Medical Care Commission (the “Commission”), a commission of the Department of Health and Human Services of the State of North Carolina, has issued \$4,000,000 aggregate principal amount of its Health Care Facilities Revenue Bonds (Pungo District Hospital Corporation Project), Series 1997, \$1,600,000 principal amount of which are currently outstanding, pursuant to the terms of a Trust Indenture, dated as of December 1, 1997 (the “Trust Indenture”), between the Commission and First-Citizens Bank & Trust Company, succeeded by U.S. Bank National Association, as trustee (the “Trustee”); and

WHEREAS, the Commission loaned the proceeds from the sale of the Bonds to Pungo District Hospital Corporation (the “Borrower”) pursuant to a Loan Agreement, dated as of December 1, 1997 (the “Loan Agreement”), between the Commission and the Borrower; and

WHEREAS, the Loan Agreement provides for the payment by the Borrower of amounts sufficient to pay the principal of, premium, if any, and interest on the Bonds and other costs incurred in connection with the Bonds; and

WHEREAS, pursuant to the Trust Indenture the Commission assigned to the Trustee as security for the Bonds certain of the Issuer’s rights under the Agreement; and

WHEREAS, as additional security for the payment of principal of and interest on the Bonds and the purchase price of tendered Bonds, the Borrower caused an irrevocable, direct-pay letter of credit (the “Credit Facility”) to be issued by Centura Bank, now known as RBC Bank (USA) (the “Credit Issuer”), simultaneously with the issuance of the Bonds; and

WHEREAS, the Borrower desires to defease the Bonds on or after September 30, 2011 in order to facilitate the acquisition of the Borrower by University Health Systems of Eastern Carolina, Inc. (“UHSEC”); and

WHEREAS, the Trust Indenture does not provide for defeasance of the Bonds while the Bonds bear interest at the Weekly Rate (as defined in the Trust Indenture) by irrevocably depositing Eligible Funds (as defined in the Trust Indenture) with the Trustee in trust; and

WHEREAS, Section 12.1(g) of the Trust Indenture permits the Commission and the Trustee, without the consent of any Holder (as defined in the Trust Indenture) but with the consent of the Credit Issuer, to enter into indentures supplemental to the Trust Indenture to make any provision with respect to matters or questions arising under the Trust Indenture if such supplemental indenture shall not materially adversely affect the interest of the Holders or the Credit Issuer; and

WHEREAS, there has been presented at this meeting a draft copy of a First Supplemental Trust Agreement, to be dated on or after September 30, 2011 (the "Supplement") between the Commission and the Trustee, that would amend the Trust Indenture in order to provide for defeasance of the Bonds while the Bonds bear interest at the Weekly Rate by irrevocably depositing Eligible Funds with the Trustee in trust; and

WHEREAS, the Corporation has requested that the Commission approve the Supplement and authorize its execution and delivery;

NOW, THEREFORE, THE NORTH CAROLINA MEDICAL CARE COMMISSION DOES HEREBY RESOLVE, as follows:

Section 1. The forms, terms and provisions of the Supplement are hereby approved in all respects, and the Chairman, Vice Chairman, Secretary or Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) are hereby authorized and directed to execute and deliver the Supplement in substantially the form presented at this meeting, together with such changes, modifications and deletions as they, with the advice of bond counsel, may deem necessary and appropriate, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 2. The Chairman, Vice Chairman, Secretary or Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) or any duly authorized Commission Representative under the Trust Indenture are authorized and directed to take such other action and to execute and deliver any such other documents, certificates, undertakings, agreements or other instruments as they, with the advice of bond counsel, may deem necessary or appropriate to effect the defeasance and redemption of the Bonds.

Section 3. This Resolution shall take effect immediately upon its passage.

4. **Adjournment**

There being no further business, the meeting was adjourned at 11:15 a.m.

Respectfully submitted,

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Christopher B. Taylor, C.P.A.  
Assistant Secretary

Required Redemption of the Series 2006A Bonds

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2012	2,240,000	2033	4,655,000
2013	2,505,000	2034	4,790,000
2014	2,695,000	2035	4,915,000
2015	2,885,000	2036	5,075,000
2029	4,120,000	2037	5,230,000
2030	4,265,000	2038	5,380,000
2031	4,390,000	2039*	5,540,000
2032	\$ 4,520,000		

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\* Maturity

Required Redemption of the Series 2006B Bonds

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2012	2,235,000	2033	4,655,000
2013	2,510,000	2034	4,790,000
2014	2,690,000	2035	4,920,000
2015	2,885,000	2036	5,080,000
2029	4,115,000	2037	5,230,000
2030	4,265,000	2038	5,380,000
2031	4,390,000	2039*	5,545,000
2032	\$ 4,520,000		

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\* Maturity

Required Redemption of the Series 2006C Bonds

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2012	725,000	2033	1,405,000
2013	815,000	2034	1,445,000
2014	875,000	2035	1,485,000
2015	935,000	2036	1,530,000
2029	1,240,000	2037	1,575,000
2030	1,285,000	2038	1,625,000
2031	1,325,000	2039*	1,670,000
2032	\$ 1,365,000		

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\* Maturity

Professional Fees Comparison for  
Duke University Health System, Inc.  
Series 2006A, 2006B and 2006C Conversions

<u>Professional</u>	<u>Fees Estimated In Preliminary Approval Resolution</u>	<u>Actual Fees</u>
Bank counsel	\$25,000	\$25,000
Bond counsel	75,000	75,000
Corporation counsel	26,500	26,500
Bank commitment fee	14,500	10,000