

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
JUNE 14, 2012
11:00 A.M.**

Members of the Executive Committee Present:

Joseph D. Crocker, Vice-Chairman
Dr. George A. Binder
George H.V. Cecil
Albert F. Lockamy

Members of the Executive Committee Absent:

Lucy Hancock Bode, Chairman
Mary L. Piepenbring
Dr. Carl K. Rust

Members of Staff Present:

Christopher B. Taylor, CPA, Assistant Secretary
Alice S. Creech, Bond Program Assistant

Others Present:

Paul Billow, Womble Carlyle Sandridge & Rice, PLLC
Christopher McCann, JP Morgan Securities, LLP
Allen Robertson, Robinson Bradshaw & Hinson, P.A.
Caleb Stephenson, JP Morgan Securities, LLP
Peter Stevens, JP Morgan Securities, LLP

1. **Purpose of Meeting**

To authorize the sale of bonds, the proceeds of which are to be loaned to Duke University Health System, Inc. and a resolution approving a First Amendment to a Loan Agreement relating to the North Carolina Medical Care Commission Variable Rate Demand Health System Refunding Bonds for Transylvania Regional Hospital, Series 2011.

2. **Resolution Approving a First Amendment to Loan Agreement Relating to the North Carolina Medical Care Commission Variable Rate Demand Health System Refunding Revenue Bonds (Transylvania Regional Hospital), Series 2011 and Certain Other Matters Related Thereto** – Remarks were made by Paul Billow.

Executive Committee Action: A motion was made by Dr. George Binder, seconded by Mr. Al Lockamy, and unanimously approved with Mr. George Cecil 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

WHEREAS, the Commission has heretofore issued its Variable Rate Demand Health System Refunding Revenue Bonds (Transylvania Regional Hospital), Series 2011, dated as of August 24, 2011, in the aggregate principal amount of \$14,655,000 (the “Bonds”), and loaned the proceeds thereof to Transylvania Community Hospital, Inc. (the “Corporation”), which is a North Carolina nonprofit and a “non-profit agency” within the meaning and intent of the Act, which operates, by itself and through its affiliates, various health care facilities; and

WHEREAS, pursuant to a Guaranty Agreement, dated as of August 1, 2011 (the “Guaranty Agreement”), between Mission Health System, Inc. (“Mission Health”) and Wells Fargo Bank, National Association, as the initial holder and purchaser of the Bonds (“Wells Fargo”), Mission Health agreed to guarantee certain obligations of the Corporation with respect to the Bonds; and

WHEREAS, the Corporation has previously granted a lien on certain of its real and personal property in favor of Mission Health to secure its reimbursement obligations to Mission Health (the “Reimbursement Obligations”) with respect to the Guaranty Agreement pursuant to a Security Agreement, dated August 24, 2011 (the “Security Agreement”), between the Corporation and Mission Health, and a Deed of Trust, dated August 24, 2011 (the “Deed of Trust”), from the Corporation to the deed of trust trustee named therein for the benefit of Mission Health; and

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WHEREAS, the Corporation proposes to enter into a Guaranty Agreement, dated as of the date of delivery thereof (the "THS Guaranty Agreement"), between the Corporation and Mission Health, pursuant to which the Corporation will provide a guaranty with respect to certain loan repayment obligations of Transylvania Health System, Inc. to Mission Health; and

WHEREAS, the Corporation desires to amend the Security Agreement and the Deed of Trust to secure its obligations to Mission Health under the THS Guaranty Agreement on the same terms as the Reimbursement Obligations; and

WHEREAS, it is necessary for the Commission and the Corporation to amend the definition of Permitted Liens set forth in Section 5.04(b) of the Loan Agreement, dated as of August 1, 2011 (the "Loan Agreement"), between the Commission and the Corporation, to include the lien in favor of Mission Health with respect to the Corporation's obligations under the THS Guaranty Agreement as a Permitted Lien under the Loan Agreement; and

WHEREAS, the Commission and the Corporation will effect such amendment pursuant to a First Amendment to Loan Agreement, to be dated as of June 1, 2012 or such other mutually agreeable date (the "First Amendment"), between the Commission and the Corporation, as consented to by Wells Fargo, as the holder of the Bonds; and

WHEREAS, a draft form of the First Amendment has been presented at this meeting; and

WHEREAS, Wells Fargo Bank, National Association will be required to consent to such amendment as the sole Holder of the Bonds; and

WHEREAS, the Commission has determined that the Corporation and Mission Health are financially responsible and capable of fulfilling their obligations under the proposed transaction;

NOW THEREFORE, BE IT RESOLVED by the Executive Committee of the North Carolina Medical Care Commission as follows:

Section 1. The form, terms and provisions of the First Amendment are hereby authorized and approved in all respects, and each of the Chairman, the Vice Chairman and the Secretary or any Assistant Secretary of the Commission (the "Authorized Officers") are each hereby authorized to execute and deliver on behalf of the Commission the First Amendment in substantially the form presented at this meeting, together with such additions, deletions or other modifications not inconsistent with the general tenor of said document as the Authorized Officer executing such document, with the advice of counsel, may deem necessary or appropriate, such execution and delivery to be conclusive evidence of the authorization and approval thereof by the Commission.

Section 2. The Authorized Officers are hereby authorized and directed to take such action and to execute and deliver any and all certificates, undertakings, agreements or other instruments as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by this resolution and the documents described in this resolution.

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

3. **Resolution of the North Carolina Medical Care Commission Authorizing the Issuance of \$300,000,000 North Carolina Medical Care Commission Health Care Facilities Revenue Bonds (Duke University Health System) Series 2012A (the “Bonds”)** – Remarks were made by Allen Robertson and Peter Stevens.

Executive Committee Action: A motion was made by Dr. George Binder, seconded by Mr. Al Lockamy and unanimously approved.

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

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, the Corporation has made application to the Commission for a loan for the purpose of providing funds, together with other available funds, to (a) acquire, construct, improve, renovate, expand and equip the health care facilities of the Corporation on the campus of Duke University Hospital, which is located on the main campus of Duke University at Erwin Road, Durham, North Carolina, including the acquisition, construction, installation and equipping of Duke Medicine Pavilion (“DMP”), including (1) a new 609,000 square-foot tertiary-care addition that will include four 24-bed intensive-care units, two 32-bed intermediate/step-down units, 16 additional operating rooms, expanded imaging facilities, and patient- and family-oriented amenities; (2) a new two-story 9,000 square-foot South Concourse connector corridor between the existing Cancer Center and Duke Clinics and the DMP; (3) a new two-story 46,000 square-foot North Concourse connector corridor between the DMP and existing Duke Hospital North; (4) the renovation of approximately 29,000 square feet of space in the existing Duke Hospital North to accommodate the connection to the DMP; and (5) a road-improvement project required to complete and operate the DMP (collectively, the “Project”); and (b) pay certain expenses incurred in connection with the issuance of the Bonds (as defined below) by the Commission; and

WHEREAS, the Commission has determined that the public will best be served by the proposed financing and, by a resolution adopted by the Commission on May 11, 2012, has approved the issuance of the Bonds, 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 issuance of the Bonds:

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(a) a Contract of Purchase, dated June 14, 2012 (the “Purchase Agreement”), between the Local Government Commission of North Carolina and J.P. Morgan Securities LLC and the other underwriters named therein (collectively, the “Underwriters”), and approved by the Commission and the Corporation, pursuant to which the Underwriters have agreed to purchase the Bonds on the terms and conditions set forth therein and in the Trust Agreement (as defined below);

(b) a Trust Agreement, dated as of June 1, 2012 (the “Trust Agreement”), between the Commission and The Bank of New York Mellon Trust Company, N.A., as bond trustee (the “Bond Trustee”), the provisions of which relate to the issuance of and security for the Bonds and includes the form of the Bonds;

(c) a Loan Agreement, dated as of June 1, 2012 (the “Loan Agreement”), between the Commission and the Corporation, pursuant to which the Commission will lend the proceeds of the Bonds to the Corporation;

(d) a Supplemental Indenture for Obligation No. 35 dated as of June 1, 2012 (“Supplement No. 35”), between the Corporation and The Bank of New York Mellon Trust Company, N.A., as Master Trustee (the “Master Trustee”) under the Master Trust Indenture, dated as of April 13, 1999 (as supplemented, the “Master Indenture”), by and among the Corporation, Durham Therapies, Incorporated and The Bank of New York, succeeded by The Bank of New York Mellon Trust Company, N.A.;

(e) Obligation No. 35, to be dated as of the date of delivery of the Bonds (“Obligation No. 35”), to be issued by the Corporation to the Commission; and

(f) a Preliminary Official Statement of the Commission dated June 5, 2012 relating to the Bonds (the “Preliminary Official Statement”); and

WHEREAS, the Commission has determined that the Corporation is financially responsible and capable of fulfilling its obligations under the Loan Agreement, the Master Indenture, Supplement No. 35 and Obligation No. 35; and

WHEREAS, the Commission has determined that adequate provision has been made for the payment of the principal of, redemption premium, if any, and interest on the Bonds;

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

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

Section 2. Pursuant to the authority granted to it by the Act, the Commission hereby authorizes the issuance of North Carolina Medical Care Commission Health Care Facilities Revenue Bonds (Duke University Health System) Series 2012A (the “Bonds”) in the aggregate principal amount of \$300,000,000. The Bonds shall mature in such amounts and at such times,

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be subject to Sinking Fund Requirements and bear interest at such rates as are set forth in Schedule 1 attached hereto.

The Bonds shall be issued as fully registered bonds in the denominations of \$5,000 or any whole multiple thereof. The Bonds shall be issuable in book-entry form as provided in the Trust Agreement. Interest on the Bonds shall be paid on each June 1 and December 1, beginning December 1, 2012, to and including June 1, 2042. Payments of principal of and interest on the Bonds shall be forwarded by the Bond Trustee to the registered owners of the Bonds in such manner as is set forth in the Trust Agreement.

Section 3. The Bonds shall be subject to optional, extraordinary and mandatory redemption, all at the times, upon the terms and conditions, and at the prices set forth in the Trust Agreement.

Section 4. The proceeds of the Bonds shall be applied as provided in Section 2.08 of the Trust Agreement. The Commission hereby finds that the use of the proceeds of the Bonds to finance a portion of the cost of the Project and to pay costs of issuing the Bonds will accomplish the public purposes set forth in the Act.

Section 5. The forms, terms and provisions of the Trust Agreement and the Loan 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 and deliver the Trust Agreement and the Loan Agreement 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 and appropriate, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 6. The form, terms and provisions of the Purchase Agreement 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 Purchase Agreement in substantially the form 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 7. The form of the Bonds set forth in the Trust Agreement is 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 form of the Bonds, and to deliver to the Bond Trustee for authentication on behalf of the Commission, the Bonds in definitive form, which shall be in substantially the form 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 Trust

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Agreement, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 8. The forms, terms and provisions of Supplement No. 35 and Obligation No. 35 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 Agreement by the Commission shall be conclusive evidence of the approval of the documents listed in this Section by the Commission.

Section 9. The Commission hereby approves the action of the Local Government Commission in awarding the Bonds to the Underwriters at the purchase price of \$324,816,126.88 (representing the principal amount of the Bonds plus original issue premium of \$26,853,753 and less underwriters' discount of \$2,037,626.12).

Section 10. Upon their execution in the form and manner set forth in the Trust Agreement, the Bonds shall be deposited with the Bond Trustee for authentication, and the Bond Trustee is hereby authorized and directed to authenticate the Bonds and, upon the satisfaction of the conditions set forth in Section 2.08 of the Trust Agreement, the Bond Trustee shall deliver the Bonds to the Underwriters against payment therefor.

Section 11. The Commission hereby approves and ratifies the use and distribution of the Preliminary Official Statement and approves the use and distribution of a final Official Statement (the "Official Statement"), both in connection with the offer and sale of the Bonds. The Chairman, Vice Chairman (or any other member of the Commission designated by the Chairman), Secretary and any Assistant Secretary are hereby authorized to execute, on behalf of the Commission, the Official Statement in substantially the form of the Preliminary Official Statement, together with such changes, modifications and deletions as they, with the advice of counsel, may deem appropriate. Such execution shall be conclusive evidence of the approval thereof by the Commission. The Commission hereby approves and authorizes the distribution and use of copies of the Official Statement, the Trust Agreement, the Loan Agreement, the Master Indenture, Supplement No. 35 and Obligation No. 35 by the Underwriters in connection with such offer and sale.

Section 12. The Bank of New York Mellon Trust Company, N.A. is hereby appointed as the initial Bond Trustee for the Bonds.

Section 13. The Depository Trust Company, New York, New York is hereby appointed as the initial Securities Depository for the Bonds, with Cede & Co., a nominee thereof, being the initial Securities Depository Nominee and initial registered owner of the Bonds.

Section 14. Drexdal R. Pratt, Secretary of the Commission, Christopher B. Taylor, C.P.A., Assistant Secretary of the Commission, Steven C. Lewis, Chief of the Construction Section of the Division of Health Service Regulation, and Kathy C. Larrison, Auditor of the

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Commission, are each hereby appointed a Commission Representative as that term is defined in the Loan Agreement, with full power to carry out the duties set forth therein.

Section 15. 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 hereby 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 transactions contemplated by the Trust Agreement, the Loan Agreement, the Purchase Agreement and the Official Statement.

Section 16. This Series Resolution shall take effect immediately upon its passage.

4. Adjournment

There being no further business, the meeting was adjourned at 11:30 a.m.

Respectfully submitted,

Christopher B. Taylor
Assistant Secretary

Maturity Schedule

\$31,985,000 Serial Bonds

<u>Due June 1</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2013	\$6,640,000	2.00%
2014	5,780,000	3.00
2015	6,065,000	4.00
2016	1,945,000	5.00
2017	1,265,000	4.00
2018	1,025,000	2.00
2019	1,005,000	3.00
2020	955,000	4.00
2021	1,025,000	5.00
2022	1,010,000	5.00
2023	1,150,000	5.00
2024	1,010,000	5.00
2025	1,055,000	5.00
2026	1,030,000	5.00
2027	1,025,000	5.00

\$59,910,000 5.00% Term Bonds due June 1, 2032

<u>Due June 1</u>	<u>Sinking Fund Requirement</u>
2028	\$ 1,000,000
2029	13,795,000
2030	14,350,000
2031	15,015,000
2032	15,750,000

\$52,210,000 5.00% Term Bonds due June 1, 2035

<u>Due June 1</u>	<u>Sinking Fund Requirement</u>
2033	\$16,555,000
2034	17,375,000
2035	18,280,000

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\$155,895,000 5.00% Term Bonds due June 1, 2042

<u>Due June 1</u>	<u>Sinking Fund Requirement</u>
2036	\$19,140,000
2037	20,110,000
2038	21,110,000
2039	22,170,000
2040	23,280,000
2041	24,445,000
2042	25,640,000

Professional Fees Comparison for
DUHS 2012A Bonds

<u>Professional</u>	<u>Fees Estimated In Preliminary Approval Resolution</u>	<u>Actual Fees</u>
Underwriters' discount	\$2,000,766	\$2,037,626
Accountants	66,000	66,000
Corporation counsel	60,000	45,000
Bond counsel	125,000	105,000
Underwriters' counsel	85,000	75,000
Financial Advisor	105,000	60,000