

Restoring Accountability, Transparency and Oversight to Florida's Public Hospitals: Proposed Legislative Revisions to Florida Statute § 155.40

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I. INTRODUCTION

In the 1982, the Legislature authorized Florida's counties, independent hospital districts and municipalities to enter into leases and other contracts with corporations for the purpose of managing and operating public hospitals. *See* Chapter 82-147, Laws of Florida, §§ 3-4 (codified as amended at FLA. STAT. § 155.40). Since that time, Section 155.40 has been severely criticized by Florida's courts for its lack of public accountability, transparency and oversight.¹

While the Legislature has since amended Section 155.40 to begin addressing these concerns, *see, e.g.*, Chapter 96-304, Laws of Florida; Fla. H.R. Comm. on Health Care, CS for HB 965 (1996) Staff Analysis 1 (May 17, 1996), further revisions are needed. Specifically, the following three legislative revisions are suggested:

- (1) To improve accountability, leased public hospitals must not only be subject to annual appropriations but their leases should also be subject to termination upon twelve (12) months' notice from the county, district or municipality;
- (2) To improve transparency, management corporations to which public hospitals are leased should be subject to the Sunshine Laws; and
- (3) To improve oversight, Section 155.40 should be amended in two ways:
 - (a) the articles of incorporation – as well as the bylaws – of management corporations should be subject to approval by the county, district or municipality; and
 - (b) management corporations should be required to submit detailed annual budgets that are subject to line item veto and specific appropriations by the county, district or municipality.

¹ *See, e.g., Indian River Cnty. Hosp. Dist. v. Indian River Mem'l Hosp., Inc.*, 766 So. 2d 233 (Fla. 4th DCA 2000) (collecting cases and citing, *inter alia*, *Palm Beach Cnty. Health Care Dist. v. Everglades Mem'l Hosp., Inc.*, 658 So. 2d 577 (Fla. 4th DCA 1995) and *Jess Parrish Mem'l Hosp., Inc. v. City of Titusville*, 506 So. 2d 22 (Fla. 5th DCA 1987)).

Importantly, and as discussed further below, each of the foregoing revisions can be enacted to apply retroactively without impairing existing leases or contracts.

II. SUGGESTED REVISIONS

1. **Improving Accountability – Leased Public Hospitals Must Be Subject to Annual Appropriations and Their Leases Subject To Termination Upon Twelve (12) Months’ Notice From the County, District or Municipality**

To improve accountability, leased public hospitals that annually receive more than \$100,000 in public revenues from the county, district or municipality must not only be subject to annual appropriations, but their leases should also be subject to termination upon twelve (12) months’ notice from the county, district or municipality.

Public hospitals in Florida are currently leased to management corporations with little or no accountability. Many leases simply give the management corporation significant – if not complete – autonomy to manage the hospital while obligating the county, district or municipality to pay the management corporation millions of dollars in ad valorem tax revenues annually. To compound matters, these leases can often never be terminated and have terms lasting for more than forty (40) years, relegating the county, district or municipality to a mere funding mechanism that is forced to turn over tax dollars year after year. *See, e.g., Palm Beach Cnty. Health Care Dist. v. Everglades Mem’l Hosp., Inc.*, 658 So. 2d 577, 578-80 (Fla. 4th DCA 1995).

While Section 155.40 currently attempts to address this problem by giving public hospitals the option of either having tax revenues subject to annual appropriations or permitting the county, district or municipality to modify the hospital’s lease upon twelve (12) months’ notice, these alternatives fall short of providing sufficient accountability. Instead, leased public hospitals should not only be subject to annual appropriations, but their leases should also be subject to termination upon twelve (12) months’ notice from the county, district or municipality.

Specifically, Subsection (5) of FLA. STAT. § 155.40 presently provides:

In the event a hospital operated by a for-profit or not-for-profit Florida corporation receives annually more than \$100,000 in revenues from the county, district or municipality that owns the hospital, the Florida corporation must be accountable to the county, district or municipality with respect to the manner in which the funds are expended by either:

(a) Having the revenues subject to annual appropriations by the county, district, or municipality; or

(b) Where there is a contract to provide revenues to the hospital, the term of which is longer than 12 months, the governing board of the county, district or municipality must be able to modify the contract upon 12 months notice to the hospital.

FLA. STAT. § 155.40(5) (emphasis added).

Subsection (5) should instead be amended to provide as follows:

In the event a hospital operated by a for-profit or not-for-profit Florida corporation receives annually more than \$100,000 in revenues from the county, district or municipality that owns the hospital, the Florida corporation must be accountable to the county, district or municipality with respect to the manner in which the funds are expended by ~~either~~:

(a) Having the revenues subject to annual appropriations by the county, district, or municipality; ~~or~~ and

(b) Where there is a contract to provide revenues to the hospital, the term of which is longer than 12 months, the governing board of the county, district or municipality must be able to modify and/or terminate the contract upon 12 months notice to the hospital.

FLA. STAT. § 155.40(5) (with proposed revisions).

2. Improving Transparency – Compliance with Sunshine Laws

To improve transparency, management corporations to which public hospitals are leased should be subject to the Sunshine Laws.

Florida's Sunshine Laws, *see generally* FLA. CONST. Art. 1 § 24(b) and Chapters 119 and 286, Laws of Florida, are a powerful tool to compel governing boards to hold duly noticed meetings in public. In fact, Courts have extended them to cover not only counties, districts and municipalities by also committees appointed to serve a governing body, even if only in an advisory capacity; their meetings, with few exceptions, must also be open to the public for "first-hand observation." *See, e.g., Wood v. Marston*, 442 So. 2d 934, 939 (Fla. 1983). The Sunshine laws have thus been interpreted so as not to allow a governing authority to avoid public scrutiny by delegating decisions to closed-door committees. *Id.* at 939-40; *cf. Town of Palm Beach v. Gradison*, 296 So. 2d 473, 475-76 (Fla. 1974).

Just as a county, municipality or independent special district cannot delegate decision making to closed-door committees to avoid complying with the Sunshine Laws, a management corporation which has been delegated the authority to manage a public hospital should not be able to avoid compliance with the Sunshine Laws. On the contrary, as entities that often receive millions of dollars in ad valorem tax revenues each year, management corporations that lease public hospitals should be subject to the same Sunshine Laws as the counties, municipalities and independent special districts that fund them. *See, e.g., News-Journal Corp. v. Mem'l Hosp.-West Volusia, Inc.*, 695 So. 2d 418 (Fla. 5th DCA 1997) (finding that lessee of public hospital was subject to public records disclosure); *see also* 95 Op. Fla. Att'y Gen. 60, 1995 WL 698063 (Sept. 28, 1995).

Accordingly, Section 155.40 should be amended to include a new subsection that provides:

The lessee of a hospital, under this section or any special act of the Legislature, shall be subject to the provisions of chapters 119, relating to public records, and the provisions of chapter 286, relating to public meetings and records.

3. Improving Oversight – Approval of Articles of Incorporation and Bylaws, and Detailed Annual Budgets Subject to Line Item Veto and Specific Appropriations

To improve oversight, Section 155.40 should be amended in two ways: (a) the articles of incorporation – as well as the bylaws – of management corporations to which public hospitals are leased should be subject to approval by the county, district or municipality; and (b) management corporations that annually receive more than \$100,000 in public revenues should be required to submit detailed annual budgets that are subject to line item veto and specific appropriations by the county, district or municipality.

a. Approval of Articles of Incorporation and Bylaws

A corporation's articles of incorporation constitute a ministerial document requiring little more than the corporation's name and address. *See, e.g.*, FLA. STAT. § 617.0202(1) (setting forth the limited requirements for a not-for-profit corporation's articles of incorporation). In contrast, a corporation's bylaws often determine the number of its directors, the manner by which they are elected or appointed and the extent of their oversight powers. *See, e.g.*, FLA. STAT. § 617.0206 (providing that a not-for-profit corporation's bylaws "may contain any provision for the regulation and management of the affairs of the corporation not inconsistent with the law. . ."). As such, to have proper oversight, both the articles of incorporation as well as the bylaws of a management corporation leasing a public hospital must be subject to approval by the county, district or municipality.

More specifically, Section 155.40 presently provides that any lease, contract, or agreement shall:

Provide that the articles of incorporation of such for-profit or not-for-profit corporation be subject to the approval of the board of directors or board of trustees of such hospital.

FLA. STAT. § 155.40(2)(a).

Instead, Section 155.40 should be revised to provide that any lease, contract or agreement shall:

Provide that the articles of incorporation, as well as the bylaws, of such for-profit or not-for-profit corporation be subject to the approval of the board of directors or board of trustees of such hospital.

FLA. STAT. § 155.40(2)(a) (with proposed revisions).

b. Detailed Annual Budgets Subject to Line Item Veto and Specific Appropriations

In addition to providing that a management corporation's articles of incorporation and bylaws shall be subject to approval by the county, district or municipality, management corporations that annually receive more than \$100,000 in public revenues should also be required to submit detailed annual budgets that are subject to line item veto² and specific appropriations.

At present, there are no requirements in Section 155.40 for management corporations to submit budgets to the county, district or municipality. Nor is there any requirement that, once appropriated for a given capital or operating expenditure, public revenues are actually expended as budgeted (as opposed to being diverted or utilized for other purposes). While the lease or other contract between the management corporation and county, district or municipality may

² In Florida, counties, districts and municipalities may be lawfully authorized to exercise line item veto power. *See, e.g., Donmar Corp. II v. City of West Palm Beach*, 740 So. 2d 48 (Fla. 1999).

contain a provision requiring the management corporation to submit a budget, these budgets typically fail to identify specific capital or operating expenses; and, even if they do, the county, district or municipality rarely has oversight to ensure that public revenues are actually expended on the capital or operating expenses for which they were appropriated.

Accordingly, Section 155.40 should be amended to include a new subsection that provides:

In the event a hospital operated by a for-profit or not-for-profit Florida corporation receives annually more than \$100,000 in revenues from the county, district or municipality that owns the hospital:

- (a) the Florida Corporation shall prepare and submit a detailed proposed annual budget to the county, district or municipality for each fiscal year, setting forth each capital and operating expense which the Florida Corporation reasonably determines should be incurred during that fiscal year and paid for by public revenues;
- (b) Upon receipt of the Florida Corporation's annual budget, the county, district or municipality shall have thirty (30) days in which to approve or disapprove of all or any portion of the Florida Corporation's proposed annual budget; and
- (c) Unless otherwise expressly stated in the lease documents or other contract, the Florida Corporation shall not utilize public revenues appropriated by the county, district or municipality for any capital or operating expenses other than those approved by the county, district or municipality.

III. RETROACTIVE APPLICATION WITHOUT IMPAIRMENT OF CONTRACT

Each of the foregoing revisions can be enacted to apply retroactively without impairing existing leases or contracts.³ Aside from the fact that many (if not most) existing leases and

³ Indeed, prior amendments to Section 155.40 were specifically made retroactive by the Legislature. *See, e.g.*, FLA. STAT. § 155.40(5) ("A not-for-profit corporation . . . that does not currently comply with the accountability requirements in this subsection shall have 12 months after the effective date of this act to modify any contracts with the county, district or municipality in a manner that is consistent with this subsection.").

management contracts already include provisions that anticipate legislative revisions to Section 155.40 – and specifically require the parties to amend their agreements accordingly to ensure compliance with any changes in the law – Florida and federal courts have consistently found that changes to regulations concerning the heavily regulated hospital industry⁴ can be applied retroactively without impairment of contract.

Both the United States and Florida Supreme Courts have held that when a contract is entered into in a heavily regulated industry, it is deemed entered into subject to future regulations, and such regulations cannot be evaded on the basis of the Contract Clauses in the U.S. or Florida Constitutions. For instance, in *U.S. Fidelity and Guaranty Co. v. Dep't of Ins.*, 453 So. 2d 1355 (Fla. 1984), the Florida Supreme Court – quoting extensively from the United States Supreme Court's decision in *Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400 (1983) – stated:

In determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past. The Court long ago observed: **"one whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them."**

453 So. 2d 1355, 1360 (internal citations omitted) (emphasis added). In fact, just two years ago, the First District Court of Appeal applied the rule to a hospital in *West Fla. Reg'l Med. Ctr., Inc. v. See*, 18 So. 3d 676 (Fla. 1st DCA 2009), reasoning:

The "threshold inquiry" of the Contract Clause analysis is "whether the state law has, in fact, operated as a substantial impairment of the contractual relationship."

⁴ There can be no question that the hospital industry in Florida is one of the most heavily regulated industries in the state. *See, e.g.*, Chapter 395, Florida Statutes (1990-2011); Chapter 10D-28 (1990), 59A-3, Florida Administrative Code (2011); 42 CFR Parts 405, 412, 417, 440, 441, 456, 482, 489 (1990-2011).

Here, we need look no further than the "threshold inquiry" to conclude that Amendment 7 does not violate the Contract Clause as applied in this case. The United States Supreme Court has noted, "in determining the extent of the impairment, [courts] are to consider whether the industry the complaining party has entered has been regulated in the past."

The medical profession is heavily regulated by the State of Florida. Thus, under United States Supreme Court precedent, hospitals and physicians cannot purport to regulate themselves through private contracts and then seek shelter from state laws under those contracts.

West Fla. Reg'l Med. Ctr., 18 So. 3d at 687-88. (emphasis added) (internal citations omitted).

In short, inasmuch as the hospital industry is one the most heavily regulated industries in Florida, there is ample legal authority providing that the legislative revisions to Section 155.40 proposed above can be applied retroactively without impairing existing leases or contracts.

CHAPTER 2011-256

Committee Substitute for Committee Substitute for House Bill No. 1043

An act relating to Citrus County; providing for codification of special laws relating to the Citrus County Hospital Board, an independent special district in Citrus County; codifying, amending, reenacting, and repealing chapters 99-442 and 2001-308, Laws of Florida, as the “Citrus County Hospital and Medical Nursing and Convalescent Home Act”; deleting obsolete provisions; making technical revisions; providing definitions; authorizing the board to enter into a lease or contract with a not-for-profit corporation for the purpose of operating and managing the hospital and its facilities; declaring a need for governance authority to fulfill the hospital board’s public responsibilities; providing for a board of directors; providing for membership; requiring that the not-for-profit corporation conform all governance documents to certain requirements, if necessary; authorizing ad valorem taxation; requiring that the not-for-profit corporation separately account for the expenditure of all ad valorem tax moneys provided by the hospital board; requiring that the expenditure of all public tax funds be approved in a public meeting and maintained in a separate account; providing for the hospital board’s approval or rejection of the not-for-profit corporation’s articles of incorporation or bylaws, selection of a chief executive officer or renewal of his or her employment contract, the annual operating and capital budgets, additional loan indebtedness or leases in excess of a specified amount, and the not-for-profit corporation’s policies for travel reimbursements and contract bid procedures; providing that all records of the not-for-profit corporation are public records unless exempt; providing that any dispute between the hospital board and the not-for-profit corporation is subject to court action; providing for a future operational audit of the hospital board; providing application; repealing chapters 99-442 and 2001-308, Laws of Florida, relating to the Citrus County Hospital Board; providing severability; providing an effective date.

WHEREAS, the Citrus County Hospital Board was created by the Legislature in 1949 as a special taxing district and a public nonprofit corporation for the purpose of acquiring, building, constructing, maintaining, and operating a public hospital in Citrus County; and, in 1965, the Legislature expanded the purpose of the hospital board to include operating public hospitals, medical nursing homes, and convalescent homes in Citrus County, and

WHEREAS, in 1987, the hospital board caused to be incorporated a not-for-profit management corporation with the original purpose of operating exclusively for the benefit of and carrying out the purposes of the Citrus County Hospital Board and, in 1990, entered into a long-term lease agreement with the not-for-profit management corporation pursuant to section 155.40, Florida Statutes, leasing all public assets, operations, and

management of Citrus Memorial Hospital to the not-for-profit management corporation, and

WHEREAS, meaningful oversight by the hospital board is necessitated in light of the not-for-profit corporation’s status as an instrumentality of the hospital district, and

WHEREAS, restoration of meaningful hospital board representation on the board of the lessee corporation and implementation of appropriate accountability and oversight by the hospital board are necessitated in order to ensure the sovereign immunity status of the not-for-profit corporation as an instrumentality of the hospital district, and

WHEREAS, the ability of the hospital board to continue to act in the public interest on behalf of the taxpayers of Citrus County requires mechanisms to ensure adherence to the hospital board’s public responsibilities, and

WHEREAS, this act provides an appropriate and effective means of addressing the lessee’s performance of its responsibilities to the public and to the taxpayers of Citrus County, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act constitutes the codification of all special acts relating to the Citrus County Hospital Board. It is the intent of the Legislature in enacting this law to provide a single, comprehensive special act charter for the district, including all current authority granted to the district by its several legislative enactments and any additional authority granted by this act.

Section 2. Chapters 99-442 and 2001-308, Laws of Florida, relating to the Citrus County Hospital Board, are codified, reenacted, amended, and repealed as provided in this act.

Section 3. The Citrus County Hospital Board is re-created, and the charter is re-created and reenacted to read:

Section 1. This act may be cited as the “Citrus County Hospital and Medical Nursing and Convalescent Home Act.”

Section 2. As used in this act, the following words and terms have the following meanings:

(1) “Citrus County Hospital Board,” “hospital board,” and “board” means the Citrus County Hospital Board.

(2) “County” means Citrus County.

(3) “County hospital and medical nursing and convalescent homes” includes hospitals, medical care facilities, clinics, and other allied medical care units.

(4) “Indigent care” means medically necessary health care provided to Citrus County residents who are determined to be qualified pursuant to the provisions of the Florida Health Care Responsibility Act, section 154.304(9), Florida Statutes, and the Florida Health Care Indigency Eligibility Certification Standards, Florida Administrative Code, rule 59H-1.0035(30).

(5) “Operate” includes build, construct, maintain, repair, alter, expand, equip, lease pursuant to and consistent with the provisions of this act, finance, and operate.

(6) “Property” means real and personal property of every nature whatsoever.

(7) “State” means the State of Florida.

Section 3. (1) There is hereby created the Citrus County Hospital Board, an independent special district, and by that name the board may sue and be sued, plead and be impleaded, contract and be contracted with, acquire and dispose of property or any interest therein, and have an official seal. The board is created as a public nonprofit corporation without stock and is composed of and governed by the five members herein provided for, to be known as trustees. The hospital board is hereby constituted and declared to be an agency of the county and incorporated for the purpose of operating hospitals, medical nursing homes, and convalescent homes in the county. The hospital board shall consist of five trustees appointed by the Governor, and, upon this act becoming a law, the present members will automatically become trustees and shall constitute the board. Their respective terms of office shall be the term each member is presently serving. All subsequent appointments, upon the expiration of the present terms, shall be for terms of 4 years each. Upon the expiration of the term of each trustee, the successor shall be appointed by the Governor. Likewise, any vacancy occurring shall be filled by appointment by the Governor for the unexpired term. Each appointment by the Governor is subject to approval and confirmation by the Senate.

(2) The trustees of the board shall elect from among its members a chair, a vice chair, and a secretary-treasurer, who shall each hold office for a period of 1 year. Each trustee shall execute a bond in the penal sum of \$5,000 with a good and sufficient surety of a surety company authorized under the laws of the state to become surety, payable to the Citrus County Hospital Board, conditioned upon the faithful performance of the duties of the trustee, which bonds shall be approved by the remaining trustees of the board and shall be filed with the Board of County Commissioners of Citrus County. The premiums on such bonds shall be paid by the hospital board.

(3) The hospital board shall comply with the applicable requirements of chapter 280, Florida Statutes, and part IV of chapter 218, Florida Statutes.

(4) Any and all funds so deposited shall be withdrawn by a check or warrant signed by two trustees of the hospital board, of which one shall be

the chair, vice chair, or secretary-treasurer. No check or warrant exceeding the sum of \$25,000 shall be delivered to the payee without approval thereof shown in the minutes of the hospital board meeting.

Section 4. The trustees of the board shall receive no compensation for their services. Three trustees shall constitute a quorum of the hospital board for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the board only upon a vote in the affirmative of three trustees thereof.

Section 5. The Citrus County Hospital Board as hereby created shall be for the purpose of operating, in Citrus County, public hospitals, medical nursing homes, and convalescent homes, primarily and chiefly for the benefit of the citizens and residents of Citrus County. Authority is hereby given to the board to build, erect, expand, equip, maintain, operate, alter, change, lease pursuant to and consistent with the provisions of this act, and repair public hospitals, medical nursing homes, and convalescent homes in Citrus County. The corporation is authorized, when rooms and services are available, without detriment or deprivation to the citizens and residents of Citrus County, to extend the hospitalization and medical nursing home and convalescent home services provided by such hospitals, medical nursing homes, and convalescent homes to patients from adjoining and other counties of Florida and from other states, upon the payment of the cost of such hospitalization, medical nursing home services, and convalescent home services as may be determined by the trustees of the hospital board. The board shall have the power and authority to operate an ambulance system and ambulance services and to charge all patients for all services rendered in any facility owned or operated by the hospital board, including the ambulance facility. The board may charge a patient interest on the patient's account; sell, discount, or assign such account to a bank, finance company, collection agency, or other type of collection facility; accept promissory notes or other types of debt obligations from a patient; assign or discount such accounts receivable, notes, or other obligations; require a patient to guarantee the payment of an existing account or note; require a guarantee of payment before admitting a patient; and receive and assign any assignment of all types of insurance proceeds. In addition to all other powers, the board shall have the power and authority to:

(1) Provide for the payment of indigent care services by private health care providers in the county, or to partner with other entities such as the Department of Health, in furtherance of the hospital board's public purpose and the necessity for the preservation of the public health and welfare of the residents of the county by the hospital board.

(2) Develop and implement a county health plan.

Section 6. The board of county commissioners shall levy or cause to be levied each year beginning July 1, 1965, the millage certified to the board of county commissioners by the trustees of the board upon all taxable real and personal property in Citrus County, not including, however, homestead

property that is exempt from general taxation by the Constitution of the State of Florida, for the purpose of erecting, building, equipping, maintaining, changing, altering, repairing, leasing, and operating the public hospital provided for in this act. Such tax shall be known as the hospital tax, and the property appraiser shall make such assessments and the tax collector shall collect such assessments when made. The money collected shall be paid monthly to the board. However, the annual tax levied under this section may not exceed 3 mills.

Section 7. The hospital board is hereby authorized and empowered to own and acquire property by purchase, lease, gift, grant, or transfer from the county, the state, or the Federal Government, or any subdivision or agency thereof, or from any municipality, person, partnership, or corporation and to acquire, construct, maintain, operate, expand, alter, repair, change, lease, finance, and equip hospitals, medical nursing homes, convalescent homes, medical care facilities, and clinics in the county.

Section 8. The hospital board is authorized and empowered to enter into contracts with individuals, partnerships, corporations, municipalities, the county, the state or any subdivision or agency thereof, or the United States of America or any subdivision or agency thereof to carry out the purposes of this act.

Section 9. The hospital board is empowered to and shall adopt all necessary rules, regulations, and bylaws for the operation of hospitals, medical nursing homes, and convalescent homes; provide for the admission thereto and treatment of such charity patients who are citizens of the state and residents of the county for the preceding 2 years; set the fees and charges to be made for the admission and treatment therein of all patients; and establish the qualifications for members of the medical profession to be entitled to practice therein.

Section 10. The hospital board shall have the power to purchase any and all equipment that may be needed for the operation of hospitals, medical nursing homes, and convalescent homes and shall have the power to appoint and hire such agent or agents, technical experts, attorneys, and all other employees as are necessary for carrying out the purposes of this act, regardless of any lease to a not-for-profit corporation, including the hiring and maintenance of staff personnel as it may deem appropriate to assist the board in the discharge of its operational, financial, and statutory responsibilities, and in carrying out its fiduciary duties to the taxpayers of Citrus County, and to prescribe their salaries and duties. The board shall have the power to discharge all employees or agents when deemed necessary by the board for the carrying out of the purposes of this act.

Section 11. At the end of each fiscal year, the Citrus County Hospital Board shall within 30 days file with the Clerk of the Circuit Court of Citrus County a full, complete, and detailed accounting of the preceding year and at the same time shall file a certified copy of such financial report with the Board of County Commissioners of Citrus County, which report shall be

recorded in the minutes of the board of county commissioners. The board of county commissioners, at its discretion and at the expense of the county, may publish and report an accounting in a newspaper of general circulation in Citrus County.

Section 12. In addition to all other implied and express powers contained in this act, the board shall have the express authority to negotiate loans to borrow money from any state or federal agency for the purpose or purposes of constructing, maintaining, repairing, altering, expanding, equipping, leasing, and operating county hospitals, medical nursing homes, convalescent homes, medical care facilities, clinics, and all other types of allied medical care units.

Section 13. (1) In addition to all other implied and express powers contained in this act, the board shall have the express authority to borrow money, with or without issuing notes therefor, for the purpose or purposes of constructing, maintaining, repairing, altering, expanding, equipping, leasing, and operating county hospitals, medical nursing homes, convalescent homes, medical care facilities, clinics, and all other types of allied medical care units. The board's authority to borrow money, with or without issuing notes, shall be subject to the conditions of this act applying to the board's right to issue revenue bonds.

(2) The board shall have express authority to issue bonds, subject to approval at a referendum of the voters of the county, and to issue revenue bonds, without a referendum of the voters of the county, the proceeds of which shall be used for erecting, equipping, building, expanding, altering, changing, maintaining, operating, leasing, and repairing such hospitals, medical nursing homes, and convalescent homes. Such bonds, federal or state hospital loans, notes, or revenue bonds shall mature within 30 years after the year in which they are issued or made and shall be payable in such years and amounts as shall be approved by the board.

(3) The board shall determine the form of the loans, notes, bonds, and revenue bonds, including any interest coupons to be attached thereto, and the manner of executing them, and shall fix the denomination or denominations thereof and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. In case a trustee whose signature or a facsimile of whose signature appears on any loan, note, bond, or revenue certificate or coupon ceases to be such trustee before the delivery thereof, such signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if the trustee had remained in office until such delivery. All loan agreements, notes, bonds, and revenue bonds issued hereunder shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state.

(4) Whenever the board passes a resolution approving the issuance of such bonds, the board shall call for an election and, subject to such election, permit the repayment of the bonds out of an annual levy not to exceed 1.5

mills per year. Such millage is included in the maximum millage of 3 mills per year. Subject to such limitations, such bonds shall be payable from the full faith and credit of the board.

(5) The loans, notes, and revenue bonds, together with the interest, shall be payable from gross or net receipts of the hospital board or any portion thereof.

(6) Such loans, notes, bonds, or revenue bonds shall not bear interest in excess of the maximum rate permitted by the laws of the state.

(7) The board may sell bonds, loans, notes, or revenue bonds in such manner, either at public or private sale, and for such price as it may determine to be for the best interest of the hospital board.

Section 14. The total amount of outstanding bonds of the hospital payable from ad valorem taxation at any one time shall not exceed an amount equal to 6 times the annual hospital tax, assuming such tax is based upon the yearly millage of 3 mills.

Section 15. (1) The Citrus County Hospital Board shall have the authority to enter into leases or contracts with a not-for-profit Florida corporation for the purpose of operating and managing the hospital and any or all of its facilities of any kind and nature.

(2) The Citrus County Hospital Board shall have the power and authority to:

(a) Provide health care services to residents of the county through the use of health care facilities not owned and operated by the hospital board. The provision of such care is hereby found and declared to be a public purpose and necessary for the preservation of the public health and welfare of the residents of the county.

(b) Maintain an office.

(c) Provide for reimbursement to hospitals, physicians, or other health care providers or facilities, whether public or private, and pay private physicians for indigent care.

(3) The hospital board is hereby restricted from reimbursing any health care providers or facilities, including hospitals and physicians, for their bad debts arising from those patients who are not eligible for reimbursement under hospital board guidelines. The hospital board, however, shall continue to reimburse such health care providers for the medical care of medically needy patients, to the extent of the hospital board's financial resources, taking into account funds available from other sources, including other governmental funding sources.

Section 16. To ensure public oversight, accountability, and public benefit, in addition to the requirements for any such lease set forth in section 155.40, Florida Statutes:

(1) The not-for-profit corporation shall separately account for the expenditure of all ad valorem tax moneys provided to it by the Citrus County Hospital Board, including maintaining them in a separate accounting fund. The expenditure for all such public tax funds shall be approved in a public meeting and separately accounted for annually by the not-for-profit corporation in a report provided to the Citrus County Hospital Board.

(2) The articles of incorporation, all amendments or restatements of the articles of incorporation, all corporate bylaws, all amendments or restatements of the corporate bylaws, and all other governing documents of the not-for-profit corporation shall be subject to the approval of the hospital board, and any such documents that have not heretofore been approved by the hospital board shall be submitted forthwith to the hospital board for approval.

(3) The hospital board shall be the sole member of the not-for-profit corporation.

(4) The hospital board shall independently approve any plan of merger or dissolution of the not-for-profit corporation pursuant to sections 617.1103 and 617.1402, Florida Statutes, and may reject any such plan in its sole discretion.

(5) The members of the hospital board shall be voting directors of the not-for-profit board of directors who constitute a majority of the voting directors of the not-for-profit corporation; and, to the extent that any governance documents of the not-for-profit corporation do not so presently provide, the not-for-profit corporation shall forthwith take all steps necessary to bring them into conformity with this majority membership requirement.

(6) All members of the not-for-profit board of directors shall be subject to approval by the hospital board, and any board members presently serving who have not heretofore been approved by the hospital board shall be submitted forthwith to the hospital board for approval.

(7) The chief executive officer of the not-for-profit corporation and his or her term of office and any extensions thereof shall be approved by the hospital board, and the hospital board may terminate the term of the chief executive officer of the not-for-profit corporation with or without cause in its sole discretion, subject to the terms of any and all then-existing contracts.

(8) The hospital board shall approve all borrowing of money by the not-for-profit corporation in any form and for any reason in an amount exceeding \$100,000, any additional loan indebtedness or leases in excess of \$1.25 million per instrument or contract, and all policies of the not-for-profit corporation that govern travel reimbursements and contract bid procedures.

(9) No annual operating and capital budget of the not-for-profit corporation shall become effective until approved by the hospital board.

(10) Any capital project of the not-for-profit corporation having a value in excess of \$250,000 per project, and any nonbudgeted operative expenditure in excess of \$125,000 in the per annum aggregate, shall be approved by the hospital board.

(11) At the discretion of the hospital board, each and every year the not-for-profit corporation shall complete an independent audit of the fiscal management of the hospital by an auditor chosen by the hospital board, with the audit to be paid for by the not-for-profit corporation.

(12) All records of the not-for-profit corporation shall be public records unless exempt by law.

(13) Subject to the annual approved budget, the hospital board shall reimburse the not-for-profit corporation for indigent care pursuant to the Florida Health Care Responsibility Act and the Florida Indigent Certification Standards and shall take into account funds available from other sources, including other governmental funding sources.

(14) The provisions in this act and the hospital board's lease with the not-for-profit corporation shall be construed and interpreted as furthering the public health and welfare and the open government requirements of s. 24, Art. I of the State Constitution and sections 119.01 and 286.011, Florida Statutes.

(15) Any dispute between the hospital board and the not-for-profit corporation shall be subject to any court action pursuant to sections 164.101-164.1065, Florida Statutes.

Section 4. Three years after the effective date of this act, the Citrus County Hospital Board shall submit a request to the Joint Legislative Auditing Committee for an operational audit of the hospital board and the not-for-profit corporation to be conducted by the Auditor General. The board should include specific areas to be addressed in the audit, including, but not limited to, review of internal controls over financial related operations.

Section 5. This act shall apply to existing and future leases and amendments, revisions, and restatements thereto, and to existing and future agreements for hospital care and amendments, revisions, and restatements thereto. However, this act does not apply to the term of any existing contract entered into by the not-for-profit corporation with a third party, to any existing contract for the borrowing of money in excess of \$100,000, to any additional loan indebtedness or leases in excess of \$1.25 million for which the hospital board has not previously given its approval, or to any existing contract for a capital project in excess of \$250,000 per project, and any nonbudgeted operative expenditure in excess of \$125,000 in the per

annum aggregate, for which the hospital board has not previously given its approval.

Section 6. Chapters 99-442 and 2001-308, Laws of Florida, are repealed.

Section 7. If any provision of this act or its application to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 8. This act shall take effect July 1, 2011.

Approved by the Governor June 24, 2011.

Filed in Office Secretary of State June 24, 2011.

Rating Update: MOODY'S AFFIRMS CITRUS MEMORIAL HOSPITAL'S (FL) Baa3 LONG-TERM BOND RATING; OUTLOOK IS REVISED TO NEGATIVE FROM STABLE

Global Credit Research - 11 Dec 2009

CITRUS MEMORIAL HOSPITAL HAS A TOTAL OF \$41.2 MILLION OF Baa3 RATED LONG-TERM BONDS OUTSTANDING

Citrus County Hospital Board, FL
Health Care-Hospital
FL

Opinion

NEW YORK, Dec 11, 2009 -- Moody's Investors Service has affirmed the Baa3 long-term bond rating assigned to Citrus Memorial Hospital's (FL) \$41.2 million of outstanding Series 2002 Hospital Revenue Bonds issued by the Citrus County Hospital Board (see RATED DEBT section at end of report). The outlook is revised to negative from stable due to governance instability between the two governing boards of the hospital that may pose a financial and operating disruption to the hospital over the near term.

LEGAL SECURITY: The bonds are secured by a joint and several pledge of gross revenues of the obligated group (Citrus Health Memorial Foundation d.b.a. Citrus Memorial Health System).

INTEREST RATE DERIVATIVES: None

STRENGTHS

*Improved operating performance in FY 2009, with operating income growing to \$5.2 million (2.8% margin) from \$495,000 (0.3% margin) in FY 2008; debt service coverage measures improved as well

*Annual ad valorem tax revenues totaling \$10.1 million in FY 2008 and \$12.1 in FY 2009 has been a key component to financial performance in recent years; however, tax revenues are expected to decline in FY 2010 due to the decision to lower the millage and property de-valuation

*Improvement in cash and liquidity for the Baa3 rating level with absolute cash of \$49 million (105 days cash on hand) and 82.2% cash-to-debt in FY 2009 up from \$37 million (84 days) and 57.9% cash-to-debt in FY 2008

*Growing open heart service line (opened in 2004) and other management led initiatives which have increased the Medicare case mix index and limited some of the outmigration to larger markets in Orlando, Ocala and Tampa

*Agency status operating on behalf of a governmental entity qualifies the hospital for sovereign immunity resulting in \$800,000 in savings on malpractice insurance premiums

CHALLENGES

*Governance instability due to recent problems between the Citrus County Hospital Board (CCHB) and Citrus Memorial Health Foundation (the foundation board) around hospital oversight that may impair the hospital's receipt of tax revenue and serves as a distraction to operations; management has budgeted weaker financial performance in FY 2010 as a result of lower tax revenues

*Very high exposure to Medicare at 61%

*4.6% decline in admissions in FY 2009 from FY 2008 indicating the presence of some competition to the west of the hospital and tertiary competition from providers located in Ocala (25 to 30 miles away) and Leesburg (40 miles away)

RECENT DEVELOPMENTS/RESULTS

The key driver to the revision in the outlook to negative from stable reflects the recent governance problems that have arisen between the two governing boards of the hospital and the possible impairment to the hospital's financial performance. The assets of the hospital are leased from the CCHB; CCHB is comprised of five governor-appointed trustees. CCHB is a political subdivision of the state, established in 1957. CCHB's primary responsibility is to set the property tax millage and distribute the tax receipts to the hospital for operating purposes. The five CCHB trustees also serve on the 13-member Citrus Memorial Health Foundation (CMHF) board which is responsible for oversight of the hospital's operations. CMHF is a 501c3 organization. In October 2009, the CCHB members resigned from the CMHF board over disagreements regarding daily hospital operations and strategies. The CCHB and CMHF will enter mediation next week over this issue. If mediation fails, management has informed us that CCHB will likely seek legislation to increase its presence on the CMHF board through more seats. It is unclear when and how these issues will be resolved.

Moody's considers CMHS' receipt of property tax funds a key credit driver given its high dependence on unprofitable governmental payors (Medicare and Medicaid represent a combined 66.3% of gross patient revenues). In FY 2009, CMHS received \$12.1 million (6.6% of revenue) in ad valorem tax revenues, up from \$10.1 million in FY 2008. After increasing the millage to 1.1689 in FY 2009 from 0.8999 in FY 2008, the hospital board rolled back the millage for FY 2010 to 1.0000 (corresponding to approximately \$8 million in tax revenue). The tax revenue is also impacted by a smaller tax base and depreciating real estate values in Citrus County. The CCHB board has informed management that it will withhold approximately \$3 million of the anticipated tax revenues from the hospital to pay its legal and accounting costs. Given the importance of the tax revenues to partially offset operating costs, we believe that the reduction in tax revenues is a material credit factor.

The governance challenges come on the heels of improved financial performance in FY 2009 with operating gain of \$5.2 million (2.8% operating margin), up significantly from a \$495,000 gain (0.3% operating margin) in FY 2008. The improvement reflects improved revenue cycle, front-end

collections, recoupment of previously disallowed Medicare payments, savings on premiums following the receipt of sovereign immunity, improved Blue Cross rates and increased health insurance pre-authorizations. FY 2009 also denotes the absence of one-time expenses that were incurred in FY 2008 which included the use of locum tenens for radiologists and the impact of the RAC audits on revenues.

As a result of the improvement, absolute operating cash flow increased to \$17.2 million (9.3% operating cash flow margin) from \$13.2 million (7.7% operating cash flow margin) in FY 2008. Debt-to-cash flow declined to a 3.5 times in FY 2009 from 5.2 times in FY 2008 while Maximum Annual Debt Service coverage improved to 4.3 times in FY 2009 from 2.8 times in FY 2008.

While volume shows good growth over the past five years and since the introduction of open heart surgery in FY 2004, total admissions (including observation stays) showed a material decline in FY 2009 (-4.6%). However, outpatient surgeries increased 12% and outpatient visits 3% over FY 2008. The heart program and spine surgery program have reduced outmigration for these services and helped increase the Medicare case mix index to 1.67 in FY 2009 (up from 1.62 in FY 2008).

Despite growth trends, CMHS' overall market share declined to 40% in FY 2009 from a high of 44% in FY 2006. Outmigration to larger markets in Tampa and Orlando along with local competitors remains a concern for CMHS. Just 25 to 30 miles west, CMHS faces competition in HMA-owned Seven Rivers Hospital located in Crystal River (24% market share). To the northeast in Ocala, Citrus competes with A3 rated Munroe Regional Health System (9% market share). Increased competition for open hearts and cardiac catheters has occurred with the opening of a heart program three to four years ago at HCA-owned Oak Hill Hospital in Brooksville, although CMHS has maintained its heart program market share.

Unrestricted cash and investments continue to grow with \$49.2 million (105 days cash on hand) at the end of FY 2009, up from \$36.8 million (84 days cash on hand) at FYE 2008; cash to debt increased to 82.2% at FYE 2009 from 57.9% at FYE 2008. CMHS recently completed construction of the Sugarmill Woods outpatient facility in Homosassa Springs which opened in September 2009 (\$6.5 million project cost) and began a \$5.3 million renovation of its emergency department in fourth quarter of FY 2009 (scheduled completion November 2010). A \$10 million bank qualified note was borrowed in FY 2008 to fund the construction of these projects. No additional debt is planned. Cash is conservatively invested largely in government securities and a defined contribution plan is maintained.

Outlook

Even with the improvement in financial performance, the revision in the outlook to negative from stable is attributable to governance instability stemming from the recent problems between the Citrus County Hospital Board and the Citrus Memorial Health Foundation Board which may threaten the amount of tax revenue received by the hospital and serves as a disruption to the oversight of hospital operations.

What could change the rating--UP

Favorable resolution of the governance issues that restores the receipt of tax revenues to the hospital and acceptable solutions are mutually agreed upon by all parties; continuation of recent improvement in financial performance; increased liquidity and improved debt coverage ratios

What could change the rating--DOWN

Downturn in financial performance due to distractions from the governance situation and the inability to contract expenses or find revenue enhancements to replace the reduction in tax revenues; declines in liquidity or increased leverage

KEY INDICATORS

Assumptions & Adjustments:

-Based on audited financial statements for Citrus Memorial Health Foundation, Inc. and Citrus Memorial Health Foundation Management Services Corporation Inc. Citrus Memorial Health System

-First number reflects audit year ended September 30, 2008

-Second number reflects twelve month unaudited financial statements ended September 30, 2009

-Investment returns normalized at 6% unless otherwise noted

*Inpatient admissions: 12,342; 11,232

*Total operating revenues: \$170.6 million; \$184.4 million

*Moody's-adjusted net revenue available for debt service: \$15.4 million; \$20.1 million

*Total debt outstanding: \$63.5 million; \$59.8 million

*Maximum annual debt service (MADS): \$5.5 million; \$4.7 million

*MADS Coverage with reported investment income: 2.7 times; 4.1 times

*Moody's-adjusted MADS Coverage with normalized investment income: 2.8 times; 4.3 times

*Debt-to-cash flow: 5.2 times; 3.5 times

*Days cash on hand: 84 days; 105 days

*Cash-to-debt: 57.9%; 82.2%

*Operating margin: 0.3%; 2.8%

*Operating cash flow margin: 7.7%; 9.3%

RATED DEBT (debt outstanding as of September 30, 2008)

-Series 2002 (fixed rate) (\$41.2 million outstanding), rated Baa3

CONTACTS

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The principal methodology used in rating Citrus Memorial Hospital was Moody's Rating Methodology: Not-For-Profit Hospitals and Health Systems, published in January 2008 and available on www.moodys.com in the Rating Methodologies sub-directory under the Research & Ratings tab. Other methodologies and factors that may have been considered in the process of rating Citrus Memorial Hospital can also be found in the Rating Methodologies sub-directory on Moody's website

The last rating action was on September 16, 2008 when Citrus Memorial Hospital's Baa3 ratings and stable outlook were affirmed.

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**Rating Update: MOODY'S DOWNGRADES TO Ba2 FROM Baa3 THE LONG-TERM RATING
ASSIGNED TO CITRUS MEMORIAL HOSPITAL (FL); RATING REMOVED FROM WATCHLIST;
OUTLOOK REMAINS NEGATIVE AT THE LOWER RATING LEVEL**

Global Credit Research - 18 Feb 2011

HOSPITAL HAS \$41.2 MILLION OF OUTSTANDING RATED DEBT

Citrus County Hospital Board, FL
Health Care-Hospital
FL

Opinion

NEW YORK, Feb 18, 2011 -- Moody's Investors Service has downgraded Citrus Memorial Hospital, doing business as Citrus Memorial Health System's (FL), long-term bond rating to Ba2 from Baa3, affecting \$41.2 million of outstanding Series 2002 Hospital Revenue Bonds issued by the Citrus County Hospital Board (CCHB) (see RATED DEBT section at end of report). At this time we are removing the rating from Watchlist. The outlook remains negative at the lower rating level.

RATINGS RATIONALE:

The downgrade of the rating to Ba2 from Baa3 on Citrus Memorial Health System's outstanding debt reflects weakened operating performance and a decline in liquidity, driven, in part, by declining volumes as well as a reduction in the receipt of tax revenues from CCHB. The reduction in the receipt of tax revenues reflects tenuous governance issues between the Citrus Memorial Health Foundation (CMHF) board and Citrus County Hospital Board (CCHB). CCHB is responsible for setting the annual ad valorem millage, collecting the tax revenues and distributing the funds to CMHF. The negative outlook reflects the decline in liquidity (64 days as of December 31, 2010) and its limited headroom to the 50 days cash on hand covenant measured once a year, as well as our concerns that governance issues between the CMHF board and the CCHB board will continue to pressure hospital performance.

LEGAL SECURITY: The bonds are secured by a joint and several pledge of gross revenues of the obligated group (Citrus Memorial Health Foundation, a 501c3 organization, doing business as Citrus Memorial Health System). Tax revenues are not pledged to debt service. The bonds are subject to two covenants calculated at the end of each fiscal year: (1) no less than 1.10 times debt service coverage; and (2) a minimum of 50 days cash on hand.

INTEREST RATE DERIVATIVES: None

CHALLENGES

*Weakened operating performance based on unaudited fiscal year (FY) 2010 results, with operating income declining to a material loss of \$7.8 million (-4.5% margin) in FY 2010 from a \$4.2 million gain (2.3% margin) in FY 2009, due to 6% admissions decline in fiscal year (FY 2010) and a decline in the receipt of ad valorem tax revenues due to drop in the millage rate (from 1.17 in FY 2009 to 1.00 in FY 2010) and the withholding of the majority of tax funds by CCHB; debt coverage measures weakened as a result

*Above average exposure to Medicare (61% of revenues, compared to national median of 43%) continues to constrain the ability of the organization to enhance profitability and reduce reliance on tax revenues; Blue Cross rates are reportedly below market

*Governance issues between the CCHB and the CMHF boards regarding control over day-to-day operations and influence in implementing long-term strategies is a credit concern and has consumed CMHF's resources

*Thin balance sheet measures with 64 days cash on hand (Baa3 median is 92 days cash on hand) and 52% cash-to-debt (Baa3 median is 76%) as of December 31, 2010; although 100% of cash is available within one month with 100% of investments allocated to cash; days cash on hand ratio is in compliance to the minimum 50 days cash on hand covenant required under the Series 2002 bonds (measured annually at fiscal yearend)

*Although very limited local competition, competition does exist from tertiary providers located 25 to 30 miles away in Ocala (Munroe Regional Medical Center and two HCA facilities) and in Leesburg (Central Florida Health Alliance); strong local outpatient competition exists from entrepreneurial physicians in the community including an outpatient diagnostic center and ambulatory surgery centers

STRENGTHS

*Leading market share (40% in FY 2009) in its primary service area although market share has declined since FY 2006 (market share reached a high of 44%)

*Growing spine surgery program and other management led initiatives which have successfully improved case mix index and has limited outmigration to larger markets in Orlando and Tampa

*Frozen defined benefit pension plan for all new entrants since October 1, 2004 and subsequently closed the defined benefit plan at December 31, 2010 with no additional accruals being incurred; although underfunded by \$12.7 million in FY 2010; defined contribution plan for employees who joined afterward

*Swift, mid-course management actions to improve operational performance in the short-term and implement longer-term strategies to improve payor mix and grow strategic service lines; smooth transition to a new Chief Financial Officer (CFO) following the retirement of the longstanding CFO

RECENT DEVELOPMENTS/RESULTS

The downgrade to Ba2 from Baa3 reflects a downturn in the CMHF's operating performance, driven, in part, by ongoing governance disruptions between CMHF and CCHB which has contributed to the impairment of the hospital's financial health. Based on unaudited FY 2010 results, CMHF's operations declined with a \$7.8 million operating loss (-4.5% margin) down from a stronger year of performance in FY 2009 with \$4.2 million operating gain (2.3% margin). Operating cash flow weakened to \$2.9 million (1.7% operating cash flow margin) from a high \$16.2 million (8.8% operating cash flow margin) in FY 2009. The weakened performance in FY 2010 reflects volume declines due to the economy and some campus disruption during the expansion of the emergency department completed in November 2010, a \$2.0 million increase in pension expense, a \$9.3 million decrease in tax revenue received from the prior year, a \$2.5 million increase in health insurance expenses and losses from the first year of performance of the new Sugar Mill Woods outpatient facility, as well as \$946,000 in losses incurred at the orthopedic practice.

Through three months of FY 2011, performance continues to be challenged as indicated by an expected \$1.8 million operating loss (-4.1% margin) and \$614,000 operating cash flow (1.4% operating cash flow margin) compared to the same period the prior year which reported a \$26,000 operating gain (0.1% operating margin) and \$2.8 million operating cash flow (6.5% operating cash flow margin). Part of the decline reflects higher accrual levels of tax receipts in first quarter FY 2010 compared to lower accruals in first quarter FY 2011. First quarter FY 2011 results continue to be challenged by volume declines, rising health insurance expense and declining receipt of tax revenues.

Despite volume losses and operating performance, CMHF maintains lead market share in its primary service area of Citrus County, FL with 40% market share in FY 2009 although down from previous years. Outmigration to larger markets in Tampa and Orlando along with local competitors remain an ongoing concern for CMHF with HMA-owned Seven Rivers Hospital located in Crystal River 25 to 30 miles west (also in Citrus County) and A3-rated Munroe Regional Health System located northeast in Ocala. CMHF's market position is bolstered by its strong spine surgery program and growing open heart program (256 cases in FY 2010) as indicated by the hospital's high Medicare case mix index of 1.67.

CCHB is comprised of five governor-appointed trustees and was established in 1949 by House Bill 1479 as a political subdivision of the state. CCHB's primary responsibility is to set the property tax millage in Citrus County, levy and collect the tax revenues and distribute the tax receipts to CMHF to support the operations of the hospital. The hospital property and other assets are leased by CCHB to CMHF under a long-term lease agreement that expires in 2033 in exchange for rental payments equal to the principal, interest and premiums on the hospital's bonds and is conterminous with the bond maturity. CMHF's management is charged with the day to day operations of the hospital. Until recently, the five CCHB trustees also served as five of the thirteen members of the CMHF board. In October 2009, the five CCHB trustees resigned from the CMHF board over disagreements regarding control over the organization. Prior mediation attempts to resolve concerns from both boards have failed.

Moody's considers and has considered CMHF's receipt of property tax funds as a key credit driver given its high dependence on unprofitable governmental payors (Medicare and Medicaid represent a combined 66.3% of gross patient revenues). CMHF received \$1.6 million in ad valorem tax revenues (0.9% of total operating revenue) in FY 2010, down significantly from \$10.9 million (5.9% of total operating revenues) based on the restatement of FY 2009 numbers. The decline in tax revenues in FY 2010 is as a result of a decline in the millage by CCHB to 1.00 in FY 2010 from 1.17 in FY 2009. It also reflects the decision by CCHB to withhold \$4.5 million of \$6.0 million in tax revenues pledged to CMHF for FY 2010 (\$9.0 million in tax revenue was levied by CCHB) and withhold \$1.2 million in tax revenues for FY 2009. As a result, CMHF has sued CCHB for breach of contract citing default under the lease agreement and its obligation to transfer the tax revenues to CMHF levied in FY 2010 and FY 2009. CCHB has sued CMHF for failure to disclose the hospital's confidential strategic plan with CCHB. It is unclear when and how these issues will be resolved and, as such, we view this uncertainty as a negative credit factor. For FY 2011, CCHB set the millage at 0.25 and has pledged \$2.0 million in tax revenues to CMHF. Through December 31, 2010, none of the funds have been received. CCHB may also challenge the applicability of CMHF's sovereign immunity which if overturned could result in a \$1.0 million increase in the hospital's medical malpractice premiums and a one time \$2.6 million increase on the accrued liability for malpractice claims.

Given the continued importance of the tax revenues to partially offset operating expenses, we believe that the reduction in tax revenues is a material credit factor. Hospital management is quickly implementing strategies to curb its reliance on tax revenues that include pursuing improved payor contracts, undertaking revenue cycle strategies, and increasing its outpatient presence in Citrus County. Management has also budgeted over \$8.0 million in expense reductions in FY 2011 by closing the defined benefit pension plan, instituting a reduction in force, eliminating senior management bonuses, reducing professional liability expense, closing its orthopedic practice and reducing supply expense.

The governance issues between CCHB and CMHF have escalated over the last year given the litigation and failed mediation attempts. Additionally, a local bill is currently in the Florida legislature that seeks to reorganize CMHF's governance structure by giving greater control over day to day operations to the CCHB board. If successful, a change in control may result in the termination of the lease agreement and hospital care agreement governing CCHB's and CMHF's relationship. Per the Series 2002 Trust Indenture, in the event that the lease agreement is terminated, CMHF's bond obligations would revert to CCHB. It is unclear at this point whether or not the local bill will be passed and signed by the Governor. Management questions whether or not, if passed and signed into law, a court will find the law to be constitutional.

CMHF's unrestricted cash and investments declined by \$15.1 million over a three month period with \$30.8 million (64 days cash on hand) at December 31, 2010, down from \$45.9 million (97.4 days cash on hand) at FYE 2010. Cash to debt declined to 51.5% at December 31, 2010 from 79.5% at FYE 2010. The cash decline at December 31, 2010 was as a result of \$3.7 million in cash paid to support CMHF's acquisition activity that included the purchase of Citrus Orthopedic and Joint Institute's Rehabilitation practice and the purchase of West Florida Diagnostics Imaging facility during the first quarter of FY 2011. The cash decline was also impacted by a \$5.1 accounts payable and payroll payment at calendar yearend, a \$3.0 million transfer to the state to fund the Low Income Pool (LIP) program, pension funding, current portion of bond funding and routine capital expenditures. CMHF maintains 100% liquidity available within one month and has very conservative investments with 100% allocated to cash. No future debt is planned and CMHF maintains a defined contribution pension plan for all employees who joined as of October 1, 2004 in the absence of a defined benefit plan.

Outlook

The negative outlook reflects the decline in liquidity (64 days as of December 31, 2010) and its limited headroom to the 50 days cash on hand covenant measured annually at fiscal yearend, as well as our concerns that governance issues between the CMHF board and CCHB will continue to negatively pressure hospital performance.

What could change the rating--UP

Favorable resolution of the governance issues with CCHB; improvement in financial performance increase in liquidity and improved debt coverage ratios

What could change the rating--DOWN

Continued downturn in financial performance due to distractions from the governance issues and the inability to contract expenses or grow revenues; further decline in liquidity or increased leverage

KEY INDICATORS

Assumptions & Adjustments:

-Based on audited financial statements for Citrus Memorial Health Foundation, Inc. and Citrus Memorial Health Foundation Management Services Corporation Inc. d.b.a. Citrus Memorial Health System

-First number reflects FY 2009 audit year ended September 30, 2009 (restated in the unaudited FY 2010 numbers)

-Second number reflects FY 2010 twelve month unaudited financial statements ended September 30, 2010

-Investment returns normalized at 6% unless otherwise noted

*Inpatient admissions: 11,232; 10,592

*Total operating revenues: \$183.3 million; \$172.1 million

*Moody's-adjusted net revenue available for debt service: \$19.5 million; \$6.9 million

*Total debt outstanding: \$62.1 million; \$57.8 million

*Maximum annual debt service (MADS): \$5.5 million; \$5.5 million

*MADS Coverage with reported investment income: 3.3 times; 0.9 times

*Moody's-adjusted MADS Coverage with normalized investment income: 3.5 times; 1.3 times

*Debt-to-cash flow: 3.8 times; 14.5 times

*Days cash on hand: 111 days; 97 days

*Cash-to-debt: 83.3%; 79.5%

*Operating margin: 2.3%; -4.5%

*Operating cash flow margin: 8.8%; 1.7%

RATED DEBT

-Series 2002 (fixed rate) (\$41.2 million outstanding), rated Ba2

CONTACTS

Obligor: Mr. Mark Williams, Chief Financial Officer, Citrus Memorial Hospital, (352) 560-6898

The last rating action with respect to Citrus Memorial Hospital, FL was on November 23, 2010, when the Baa3 rating was placed on watchlist for a potential downgrade.

RATING METHODOLOGY:

The principal methodology used in this rating was Not-for-Profit Hospitals and Health Systems published in January 2008.

REGULATORY DISCLOSURES

Information sources used to prepare the credit rating are the following: parties involved in the ratings, parties not involved in the ratings, public information, confidential and proprietary Moody's Investors Service information, and confidential and proprietary Moody's Analytics information.

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CURRENT MONTH STATEMENT OF OPERATIONS ACTUAL TO BUDGET

<u>INDICATOR</u>	<u>ACTUAL</u>	<u>BUDGET</u>	<u>VARIANCE</u>	<u>COMMENT</u>
<i>GROSS REVENUE</i>	56,538,023	57,727,845	(1,189,822)	IP CV surgery 1.3 under budget
<i>NET PATIENT REVENUE</i>	13,221,848	14,939,071	(1,717,223)	Shift from bad debt to charity Decreased volumes, poor payor mix
<i>EXPENSES</i>	13,807,235	15,570,226	(1,762,991)	
<i>SALARIES/BENEFITS</i>	6,191,802	5,907,625	284,177	Employee Health insurance 209K over budget
<i>PRN/PROFESSIONAL FEES</i>	1,247,364	1,218,594	28,770	
<i>MEDICAL SUPPLIES</i>	2,654,487	3,243,004	(588,517)	Spine 167K, Pacemakers 144K, drugs 156K under budget
<i>BAD DEBT EXPENSE</i>	849,225	1,931,711	(1,082,486)	Shift to charity
<i>DEPRECIATION</i>	631,944	760,219	(128,275)	
<i>BLD & GENERAL INSURANCE</i>	359,255	378,374	(19,119)	
<i>R/M - SERVICE CONTRACTS</i>	455,469	451,805	3,664	
<i>REV OVER EXPENSE</i>	28,371	80,203	(51,832)	
<i>YTD REV OVER EXPENSE</i>	446,744	2,227,400	(1,780,656)	

Notables:

- Open Heart procedures 16 vs PY 25
- IP cath lab patients 105 PY 113, OP cath lab patients 162 PY 161
- Total discharges 817 vs PY 896
- Total surgeries 554, PY 542
- Case Mix Index 1.7382 PY 1.8304

CITRUS MEMORIAL HEALTH FOUNDATION, INC.
COMPARATIVE KEY OPERATIONAL NUMBERS
For the 5 months ended February 2010

	<u>YTD</u> <u>2010</u>	<u>12 Months</u> <u>2009</u>	<u>12 Months</u> <u>2008</u>
BAD DEBTS	1.3%	3.1%	3.4%
	<u>\$3,898,767</u>	<u>\$21,622,383</u>	<u>\$20,945,645</u>
SELF-PAY ALLOWANCE	0.6%	1.1%	1.5%
	<u>1,782,726</u>	<u>7,442,971</u>	<u>9,154,652.40</u>
CHARITY	2.2%	2.4%	1.1%
	<u>6,525,895</u>	<u>\$16,940,738</u>	<u>\$6,862,455</u>
TOTAL	4.1%	6.6%	6.0%
	<u><u>\$12,207,389</u></u>	<u><u>\$46,006,091</u></u>	<u><u>\$36,962,752</u></u>

CITRUS COUNTY HOSPITAL BOARD TAX UTILIZATION

CURRENT MONTH ACTUAL

CAPITAL	CHARITY	TOTAL	TAX DUE	DIFFERENCE
115,466	285,758	401,224	375,798	(25,426)

CURRENT YEAR ACTUAL

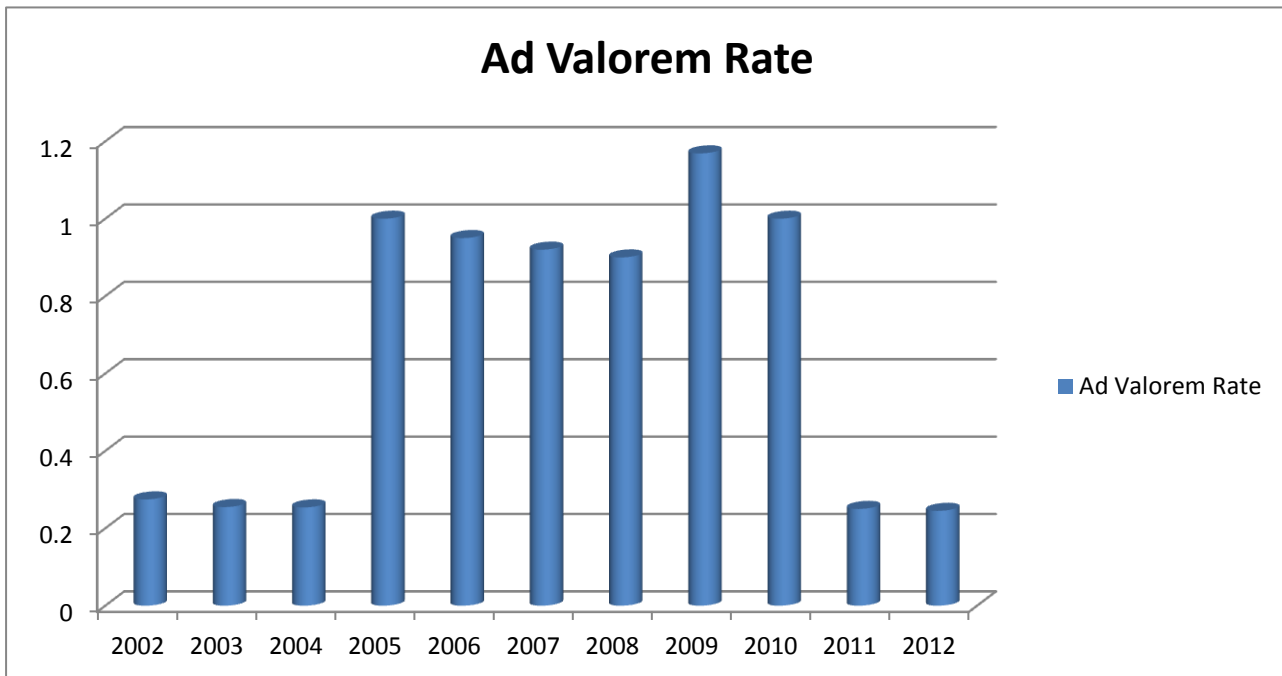
CAPITAL	CHARITY	TOTAL	TAX DUE	DIFFERENCE
2,581,182	1,696,733	4,277,915	1,876,302	(2,401,613)

CITRUS COUNTY HOSPITAL BOARD
HISTORY OF AD VALOREM (PROPERTY) TAX RATES
FISCAL YEARS ENDING SEPTEMBER 30, 2002 TO SEPTEMBER 30, 2012

FISCAL YEAR END SEPTEMBER 30	AD VALOREM RATE		TAXABLE VALUE		GROSS AD VALOREM PROCEEDS
2002	0.2746	(3)	5,583,947,000	(1)	1,533,352
2003	0.2548	(3)	5,949,416,000	(1)	1,515,911
2004	0.2539	(3)	6,483,166,000	(1)	1,646,076
2005	1.000	(3)	7,107,654,000	(1)	7,107,654
2006	0.950	(3)	8,722,316,000	(1)	8,286,200
2007	0.920	(2)	11,171,615,056	(2)	10,277,886
2008	0.8999	(2)	11,848,337,433	(2)	10,662,319
2009	1.1689	(2)	10,949,871,541	(2)	12,799,305
2010	1.0000	(2)	10,074,921,377	(2)	10,074,921
2011	0.2500	(2)	9,614,305,893	(2)	2,403,576
2012	0.2450	(4)	9,336,411,252	(4)	2,287,421

SOURCES:

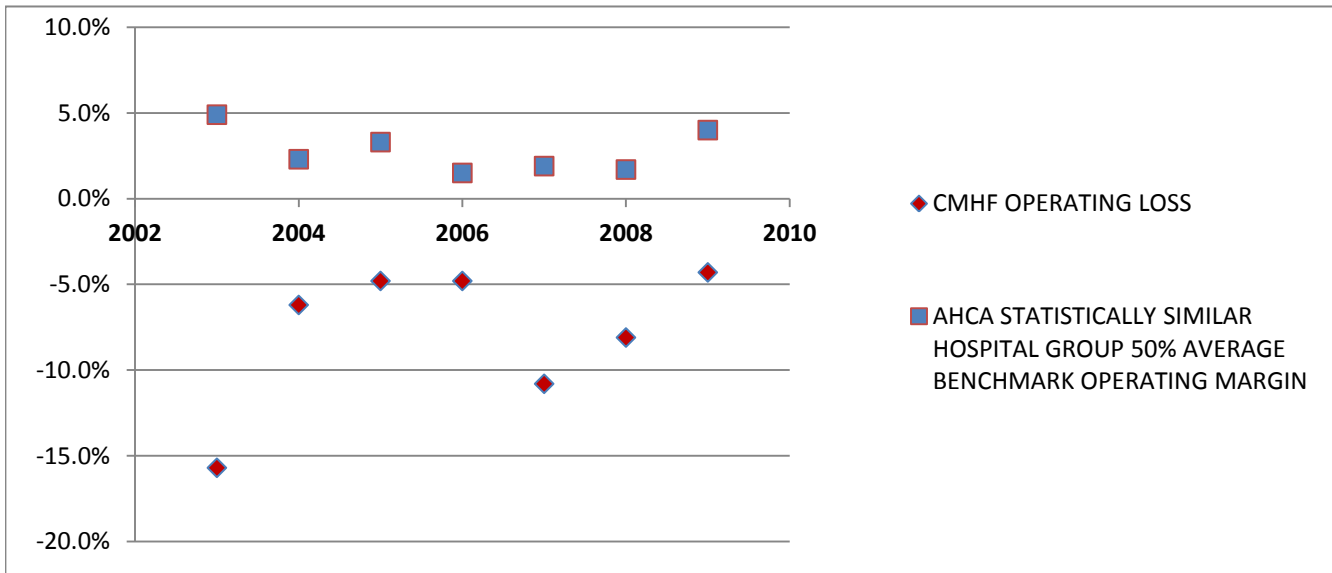
- (1) CITRUS COUNTY FLORIDA, COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2009.
- (2) CITRUS COUNTY HOSPITAL BOARD RESOLUTIONS ADOPTING EACH YEAR'S AD VALOREM TAX RATE.
- (3) CITRUS COUNTY PROPERTY APPRAISER FINAL MILLAGE RATE FORMS FOR EACH YEAR.
- (4) CURRENTLY PROPOSED TAX RATE FOR 2011/12 FISCAL YEAR



CITRUS COUNTY HOSPITAL BOARD
HISTORY OF CITRUS MEMORIAL HEALTH FOUNDATION OPERATING MARGIN
COMPARED TO ACHA DATA FOR SIMILAR HOSPITAL GROUPS
FISCAL YEARS ENDING SEPTEMBER 30, 2003 TO SEPTEMBER 30, 2009

	2009	2008	2007	2006	2005	2004	2003
CMHF OPERATING LOSS	-4.3%	-8.1%	-10.8%	-4.8%	-4.8%	-6.2%	-15.7%
AHCA STATISTICALLY SIMILAR HC HOSPITAL GROUP 50% AVERAGE BENCHMARK OPERATING MARGIN	4.0%	1.7%	1.9%	1.5%	3.3%	2.3%	4.9%

SOURCE: FLORIDA HOSPITAL FINANCIAL DATA PUBLISHED BY THE FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION (AHCA). THE REPORT FOR 2010 HAS NOT BEEN ISSUED.



THE ABOVE GRAPH INDICATES THAT CMHF HAS SIGNIFICANTLY UNDERPERFORMED THEIR PEERS. OVER THE SEVEN YEAR PERIOD FOR 2003 TO 2009, CMHS HAS AVERAGED A NET OPERATING LOSS OF 7.3% WHILE OTHER SIMILAR HOSPITALS AVERAGED A NET OPERATING GAIN OF 2.8%

CMHF SEVERANCE AMOUNTS

ITEM	NAME	POSITION	SIGN DATE	SEVERANCE AMOUNT	BENEFIT & DURATION
1	Ryan Beaty	Chief Executive Officer	6/27/2011	\$ 678,550.91	24 Months Salary, PDO's & 24 Health Insurance
2	Jerry DeLoach	Chief Operating Officer	6/27/2011	\$ 179,999.87	12 Months Salary, PDO's & 12 Health Insurance
3	Mark Williams	Chief Financial Officer	6/27/2011	\$ 175,000.80	12 Months Salary, PDO's & 12 Health Insurance
4	Linda McCarthy	Chief Nursing Officer		\$ 171,999.98	12 Months Salary, PDO's & 12 Health Insurance
5	Lee Glotzback	Chief Human Resources Officer		\$ 134,782.34	12 Months Salary, PDO's & 12 Health Insurance
6	George Mavros	Director of Professional Services		\$ 110,160.54	6 Months Salary, PDO's & 6 Health Insurance
7	Chris Pool	Director of Marketing and Philanthropy		\$ 98,939.98	6 Months Salary, PDO's & 6 Health Insurance
8	Margie Leturno	Director of Women & Children's Services		\$ 40,469.00	6 Months Salary, PDO's & 6 Health Insurance
9	David Wells	Director of Diagnostic Imaging	7/11/2011	\$ 38,750.00	6 Months Salary, PDO's & 6 Health Insurance
10	Paul H. Weigel	Director of Physician Practices	7/1/2011	\$ 43,349.00	6 Months Salary, PDO's & 6 Health Insurance
11	Lori Dennison	Director of Nursing Operations		\$ 42,329.00	6 Months Salary, PDO's & 6 Health Insurance
12	Cheryl Love	Director of Nursing Practices		\$ 42,500.00	6 Months Salary, PDO's & 6 Health Insurance
13	Andrea Weeks	Director of Finance		\$ 43,828.00	6 Months Salary, PDO's & 6 Health Insurance
14	Diane Wesch	Director of Revenue Cycle Management		\$ 42,505.00	6 Months Salary, PDO's & 6 Health Insurance
15	Lance Ledoux	Director of Support Services		\$ 40,798.00	6 Months Salary, PDO's & 6 Health Insurance
16	Robin Natterer	Home Health Administrator	7/6/2011	\$ 40,799.00	6 Months Salary, PDO's & 6 Health Insurance
18	Joseph Gyorko	Director of Plant Operations	7/5/2011	\$ 41,716.00	6 Months Salary, PDO's & 6 Health Insurance
19	James Meister	Director of Information Services	7/1/2011	\$ 45,000.00	6 Months Salary, PDO's & 6 Health Insurance
20	Randall Weeks	Director of Perioperative Services		\$ 50,107.00	6 Months Salary, PDO's & 6 Health Insurance
21	Craig McCurdy	Director of Pharmacy	7/1/2011	\$ 56,000.00	6 Months Salary, PDO's & 6 Health Insurance

TOTAL SEVERANCE AMOUNT \$ 2,117,584.42
TOTAL PDO AMOUNT UNKNOWN
TOTAL HEALTH INSURANCE \$ 202,500.00
TOTAL BENEFIT PACKAGE \$ 2,320,084.42

AHCA / CMHF Hospital Financial Data Review
AHCA / CMHF Profit/Loss From Patient Service Operations
AHCA / CMHF Operating Margins

Profitability Analysis noting CMHF patient service operative losses and underperformance as compared to AHCA Not-For-Profit Operating Margins and AHCA hospitals classified as statistically similar to CMHF (AHCA Similar Hospital Group):

AHCA Reported CMHF Patient Service Operative Losses

2003 (-\$10,613,816)
 2004 (-\$5,362,792)
 2005 (-\$4,954,311)
 2006 (-\$5,744,703)
 2007 (-\$13,614,230)
 2008 (-\$10,456,415)

2003 – 2008 AHCA Reported CMHF Patient Service Operative Losses (- \$50,746,267)

2009 (- \$8,485,211) *CMHF projected losses from patient service operations exclusive of tax support.*

AHCA Reported CMHF Operating Margins	AHCA NFP Operating Margins	AHCA Similar Hospital Group Operating Margins
2003 (-15.7%)	2003 3.2%	2003 4.9%
2004 (- 6.2%)	2004 3.1%	2004 2.3%
2005 (- 4.8%)	2005 3.9%	2005 3.3%
2006 (- 4.8%)	2006 2.5%	2006 1.5%
2007 (-10.8%)	2007 2.4%	2007 1.9%
2008 (- 8.1%)	2008 2.5%	2008 1.7%

**CITRUS COUNTY HOSPITAL BOARD &
CITRUS MEMORIAL HEALTH
FOUNDATION, INC.**

Operational Audit

January 2006 Through December 2008
and Selected Actions Taken Prior and Subsequent Thereto



BOARD MEMBERS

Citrus County Hospital Board Members and Citrus Memorial Health Foundation, Inc., Directors and Chief Executive Officer (serving both Boards) who served from January 2006 through December 2008, and through November 2009, are listed below:

Citrus County Hospital Board Members

Upender Rao, M.D. from 8-7-07,
Chairperson from 10-28-08

Deborah Ressler, from 7-6-09,
Vice-Chairperson from 8-14-09

Sandra L. Chadwick, to 7-16-07

Robert F. Collins, from 7-8-08 to 6-22-09

Deborah O. Frankel, Esq.

Debra S. Fredrick, to 7-7-08

David Langer, to 6-19-08

Alida V. Langley, to 7-5-09

Ralph W. Rogers, M.D., from 7-20-08 to 4-7-09

James Sanders, to 7-3-07

Michael A. Smallridge, from 7-2-09

James O. Wood, from 7-2-09

Ryan Beaty, Chief Executive Officer

Citrus Memorial Health Foundation, Inc., Directors

David Langer, Chairperson from 10-27-09

Joseph Brannen, Esq.,
Vice-Chairperson from 10-27-09

Sandra L. Chadwick

Robert F. Collins, from 7-8-08 to 6-22-09
and from 10-27-09

Deborah O. Frankel, Esq.

Debra S. Fredrick, to 7-7-08

Carlos Govantes, M.D., from 10-1-06 to 9-30-07

Dr. William Harrer, M.D., from 10-1-09

Robert Henigar

Marilyn Jordan, to 10-1-07

Mariananda Kumar, M.D., from 10-1-08 to 9-30-09

Vikas Kamat, M.D., from 10-1-07 to 9-30-08

Phillip Kofmehl to 10-26-09

Alida V. Langley, to 7-5-09

Upender Rao, M.D., from 8-7-07

Venugopala Reddy, M.D.

Deborah L. Ressler, from 7-6-09

Ralph W. Rogers, M.D., from 7-20-08 to 4-7-09

Steven Roth, M.D., from 10-1-05 to 9-30-06

James Sanders

Michael A. Smallridge, from 7-2-09

James O. Wood, from 7-2-09

Ryan Beaty, Chief Executive Officer

The audit team leader was James H. Cole, CPA, and the audit was supervised by Michael J. Gomez, CPA. Please address inquiries regarding this report to Marilyn D. Rosetti, CPA, Audit Manager, by e-mail at marilynrosetti@aud.state.fl.us or by telephone at (850) 487-9031.

This report and other audit reports prepared by the Auditor General can be obtained on our Web site (www.myflorida.com/audgen); by telephone (850) 487-9024; or by mail (G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450).

**CITRUS COUNTY HOSPITAL BOARD AND
CITRUS HEALTH MEMORIAL FOUNDATION, INC.
OPERATIONAL AUDIT**

Table of Contents

SUMMARY.....1

BACKGROUND 2

FINDINGS AND RECOMMENDATIONS..... 3

Accountability..... 3

 Finding No. 1: Hospital Board Oversight.....3

 Finding No. 2: Accounting for Ad Valorem Taxes5

 Finding No. 3: Accounting for Low Income Pool Expenditures.....7

Debt..... 8

 Finding No. 4: Debt Management.....8

Construction Administration10

 Finding No. 5: Construction Projects 10

Expenditures.....15

 Finding No. 6: Employee Bonuses..... 15

 Finding No. 7 Travel-related Expenditures 16

Contractual Services.....17

 Finding No. 8: Transcriptionist Contracts 17

 Finding No. 9: Foundation Board Approval of Contracts 18

Other Matters.....19

 Finding No. 10: Conflicts of Interest..... 19

 Finding No. 11: Hospital Board Actions..... 21

OBJECTIVES, SCOPE, AND METHODOLOGY.....22

AUTHORITY23

MANAGEMENTS’ RESPONSES23

 Exhibit A - Citrus County Hospital Board's Response 24

 Exhibit B - Citrus Memorial Health Foundation, Inc.'s Response..... 63

SUMMARY

The Auditor General is authorized by State law to perform independent audits of governmental entities in Florida. Pursuant to Section 11.45(2)(I), Florida Statutes, the Legislative Auditing Committee, at its March 9, 2009, meeting, directed us to conduct an audit of the Citrus County Hospital Board (Hospital Board) and the Citrus Health Memorial Foundation, Inc. (Foundation). The summary of our findings for the period January 2006 through December 2008, and selected actions taken prior and subsequent thereto, is as follows:

ACCOUNTABILITY

Finding No. 1: Although the Hospital Board exercised its authority in contracting the operation of the Hospital to the Foundation, additional accountability measures should be implemented to ensure that public funds are used in a prudent manner and the Hospital is operated efficiently.

Finding No. 2: The Foundation does not maintain separate accountability for expenditures of ad valorem taxes received from the Hospital Board.

Finding No. 3: The Foundation does not maintain separate accountability for expenditures of Low Income Pool Program funds received from the Agency for Health Care Administration.

DEBT

Finding No. 4: Neither the Hospital Board nor the Foundation had developed formal policies and procedures governing the issuance and monitoring of long-term debt. Additionally, the Hospital Board approved and issued revenue bonds and notes in 2006 and 2008, respectively, that exceeded the Foundation's debt capacity, as calculated by the contracted financial advisor.

CONSTRUCTION ADMINISTRATION

Finding No. 5: The Hospital Board did not require the Foundation to follow any specific policies and procedures for construction processes related to the use of the 2008 revenue note proceeds and we noted several issues of concern in the Foundation's administration of the construction projects. Such concerns include certain contract elements and costs, conflicts of interest, and subcontractor bid awards.

EXPENDITURES

Finding No. 6: Employee bonuses were paid to some Hospital officers and directors without the approval of either the Executive Compensation Committee or the Foundation Board.

Finding No. 7: Of the \$58,260 in Foundation travel-related expenses we reviewed, \$10,200 were only supported by credit card statements, check requests, or handwritten notes (i.e., were not supported by actual invoices); several hotel and restaurant invoices included alcohol, spa, and golf charges; and 16 banquet dinners were paid for by the Foundation for non-hospital-related attendees. Only \$517 in reimbursements were received by the Foundation related to these charges.

CONTRACTUAL SERVICES

Finding No. 8: Travel costs totaling approximately \$146,000 were paid by the Foundation either to the vendor for transcriptionist services, or on behalf of the vendor, that were not authorized in the contract.

Finding No. 9: Some contracts, the total of which exceeded the Chief Executive Officer's expenditure authority, were not presented to the Foundation Board for approval.

OTHER MATTERS

Finding No. 10: We noted instances of actual or possible conflicts of interest during our audit period. The Foundation's by-laws established conflicts of interest policies and a Conflict Committee to address actual

or possible conflicts of interest related to its directors, principal officers, and committee members. However, the Conflict Committee did not operate during our audit period.

Finding No. 11: The Hospital Board did not always comply with controlling laws relating to voting, meeting minutes, or check approvals.

BACKGROUND

Citrus County Hospital Board

The Citrus County Hospital Board (Hospital Board) is an independent special district originally created by a special act of the Legislature in 1949 (Ch. 25728, Laws of Florida). Chapter 99-442 (as subsequently amended by Chapter 2001-308), Laws of Florida, is the codification of all special acts relating to the Hospital Board.

The Hospital Board was created as a public nonprofit corporation without stock for the purpose of operating public hospitals, medical nursing homes, and convalescent homes, primarily and chiefly for the benefit of the citizens and residents of Citrus County. The Hospital Board is composed of, and governed by, a five-member board of trustees, all of whom are appointed by the Governor with four-year terms.

The Hospital Board is authorized and empowered, in part, to: (1) own and acquire property by purchase, lease, gift, grant, or transfer; (2) acquire, construct, maintain, operate, expand, alter, repair, change, lease, finance, and equip hospitals, medical nursing homes, convalescent homes, medical care facilities, and clinics in Citrus County; (3) enter into contracts with individuals, partnerships, corporations, and various governmental entities to carry out its purposes in law; (4) adopt all necessary rules, regulations, and bylaws for the operation of said hospitals and related facilities; (5) provide for admission and treatment of specified charity patients; and (6) establish a medical staff and employ personnel.

In addition, the Hospital Board has express authority to: (1) borrow money, with or without issuing notes, for the purpose(s) of constructing, maintaining, repairing, altering, expanding, equipping, leasing, and operating said hospitals and related facilities; and (2) issue bonds, subject to approval by a referendum of the voters of Citrus County, and Revenue Certificates, without such a referendum, the proceeds of which shall be used for erecting, equipping, building, expanding, altering, changing, maintaining, operating, leasing, and repairing said hospitals and related facilities.

The Hospital Board is authorized by the State of Florida to levy up to three (3) mills per year on all taxable real and personal property in Citrus County. Up to one and one-half (1½) mills per year, which is included in the maximum millage of three (3) mills per year, may be used to repay bonds principal and interest.

Citrus Memorial Health Foundation, Inc.

In March 1987, the Hospital Board created the Citrus County Health Foundation, Inc., subsequently renamed in November 1989 as the Citrus Memorial Health Foundation, Inc. (Foundation). The Foundation was created as a nonprofit corporation, with the Hospital Board as its sole member, to carry out the purpose of the special act creating the Hospital Board. The Foundation is currently doing business as the Citrus Memorial Health System, which includes:

- 198-bed in-patient hospital
- 24-hour emergency room
- Laboratory and diagnostic services
- Walk-in clinic

- Home health agency
- Rehabilitation services
- Heart center
- Orthopedic services

According to the Articles of Restatement, the Foundation operates exclusively for charitable, scientific, and/or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, as amended. The Foundation is managed by a board of directors comprised of the following: (1) the five trustees of the Hospital Board, (2) a minimum of five and a maximum of seven at-large directors, and (3) the chief/president of the medical staff who represents the medical staff of the Citrus Memorial Hospital. In the event of dissolution of the Foundation, its assets, after payment of its liabilities, revert to the Hospital Board.

The Hospital Board entered into a lease agreement and an agreement for hospital care with the Foundation, both effective March 1, 1990. The lease agreement expires on June 15, 2033, unless sooner terminated in accordance with lease terms. The Foundation has the right to unconditionally renew the lease for an additional 45-year term, if the Foundation is not in default under the lease agreement terms. In the event the lease is terminated, the Hospital Board will take over the hospital facilities. The agreement for hospital care is automatically renewed each year for a total of 40 years, or for as long as the lease agreement remains in effect, unless terminated by the Foundation in accordance with agreement terms.

Under the lease agreement, the Foundation has leased from the Hospital Board all of the land, buildings, improvements, equipment, furniture, and fixtures of the Citrus Memorial Health System and agreed to make rental payments equal to the principal and interest and any premiums on the Hospital Revenue and Revenue Refunding Bonds issued by the Hospital Board.

Under the agreement for hospital care, the Hospital Board agreed to assist the Foundation with funding for uncompensated care and the acquisition, expansion, and maintenance of proposed and existing hospital and health facilities in exchange for medical services provided by the Foundation to the residents of Citrus County. In addition, the Foundation is required to submit an annual operating and capital budget to the Hospital Board. The Hospital Board is required to review the budget in conjunction with its own budget and, in accordance with its enabling legislation, certify to the Citrus County Board of County Commissioners the millage rate required to be levied. Public budget hearings are held as required by law. The Hospital Board is then required to pay to the Foundation its share of the ad valorem tax revenues to fund activities and services identified in the Foundation operating and capital budget.

FINDINGS AND RECOMMENDATIONS

Accountability

Finding No. 1: Hospital Board Oversight

Section 155.40, Florida Statutes, provides general authority for any county, district, or municipal hospital to be sold or leased to a for-profit or nonprofit Florida corporation and for the governmental entity to enter into an agreement with the corporation for the operation of the hospital. Section 155.40(5), Florida Statutes, indicates that in the event a hospital operated by the corporation receives more than \$100,000 annually in revenues from the county, district, or municipality that owns the hospital, the Florida corporation must be accountable to the county, district, or

municipality with respect to the manner in which the funds are expended by either (a) having the revenues subject to annual appropriations by the county, district, or municipality; or (b) where there is a contract to provide revenues to the hospital, the term of which is longer than 12 months, the governing board of the county, district, or municipality must be able to modify the contract upon 12 months notice to the hospital. The Foundation receives annual appropriations from the Hospital Board in amounts exceeding \$100,000. Florida Courts have recognized that, although Section 155.40, Florida Statutes, provides that a district may reorganize a hospital entity for the purpose of operating and managing the hospital, it does not authorize relinquishing to an independent private board effective unfettered control over public property, powers, taxing authority, and money, including expenditure of ad valorem taxes without public oversight or accountability. Florida courts have also held that the Hospital Board must exercise sufficient control over the Foundation for the Foundation to be considered an instrumentality of a governmental entity and, thus, entitled to sovereign immunity.

Pursuant to its authority, the Hospital Board entered into agreements with the Foundation, a nonprofit corporation, to operate the Citrus County Hospital System (Hospital) pursuant to a lease agreement and an operating agreement for hospital care. The agreement for hospital care is automatically renewed each year for 40 years, or as long as the lease remains in effect. The lease agreement also provides, in addition to the 40-year term, a provision that the Foundation has an unconditional right to renew the lease for an additional 45-year period. The Foundation has the right to terminate the agreement for any reason if it provides notice of such termination no later than 30 days prior to the annual automatic renewal date. Florida Statutes that apply to the operations of the Hospital Board, as a Florida local government, generally do not apply to the operations of the Foundation, as a nonprofit corporation. The agreements for the lease and operation of the Hospital do not incorporate or otherwise require the Foundation to follow any specific Florida laws, other than the Sunshine and public records laws, in the operation of the Foundation that are applicable to the Hospital Board. The agreements also do not prescribe specific good business practices to ensure the efficient operation of the Hospital.

In this report, we have noted administrative deficiencies by the Foundation in the areas of accountability for public funds provided by the Hospital Board and the State, debt management, construction project administration, expenditure of funds, and other matters. The agreement for hospital care requires the Hospital Board to appropriate sufficient funds to the Foundation in an amount based on an annual operating and capital budget submitted by the Foundation to the Hospital Board. The Hospital Board must pay the Foundation public money for a period of at least 40 years (or conceivably 85 years) with limited input from, or accountability to, the public. The Hospital Board, unlike the Foundation, has no authority to unilaterally terminate the agreement. The Foundation is self-perpetuating and structured so that the Hospital Board members serving as directors of the Foundation Board will always be a minority. At its October 26, 2009, meeting, the Hospital Board passed a resolution whereby its members agreed to resign as directors of the Foundation Board. However, as of November 30, 2009, written notifications of these resignations had not been received by the Foundation, its Board, or its Chair. For such resignations to be effective, Section 617.0807, Florida Statutes, require directors' notices of resignation to be in writing and delivered to the board of directors, its chair, or to the corporation. Section 4.9 of the Foundation's by-laws also require resignations to be in writing and delivered to the Chair or Vice-Chair. Although the Hospital Board has exercised its authority in contracting the operation of the Hospital to another entity, it has a responsibility to ensure that proper accountability measures are in place to carry out the responsibilities contained in its enabling legislation. Requiring the use of specified good business practices would help ensure that the Hospital is operated in a more efficient manner and may reduce the need for ad valorem tax revenues. Further, requiring accountability for any public funds used would provide additional assurance that these funds are used in a prudent manner.

Recommendation: The Hospital Board should consider either amending its agreement(s) with the Foundation to require the Foundation to utilize policies and procedures adopting good management and business practices, or evaluate the manner in which the Hospital has been administered by the Foundation in determining the annual appropriation to the Foundation. Any such policies and procedures could require the Foundation to follow selected Florida laws that are applicable to the Hospital Board; however, the policies and procedures should, at a minimum, address the findings noted elsewhere in this report. Amendments to the agreement(s) should also provide the Hospital Board with the ability to terminate the agreement(s) with proper notice. Should the Hospital Board desire to amend the contract, it would require concurrence of the Foundation.

Finding No. 2: Accounting for Ad Valorem Taxes

Section 6 of Chapter 99-442, Laws of Florida, states that the Board of County Commissioners of Citrus County shall levy a hospital tax based on the millage certified by the trustees of the Hospital Board. The Hospital Board is authorized to levy up to three (3) mills per year on all taxable real and personal property in Citrus County. The collections are to be used for the purpose of erecting, building, equipping, maintaining, changing, altering, repairing, leasing, and operating the public hospital.

As noted previously, the Hospital Board and the Foundation entered into agreements whereby the Foundation would lease the Hospital Board’s real and personal property and provide hospital care in Citrus County. Article V of the hospital care agreement states that in return for payments to be made by the Hospital Board to the Foundation, the Foundation would operate the hospital system. Article VI of the agreement (amended on May 28, 1991, and February 27, 2006) states that the Foundation shall prepare an annual operating and capital budget and that the Hospital Board shall use that budget to determine the ad valorem taxes to be levied. The Hospital Board would then certify the tax assessment needed to fund the Foundation’s budget as well as its own expenses.

Ad valorem tax revenues, millage rates levied, and funds provided to or for the Foundation for the most recent four years are shown in Table 1:

Fiscal Year	Ad Valorem Tax Revenue	Millage Rate	Funds Provided for Foundation per Agreement (Note 1)
2005-06	\$ 8,031,865	0.9500	\$ 7,585,000
2006-07	10,357,117	0.9200	9,900,000
2007-08	10,889,759	0.8990	10,050,000
2008-09 (Budgeted)	12,799,305	1.1689	11,900,004

Note 1 – A portion of the funds are provided directly to the Foundation, while the remainder is sent to the State on behalf of the Foundation (see additional discussion in finding No. 3)

The Foundation’s budgeted funding comes from net patient service revenue, Hospital Board tax transfers, and other operating revenues as noted in the budgets noted in Table 2:

Table 2				
Budgeted Amounts by Fiscal Year				
Budget Line Item	<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>
Revenues:				
Net Patient Service Revenue	\$ 123,574,000	\$ 145,723,503	\$ 154,039,236	\$ 165,615,177
Funds from Hospital Board	7,585,000	9,900,000	10,050,000	11,900,004
Other Operating Revenues	500,000	1,731,000	2,125,872	1,981,116
Total Operating Revenues	131,659,000	157,354,503	166,215,108	179,496,297
Expenses:				
Total Operating Expenses	130,926,000	155,345,103	166,553,761	176,833,152
Non-Operating Income	1,500,000	1,474,600	1,860,504	1,712,484
Excess of Revenue Over Expenses	2,233,000	3,484,000	1,521,851	4,375,629
Special Capital Outlay				3,579,400

Although budgets were prepared for the taxes levied as noted above, neither the Hospital Board nor the Foundation budgets detailed the specific planned uses of the tax proceeds by the Foundation and the Foundation’s accounting records did not identify the specific uses of the tax proceeds. As part of its budget process, the Foundation estimates the operating revenues (excluding the ad valorem tax revenues) and expenditures (operating and capital outlay) for the upcoming year and then requests the amount of tax collections needed to fund operations, including a small excess. The Hospital Board then calculates the required tax rate based on the County’s estimated taxable values.

Table 3 summarizes the Foundation’s actual operating results for the 2005-06, 2006-07, and 2007-08 fiscal years, with and without the ad valorem tax receipts:

Table 3			
Actual Operating Results by Fiscal Year			
	<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>
Revenues:			
Net Patient Service Revenue	\$ 134,573,656	\$ 145,331,323	\$ 158,364,191
Funds from Hospital Board	7,585,000	9,900,000	10,050,000
Other Operating Revenues	1,623,001	2,005,832	2,149,918
Total Operating Revenues	143,781,657	157,237,155	170,564,109
Expenses:			
Total Operating Expenses	142,894,318	160,306,034	170,069,018
Non-Operating Income	1,783,109	1,801,736	2,055,956
Excess of Revenue Over (Under) Expenses	2,670,448	(1,267,143)	2,551,047
Less: Funds from Hospital Board	7,585,000	9,900,000	10,050,000
Revised Income (Loss) without Board Funds	<u>(\$4,914,552)</u>	<u>(\$11,167,143)</u>	<u>(\$7,498,953)</u>

Although Table 3 shows that more net patient revenues were received in fiscal years 2005-06 and 2007-08 than anticipated in the budgets, additional expenses were also paid that exceeded the budgeted expenditures approved by

the Foundation Board. While Table 3 shows that the Foundation relied on the ad valorem tax revenues to fund its expenditures, given the lack of detail in the Foundation’s budgets and accounting records, along with deficiencies discussed elsewhere in this report, it is not possible to determine if the ad valorem tax revenues were actually needed, or the specific purposes for which they were needed, for the Foundation’s operations.

Recommendation: As part of its budgeting process, the Foundation and the Hospital Board should identify the specific planned and authorized uses of the ad valorem tax proceeds. The Hospital Board should require the Foundation to maintain separate accountability as to the use of funds received from ad valorem tax proceeds.

Finding No. 3: Accounting for Low Income Pool Expenditures

The Hospital Board has participated with the Florida Agency for Health Care Administration’s (AHCA) Low Income Pool (LIP) Program for each year since the 2005-06 fiscal year. According to AHCA, “the Low Income Pool (LIP) will be established to ensure continued government support for the provision of health care services to Medicaid, underinsured, and uninsured populations.” An agreement between the Hospital Board and AHCA provides that the Hospital Board remit a certain amount each quarter to AHCA. The amounts remitted to AHCA are paid from the tax revenues collected by the Hospital Board. AHCA then remits the moneys to the Foundation with a Medicaid matching amount. The Foundation deposits LIP Program receipts into a separate revenue account. However, once received and recorded, the funds are comingled with other Foundation receipts and the use is not accounted for separately to document increased spending on eligible recipients.

The Foundation received LIP Program funds noted in Table 4:

Table 4			
Fiscal Year	Payments to State	Matching Funds	Total LIP Funds Received by Foundation
2005-06	\$ 6,367,903	\$ 1,114,059	\$ 7,481,962
2006-07	6,367,910	1,429,506	7,797,416
2007-08	7,704,238	1,551,574	9,255,812
2008-09	5,483,686	1,607,576	7,091,262

Item No. 1 of the agreement states that “these funds will only be used to increase the provision of health services for the Medicaid, uninsured, and underinsured people of the Board and the State of Florida at large.” Item No. 2 cites ten programs by which the increased provision for health services will be accomplished. Item No. 4 states that the Hospital Board and the State agree that the State will maintain necessary records and supporting documentation applicable to the health services covered by the agreement. Further, the Hospital Board and State agree that the Hospital Board shall have access to those records and the supporting documentation by requesting it from the State.

We requested documentation showing the increased spending on the qualified program recipients from the Foundation. In its June 19, 2009, response to our inquiry, the Foundation indicated that it had requested the documentation identified in Item No. 4 of the agreement from AHCA. As of November 30, 2009, we had not been provided the documentation. Although the agreement indicates that the State will maintain the necessary records and supporting documentation applicable to the health services covered by the agreement, because the Program funds

received by the Foundation are restricted as to their use, it is incumbent upon the Foundation to track these expenditures to ensure that these funds are not expended for unauthorized purposes.

Recommendation: The Foundation should develop documents and procedures to track and monitor the use of LIP Program receipts through its accounting system, obtain documentation from AHCA to determine to what extent these receipts have been expended for authorized purposes, and replenish any Program funds used for unauthorized purposes from unrestricted sources.

In his response, the Chairman of the Foundation stated that the Foundation requests that this finding be stricken and that the Foundation is not aware of any provision of contract or law that requires such an accounting. Notwithstanding the provisions of the contract or law, the point of our finding is that the LIP funds are restricted as to their use and, therefore, the Foundation should take steps to ensure that the funds are used for allowable purposes.

The Chairman also stated that our finding “is based upon the misguided premise that every dollar of LIP funds must be spent on ‘qualified [Medicaid] program recipients.’ That is not what AHCA’s standard letter of agreement states. What it actually states is: The Foundation and the Agency have agreed that these funds will only be used to increase the provision of Medicaid funded health services to the people of the Foundation and the State of Florida at large.” However, we believe it is clear from the language in the agreement between the Hospital Board and AHCA as quoted in our finding that the provision of services is limited to Medicaid, uninsured, and underinsured people.

Further, the Chairman stated that the total LIP funds listed in Table 4 vastly overstates the net amount that the Foundation actually receives from AHCA because it includes substantial amounts of money that the Hospital Board pays to the State that are merely returned to the Foundation along with LIP payments. The Chairman also stated that the actual net LIP payments for each year are the amounts listed under “Matching Funds” in Table 4. Finally, the Chairman provided a Web site for information on “how to properly allocate LIP funds.” The Chairman’s response indicates that the Foundation does not believe that the funds provided to the State by the Hospital Board become LIP program funds when provided to the Foundation through AHCA. Section 1.a) of the Letter of Agreement between the Hospital Board and AHCA, in reference to the funds provided by the Hospital Board, states “The Board and the Agency have agreed that these funds will only be used to increase the provision of health services for Medicaid, uninsured, and underinsured people of the Board and of the State of Florida at large.” Pursuant to the Letter of Agreement, the Web site provided by the Chairman, and Section 409.91211, Florida Statutes, once the Hospital Board provides funds to AHCA, the right to use such funds for any purpose other than the LIP program is relinquished. As such, we believe the presentation of LIP funds received by the Foundation, as shown in Table 4, is accurate.

Debt

Finding No. 4: Debt Management

The Hospital Board issued Series 2002 Hospital Revenue and Revenue Refunding Bonds for \$45,000,000. The bonds were issued with interest rates ranging from 6.250 to 6.375 percent to (i) refund outstanding 1992A Bonds; (ii) pay a portion of the costs of the acquisition, construction, and equipping the Series 2002 Project; and (iii) pay Series 2002 Bond issuance costs. The Hospital Board issued the Series 2006 Hospital Revenue Bonds for \$10,000,000 with a variable percentage interest rate based on the London Interbank Offered Rate (LIBOR), and the Series 2008 Hospital Revenue Note for \$10,000,000, with a variable percentage interest rate also based on LIBOR, to finance and reimburse costs of acquiring, constructing, and equipping health facility improvements owned by the Hospital Board and leased to the Foundation. For all three debt issues, a simultaneous financing agreement was issued whereby the

Hospital Board loaned the Foundation the debt proceeds. As a result, the bonds and notes are reported as debt by the Foundation. Because the debt was conduit debt (authorized by the Hospital Board for tax exempt purposes), the debt was not the legal liability of the Hospital Board. Although the conduit debt is not currently a legal liability of the Hospital Board, in the event the agreements with the Foundation are terminated, the assets and liabilities of the Foundation would revert to the Hospital Board. As a result, the Hospital Board could potentially be liable for repayment of the debt issues.

Debt Management Policy. Neither the Hospital Board nor the Foundation had developed and documented formal policies and procedures for the issuance and monitoring of long-term debt. Debt management policies are written guidelines and restrictions that affect the amount and type of debt issued, the issuance process, and the management of a debt portfolio. An effective debt management policy can help improve the quality of decisions, provide justification for the structure of debt issuance, identify policy goals, and demonstrate a commitment to long-term financial planning, including a multi-year capital plan. Adherence to a debt management policy provides assurances to rating agencies and the capital markets that an entity is well-managed and should meet its obligations in a timely manner. Debt levels and their related annual costs are important long-term obligations that must be managed within available resources. An effective debt management policy provides guidelines for an entity to manage its debt program in line with those resources.¹

Debt Capacity. One definition of debt capacity is an assessment that determines the amount of debt an entity can repay in a timely manner with current available resources without jeopardizing its financial viability. According to the Board's financial advisor, a debt capacity analysis attempts to calculate the amount of additional debt an entity can support without lowering its existing bond ratings. We noted that in 2006 and 2008 the Hospital Board approved and issued bonds or notes that exceeded the Foundation's debt capacity calculated on a quantitative basis by the contracted financial advisor, as follows:

- The financial advisor's presentation for the Series 2006 Revenue Bonds indicated that the Hospital System administered by the Foundation had a quantitative incremental debt capacity of \$3.8 million, but revenue bonds were issued for \$10 million.
- The financial advisor's presentation for the Series 2008 Revenue Notes indicated that the Hospital System's quantitative debt capacity was negative \$11.3 million, but revenue notes were issued for \$10 million.

The presentation for the 2006 debt issue included non-quantitative credit strengths and stated that the Hospital Board's "taxing ability is a key strength with a significant increase in revenues expected in 2005 based on recent increase in tax millage (the willingness to increase the millage will also be seen as a positive)." Again, the presentation for the 2008 debt issue with debt capacity of negative \$11.3 million cited the Hospital Board's ability to tax as one of the non-quantitative credit strengths and stated that the Board "should be able to issue between \$5 and \$10 million of additional debt without negative rating consequences."

In the presentation for the 2008 bond issue, the financial advisor indicated that the most current rating by one of the rating agencies for the Hospital's bonds was Baa3, based on a report dated August 30, 2007, and the rating agency analysts believed that the tax revenues recorded in recent years were not sustainable in the long term. In the presentation, the following "credit challenges" were stated:

- "Recent legislation limits tax revenue growth in fiscal year 2008;
- High percentage of unprofitable Medicare and Medicaid utilization;

¹ Government Finance Officers Association's *Recommended Practices for Debt Management Policy (1995 and 2003)*

- Decline in operating performance in fiscal year 2007 due to the departure of radiology group, shift of cases from an inpatient to outpatient setting with reduced reimbursement, and flat utilization trend in fiscal year 2007;
- Decline in liquidity from fiscal year end 2005 to fiscal year end 2007;
- Net revenue growth not keeping pace with expense growth; and
- While market share is a positive strength, the Hospital has not generated positive financial results from this strength.”

The Hospital Board and Foundation have a fiduciary duty to make prudent decisions to protect the public purpose of providing health services to the citizens of Citrus County. Given that the purpose of a debt capacity calculation is to determine whether it is prudent to issue additional debt, the decision to issue \$10 million in debt when the debt capacity was negative \$11.3 million is questionable, particularly if the decision was partially based on the ability and willingness to levy additional taxes.

Recommendation: Before authorizing future conduit debt to be repaid by the Foundation, the Hospital Board should adopt formal policies and procedures regarding the issuance and monitoring of long-term debt as a part of its comprehensive debt management practices. These policies and procedures should include guidance on the restrictions and limitations for debt capacity, reserves, ratios and measurements, reporting, benchmarks, selection and use of professional service providers, and criteria for determining the sales method. The Hospital Board should also ensure that revenues from operations of the Hospital are the primary source for repayment of bonds or notes and there is not an over-reliance on its taxing ability in the determination to issue debt.

Construction Administration

Finding No. 5: Construction Projects

As previously noted, the Hospital Board issued conduit debt in form of a 2008 Hospital Revenue Note for \$10,000,000 in September 2008. The Note was issued primarily to fund construction of and equipment for the Sugarmill Woods Medical Center (\$4,366,288) and Emergency Room Expansion (\$4,200,000). A simultaneous financing agreement was issued whereby the Hospital Board loaned the Foundation the debt proceeds to complete the projects. As a result, the Foundation reports the projects and equipment as assets and the notes as debt of the Foundation. Our review of the above construction projects related to this debt issue noted the following:

Construction Policies and Procedures

In loaning the debt proceeds for the projects, the Hospital Board did not require the Foundation to follow any specific policies and procedures for construction processes including project management, advertising, bidding, awarding, and monitoring. It should be noted that had these construction projects been completed by the Hospital Board rather than the Foundation, Section 287.055, Florida Statutes (the Consultants’ Competitive Negotiation Act), would have been applicable. Although we noted that at times the Foundation followed certain good business practices, management had not developed and documented formal policies and procedures, without which there is an increased risk that planned processes may not be followed and adequate documentation of the process may not be obtained. In these circumstances, there is an increased risk of the Foundation not completing construction projects of satisfactory quality at the lowest possible cost.

Sugarmill Woods Project

Public Advertisement. The Foundation's procedures did not ensure that all qualified firms were considered for the Sugarmill Woods Project. Using the proceeds from the 2008 Revenue Note, the Foundation decided to construct a medical facility in southwest Citrus County near Homosassa Springs (Sugarmill Woods), expand the emergency room facilities at the main hospital, and purchase equipment. The Foundation Directors appointed a three-member Construction Committee from among its members and contracted with an owner's representative firm for \$287,000 to administer the Sugarmill Woods facility as a design-build project. The owner's representative solicited and prequalified firms using a modified bid process for selecting a design-build firm for the project. The owner's representative prepared a design criteria package and issued a "solicitation of interest" to contractors known by the owner's representative to be qualified to perform this type of work. The solicitation was distributed to approximately ten firms, but was not publicly advertised. In the absence of public advertisement for the project, the representative could not assure the Foundation that all qualified contractors considered applying for the project and, therefore, could not demonstrate that the lowest and best price was obtained for the project consistent with product quality and performance.

Potential Conflict of Interest. Two Foundation Board directors with potential conflicts of interest participated in the selection process for a design-build firm. All three Construction Committee members participated in the Committee discussions and deliberations including the decision to short-list four design-build firms. Then, according to the Committee minutes, two of the three Committee members indicated possible conflict-of-interest issues with one of the short-listed contractors and requested that the Foundation Chairperson assign two additional Committee members. Two new members were in place at the next Construction Committee meeting whereby the final ranking of the four short-listed firms was determined.

At the next meeting, the owner's representative announced that one of the four finalists had withdrawn from consideration. The three finalists then made presentations and the Committee designated two in a higher position because of their experience with medical facilities. The third ranked firm was local but considered beneficial because it would benefit the local economy. The Committee then unanimously approved the final ranking with the local contractor designated as first and the local contractor was ultimately awarded the design-build contract.

In summary, the two members who approved short-listing the firm that was ultimately awarded the contract should have recused themselves once that firm was under consideration, not after the short-listing was completed. The participation of Committee members with a conflict-of-interest in the selection process could lead to the Foundation not selecting the most qualified firm or not negotiating the best price for the project.

General Conditions. General Conditions charges for the Sugarmill Woods project were not adequately reviewed or documented. The design-build firm charged the Foundation 10 percent of the agreed-upon General Conditions amount on each monthly Application for Payment for 10 months without providing any documentation to support the charges. In addition, the overall agreed-upon General Conditions amount of \$361,011 included items that were separately reimbursed to the design-build firm by the Foundation, and included other items that did not appear reasonable. The items included in the General Conditions total that were also charged separately on the design-build firm's Application for Payment are noted in Table 5:

Table 5		
Item	Per General Conditions Detail	Per Separate Payment Application
Builders' Risk Insurance	\$ 17,500	\$ 5,798
Building Permit Fees	13,300	12,500
Materials Testing	1,000	6,000

Without obtaining and reviewing sufficient supporting documentation for General Conditions charges, the owner’s representative cannot be assured that the Foundation is being properly charged for General Conditions costs or that the Foundation is not paying for duplicate charges. In response to our inquiry related to General Conditions, the owner’s representative stated that “It is not uncommon in Design/Build (and negotiated construction manager) contracts to fix General Conditions as a negotiated lump sum amount to eliminate the administrative burden of reviewing those costs.” However, records provided for our review did not evidence on what basis the negotiated lump sum amounts were determined. Items included in the General Conditions that did not appear reasonable were subsistence, mileage, and warranty management.

Subcontractor Bidding Process. The Foundation had not established a formal subcontractor bidding process for the construction projects. For the Sugarmill Woods project, our review indicated that subcontractor bids were awarded by the design-build firm and detailed bidding information was maintained solely by the design-build firm, not by the owner’s representative. The owner’s representative only retained summary information related to the subcontractor bids. In addition, our inquiries determined that subcontractor bids were obtained by written bids and by telephone calls. Our review noted instances where the subcontract was not awarded to the lowest bidder and no explanations for the exceptions were included.

The design-builder identified \$57,282 (or 1.8 percent) of the total subcontract work as being self-performed (i.e., by the design-builder), including \$22,022 in labor for finish/trim carpentry work and \$11,400 in labor for installation of prefinished interior doors. Since there were no competing bids, the owner’s representative should have analyzed the self-performed bids for reasonableness. For example, the charge to install the interior doors could have been analyzed by cost per door. In addition, another \$509,092 (or 15.7 percent) of the subcontract work was performed by other companies related to the design-builder’s officers and managers where the relationship was apparently not disclosed to the Foundation or the owner’s representative, and it was not always apparent that the companies were the lowest bidders. For example, the president of the subcontractor firm awarded \$403,675 for site work was also an officer of the design-build firm. Another subcontracting company operated by three of the design-build firm’s directors was awarded subcontracts totaling \$105,417.

Without an adequate and monitored subcontractor bidding process, the Foundation cannot be assured that the best subcontractors and the best prices are selected.

Supporting Documentation. Applications for Payment for the Sugarmill Woods project did not always include sufficient supporting documentation. Although the design-build firm’s payment applications were signed and approved for payment by both the owner’s representative and the Foundation staff, the subcontractors’ charges were not supported by detailed invoices. In addition, we noted several instances where subcontractor payment requests were not signed and appeared to be prepared on the design-build firm’s form. Subcontractor charges generally represent a large portion of work billed. For this project, subcontractor work represented 76 percent of the total

contract amount. Absent adequate pre-audit of supporting invoices by appropriate staff, the Foundation cannot be assured that payments are proper.

As a result of our audit inquiries relating to this project, the Foundation contracted with a certified public accounting firm to conduct agreed-upon procedures relative to this project to assist the Foundation in determining the final contract value to the design-build firm.

Emergency Room Expansion Project

As of July 2009, construction had not begun on the Emergency Room Expansion Project. As a result, our review was limited to the contract awarded.

General Conditions. A portion of the 2008 Revenue Note proceeds was used to contract with another firm to expand the Hospital’s emergency room facilities under a construction manager contract. The Foundation engaged the same owner’s representative firm as with the Sugarmill Woods project to act as its representative overseeing and managing the Emergency Room Expansion Project. The agreed upon General Conditions amount, totaling \$643,995, for the Emergency Room Expansion Project included the following:

Table 6			
Item	Quantity	Unit Cost	Total Cost
Superintendent Labor	60 Weeks	\$ 3,357	\$ 201,420
Project Manager Labor	35 Weeks	3,200	112,000
Jobsite Secretary Labor	60 Weeks	864	51,840
Field Office Supplies	15 Months	800	12,000
Safety Supplies (Hard Hats)	14 Months	450	6,300

Records provided for our review did not evidence that the Foundation had determined the reasonableness of the above-listed cost items included in the General Conditions amount.

Labor Burden Costs. The Foundation entered into a \$4,200,000 guaranteed maximum price (GMP) contract with a construction management firm for the Emergency Room Expansion Project. Under GMP contracts, the Foundation may realize cost savings if the cost of construction is less than the GMP and as such, a GMP contract requires that Foundation personnel closely monitor construction costs. The GMP contract included direct salary costs plus an indirect salary element commonly referred to as the labor burden. According to the June 2009 *Economic News Release* by the United States Department of Labor, Bureau of Labor Statistics (BLS), labor burden components for the construction industry typically include legally required benefits (such as social security and Medicare taxes, unemployment taxes, workers’ compensation), life and medical insurance, retirement plans, paid leave (including vacation, sick, and holiday), and supplemental pay (such as overtime and shift differentials). These categories and cost percentages according to the BLS and the construction manager’s GMP contract (let in February 2009) are included in Table 7:

Table 7		
Component	Component Cost as Percentage of Salaries/Wages	
	BLS	GMP Contract
Legally Required Benefits	16.1	26.8
Insurance	10.6	13.8
Retirement	7.4	10.9
Paid Leave	5.2	14.2
Supplemental Pay	4.9	-
Incentives (Bonuses)	-	15
Total	44.2	80.7

As shown in Table 7, the construction manager’s labor burden rate does not appear reasonable, when compared to the BLS rates, as several of the rates appear excessive and the Incentives component appears unwarranted.

Considering this was a GMP contract, it does not appear reasonable for the construction manager to be paid a bonus for completing the project by the contracted completion date and at the contracted cost. If utilized, bonuses should be shown as a separate line item in the schedule of values, should require approval by the Foundation, and should be based on predetermined measurable objectives, such as early completion of the project.

Unreasonable Costs. Our review of the construction manager contract for the Emergency Room Expansion Project indicated that the construction manager could be reimbursed for certain costs that do not appear reasonable. The contract allowed the construction manager to be reimbursed for items such as reinspection fees, warranty work above the warranty escrow amount (\$4,500), and defective work up to the amount of the guaranteed maximum price. Based on the contract language, the Foundation is subject to paying for certain costs more than one time and to correct errors of the construction manager.

Recommendation: To ensure that good business practices are used, the Hospital Board should require the Foundation to follow specific policies and procedures for construction processes including construction contracting and administration, soliciting proposals, contractor selection and awarding process, guaranteed maximum price proposals, contract management, allowable labor burden rates, subcontractor selection, self-performed work, payment application processing and documentation requirements, and project closeout. The Foundation should seek to revise contract provisions identified above that reflect unreasonable charges and reduce subsequent payments or request refunds for duplicate charges paid. Further, the Foundation should ensure that only actual amounts that are supported by invoices or other appropriate documentation for General Conditions items and other charges are included on payment applications.

Regarding general conditions, the Chairman of the Foundation stated that actual mileage considerably exceeded the \$5,000/10,000 mile estimate and provided a mileage log and a few samples of the daily detail. The Chairman also indicated that warranty management costs of \$2,400 included in the negotiated amount have been exceeded. Notwithstanding actual results, the point of our finding is that an analysis should be performed to provide a basis for negotiated fixed amounts.

Expenditures

Finding No. 6: Employee Bonuses

Article X of the Foundation's by-laws address hospital management and Section 10.2 describes the authority and duties of the Chief Executive Officer, including his responsibility to manage and operate the hospital; to select, employ, control, discharge all administrative personnel, department heads, and other employees; to expend moneys for any single capital item, or normal, non-personnel operating expenditure (capital or otherwise), the total value of which is less than \$50,000; and to establish compensation for employees with the approval of the Foundation Board.

The Foundation Board established an Executive Compensation Committee with authority to make decisions regarding executive compensation. Based on the minutes of this Committee's meetings, it appears that "executive compensation" applied to that of the "Officers" (Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer, and the Chief Nursing Officer).

In our review of employee bonuses, we noted the following:

- Bonuses totaling \$35,462 were paid to the Chief Operating Officer and the Chief Financial Officer for the 2005-06 fiscal year. Due to a vacancy, the Chief Nursing Officer position did not qualify for the bonus that year. Although requested, we were not provided with documentation that these bonuses were approved by the Foundation Board or the Executive Compensation Committee.
- Bonuses totaling \$113,925 and \$164,974 were paid to directors (department heads that report to officers) for the 2005-06 and 2007-08 fiscal years, respectively. Although requested, we were not provided with documentation indicating that the Foundation Board had approved a bonus plan or payments to directors. These bonuses had been approved by the Chief Executive Officer; however, the by-laws do not provide such authority without Board approval.
- We noted inconsistencies in bonus calculations. For example, the 2005-06 fiscal year bonuses were based on fiscal year salary amounts, which included amounts for unused paid days off, as the salary base. However, the 2007-08 fiscal year bonus calculations used the ending salary rate (excluding unused paid days off payments) for the 2007-08 fiscal year. Establishing formal policies and procedures over bonuses would provide assurance that calculations were applied consistently and as intended by the Foundation Board or Executive Compensation Committee.

We also noted two instances in which minutes to support approval of the Chief Executive Officer's 2005-06 and 2007-08 fiscal year bonuses were not retained and, subsequent to audit inquiry, were re-created and we noted three instances in which Executive Compensation Committee minutes were not signed.

Recommendation: The Foundation should ensure that bonuses are not paid to employees unless properly authorized by the Foundation Board or Executive Compensation Committee. Actions authorized by the Executive Compensation Committee should be pursuant to duly signed minutes of Committee meetings. Formal policies and procedures should be established governing eligibility, forms, factors and goals, calculation, approval and payment of management performance bonuses.

Finding No. 7: Travel-related Expenditures

The Foundation’s Administrative Policy and Procedure Manual (Policy), Code P-703, states that employees who were authorized to travel were to complete and submit an Expense Report to be reimbursed for necessary expense incurred on Hospital business including: 1) travel, 2) reasonable lodging accommodations, 3) reasonable costs of meals (excluding entertainment), 4) costs of meeting/seminar registration and connected functions, 5) travel by automobile at twenty-five (25) cents per mile, and 6) parking and tolls.

From our testing, we noted travel expenditures that were not adequately documented and, in some instances, did not appear to be allowable under the Foundation’s Policy or reasonable under good business practices. We would also note that if these travel expenditures were paid by the Hospital Board, Section 112.061, Florida Statutes, would have been applicable. We reviewed the records for six retreats and meetings attended by various Foundation Board directors and executive management during the 2006, 2007, and 2008 calendar years, as summarized in Table 8:

Conference or Meeting Location Dates	No. of Registered Attendees	Registration/Rental Fees	Lodging	Meals	Travel and Entertainment	Total Cost
Board Retreat Longboat Key, FL August 18/20, 2006	28	None	\$ 14,350	\$ 10,519	Not Provided	\$ 24,869
VHA Conference Key Biscayne, FL October 11/13, 2006	9	Unable to determine if paid	3,360	Not Provided	\$ 1,104	4,464
Executive Management Meeting Crystal River, FL April 5, 2007	25	\$ 140		1,496		1,636
VHA Conference Key Biscayne, FL September 26/28, 2007	12	4,740	5,129	468	1,310	11,647
American Hospital Association Annual Meeting Washington, D.C. March 6/8, 2008	4	2,330	2,863	793	1,350	7,336
VHA Conference Amelia Island, FL September 10/12, 2008	10	4,075	3,506	190	537	8,308
Total Cost		\$ 11,285	\$ 29,208	\$ 13,466	\$ 4,301	\$ 58,260

For the above charges, we noted the following:

- Many of the charges noted above were not supported by detailed invoices such as hotel bills or restaurant receipts. Of the total charges above, \$8,646 were only supported by credit card statements instead of actual invoices.
- In some instances, attendees did not complete expense reports, but submitted check requests or handwritten notes requesting reimbursements. Of the total charges tested, \$1,554 were only supported by check requests

or handwritten notes and without actual invoice support. Additionally, we noted several reimbursement requests that were not signed by the traveler.

- Several hotel and restaurant invoices included charges for alcohol, totaling approximately \$3,665, and we noted \$244 for spa and golf charges.
- Periodically, attendees appeared to bring guests to the conferences or meetings and many costs associated with the guests were not always reimbursed to the Foundation. For example, at the August 2006 Foundation Board Retreat in Longboat Key, 42 banquet dinners were purchased at a cost of \$49.95 per person for the night of August 18, 2006. However, there were only 26 hospital-related attendees at the dinner. At that same retreat, one attendee extended his/her hotel stay an extra night and did not reimburse the Foundation for the extra night. Foundation’s records indicated that reimbursements totaling \$517 had been received from attendees for this retreat.

Although requested, the Foundation did not provide us with travel or entertainment costs for the August 2006, Foundation Board Retreat in Longboat Key or the meals costs for the October 2006, VHA Conference in Key Biscayne.

Requiring travelers to use the designated Expense Report would strengthen the Foundation’s pre-audit of procedures for travel expenditures and enhance Foundation management’s ability to analyze and manage travel costs for meetings and conferences.

Recommendation: The Foundation should update its travel policies to require supporting documentation for eligible travel expenses and require that all travel reimbursement requests: 1) be submitted on the proper forms, 2) be signed by the traveler and appropriate supervisory personnel, 3) be supported by original vendor invoices and conference agendas, 4) identify personal costs of the traveler, and 5) indicate any amount to be paid by (or reimbursed to) the traveler. For amounts to be paid by travelers, the Foundation should ensure that such reimbursements are ultimately obtained.

Contractual Services

Finding No. 8: Transcriptionist Contracts

The Foundation did not have a bidding policy or procedure. The Foundation contracted for transcriptionist services with a vendor in 2003 and with a different vendor in 2007. Although requested, the Foundation did not provide us with documents supporting the 2003 vendor selection process. For the 2007 process, while the Foundation provided us with an analysis of four vendors’ apparent submissions, it did not provide us with records showing how the vendors were solicited or selected.

Effective October 24, 2003, the Foundation signed a contract with a vendor to provide medical record transcription services for overflow work that the Foundation transcriptionists could not handle in a timely manner. Although the contract term was open-ended, Foundation personnel indicated that this contract was in effect until December 2007. Section 5 of the contract addressed expenses and indicated that the client (Foundation) was responsible for all reasonable vendor “Consultant” expenses, such as mileage of personal vehicle use. However, several other expense items were struck through by the contract signers, including airfare, car rental, tolls, parking, lodging, business telephone charges, gratuities, office supplies, and \$30 per diem for food, thereby indicating that the Foundation would not be responsible for these charges. Foundation personnel indicated that they struck through these expenses because

the hourly rate was considered high (\$44 per hour of regular time and \$66 per hour for overtime) and those types of expenses should have been built into the service rates.

Payments to the vendor under the 2003 contract for transcription services totaled \$907,130 during the 2005-06 and 2006-07 fiscal years. However, our testing of these expenditures disclosed that vendor invoices included charges for airfare, car rental, lodging, and per diem that were not allowable under the contract. We tested three payments, which included 15 contractor invoices, totaling \$105,173, and noted the following cost breakdown:

Table 9		
Item	Description	Expense Amount
1	Labor	\$ 75,764
2	Airfare	3,544
3	Car Rental	5,586
4	Parking and Tolls	19
5	Lodging	9,090
6	Per Diem Meals	6,510
7	Gasoline (related to car rentals)	804
8	Mileage	3,856
	Total Vendor Charges	\$105,173

The invoices included in our test covered the following periods: December 25, 2005, through January 15, 2006; March 6, 2006, through April 9, 2006; and July 16, 2007, through September 23, 2007. As noted in Table 9, items 2 through 7, totaling \$25,553 (24.3 percent of the total), were not allowable costs according to the original signed contract. The Foundation provided two addenda to the contract that provided for the Foundation to pay the services at the same hourly rates in addition to travel costs from October 15, 2005, through October 21, 2005, and from December 27, 2005, through January 17, 2006. The travel costs for this period included in our tests totaled \$1,318. As the Foundation considered the original contract’s hourly rates sufficiently high to cover travel expenses, it is not apparent why the Foundation did not negotiate a lower hourly rate when it later agreed to pay the travel costs.

We also noted that the Foundation paid approximately \$121,467 directly to an area hotel to house transcriptionists for the above work. In response to our inquiry, the Foundation stated that the airfare, car rental, lodging, and per diem meal costs were paid in error.

Recommendation: The Foundation should develop policies and procedures governing the procurement of goods and services, including bid thresholds, contract management, and pre-audit of invoices submitted for payment. Considering that the Foundation paid the vendor \$907,130 over the 2005-06 and 2006-07 fiscal years, and potentially a significant percentage of these costs were not allowable under the contract provisions, the Foundation should review all payments made to the vendor to determine the actual total charges that were not allowable under the contract and obtain a refund of those charges from the vendor, including the amounts paid to the area hotel for transcriptionists’ lodging.

Finding No. 9: Foundation Board Approval of Contracts

Article X, Section 10.2, of the Foundation’s by-laws describes the authority and duties of the Chief Executive Officer, including his authority to expend moneys for any single capital item, or normal, non-personnel operating expenditure (capital or otherwise), the total value of which is less than \$50,000. This section also states that any single, non-personnel expenditure (capital or otherwise), the total value of which is over the sum of \$50,000, shall require

Foundation Board approval thereof. The Chief Executive Officer is also authorized in this section to establish compensation for employees with the approval of the Foundation Board.

We noted the following instances in which contracts were entered into by the Foundation based on the approval of the Chief Executive Officer, but without Foundation Board approval:

- The Foundation has contracted with the same individual since 1987 to direct its Pathology Department. The original annual rate of \$30,160 was increased to \$33,760, effective July 1, 1994, by an updated agreement dated June 15, 1994. The rate was then increased to \$50,400 annually based on a memorandum from the Foundation’s Director of Professional Services effective October 1, 2005, and then again to \$96,000 per year, effective October 1, 2006. According to Foundation personnel and our review of the Foundation Board minutes, contract amendments were not prepared and the increases were not presented to the Foundation Board for approval for the 2005 and 2006 increases.
- The contracts for transcriptionist services discussed in finding No. 8 were not presented to the Foundation Board for its approval and the Foundation paid \$397,720 and \$630,877 in the 2005-06 and 2006-07 fiscal years, respectively, in relation to the 2003 contract (\$907,130 directly to the vendor and \$121,467 to a hotel on behalf of the vendor). The estimates noted in the Foundation’s records indicated that the annual cost on the 2007 contract was estimated to be \$700,000.
- The Foundation entered into two leases for office space in which lease payments over the three-year terms totaled \$165,312 and \$63,452, respectively.

Although some of the single payments on these contracts did not exceed the Chief Executive Officer’s authority, the payments were made to the contractors pursuant to single contracts that, in total, exceeded the established threshold.

Recommendation: The Foundation should ensure that contracts, the total of which exceed the expenditure authority of the Chief Executive Officer, are presented to the Foundation Board for approval. The Foundation should also ensure that any changes to existing contracts are accomplished through the use of formal contract amendments, signed by both parties.

Other Matters

Finding No. 10: Conflicts of Interest

To ensure public confidence over procurement practices, it is essential that any and all appearances of a conflict of interest be avoided. Section 112.313(3), Florida Statutes, prohibits a public officer, acting in his official capacity, from purchasing any goods or services for his own agency from any business entity of which the officer has a material interest. The Hospital Board is subject to this section of Florida Statutes; however, most of the financial and operational activity occurred within the Foundation, which is not subject to most Florida Statutes.

Section 7.14 of the Foundation by-laws, as amended in 2005, established policies and procedures to address actual or potential conflicts of interests of its directors and staff members. Section 7.14.1 states, “The purpose of the conflicts of interest policy is to protect the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Corporation. This policy is intended to supplement but not replace any applicable state laws governing conflicts of interest applicable to nonprofit and charitable corporations.” Section 7.14.2 defines:

Interested Person as “Any director, principal officer, senior staff member, or member of a committee with board delegated powers who has a direct or indirect financial interest.”

Under Financial Interest, “A person has a financial interest if the person has, directly or indirectly, through business, investment or family, a) an ownership or investment interest in any entity with which the Corporation has a transaction or arrangement, b) a compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement, or c) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement.”

Conflict of Interest is “An actual or potential conflict of interest occurs when anyone is in a position to influence a decision that may result in a personal gain for that person, or for any relative or business associate of that person, as a result of the corporation's business dealings.”

The Foundation's by-laws state that a financial interest is not necessarily a conflict of interest. However, Section 7.14.4 states that for any actual or possible conflicts of interest, an interested person must disclose the existence of his or her financial interest to the Conflict Committee, and must be given the opportunity to disclose all material facts to the Conflict Committee. The Committee was to “consist of the Chairperson of the Citrus County Hospital Board, Chairperson of the Citrus Memorial Health Foundation, the Director serving in the position of the Chief of the Medical Staff, the President of the Citrus County Bar Association, and the President or Chairperson of the Citrus County Association of Ministers (or like entity).” It concludes stating that, “In the event that the Chairperson of the Hospital Board and Foundation are the same, then the Vice Chairperson of the Foundation shall serve in that position.” In response to our inquiry, the Foundation indicated that although established in the 2005 by-laws revision, the Conflict Committee has never held meetings, has made no reviews, and has had no minutes prepared.

Section 7.14.7 requires that “each director, principal officer and member of a committee with board delegated powers shall annually sign a statement which affirms that such person: a. has received a copy of the Conflicts of Interest Policy, b. has read and understands the policy, c. has agreed to comply with the policy, and d. understands that the Corporation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.” According to the Foundation, the annual statements have not been prepared by or obtained from the respective individuals.

Our examination noted several actual or possible conflicts of interest for Foundation Board directors that should have been disclosed to the Conflict Committee:

- One Foundation Board director's spouse had contracted with the Hospital to direct its Pathology Department since April 1, 1987. Although the Pathologist's initial contract originated, and the director's appointment to the Foundation Board occurred prior to establishment of the Conflict Committee in 2005, the relationship should have been disclosed to the Foundation's Conflict Committee upon its establishment. We found no instances in which this director participated in discussions or voted on matters related to the contract; however, see additional discussion in finding No. 9.
- Two Foundation Board directors were also directors in a corporation that leased office suites to the Foundation. The members had served on the Foundation Board since October 25, 2004, and October 1, 2008, respectively. According to two leases effective August 1, 2006, and March 1, 2009, the corporation provided the Hospital with 4,592 and 1,583 square feet of space, costing \$12 and \$13 per square foot, per year, respectively. Based on the lease agreements, the amounts to be paid over the lease terms

totaled \$165,312 and \$63,452, respectively. Although we found no instances in which these directors participated in discussions or voted on matters related to the leases, see additional discussion in finding No. 9.

- As discussed in finding No. 5, two Foundation Board directors had potential relationships with a local contractor and participated as members of the Construction Committee until the contractor was placed on the project short-list. The directors subsequently recused themselves from the Construction Committee due to the relationship and were replaced by two other Foundation Board directors. Ultimately, the contractor with which the Foundation Board directors had a conflict was awarded the design-build project contract.
- One Foundation Board director was also the vice president of a local bank that provided banking services to both the Hospital Board and Foundation organizations. We noted no instances in which this director participated in discussions or voted on matters related to the banking agreements.

At one of the Foundation's Board meetings, this director also declared a conflict of interest because a family member was the owner of an insurance company that the Foundation was considering as a Hospital insurance brokerage representative. The director recused himself from discussions and abstained from voting.

- Another Foundation Board director worked for a natural gas company that provided natural gas to the Hospital. We found no instances in which this director participated in discussions or voted on matters related to the contract during our audit period.

Although at times Foundation Board directors recused themselves from discussions and abstained from voting, these examples highlight the Foundation's need to implement its already established policies and procedures to address actual or possible conflicts of interest. Even in the instances where Foundation Board directors acknowledged relationships and recused themselves from deliberations and decisions, the potential conflicts should have been previously addressed and resolved by the Foundation's Conflict Committee.

Recommendation: The Foundation Board should ensure the implementation of its established policies and procedures regarding actual or possible conflicts of interest through its Conflict Committee, including requiring each director, principal officer, and member of a committee with Board delegated powers to prepare and sign the required annual statement regarding conflicts of interest.

Finding No. 11: Hospital Board Actions

In our review, we noted instances in which the Hospital Board did not comply with controlling laws:

Voting. Section 286.012, Florida Statutes, sets forth the voting requirements at meetings of governmental bodies. The statute provides, in part, that no member of any governmental agency board who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; except when there is, or appears to be, a possible conflict of interest pursuant to Sections 112.311, 112.313, or 112.3143, Florida Statutes. Hospital Board minutes show three instances where members abstained from voting on Hospital Board actions. Two instances occurred at the August 25, 2008, meeting and one at the October 27, 2008 meeting. The October 27, 2008, meeting minutes include a fourth attempted abstention on a motion to designate Hospital Board officers. The minutes state that a question arose regarding the inability of a member to abstain from voting and at that point the Hospital Board attorney agreed that members cannot abstain. The Hospital Board minutes did not include explanations for the abstentions and no other explanations were provided. Section 112.3143, Florida Statutes, generally requires written disclosure of the nature of

any conflicts prior to a meeting or, if not known prior to the meeting, an oral explanation is required at the meeting followed by written memorandum within 15 days explaining the same. While the members’ abstentions did not affect the outcome of the motions in the three circumstances, the legal authority for abstaining is not apparent.

Meeting Minutes. Section 286.011, Florida Statutes, requires that minutes of a meeting of any board or commission of any State agency or authority shall be promptly recorded, and such records shall be open to public inspection. Further, Article VI, Section IV of the Hospital Board’s by-laws requires that the Secretary-Treasurer shall preserve in books of the Board true minutes of the proceedings of such meetings. Minutes serve to document official actions of the governing body.

Starting with its March 30, 2009, meeting, the Hospital Board ceased preparing minutes of the proceedings and started relying on meeting transcripts or transcript excerpts as the official meeting record. As a result it was difficult to identify the official actions of the Hospital Board. The transcripts or excerpts were long or disjointed and it was difficult to clearly identify the subject, and at one point the wrong speaker was identified. For example, the transcript excerpt of the May 14, 2009, meeting referred to a motion to sign an unidentified agreement and the March 30, 2009, transcript identified the Chief Operating Officer of the Hospital as amending a Hospital Board motion.

Check Approvals. Section 3(c), Chapter 99-442, Laws of Florida, allows the Hospital Board to open depository accounts located within Citrus County for the deposit of Hospital Board funds. Section 3(d) goes on to require that all withdrawals by a check or warrant be signed by two Hospital Board trustees, one of which shall be the chair, vice chair, or secretary-treasurer. This section also states that all checks or warrants must be approved in the Hospital Board’s minutes. Our testing disclosed that the Hospital Board issued 40 checks between October 1, 2007, and March 3, 2009, and all 40 checks were properly signed by two Hospital Board members, with at least one being an officer. However, our testing also determined that 36 of the 40 checks issued were not approved in the Hospital Board’s minutes.

Recommendation: The Hospital Board should:

Comply with Section 286.012, Florida Statutes, regarding voting requirements, and no member should abstain from voting unless it is clearly demonstrated that he or she is required to abstain due to a conflict of interest as outlined under the provisions of Sections 112.311, 112.313, or 112.3143, Florida Statutes. The nature of any conflicts should be described in writing as required by Section 112.3143, Florida Statutes.

Ensure that all future meeting minutes are clear as to the speaker and subject in relation to official actions of the Hospital Board.

Enhance its procedures to ensure that all checks and warrants are approved and that such approval is reflected in its minutes as required by Section 3(d), Chapter 99-442, Laws of Florida.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida’s citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit focused on the Hospital Board and Foundation’s administration of the Hospital. The overall objectives of the audit were:

- To document our understanding of the Hospital Board and Foundation management controls relevant to the organization structure, minutes, and by laws; capital projects; bonds; financing; and expenditures. Our purpose in obtaining an understanding of management controls and making judgments with regard thereto was to determine the nature, timing, and extent of substantive audit tests and procedures to be performed.
- To evaluate Hospital Board and Foundation management’s performance in administering its assigned responsibilities in accordance with applicable laws, special acts, ordinances, grant agreements, bond covenants, and other guidelines.
- To determine the extent to which the Hospital Board’s and Foundation’s management controls promote and encourage the achievement of management's objectives in the categories of compliance with controlling laws, special acts, ordinances, grant agreements, bond covenants, and other guidelines; the economic and efficient use of public money; the reliability of financial records and reports; and the safeguarding of assets.

Our audit included examinations of various records and transactions occurring from January 2006 through December 2008, and selected transactions taken prior and subsequent thereto. In conducting our audit, we examined actions related to allegations/concerns, including the public accountability of and the exercise of proper authority in the expenditure of public money and the proper use of bond proceeds, to determine whether such transactions were executed, both in manner and substance, in accordance with governing provisions of laws, special acts, ordinances, grant agreements, bond covenants, and other guidelines.

Our audit did not extend to an examination of the financial statements of Citrus County Hospital Board or the Citrus Health Memorial Foundation, Inc. The financial statements for the fiscal year ended September 30, 2008, were audited by a certified public accounting firm, and the audit reports are on file with the Hospital.

AUTHORITY

Pursuant to the provisions of Section 11.45(2)(l), Florida Statutes, I have directed that this report be prepared to present the results of our operational audit of the Citrus County Hospital Board and the Citrus Health Memorial Foundation, Inc., for the period January 1, 2006, through December 31, 2008, and selected actions taken prior and subsequent thereto.



David W. Martin, CPA
Auditor General

MANAGEMENTS’ RESPONSES

Managements’ responses to our findings are included as [Exhibits A and B](#).

LAW OFFICE OF
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June 17, 2011

VIA HAND DELIVERY
William J. Grant, Esquire
Legal Counsel, Citrus County Hospital Board
123 N. Apopka Avenue
Inverness, Florida 34450

Re: Citrus Memorial Health Foundation, Inc., ("Foundation") –
Public Records Request Nos. 31 – 52 (to date)

Dear Mr. Grant:

Following my last letter on the referenced topic ;our office as general counsel for Foundation and the client, CMHF is in receipt of the above referenced public records requests. I would first note that the date of the letters and the actual receipt by mail would indicate that such were not mailed on the date of each request.

As you are aware, CMHF voluntarily complies with F.S. 119.00 et. seq. Further the Foundation has historically reserved the right to assert statutory exemptions from the noted statutes to include F.S. 395.3095 and 395.3036. The public record statutes provide a party the subject of public records request may charge a reasonable rate for review and preparation time plus cost of copying. (See below legal authority cited)

The Foundation has reviewed all of your Requests No. 31-52 to provide to you a good faith estimate of cost of compliance. Before estimating it should be noted that such, the No.31-52- are in many aspects duplicative of prior, like or similar requests. By any definition of the term, such are "voluminous" in nature. By example, Request No. 33 any and all contracts effective on July 1, 2011". There are potential hundreds of such documents from suppliers to copiers to physicians. The same applies to Request No. 42- "all leases." I hope you get the picture.

At this time, to comply with your "shotgun" public records request, we estimate as to staff time – 12,000-15,000¹ plus review of such by legal of 10-15 hours. The cost per page will be \$0.15 page. Number of pages is indeterminable but it should be a minimum of 500. Given this estimated cost the Foundation will require a deposit of fifty (50) percent of the stated cost. Legal authority exists imposition of a deposit. See Wooten v. Cook, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991); Malone v. City of Satellite

¹ One full time person, four (4) to six (6) months to complete.

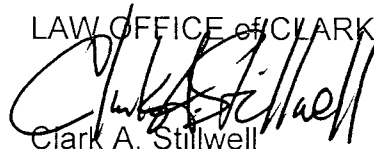
Beach, No. 94-10557-CA-D (Fla. Cir. Ct. Brevard Co. December 15, 1995), per curiam affirmed, 687 So. 2d 252 (Fla. 5th DCA 1997). Note, this is an estimate, to the extent it is exceeded or falls below an adjustment will be made to the cost changed. Also, please be aware that the scope of your request includes time period in some instances beyond which the Foundation would be legally required to retain these documents. In short, the records may no longer exist or require obtaining such from third parties. In Herskovitz v. Leon County, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998,) in which the court said that if an agency is asked for a large number of records the fee should be communicated to the requestor before the work is undertaken. "If the agency gives the requesting party an estimate of the total charge, or the hourly rate to be applied, the party can then determine whether it appears reasonable under the circumstances."

Respectfully, I suggest you review your requests and fine tune them to suit your specific needs. As a custodian of tax dollars, your client has such a responsibility.

Finally, this letter is not be construed as a waiver of any exemptions which may exist (as noted above) at time of production.

Very truly yours,

LAW OFFICE of CLARK A. STILLWELL, LLC



Clark A. Stillwell

CAS/gd

cc: J. Kennedy
M. Williams

Postscript: A number of the simpler requests have been gathered and will be produced next week at no cost.

LAW OFFICE OF
CLARK A. STILLWELL, LLC
ATTORNEY AT LAW

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July 27, 2011

VIA FACSIMILE AND U.S. MAIL
William J. Grant, Esquire
Legal Counsel, Citrus County Hospital Board
123 N. Apopka Avenue
Inverness, Florida 34450

Re: Public Records Request No. 54

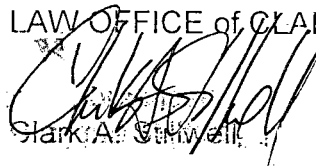
Dear Mr. Grant:

I am in receipt of the referenced request. My client has reviewed its records for the 1990 Master Facility Plan. They no longer have a copy of such. Historically, the Citrus Memorial Hospital has undergone multiple major renovations and expansions over the last 20 years. Retention of the original 1990 plan after these projects were completed simply was not realistic, nor practical.

Nothing in this voluntary response or production is intended as waiver of any of the Foundation's legal privileges or exemptions beyond the four corners of this production. In other words, the fact that a document, issue, or event is referenced in this production does not mean that the Foundation waives any legal privileges or exemptions as to that document, issue, or event, now or in the future. The Foundation reserves the right now or in the future to assert all legal privileges and exemptions as it deems appropriate relative to public records.

Very truly yours,

LAW OFFICE of CLARK A. STILLWELL, LLC.



Clark A. Stillwell

CAS/tp
cc: J. Kennedy, Esquire
J. Gatto, Esquire
M. Williams, CFO

FILE

Calendar 5

Filed _____

Citrus County Hospital Board

P.O. Box 1030

Inverness, FL 34451-1030

August 30, 2010

Citrus Memorial Health Foundation, Inc.
David Langer, Chairman
502 W. Highland Blvd.
Inverness, FL 34453

Via Certified Mail 7009 0002 4170 6604

RE: NOTICE OF DEFAULT of Lease and Agreement for Hospital Care
Citrus County Hospital Board v. Citrus Memorial Health Foundation, Inc.

Dear Mr. Langer,

The purpose of this NOTICE OF DEFAULT is to demand that the Citrus Memorial Health Foundation, Inc. immediately come into compliance with the provisions of the Lease and the Agreement for Hospital Care, respectively, as follows:

LEASE

1) 5.4 Compliance with Law:

- A. The Citrus Memorial Health Foundation, Inc. has failed to comply with all laws and the requisite and necessary oversight that is required due to the extension of sovereign immunity to the Citrus Memorial Health Foundation, Inc. as the agent and instrumentality of the Citrus County Hospital Board.
- B. On July 8, 2010 a Notice of Default against the Citrus County Hospital Board was issued pursuant to Sections 9.1 and 10.1 of the Agreement for Hospital Care, but same "limited strictly to area of indigent care financing." Specifically the Citrus Memorial Health Foundation, Inc. indicated that 1.2M additional dollars are due to Citrus Memorial Health Foundation, Inc. from FY 2008/2009 for "indigent care and capital expenditures." The Citrus County Hospital Board has fully funded FY 2008/2009 charity care and capital expenditures. In fact, FY 2008/2009 charity care was reported on the Citrus Memorial Health Foundation, Inc. Audited Financial Statement and to the Agency for Health Care Administration as \$4,623,153. The total of budgeted capital expenditures actually total \$773,127. When the FY 2008/2009 charity care and budgeted capital expenditures are made the total is \$5,396,280. Citrus Memorial Health Foundation, Inc. was paid \$10,900,000, which represents an overpayment of \$5,503,720. The Citrus Memorial Health Foundation, Inc. is wrongfully depriving the Citrus County Hospital Board of the overpaid monies. Possession of the overpaid monies is

illegal unless it is the intent of the Citrus Memorial Health Foundation, Inc. to return to the Citrus County Hospital Board the overpaid money in the amount of \$5,503,720. Repayment is demanded.

- C. The Citrus Memorial Health Foundation, Inc. fails to comport with the agreements between the parties as it relates to charity care payments and charity care requests for FY 2009/2010. The Citrus Memorial Health Foundation, Inc. fails to make requests pursuant to the agreement and has engaged in conduct intended to deprive the Citrus County Hospital Board of taxpayer money by wrongfully shifting bad debt to charity care to acquire tax money. Furthermore, the Citrus County Hospital Board codified its existing agreement between the parties to the Citrus County Hospital Board Charity Care Policy. The Citrus Memorial Health Foundation, Inc. fails to abide by the Citrus County Hospital Board Charity Care policy.

2) 14.A.d and 14.B Insurance Requirements:

- A. Currently the Citrus Memorial Health Foundation, Inc. is under-insured and such is not reasonably acceptable to the Board.
- B. Currently the Citrus Memorial Health Foundation, Inc. is under-insured and due to the Citrus Memorial Health Foundation, Inc.'s failure to have sovereign immunity due to Citrus Memorial Health Foundation, Inc. failure to comport with appropriate oversight is thus under-insured and same is not reasonably acceptable to the Citrus County Hospital Board.

3) Section 27 as Amended:

- A. Citrus Memorial Health Foundation, Inc. deliberately requests funding for indigent care in excess of the Lease Agreement. Specifically, requests for indigent care must be made pursuant to the agreement between the parties and the Citrus County Hospital Board Charity Care Policy.

4) 19.h. Events of Default:

- A. The Citrus Memorial Health Foundation, Inc. has failed to comply with the term, provisions and covenants of this Lease.
- B. The Citrus Memorial Health Foundation, Inc. has failed to discharge obligations hereunder. Provision 6.1 (B) of the Agreement for Hospital Care is an implied term of the lease of which the Citrus Memorial Health Foundation, Inc is in breach of for a failure to fulfill that obligation pursuant to the transfer of governmental function.

AGREEMENT FOR HOSPITAL CARE

1) 6.1 (b) Second Amendment for Agreement for Hospital Care:

- A. Citrus Memorial Health Foundation, Inc. has failed to act on behalf of the Citrus County Hospital Board and to appropriately perform its obligations as acting as the instrumentally of the Citrus County Hospital Board.
- B. Citrus Memorial Health Foundation, Inc.'s failure to authorize the appropriate oversight pursuant to the aforementioned provisions jeopardizes the agreement and interest of the parties to acquire and maintain sovereign immunity. The reckless conduct of the Citrus Memorial Health Foundation, Inc. jeopardizes the Citrus County Hospital Board facilities and as a consequence needlessly endangers the welfare of the community's public hospital.

2) Articles IX:

- A. Citrus Memorial Health Foundation, Inc. failure to comply with 6.1 (B) of the Agreement for Hospital Care covers the provisions herein to be in breach by the Citrus Memorial Health Foundation, Inc.

If the Citrus Memorial Health Foundation, Inc. does not cure the noticed defaults by payment of the overpaid funds and to comport with the agreement between the parties, pursuant to the appropriate cure periods, then the Citrus County Hospital Board will pursue any and ALL remedies to which it is entitled.

PLEASE GOVERN YOURSELF ACCORDINGLY.

Sincerely,



V. Upendar Rao, Chairman

WJG/rg

XC: Ryan Beaty

Citrus County Hospital Board of Trustees

William J. Grant, Esquire

**IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT
IN AND FOR CITRUS COUNTY, FLORIDA**

**CITRUS MEMORIAL HEALTH
FOUNDATION, INC., a Florida not-for-
profit corporation,**

Plaintiff,

Case No.: 2010-CA-005399

v.

**CITRUS COUNTY HOSPITAL
BOARD,**

Defendant.

_____ /

THIRD AMENDED COMPLAINT

Plaintiff Citrus Memorial Health Foundation, Inc. (the "Foundation") sues Defendant Citrus County Hospital Board ("CCHB"), and states:

GENERAL ALLEGATIONS

1. CCHB is an independent special taxing district created by special act of the Florida Legislature.
2. The Foundation is a private, Florida not-for-profit corporation, incorporated under chapter 617, Florida Statutes and having 501(c)(3) status for federal tax purposes. It is engaged in business in Citrus County, Florida.
3. Venue is proper because the parties reside in Citrus County, Florida and all or a substantial part of the transactions and occurrences set forth herein took place in Citrus County, Florida.

4. On or about March 1, 1990, in accordance with section 155.40, Florida Statutes, CCHB leased Citrus Memorial Hospital to the Foundation by a Lease Agreement. A true and correct copy of the Lease Agreement, together with all subsequent amendments, is attached as Exhibit A.

5. On the same date, CCHB and the Foundation entered into an Agreement for Hospital Care, which was amended on or about May 28, 1991 (collectively, the "1990 Agreement"). A true and correct copy of the 1990 Agreement, including a copy of the May 28, 1991 amendment, is attached as Exhibit B.

6. Under the 1990 Agreement, the Foundation was obligated to provide hospital care to all residents of Citrus County, and CCHB was obligated to provide tax funding to the Foundation to support the Foundation in "acquiring, building, constructing, maintaining, expanding, repairing, altering, equipping, operating, [and] leasing" the hospital. CCHB's funding obligation is not limited to indigent care or capital expenditures.

7. The 1990 Agreement did not expressly provide that CCHB has discretion to determine the "amount necessary" to support the Foundation's activities each year. The Foundation has always acknowledged, however, and the parties' course of dealing confirms, that CCHB has discretion to determine the "amount necessary" each year.

8. From the very beginning of the contractual relationship between the parties, the Foundation's annual requests for tax funding have acknowledged this discretion, and

CCHB has exercised its discretion on several occasions to determine a lesser "amount necessary" than was requested by the Foundation for a given year.

9. On or about March 1, 1992, CCHB and the Foundation entered into an Amended and Restated Agreement for Hospital Care (the "1992 Agreement"). A true and correct copy of the 1992 Agreement is attached as Exhibit C. The primary purpose of the 1992 Agreement was to expressly provide that CCHB has discretion to determine the "amount necessary" to support the Foundation's activities each year.

10. The 1992 Agreement expressly superseded all prior agreements between the parties regarding the same subject matter, including the 1990 Agreement, as amended in 1991.

11. On or about February 27, 2006, CCHB and the Foundation entered into a Second Amendment to the Agreement for Hospital Care (the "2006 Amendment"). A true and correct copy of the 2006 Amendment is attached as Exhibit D.

12. The sole purpose of the 2006 Amendment was to add a new provision to the prior agreement, in accordance with section 155.40(7), Florida Statutes, acknowledging that the Foundation should be considered as "acting on behalf of" CCHB in operating the hospital.

13. After adding this new provision, the 2006 Amendment states that the 1990 Agreement, as amended in 1991, "shall remain in full force and effect." The parties, however, did not intend by that language to invalidate the 1992 Agreement. Rather, they intended to affirm the continued validity of the agreement that was currently in effect,

which was the 1992 Agreement. The reference to the 1990 Agreement, rather than the 1992 Agreement that was in fact currently in effect, was merely a mutual mistake of fact and/or a scrivener's error.

14. The parties' current agreement is set forth in the 1992 Agreement and the 2006 Amendment, and the Foundation has requested in Count V that the 2006 Amendment be reformed to expressly so reflect. Alternatively, if the 1992 Agreement is deemed superseded by the 2006 Amendment, the parties' agreement then is set forth in the 1990 Agreement, as amended on May 28, 1991, and the 2006 Amendment.

15. For purposes of the breach of contract claims in this lawsuit, it is immaterial whether the 1990 Agreement or the 1992 Agreement is in effect, as the parties' rights and duties at issue in this case are the same. Under both the 1990 Agreement and the 1992 Agreement, once CCHB determines the "amount necessary" to support the Foundation's activities, it must appropriate that amount to the Foundation. Once CCHB appropriates the amount of tax funds that it has determined to be necessary, it "shall pay" that amount to the Foundation.

16. All conditions precedent to the filing of this action have been performed or have occurred.

17. The Foundation has hired Carlton Fields, P.A. and The Law Office of Clark A. Stillwell, P.A. to pursue this action and is obligated to pay them reasonable fees.

18. The Foundation is entitled to an award of attorney's fees under section 14.4 of both the 1990 Agreement and the 1992 Agreement.

**COUNT I - BREACH OF CONTRACT
(FISCAL YEAR 2009 - FAILURE TO PAY)**

19. This is an action for breach of contract for damages exceeding \$15,000.

20. The allegations contained in paragraphs 1 through 18 above are re-alleged and incorporated herein by reference.

21. For Fiscal Year 2009, CCHB appropriated \$12.1 million to the Foundation.

22. During Fiscal Year 2009, CCHB only paid \$10.9 million to the Foundation.

23. CCHB made these payments on a regular basis as contemplated by the Agreement, but abruptly discontinued such payments after a dispute arose between the parties over governance of the hospital.

24. CCHB has breached the parties' agreement by failing and refusing to pay \$1.2 million appropriated to the Foundation for Fiscal Year 2009.

25. As a result of CCHB's breach, the Foundation has suffered damages in the amount of \$1.2 million.

WHEREFORE, the Foundation demands judgment against CCHB for damages, contractually-required attorney's fees, pre-judgment interest, costs, and such other relief as the Court deems proper.

**COUNT II - BREACH OF CONTRACT
(FISCAL YEAR 2010 - FAILURE TO APPROPRIATE)**

26. This is an action for breach of contract for damages exceeding \$15,000.

27. The allegations contained in paragraphs 1 through 18 above are re-alleged and incorporated herein by reference.

28. For Fiscal Year 2010, CCHB determined that the "amount necessary" to support the Foundation's activities was \$9.5 million.

29. Nevertheless, CCHB appropriated only \$6 million to the Foundation.

30. By failing to appropriate \$3.5 million that CCHB had determined was necessary, CCHB breached the parties' agreement.

31. As a result of CCHB's breach, the Foundation has suffered damages in the amount of \$3.5 million.

WHEREFORE, the Foundation demands judgment against CCHB for damages, contractually-required attorney's fees, pre-judgment interest, costs, and such other relief as the Court deems proper.

**COUNT III – BREACH OF CONTRACT
(FISCAL YEAR 2010 – FAILURE TO PAY)**

32. This is an action for breach of contract for damages exceeding \$15,000.

33. The allegations contained in paragraphs 1 through 18 above are re-alleged and incorporated herein by reference.

34. During Fiscal Year 2010, CCHB appropriated \$6 million to the Foundation.

35. In appropriating those monies to the Foundation, however, CCHB unilaterally attached conditions to the payment of the appropriated monies, which conditions are not authorized under the parties' agreement.

36. Under the parties' agreement, once CCHB appropriates money to the Foundation, CCHB "shall pay" the appropriated funds to the Foundation.

37. Nevertheless, CCHB asserted that \$4.5 million of the \$6 million would only be paid for indigent care expenses that CCHB approved after such expenses were incurred, and the other \$1.5 million would only be paid for capital expenses that CCHB approved after such expenses were incurred. Nothing in the parties' agreement gives CCHB such approval rights over appropriated funds.

38. The tax funds that CCHB pays to the Foundation are not designated merely for indigent care or capital expenditures; rather, they are to support all aspects of the Foundation's operation of the hospital, including "acquiring, building, constructing, maintaining, expanding, repairing, altering, equipping, operating, [and] leasing" the hospital.

39. During Fiscal Year 2010, CCHB paid only \$1,589,124 to the Foundation.

40. Because the conditions imposed by CCHB on these appropriated funds were unauthorized by the parties' agreement, the Foundation is entitled to the entire \$6 million appropriated by CCHB.

41. CCHB has breached the parties' agreement by failing and refusing to pay \$4,410,876—the difference between the \$6 million owed and the \$1,589,123 paid.

42. Thus, as a result of CCHB's breach, the Foundation has suffered damages in the amount of \$4,410,876.29.

WHEREFORE, the Foundation demands judgment against CCHB for damages, contractually-required attorney's fees, pre-judgment interest, costs, and such other relief as the Court deems proper.

COUNT IV - BREACH OF CONTRACT
(FISCAL YEAR 2011 – FAILURE TO PAY)

43. This is an action for breach of contract for damages exceeding \$15,000.

44. The allegations contained in paragraphs 1 through 18 above are re-alleged and incorporated herein by reference.

45. For Fiscal Year 2009, CCHB appropriated \$2 million to the Foundation.

46. In appropriating those monies to the Foundation, however, CCHB unilaterally attached conditions to the payment of the appropriated monies, which conditions are not authorized under the parties' agreement.

47. Under the parties' agreement, once CCHB appropriates money to the Foundation, CCHB "shall pay" the appropriated funds to the Foundation.

48. Nevertheless, CCHB asserted that \$1 million of the \$2 million would only be paid for indigent care expenses that CCHB approved after such expenses were incurred, and the other \$1 million would only be paid for capital expenses that CCHB approved after such expenses were incurred. Nothing in the parties' agreement gives CCHB such approval rights over appropriated funds.

49. The tax funds that CCHB pays to the Foundation are not designated merely for indigent care or capital expenditures; rather, they are to support all aspects of the Foundation's operation of the hospital, including "acquiring, building, constructing, maintaining, expanding, repairing, altering, equipping, operating, [and] leasing" the hospital.

50. CCHB has breached the parties' agreement by failing and refusing to pay any tax funds to the Foundation for Fiscal Year 2011.

51. Because the conditions imposed by CCHB on its tax funding were unauthorized by the parties' agreement, the Foundation is entitled to the entire \$2 million appropriated by CCHB, in monthly increments of \$166,667.

52. Thus, as a result of CCHB's breach, the Foundation has suffered and will continue to suffer damages in the amount of \$166,667 per month for the remainder of Fiscal Year 2011.

WHEREFORE, the Foundation demands judgment against CCHB for damages, contractually-required attorney's fees, pre-judgment interest, costs, and such other relief as the Court deems proper.

COUNT V – REFORMATION OF 2006 AMENDMENT

53. This is an action for reformation of the 2006 Amendment.

54. The allegations contained in paragraphs 1 through 13 and 16 through 18 above are re-alleged and incorporated by reference.

55. The language in the 2006 Amendment that the 1990 Agreement, as amended in 1991, "shall remain in full force and effect," was included as a result of a mutual mistake of fact and/or a scrivener's error on the part of CCHB and the Foundation.

56. Both parties intended at the time of the 2006 Amendment to affirm the continued validity of the agreement that was currently in effect, which was in fact the

1992 Agreement and not the 1990 Agreement. There was no intent to revive the 1990 Agreement, which was not currently in effect.

57. The only substantive change intended by the parties was to add a new provision to the prior agreement acknowledging, in accordance with section 155.40(7), Florida Statutes, that the Foundation should be considered as "acting on behalf of" CCHB in operating the hospital.

58. Thus, the Court should honor the actual intent of the parties by reforming the 2006 Amendment to reflect that the 1992 Agreement would "remain in full force and effect."

WHEREFORE, the Foundation respectfully requests that the Court reform the 2006 Amendment to reflect the parties' actual intent that the 1992 Agreement would "remain in full force and effect," and award the Foundation its costs, contractually-required attorney's fees, and such other relief as the Court deems proper.

COUNT VI – UNJUST ENRICHMENT

59. This is an action for unjust enrichment for damages in excess of \$15,000.

60. This action is pled in the alternative to Counts I through IV above, and is asserted only in the event that it is determined that there is no valid contract with respect to CCHB's obligation to provide tax funds to the Foundation.

61. The allegations contained in paragraphs 1 through 3 and 16 above are re-alleged and incorporated herein by reference.

62. During Fiscal Years 2009 through 2011, the Foundation conferred a benefit on CCHB by providing uncompensated hospital services to Citrus County residents, which services would otherwise have been provided by CCHB.

63. The expenses of providing such services far exceeded any amounts CCHB paid for the services.

64. CCHB appreciated that the Foundation was providing such a benefit.

65. CCHB accepted and retained the benefit.

66. CCHB's acceptance and retention of the benefit conferred on it by the Foundation is unjust because CCHB has not paid the Foundation a fair amount in relation to the benefit conferred.

67. As a result, the Foundation has suffered damages.

WHEREFORE, the Foundation demands judgment against CCHB for damages, costs, and such other relief as the Court deems proper.

COUNT VII – QUANTUM MERUIT

68. This is an action for quantum meruit for damages in excess of \$15,000.

69. This action is pled in the alternative to Counts I through IV above, and is asserted only in the event that it is determined that there is no valid contract with respect to CCHB's obligation to provide tax funds to the Foundation.

70. The allegations contained in paragraphs 1 through 3 and 16 above are re-alleged and incorporated herein by reference.

71. During Fiscal Years 2009 through 2011, the Foundation provided a benefit to CCHB in the form of uncompensated hospital services to Citrus County residents, which services would otherwise have been provided by CCHB.

72. CCHB assented to and received the benefit of the Foundation's services.

73. In the ordinary course of common events, a reasonable person would have expected to pay for the services provided by the Foundation.

74. CCHB has failed to pay the Foundation an amount that a reasonable person would have expected to pay for the services provided by the Foundation.

75. As a result, the Foundation has suffered damages.

WHEREFORE, the Foundation demands judgment against CCHB for damages, costs, and such other relief as the Court deems proper.

COUNT VIII – PROMISSORY ESTOPPEL (FISCAL YEAR 2010)

76. This is an action for promissory estoppel for damages in excess of \$15,000.

77. This action is pled in the alternative to Counts I through IV above, and is asserted only in the event that it is determined that there is no valid contract with respect to CCHB's obligation to provide tax funds to the Foundation.

78. The allegations contained in paragraphs 1 through 3 and 16 above are alleged and incorporated herein by reference.

79. By Resolution 2009-06, dated September 21, 2009, CCHB promised to provide \$4,500,000 for certain indigent care services provided by the Foundation. A true and correct copy of Resolution 2009-06 is attached as Exhibit E.

80. The Foundation has complied with all conditions necessary to receive payment from CCHB for indigent care services under Resolution 2009-06.

81. CCHB should have reasonably expected the Foundation to act on Resolution 2009-06 by incurring expenses that it would not have incurred but for Resolution 2009-06.

82. The Foundation acted on Resolution 2009-06 by incurring expenses that it would not have incurred but for Resolution 2009-06, resulting in financial losses to the Foundation.

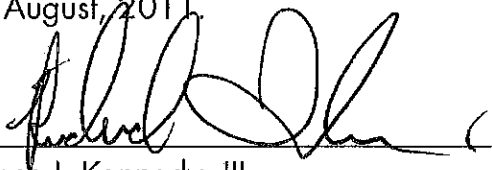
83. Injustice can be avoided only by requiring CCHB to pay the funds promised through Resolution 2009-06.

84. As a result of CCHB's failure to pay the promised funds, the Foundation has suffered damages.

WHEREFORE, the Foundation demands judgment against CCHB for damages, costs, and such other relief as the Court deems proper.

Respectfully submitted this 17th day of August, 2011.

Clark A. Stillwell
Law Office of Clark A. Stillwell, P.A.
Bank of Inverness Building



James J. Kennedy, III
Florida Bar No.: 435686
Richard Oliver

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roliver@carltonfields.com
Attorneys for Plaintiff Citrus Memorial Health
Foundation, Inc.

CERTIFICATE OF SERVICE

WE CERTIFY that a true and correct copy of the foregoing was provided by facsimile and regular mail to William J. Grant, Esquire, Grant & Samargya, LLC, 123 North Apopka Avenue, Inverness, FL 34450 (facsimile no. (352) 726-7244); Clifford B. Shepard, Esquire, Shepard, Smith & Cassady, P.A., 2300 Maitland Center Parkway, Suite 100, Maitland, FL 32751 (facsimile no. (407) 622-1884); and Bruce B. Blackwell, King, Blackwell, Downs & Zehnder, P.A., 25 East Pine Street, Post Office Box 1631, Orlando, Florida 32802 (facsimile no. (407) 648-0161) and by next day mail to The Honorable William T. Swigert, Senior Judges' Office, 110 Northwest First Avenue, Ocala, Florida 34475 on this 17th day of August, 2011.



Attorney