

**DELAWARE HEALTH FACILITIES AUTHORITY**  
**MINUTES OF SPECIAL MEETING**

of

**October 1, 2009**

A special meeting of the Delaware Health Facilities Authority (the "Authority"), was held on October 1, 2009, called for 11:00 a.m., at the offices of Potter Anderson & Corroon LLP at 1313 N. Market Street, Wilmington, Delaware 19801. The meeting and the public hearings to be conducted at the meeting were duly noticed and the hearings are open to the public for comment. The following Authority Members attended in person: Rolf F. Eriksen, Chair, Desmond A. Baker, George W. Forbes, III, Lisa More, and Howard A. Palley, Ph.D. Authority Member William G. Neaton participated by telephone connection but was not counted for purposes of a quorum and did not vote at the meeting. Also participating in the meeting from Potter Anderson & Corroon LLP were John J. Quinn, III, Esq., the Authority's Counsel, and Margaret M. Grillet. In attendance at the meeting in connection with the *Bayhealth* Medical Center, Inc. (the "Hospital") Application for Revenue Bond Financing and certain Hospital requests for modification thereto (collectively, "Application") were Emilie R. Ninan, Esq., Ballard Spahr LLP, Bond Counsel. Participating in the meeting by telephone connection in support of the Application were the following: Earl P. Tanis, Senior Vice President and CFO of the Hospital; Donald J. Persinski, PNC, Underwriter; and Emily Abrantes and Jeremy Bass, Public Financial Management, Inc. ("PFM"), Financial Advisor to the Authority. No members from the public were in attendance.

Mr. Eriksen called the meeting to order at 11:05 a.m.

Further Consideration of the *Bayhealth* Medical Center, Inc. Application for Revenue Bond Financing

At Mr. Eriksen's request, Mr. Quinn advised those present that the primary purpose of the meeting was for the Members to consider the Hospital's proposed modifications to the Application and to the resolutions approved by the Authority in connection therewith at the September 10, 2009 meeting of the Members. Mr. Quinn briefly described the proposed modifications as an increase in the maximum amount of the bonds to be issued from \$200,000,000 to \$220,000,000 and to provide for the refunding of *Bayhealth's* Series 1999 Bonds (the "Series 1999 Bonds").

Mr. Persinski explained that the Hospital and its advisors found it advantageous to refund the Series 1999 Bonds and provide for the refunding by increasing the maximum amount of new bonds to be issued rather than incur additional costs and fees and satisfy additional covenants required by AMBAC, the insurer of the Series 1999 Bonds.

Ms. Ninan emphasized that it was reasonable at the time of the original Application to expect that AMBAC would consent to the issuance of the new bonds on customary terms and conditions as it had routinely done in the past.

Mr. Persinski suggested that while AMBAC has approved arrangements similar to those originally contemplated by the Hospital and its advisors, AMBAC, now in a weakened financial condition with its own rating currently at “CC”, was requiring conditions that now make refunding the Series 1999 Bonds slightly advantageous to the Hospital. Furthermore, the Hospital, with the assistance of its financial advisors, determined that AMBAC’s demands were not consistent with market conditions or appropriate for a borrower with the creditworthiness of the Hospital.

There was extensive questioning and discussions among the Members and the Hospital and its advisors regarding the Hospital’s negotiations with AMBAC; the amortization schedules for the proposed issuance (as now proposed to be modified), as compared to the amortization schedules for the Series 1999 Bonds combined with the new bonds contemplated under the original Application; the variable and fixed rate components of the new bonds; the Hospitals’ interest rate swap arrangements; and the Hospital’s current Fitch and S&P ratings (AA-, stable; and A+, stable, respectively).

In response to a question, it was noted that the now-proposed issuance was \$138.4 million of fixed rate bonds and \$76.3 million of variable rate bonds for a total of approximately \$214.715 million.

Ms. More raised a question regarding the current swap agreement and any associated termination fee. Mr. Tanis confirmed that there is an existing swap agreement and that the termination fee is \$2,787,476, as of today, subject to fluctuating market rates.

Dr. Palley expressed concern that the variable rate bonds would require the Hospital to be in a position to have to generate additional revenues if interest rates increased. In response, Mr. Tanis noted that half of the Hospital’s variable rate bonds are covered by the swap agreement, with a term to expire in 2023. The Hospital is not, however, considering a swap at this time.

At Mr. Eriksen’s request, Mr. Persinski reported on the status of the Hospital’s ratings. Historically, the Hospital has had a AA- rating and that has recently been confirmed by Fitch with a “stable outlook”. Additionally, S&P recently gave the hospital an A+ rating with a “stable outlook”.

In response to a question from Mr. Forbes, Mr. Tanis noted that there is a 1% prepayment penalty on the outstanding bond balance, or \$18,165. Mr. Tanis also confirmed that the useful life of the Hospital’s assets is sufficient for the new issue.

Mr. Quinn asked PFM to note its position and make a recommendation to the Members based on the Hospital’s financial condition. Ms. Abrantes discussed the current bond marketplace, the precarious financial condition of some bond insurers including AMBAC, the improving interest rate environment, the Hospital’s large cash portfolio, and the prudence of including some variable debt in the Hospital’s debt portfolio. Mr. Bass indicated that PFM’s

earlier favorable recommendation of the proposed bond issuance, as now proposed to be modified, stands.

Mr. Quinn advised Mr. Eriksen that he has reviewed the modified loan agreements, which are still currently circulating in draft form for comments, and that he is comfortable with all changes. Mr. Quinn noted that the Bond Committee will have further opportunity to consider any material changes to the modified loan agreements.

Whereupon, Mr. Quinn, Counsel to the Authority, presented to the Members the resolution entitled "SUPPLEMENTAL RESOLUTION TO A BOND RESOLUTION APPROVING A PLAN OF FINANCING AND THE EXECUTION AND DELIVERY OF CERTAIN AGREEMENTS, APPOINTING A COMMITTEE TO APPROVE THE FINAL TERMS OF ONE OR MORE SERIES OF BONDS, AND PROVIDING FOR OTHER MATTERS IN CONNECTION THEREWITH", a copy of which had been previously circulated to the Members and which (in modified form as described below) is attached hereto.

During the course of considering the proposed resolution, upon Mr. Eriksen's request, Mr. Quinn discussed a newly-passed Delaware Act amending the State's Freedom of Information Act (FOIA) that requires member presence in person or by videoconference at meetings of State agencies in order to constitute presence at the meeting for quorum and voting purposes. Mr. Quinn explained that Members (including Committees of the Authority) are not excluded from connecting to a meeting by telephone (rather than videoconference), but in such cases those Members will not be considered "present" at the meeting, they will not count towards a quorum and their vote cannot be taken.

After additional discussion by the Members regarding quorum and attendance requirements and the impact on the Authority's Bond Committee, Mr. Eriksen suggested that Ms. More be appointed as a fourth member of the Bond Committee (*Bayhealth* Series 2009 Bonds) to ensure that there will be a quorum physically present at the scheduled meetings. Mr. Quinn indicated that, subject to the Members' approval, he would add this to the proposed resolutions. Following discussion, the Members unanimously agreed that Ms. More should be added to the Bond Committee.

Ms. Ninan initiated a discussion regarding the scheduling of the Bond Committee meetings. It was agreed that there will be three meetings of the Bond Committee to approve the new bond issues: October 7, 2009 at 1 p.m. at the offices of Potter Anderson & Corroon LLP; October 26, 2009 at 1 p.m. at the offices of Ballard Spahr LLP; and October 27, 2009 at 9:30 a.m. at the offices of Potter Anderson & Corroon LLP.

After further discussion, and upon motion made by Mr. Forbes and seconded by Mr. Eriksen, the proposed resolution, as modified by the Members as described above (and in the form attached), was unanimously approved by the Members physically present at the meeting.

Whereupon, at approximately 11:35 p.m., Mr. Quinn terminated the telephone connection and those participating by telephone were no longer present at the meeting.

*Other New Business*

Mr. Quinn presented a proposal to amend the Authority's Bylaws to allow for telephone and videoconferencing at meetings of Members and Authority Committee meetings. He explained that this proposed amendment would add flexibility to conform with changes in State law and would permit telephone conferencing if the new videoconferencing law should ever be amended or interpreted to permit presence by telephone participation. In any event, Mr. Quinn advised the Members that the proposed change to the Bylaws would permit the Members to participate in meetings by videoconference, as now clearly permitted under Delaware law.

After discussion, the Members asked Mr. Quinn to clarify the proposed addition to the Bylaws so that it expressly applies only to the extent permitted by law. Mr. Quinn agreed to add that to the proposed amendment.

Upon motion made by Dr. Palley and seconded by Ms. More, the resolution to amend the Bylaws, as modified, was unanimously approved, as follows:

RESOLVED, that the Bylaws of the Delaware Health Facilities Authority shall be amended to add a new Section 6 to ARTICLE III (Meetings) as follows:

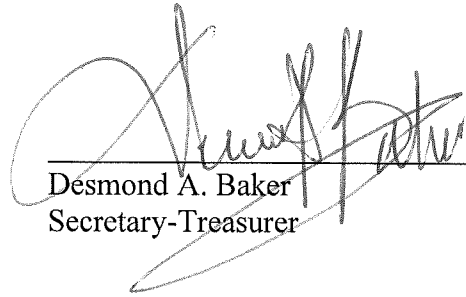
Section 6. Manner of Acting. To the extent permitted by applicable law, members of the Authority, or any committee thereof, may participate in any meeting of the members or such committee by means of conference telephone or other communications equipment by means of which all persons participating therein can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

The Members then discussed in general terms the Certificate of Public Review that is prepared and submitted with the bond applications. Dr. Palley suggested that the Members consider supplementing the findings set forth in a Certificate of Public Review with additional analysis regarding whether and how a hospital can be most responsive to the health of the community in the future. Mr. Forbes asked that the Certificate of Public Review for the Hospital be circulated to the Members for review. Mr. Quinn provided a copy of same to all Members in attendance. Mr. Forbes noted that the Certificate of Public Review report attached to the Application was dated October 1, 2007. Mr. Forbes asked Mr. Quinn to investigate how best to ensure that the report included in an application for financing is current. Mr. Forbes and Dr. Palley proposed that consideration be given to having a more formal presentation and discussion of the Certificate of Public Review of a hospital in the future. Mr. Quinn agreed to follow up on this.

There being no further business to come before the meeting, the meeting was duly adjourned at approximately 12:00 Noon.

**CERTIFICATION**

I, Desmond A. Baker, hereby certify that the foregoing is a true and correct copy of the Minutes of Special Meeting of the Delaware Health Facilities Authority held on October 1, 2009.



Desmond A. Baker  
Secretary-Treasurer

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