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**MEMORANDUM**

**TO:** Senate Committee on Assignments

**FROM:** Brian Scott Johnson *Brian*

**SUBJECT:** Grady Hospital/Emory University Contract and Audit Analysis

Pursuant to a request by Senator Shafer, please find the following analysis regarding the existing relationship between Emory University ("Emory") and the Fulton-DeKalb Hospital Authority ("Grady"). This analysis is based upon review of the current contract between Emory and Grady which was executed on or about July 1, 1984 ("Agreement") coupled with the strategic assessment of the Agreement produced by the auditing firm of Cherry, Bekaert & Holland and Horne, L.L.P. on or about March 1, 2005 ("Audit").<sup>1</sup> The documents were reviewed in conjunction with correspondence by William Loughrey, former Trustee of the Fulton-DeKalb Hospital Authority, dated August 24, 2007; a press release by Emory University, dated August 30, 2007; a press release by Attorney General Thurbert Baker, dated November 13, 1998; and the Charter of Emory University granted January 25, 1915, and restated November 12, 1987, among other available documents.

Emory and Grady mutually agree to jointly operate Henry W. Grady Memorial Hospital ("Hospital")<sup>2</sup> unless otherwise terminated.<sup>3</sup> The existing Agreement binds the parties from 1984 through June 30, 2013; this 30-year contractual period is ten times as long as a majority of peer institutions' contractual average of 3 years.<sup>4</sup> The Agreement arose out of historical practice and does not appear to have been competitively bid.

The Agreement creates the Emory/Grady Committee composed of an equal number of Emory and Grady trustees; these trustees are vested with authority to settle and/or resolve all issues of policy arising under the Agreement with respect to the performance of the parties in adherence to

<sup>1</sup> The Audit assesses the contractual relationship between Grady, Emory, and Morehouse. It is important to note that Grady also contracts with Morehouse School of Medicine ("Morehouse") to provide similar services at the Hospital.

<sup>2</sup> See Agreement Page 2, § 2.

<sup>3</sup> See Agreement Page 3, § 4.

<sup>4</sup> See Audit Page 41.

the Agreement.<sup>5</sup> Under the Agreement, should Grady contract with a third party without Emory's permission, the Agreement effectively terminates.<sup>6</sup> Essentially, Emory enjoys the unilateral discretion to terminate the Agreement if Grady contracts with another third party to provide similar or additional services.

The Agreement notes that Emory has provided supervision and professional care of patients at Grady for many decades;<sup>7</sup> moreover, Emory continues to assume full and exclusive authority and responsibility of patient care.<sup>8</sup> Emory provides the Medical Staff, House Staff, and Allied Health Professionals Staff. The Medical Staff consists of physicians who provide supervisory, administrative, and training services for the benefit of the Hospital and who provide direct care to Hospital patients; the House Staff consists of resident physicians, fellows, and dentists participating in Emory's residency training program; the Allied Health Professionals Staff consists of non-physician health professionals.<sup>9</sup> The Chiefs of Services are appointed by the Dean of Emory's Medical School and must be selected from full-time faculty members of Emory; moreover, the Medical Director is jointly nominated by the Hospital Executive Director and Emory Vice President subject to approval by the trustees of Grady.<sup>10</sup> This arrangement effectively gives Emory a veto over the Medical Director of the Hospital.

Under the Agreement, Grady compensates Emory in a sum equal to an amount that Emory provides in stipends to the House Staff and Allied Health Professionals Staff.<sup>11</sup> Additionally, Grady compensates Emory for the time that the Medical Staff spends providing supervision, administrative, and training services. The Agreement requires Emory to document this time expended by Emory Medical Staff for two consecutive weeks each quarter (eight weeks annually). Emory then sends a bill to Grady for 52 weeks of medical service (Emphasis added) using the eight weeks of recorded time to guess as to the amount of time spent during the other 44 weeks of the year.<sup>12</sup> According to the Audit, at some point after the Agreement was initially concluded, the documentation requirement was reduced to one week per quarter, leaving 48 weeks of the year undocumented. The lack of documentation for services billed was a major focus of the Audit. The Audit repeatedly criticized Emory's documentation practices as "inadequate" and noted that, in contrast, Morehouse was required to maintain bill records for two weeks each month—a level of detail six times as great as required by Emory.<sup>13</sup> The Audit notes that Emory promised to increase the frequency of documentation to at least one week per month; however, this recommendation and Emory's promise were apparently never implemented.<sup>14</sup>

This Agreement contains an acknowledgement by both Grady and Emory that due to the limited financial means of Grady that Grady will likely not be able to pay Emory for all of the supervisory, administrative, and teaching services. The Agreement contemplates, but does not

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<sup>5</sup> See Agreement Page 4, § 8.

<sup>6</sup> See Agreement Page 3, § 4.

<sup>7</sup> See Agreement, Statement of Background Page 1.

<sup>8</sup> See Agreement Page 2, § 2.

<sup>9</sup> See Agreement Page 1, § 1; Page 2, § 2; and Page 5, § 10.

<sup>10</sup> See Agreement Page 5, § 11 and Page 6, § 12.

<sup>11</sup> See Agreement Page 9, § 20.

<sup>12</sup> See Agreement Pages 9 and 10, § 20.

<sup>13</sup> See Audit Page 29. The agreement stipulates that this billing plan is in conformity with the Code of Federal Regulations.

<sup>14</sup> See Audit Page 9.

require, that Emory may perform certain services without compensation, an historical practice consistent with Emory's nonprofit charter and Christian mission.<sup>15</sup> It could be argued that the practical effect of this Agreement is to create a situation in which Grady is perpetually indebted to Emory in such a manner and at a level that is unilaterally determined by Emory. Emory maintains the unilateral power to make this determination because of the speculative nature of its billing practices and the fact that Emory alone may determine what portion of the charges (which both Emory and Grady agree that Grady cannot afford) will be written off as uncompensated services. Indeed, the Audit notes that the financial pressure on Grady as increased because of Emory's unilateral decision to reduce uncompensated service.<sup>16</sup>

In addition to compensation paid directly by Grady to Emory for administrative, supervisory, and teaching services, patients of Grady are billed directly by the Emory Medical Care Foundation ("Foundation") for the physician services of Emory physicians. The Foundation enjoys the power to set physician charges.<sup>17</sup> The Agreement notes that the foundation may afford courtesy and charitable discounts as historically recognized by the Hospital.<sup>18</sup> Generally, the Foundation sets and retains the charges for all services performed by its physicians while on Hospital property. The Audit suggests that Emory is permitted to charge Grady patients for physician services in recognition of the fact that Grady is financially unable to pay the other compensation in adherence to the Agreement.

Under the Agreement, Grady assumes all liability for damages, losses, expenses, or costs for any services provided by Emory, and it is the responsibility of Grady to maintain malpractice and general liability insurance to protect itself and Emory personnel.<sup>19</sup> Essentially, Grady pays for Emory liability. At the time of execution of this Agreement, common law presumed to provide Grady with "sovereign immunity" due to its standing as a public health facility; however, a 1994 Georgia Supreme Court ruling reversed the principal that public hospital authorities enjoyed such immunity. This ruling subsequently exposed Grady to millions of dollars on unanticipated costs associated with defending and settling medical malpractice and other civil torts.<sup>20</sup>

Interestingly, the Agreement encourages public statements are to be made by Emory and Grady jointly, rather than individually, whenever possible.<sup>21</sup> This is an external indication that Grady does not operate independently. Review of the Audit continued to prove extremely insightful. The auditors reported that they experienced significant delays due to resistance from Emory that resulted in numerous scope revisions.<sup>22</sup> There were numerous requests for information and a "great deal of deliberation with the participants."<sup>23</sup> Specifically, Emory objected to an "historical or retrospective audit" of its time records.<sup>24</sup>

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<sup>15</sup> Emory is affiliated with the United Methodist Church.

<sup>16</sup> See Audit Page 17.

<sup>17</sup> Emory Medical Care Foundation, inc., is a Georgia non-profit corporation in good standing since 1983.

<sup>18</sup> See Agreement Page 9, § 19.

<sup>19</sup> See Agreement Page 8, § 18.

<sup>20</sup> See Thomas v. Hospital Authority of Clarke County, 264 Ga. 40 (1994).

<sup>21</sup> See Agreement Page 11, § 22.

<sup>22</sup> See Audit, Executive Summary Page i.

<sup>23</sup> See Audit Page 5.

<sup>24</sup> See Audit Executive Summary Page i.

As referenced above, provisions relating to documentation requirements are highly controversial. The Audit criticized record keeping and characterized it as “inadequate” for Grady to monitor the work of the Medical Staff; moreover, the record keeping did not rise to sufficiently determine whether work being billed for was actually being accomplished.<sup>25</sup> The Audit noted that the auditors were “unable to establish a complete record of faculty supervision due to the lack of data” but further admitted that the “data...provided met the minimum contract requirements (based on [one] week per quarter).”<sup>26</sup>

As referenced above, the Audit recommended that the Agreement be amended to provide for more frequent documented reporting periods; however, the Audit noted that Emory voluntarily agreed to increase documentation and improve its record keeping without contractual amendment. Despite the fact that Emory *orally* promised to increase the frequency of documentation, this does not appear to have occurred. (Emphasis added).<sup>27</sup> Wisely, the Audit suggests that future amendments to the Agreement be in writing.<sup>28</sup>

The Audit found that the primary issues raised by Grady turned on its “inability to verify the quality of physician services, the increasing amount of legal liability exposure resulting from medical staff, and the lack of control over scheduling the level of timing of physician services.”<sup>29</sup>

Grady’s primary concerns are not without merit. The Audit reported that the “contractually specified level of detail and specificity is too general to allow the [H]ospital to adequately monitor faculty supervision...The Medical Schools have implemented limited faculty time record systems” which appears to be in adherence to the Agreement. Additionally, “[t]hese...are not contractually required to provide verification that a specific faculty member was actually supervising in a given location during a given period of time other than those selected weeks during which the Faculty Time Records (FTR) were recorded.”<sup>30</sup>

A press release issued by Georgia Attorney General Thurbert Baker on November 13, 1998, stated that the Foundation agreed to pay \$4.5 million in overcharges to Medicaid. Perhaps foreshadowing yet certainly substantiating the findings of the Audit, the overcharges related, in part, to allegations relating to the actual presence of Emory’s faculty physicians at the Hospital.<sup>31</sup>

In summation, the relationship between Emory and Grady appears, through review of these documents, to be structured in a fashion that is decidedly advantageous to Emory. Grady is bound into an unusually long contractual relationship in which medical services are performed at the downtown Hospital but the benefits flow back to Druid Hills. Emory obtains the use and benefit of a large, urban teaching hospital providing a large array of teaching opportunities. Grady’s medical leadership either originates from Emory or is subject to a practical veto; its spokesman is required to make joint statements with and approved by Emory whenever possible.

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<sup>25</sup> See Audit, Executive Summary Page iv and Page v.

<sup>26</sup> See Audit, Executive Summary Page iii.

<sup>27</sup> See Audit Page 9.

<sup>28</sup> Id.

<sup>29</sup> See Audit, Executive Summary Page v.

<sup>30</sup> See Audit Page 5 and 6.

<sup>31</sup> See Ga. Atty. Gen. Website: [http://ago.georgia.gov/00/press/detail/0,2668,87670814\\_89151348\\_89525649,00](http://ago.georgia.gov/00/press/detail/0,2668,87670814_89151348_89525649,00)

It is Grady's lone burden to assume malpractice liability of Emory's physicians and indemnify Emory against all liability. Grady is required to pay Emory for the cost of Emory faculty physicians at rates that both parties agree that Grady cannot afford. Grady relies solely to the speculation of time spent at the Hospital by Emory professionals; four weeks of data collection supposedly equals a year's worth of charges. Emory is allowed to bill patients directly for the services of its physicians despite the fact that these services are performed on Hospital property.

The continuing "inadequate" billing documentation requirement appears ripe for overcharging and understaffing at Grady's financial expense. Grady exists to serve the public purpose; continuing to bind Grady to the Agreement beyond 2013 in an unmodified or unaltered fashion seems to be an unwise expenditure of public money and misplacement of public trust.