

801.1(a)(2); 801.1(b), 17(c)(1)

[REDACTED]

December 2, 1991

This material may be subject to the confidentiality provisions of Section 74 (d) of the Internal Revenue Code which restricts release to the Freedom of Information Act

Richard Smith, Esq.
Thomas Hancock, Esq
Pre-Merger Notification Office, H-303
Federal Trade Commission
Washington, D.C. 20580

Re: [REDACTED]

Dear Mr. Smith and Mr. Hancock:

The purpose of this letter is to request an informal determination in connection with the filing of a pre-merger notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). The need for a filing arises because [REDACTED] nonprofit public benefit corporation (the "Foundation"), [REDACTED] is acquiring [REDACTED] (the [REDACTED]), a health-care provider organization consisting of five related entities. It is our view that the [REDACTED] is a single person for purposes of the Act, and can properly make a single filing on behalf of its constituent entities. The corollary would be that Foundation, and the "acquiring person of which it is a part," is also obligated to make only one filing.

Background

The [REDACTED] is a system of commonly-owned health care provider entities, each of which is owned by [REDACTED] individual physicians (the "Partners"). The [REDACTED] operates and holds itself out as an integrated organization under the name [REDACTED]. The [REDACTED] operates a general acute care hospital known as [REDACTED] (the [REDACTED]), and its associated medical clinics. The [REDACTED] is a [REDACTED] bed proprietary hospital located in [REDACTED]. The [REDACTED] also operates a number of medical clinics, also located in [REDACTED] which provide outpatient medical and [REDACTED]

[REDACTED]

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ancillary services (the [REDACTED]). The [REDACTED] has three constituent entities that are being acquired and are contemplating filing under the Act.¹

The Medical Group. The [REDACTED] is staffed by the members of [REDACTED] (the [REDACTED]), a medical partnership consisting of the [REDACTED] and approximately [REDACTED] physician employees. Members of the [REDACTED] also operate and staff the [REDACTED]. The [REDACTED] has a closed staff, and only members of the [REDACTED] and community-based physicians under contract to the [REDACTED] are permitted to admit patients to its facilities. The [REDACTED] revenues are therefore derived exclusively from services provided to patients of the [REDACTED].

The Hospital Corporation. The [REDACTED] is owned and operated by [REDACTED] (the [REDACTED]). Under the bylaws of the [REDACTED] its shareholders must be partners of the [REDACTED] and of [REDACTED] and must hold their interests in these entities in the same proportion. The [REDACTED] operates the [REDACTED] through a separate corporation in order to insulate the members of the [REDACTED] from liability for the [REDACTED] operations, and to avoid the need to obtain

¹ In addition to the entities described below, the [REDACTED] includes two real estate partnerships, Building Company I and Building Company II, which own the real property in which the Clinics are operated. All the partners of the [REDACTED] are also partners of these partnerships, and they share common management with the [REDACTED] and the [REDACTED]. These partnerships are selling their real property to the [REDACTED] in the same transaction, but they are not filing as acquired persons, because the acquisition of their assets falls within the exemption for the acquisition of realty in the ordinary course of business under 16 CFR § 802.1. Moreover, with respect to Building Company II, the sale does not meet the size of the transaction threshold under 16 CFR § 802.20.

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accreditation of the [redacted] hospital facilities.² The [redacted] and the [redacted] however, share common governance and management, as described below.

[redacted] of [redacted] is a California general partnership which owns the real estate and improvements in which the [redacted] is operated, and leases them to the [redacted]. The partners of [redacted] are the same persons who are the Partners of the [redacted] and shareholders of the [redacted]. The income of [redacted] is derived solely from lease payments received from the [redacted] the income of which is in turn derived only from services provided to patients admitted to the [redacted] by the [redacted].

Under the proposed transaction, the [redacted] the [redacted] and [redacted] will sell or donate all of their assets to the [redacted] which will operate them as a nonprofit hospital and associated outpatient clinics.

Common Ownership and Management

Through their interlocking partnership interests and stock, the Partners are the common owners of the [redacted] the [redacted]. The Partners own identical fractional interests in the three entities. This common ownership is reflected in the governance and management of the three entities, which is completely integrated.

The Partners have elected a group of [redacted] persons from their members, which acts as the Executive Committee of the [redacted] and of [redacted] and as the Board of Directors of the [redacted]. The same person is the Chief Executive

² The [redacted] is accredited by the Joint Commission on [redacted] and accredits hospital facilities. The [redacted] are accredited by the [redacted] of the [redacted] which accredits ambulatory care facilities.

³ The Partners hold their partnership interests and stock as individuals, so there is no single owner of the three entities.

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Officer of all three organizations, and the other senior executive officers (titled "Executive Directors") function as the executive management for all three organizations.⁴

Below the level of executive management, the [REDACTED] and the [REDACTED] employ separate staff to perform dedicated functions, but they share common office and other facilities, and use the same staff to perform common services. [REDACTED] has no employees - all of its business is performed by employees of the [REDACTED] or the [REDACTED].

Single Financial Interest

The [REDACTED] is an integrated financial system. Its revenues are derived from services provided to persons who are patients of the [REDACTED] and, if hospitalization is required, the [REDACTED]. These revenues are, in turn, the source of rental payments made by the [REDACTED] to [REDACTED] and by the [REDACTED] to [REDACTED] Holding Companies I and II. All the constituent entities share a Chief Financial Officer, and their financial statements are presented on a consolidated basis.

Conclusion

If the Partners combined into an organization having a discrete legal existence for the purpose of holding their interests in the [REDACTED] the [REDACTED] and [REDACTED] there would be no question but that they would constitute a single "ultimate parent entity" for purposes of the anticipated filing. The fact that they hold those interests as individuals is a technical matter, made the more so by the identity of the organizations from a governance, management and accounting point of view. For all practical purposes, the [REDACTED] is a single organization, and we hope that you will agree that, in these unique circumstances, the substance of the organization should take precedence over the technicalities of its legal structure.

⁴ As a matter of historical accident, one Executive Director is employed by the [REDACTED] and the others by the [REDACTED] but there are no inter-entity payments or allocations for the cost of the Executive Directors' services.

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We look forward to your thoughts, and thank you very much for your assistance. We understand that you will not provide a written response. Please feel free to call me at [REDACTED]

Very truly yours,

[REDACTED]

[REDACTED] 12/9/91 called [REDACTED] advised that Tom and I were of the view that even though The [REDACTED], The [REDACTED] and the [REDACTED] had the same equity and interest holders, no one controlled them under the HSR rules and each was therefore its own UPE. As such, each was an acquired person and, if size tests were met, there must be three ~~registrations~~ transactions filed for and three fees paid. In addition, I advised that footnote 1 is wrong. If the realty being sold is a clinic or hospital facility, it is reportable if size tests met. If realty is a doctor's office building, it would be exempt as realty as long as it did not have non-office space, such as retail shops or laboratories, in it whose value exceeds \$15MM. [REDACTED] will determine the specific property held by Building Company II.

RBSmith