[redacted] August 26, 1993

VIA FEDERAL EXPRESS

Victor Cohen, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th St. and Pennsylvania Ave., N.W.
Washington, D.C. 20580

FEDERAL TRADE COMMISSION PREMERGER NOTIFICATION OFFICE
AUG 27 10 50 AM '93

Re: Informal Interpretation Pursuant to 16 C.F.R. § 803.30

Dear Mr. Cohen:

This is to confirm the interpretation of the application of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"), as amended, 15 U.S.C. § 18a, and the Rules promulgated thereunder, to a proposed transaction that was discussed in a telephone conference with you, David Ettinger and me on August 24, 1993.

Under the proposed transaction, two hospitals intend to enter into a joint operating agreement by a contract. This will not involve the formation of a corporation. The first hospital ("Hospital A") is a separate corporation, owned by a hospital system. The second hospital ("Hospital B") is also a part of a larger hospital system, but is a division of the system and not separately incorporated. Under the proposed joint operating agreement, both hospitals will run their operations together for a period of five years and will share in the profits and losses, on a 50%/50% basis, during that period. There is no provision in the agreement whereby either hospital would be merged or consolidated into the other at the end of the term.

If any new assets are to be acquired by the hospitals, the assets would be acquired by a new corporation to be formed by Hospital A and Hospital B. However, this is not yet being contemplated.

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You stated that the proposed joint operating agreement outlined herein will not trigger a filing obligation under the Act since it is a contractual, non-corporate, joint venture. This view is consistent with Interpretations 195 and 196 of the Premerger Notification Practice Manual (1991 ed.), which states that non-corporate joint ventures are not covered by the Act.

You further stated that if a new corporation is formed by the hospitals for the purposes of acquiring new assets, the transaction would be analyzed under the joint venture rules, 16 C.F.R. § 801.40. If this new corporation is a not for profit corporation within the meaning of the Internal Revenue Code § 501(c)(1) - (4), (6)-(15), (17)-(20) or (d), it will be exempt from the requirements of the Act pursuant to 16 C.F.R. § 802.40.

Please let me know as soon as possible if this letter does not reflect the informal opinion pursuant to 16 C.F.R. § 803.30(a) given to me and David Ettinger over the telephone. Thank you very much for your assistance.

Sincerely,

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→ Formation of the new corporation is analyzed under §01.40; the subsequent acquisition by this corporation of "new asset" is analyzed separately. If the non-profit issues voting stock, which is doubtful, it may rely on §02.40 for an exemption; if it does, the formation is not within §01.40 + therefore §02.40 cannot apply.