

entered into a partnership agreement for the operation of the ^{in LBA} ^{Book} *of the* ^{is a}
hospitals. [REDACTED]

FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

DEC 28 11 15 AM '95 [REDACTED]

December 27, 1995

release under the Freedom of Information Act

VIA FEDERAL EXPRESS

Victor Cohen, Esq.
Premerger Notification of
Bureau of Competition
Federal Trade Commission
6th Street and Pennsylvania
Washington, D.C. 20590

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

Dear Mr. Cohen:

This letter summarizes the informal interpretation you gave over the telephone on December 20, 1995 relating to the proposed transaction described herein.

The two hospital entities Hospital A and Hospital B, (together with their controlling Sponsors), intend to enter into a joint operating agreement ("JOA"). The JOA will not involve the formation of any corporate or non-corporate entity. No assets will be contributed by one Sponsor to the other Sponsor as part of this transaction, and no voting securities will be issued. The hospitals will maintain their separate names and identities, as well as authority over by-laws and medical staff.

Under the JOA, a Governance Committee (jointly controlled by the Sponsors) will govern the operations and decision making processes (including hiring, purchasing, marketing, budgeting and planning) of the hospitals, subject to certain powers retained by the boards of the hospitals and certain reserved powers held by the Sponsors. The Sponsors must also approve the disposition of assets of Hospital A or Hospital B. The Sponsors will jointly share equal amounts of profits and/or losses from the combined operations of the hospitals.

At the closing, an amount of Equalization Debt will be issued by one Sponsor to the other Sponsor for the purposes of equalizing the value of the assets of the two hospitals (so as to facilitate equal sharing of profits and/or losses). This debt is not expected to exceed \$10 million, and shall be paid off, together with interest, over 10 years, unless the JOA is terminated within three (3) years (in which event, the Debt is cancelled).

management agreement, operation of hospital by previous owner holder as well as a change in name, it would constitute an acquisition. The possibility of a merger five years from now does not require a current filing.

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The hospitals (which are wholly-controlled by their respective Sponsors) will continue to hold title to all of their respective assets, and bear the risk of loss or gain in the value of such assets. Each will also bear the risk of gain or loss in the value of such assets in the event that the JOA is terminated within the first three years after its existence. In such event, the assets of each hospital will continue to be owned by their respective Sponsors.

There are three (3) events (which have not occurred, nor are guaranteed to occur) pursuant to which the Sponsors may not continue to hold their respective hospital assets. These events are as follows: (1) If termination of the JOA occurs after three years subsequent to the effective date of the JOA, there will be an appraisal to determine the fair market value of the assets and, after the payment of certain debt, the remaining assets, liabilities and operations of the combined participants will be distributed equally to the Sponsors of each of the hospitals. (2) In the event that a Sponsor wishes to withdraw from the JOA, the remaining Sponsor has the right to purchase the withdrawing Sponsor's JOA interest and the assets of its respective hospital at a price equal to 40% of the fair market value of the assets of the combined hospitals. (3) After five years subsequent to the effective date of the JOA, any Sponsor may exercise a mandatory "put" which requires the non-exercising Sponsor to buy from the exercising Sponsor its entire interest in the JOA and the assets of its respective hospital at a purchase price equal to 40% of the fair market value of the assets of the combined hospitals.

Additionally, it is the intent of the Sponsors to ultimately merge the hospitals (in one form or another); within five (5) years. However, there is no obligation to do so.

You advised us that the JOA does not constitute a presently reportable transaction under the Act. This is because no acquisition of assets or voting securities will occur upon the Effective Date of the JOA. In particular, you noted that the JOA is, in effect, an equal partnership or operating agreement (as opposed to one entity assuming effective control of the other entity), that no name changes will occur, and that the hospitals will continue to hold title to their assets and bear the risk of loss or gain.

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 over the telephone. Thank you very much for your assistance.

Sincerely
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