[redacted] → See last page ← [redacted]

December 16, 1996

This material may be subject to the confidentiality previsions of section 7A(H) of The Clayton Act which restricts release under The Freedom of Information Act.

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

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

Dear Mr. Cohen:

This letter summarizes the informal interpretation you provided [redacted] and me over the telephone on December 11, 1996 relating to the proposed transaction described herein. Four hospital systems (A, B, C, and D) (collectively "Members"), which collectively control 5 hospitals, intend to enter into a joint operating agreement ("JOA") (with a term of 50 years) to form and obtain membership interests in a new not-for-profit membership corporation, which is exempt from taxation under § 501(c)(3) (known as the "System"). The System will not issue any voting securities and will not have assets or revenues of $10 million or more. In fact, the System is expected to own little or no assets.

The Members will at all times retain title to their hospitals and will bear the risk of any loss with respect to the hospitals. The Members will retain certain powers over their respective hospitals, including the right to approve mergers, consolidations, dissolutions, or sales of substantially all the assets of their respective hospitals or the closure of their respective hospitals and the right to approve any name change of their respective hospitals.[1] Any gain or loss from the sale of any assets will be retained by the member owing these assets.

The System will be governed by a Board consisting of eight members designated by Member A, eight members designated by Member B, four members designated by Member C and two members designated by Member D. The System will also have a CEO who serves as an additional Board member. The System will have the power over the operations and management of the hospitals, including the power to decide on reconfiguration of services among the hospitals,

[1] No name changes are contemplated in connection with the formation of the System.

establishment of the overall capital and operating budgets and strategic plans for all of the hospitals, appointment of the CEO, entry into managed care contracts on behalf of the hospitals, sales or other transfers of less than substantially all the assets of the hospitals, and determination as to whether the system should join any networks or other integrated delivery systems.

Expenses and profits will be shared among the hospitals in the System based on a predetermined formula.

The JOA also will establish three subregions, which will not be separate corporations. Each subregion will have its own board. The subregional boards will have the following composition: Member A will have the power to approve all 15 members of the first subregion's board. Member C will appoint 10 of the 19 members of the second subregional board, and Member B will appoint nine members. Member B will appoint 15 of 20 members of the third subregional board, and member D will appoint five members.

The subregions will be responsible for the operations of the hospitals in their respective subregions. Subject to the authorities of the System Board, these subregional board members will also serve as the board members of the hospitals in their respective subregions. The subregional boards will have certain limited powers over the hospitals located in their respective subregions. These powers include the power to approve credentialing and privileging decisions, the power to approve sales, transfers or encumbrances of hospital assets at or below limits that are established by the System's Board, and the power to authorize the incurrence of debt below the thresholds permitted by the system board.

You advised us that the formation and operation of this JOA does not constitute a presently reportable transaction under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"). First, no acquisition of voting securities or assets by a $10 million dollar person will occur. You noted that although System has control over certain aspects of the operation and management of the hospitals in the System, no reportable acquisition will occur if the System is not a $10 million person. No Member could be deemed to have acquired the hospital assets of another Member, because no Member will control the System. Additionally, you noted that the continuation of the individual hospitals' names is a factor indicating that no acquisition of assets will occur with respect to the System.

Please call me if this letter does not reflect the advice you gave on December 11, 1996.

[redacted]

Victor Cohen, Esq.
December 16, 1996
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Thank you very much for your assistance.

Sincerely,

[redacted]

[redacted] Facts presented indicate that the 4 entities have entered into a partnership agreement for the operation of the hospital. If there is a management with operation of hospital by persons non-holder would change in name, this would constitute an acquisition under 801.1(c)

Note, however, that any agreement to restrict services may be an illegal conspiracy in restraint of trade in violation of both the Sherman Act & FTC

RS agrees