

801.40 (non-profit formation)

WRITER'S DIRECT DIAL NUMBER

INTERNET

VIA FACSIMILE

April 9, 1998

Mr. Richard Smith
Premerger Notification Office
Federal Trade Commission
Washington, D.C.

Re: Compliance with Hart-Scott-Rodino Antitrust Improvements Act (the "Act")

Dear Dick:

The purpose of this letter is to confirm your advice that no filing will be required under the Act for the following fact pattern. Our client is a not-for-profit hospital ("Hospital A"), which is its own ultimate parent entity. Hospital A intends to form a new, not-for-profit corporation ("Newco") with another not-for-profit hospital ("Hospital B"), which is part of a larger hospital system. Hospital A and Hospital B will each be 50% members of Newco and will appoint an equal number of directors to the Newco board. Newco, Hospital A and Hospital B will enter into a joint operating agreement whereby Newco will operate both Hospital A and Hospital B. The Boards of Hospital A and Hospital B will continue to be appointed as they currently are and will continue to operate and make decisions in accordance with their existing by-laws. However, certain enumerated powers regarding hospital operations will be reserved for the Newco board. With respect to these matters, a majority of the representatives on the Newco board from each of Hospital A and Hospital B must approve the action.

The consolidated annual net income or loss of Hospital A and Hospital B will be allocated between the two hospitals based upon a formula which recognizes the relative value of each hospital measured by its fund balance at the time the joint venture is begun. The assets of the hospitals will remain titled as they are. Newly acquired assets will be titled to either hospital or Newco as determined by the two hospitals through approval of the Newco budget and business plan. Upon dissolution of Newco, the assets of the hospitals will be the property of the hospital holding title to those assets and the remaining assets of Newco will be distributed to Hospital A and Hospital B in accordance with their profit percentage.

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In our telephone conversation, you confirmed that the formation of Newco was not reportable. As I noted in our conversation, besides the fact that Newco is a not-for-profit corporation, the formation of Newco will not satisfy the size tests of Section 801.40. In addition, you confirmed that the joint operating agreement among Hospital A, Hospital B and Newco and

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the operation of the hospitals pursuant to that agreement does not require any filing under the Act.

Please telephone me at [redacted] after you have had the opportunity to review this letter, to confirm that you agree with the conclusions stated herein. Thank you for your time.

Very truly yours,

[redacted]
 4/14/98 Confirmed with writer that formation of Newco is non-reportable under HSR. However, advised that Newco's operation of both hospitals may raise competitive concerns. In addition, any acquisition of assets by Newco would be seen as an acquisition by both Hospital A and Hospital B system since they both control Newco.

Richard Smith

[redacted]