[redacted]

801.11
801.40

July 1, 1998

VIA FACSIMILE

John Patrick Sharpe
Premerger Notification Office
Bureau of Competition
Sixth & Pennsylvania Avenue, N.W.
Room 303
Washington, DC 20580

Re: Premerger Notification Requirements Under the Hart-Scott-Rodino Antitrust Improvements Act of 1996, as Amended the ("Act")

Dear Pat:

As I indicated in my phone mail message this afternoon, our client is engaging in a transaction that we believe does not require the filing of a premerger notification report form under the Act, and we would like to confirm with you our analysis on the matter.

We represent Manager, a business corporation that provides management and administrative services to Medical Center, a not-for-profit corporation. Medical Center operates a regulated business that requires a certificate of need (a "CON"). In 1991, Manager purchased certain tangible assets from Medical Center for a purchase price of less than $10 million and, in connection therewith, entered into an administrative services agreement, terminable upon 90 days notice, under which Manager provides certain administrative services and support to Medical Center. The ultimate parent entity of each of Manager and Medical Center would meet the size-of-the-party test.

Not reportable under 8-2-K

asset sale

The parties now wish to effect a transaction in which Medical Center's operations will be transferred to a new entity ("NewCo") that will apply for a new CON. NewCo will be owned by two officers of Manager, each of whom owns less than 10% of Manager's voting securities. Manager, as a matter of law, it is not eligible to own NewCo.

Not reportable under 801.40

-50 > half > than .0 MM

The transactions will occur as follows:

but its operation are being sold to NEWCO?

1. Manager will pay $20 million to Medical Center in consideration for Medical Center agreeing to not compete with NewCo and, if NewCo is unable to obtain a new CON, granting to Manager the right to continue to operate under the Administrative Services

[redacted]

Agreement for an extended period of time, as well as in consideration for Medical Center's agreement to cooperate in the transactions described below.

2. The current Administrative Services Agreement between Manager and Medical Center will remain in effect. However, if Medical Center terminates the Administrative Services Agreement without cause, Medical Center is obligated to then enter into a forty year administrative services agreement with Manager that cannot be terminated without cause. Furthermore, if the applicable regulatory authorities determine that this arrangement is not enforceable, Manager would be entitled to repayment of the unamortized portion of the $20 million paid to Medical Center as described above, based upon a 20-year amortization schedule.

not reportable under 801.40

3. NewCo will be formed by the individuals described above and will apply for a CON.

Both UPE's have less than $10.1mm in sales and assets

4. If the CON is granted, NewCo will purchase from Medical Center all of the relevant patient records for a purchase price of $600,000, and NewCo and Manager will enter into a 40 year administrative services agreement. Concurrent with these transactions, the Administrative Services Agreement between Manager and Medical Center will terminate.

As we discussed, it is our view that the foregoing transactions do not involve the purchase of assets or voting securities by Manager. In consideration for the payment of $20 million, Manager is receiving the benefits of a covenant to not compete with NewCo, or in the alternative, the commitment to a 40 year arrangement, subject to the right to receive an unamortized portion of such funds in return if such arrangement is not enforceable. Manager also is receiving the intangible benefits of an agreement to cooperate in the contemplated transactions. As the staff has observed in the past, entering into an agreement not to compete seems by itself no more like an acquisition than does entering into a service contract or a lease. To the extent the covenant might be thought of as something like an asset, it is created, rather than transferred or acquired, at the time it is given. With respect to the purchase of assets by NewCo, NewCo would not meet the size-of-the-party test and the $600,000 purchase price would not meet the size-of-the-transaction requirement.

if not coupled with the transfer of assets

what is the fair market value of the medical center business being acquired?

Not NewCo, but the officers who are the UPEs.

[redacted]

Once you have had a chance to review this letter, I would appreciate it if you would call me at the above-referenced telephone number to confirm our conclusion. In the meantime, please call me if you have any questions or comments regarding the foregoing. Thank you in advance for your prompt consideration of this matter.

Very truly yours,

[redacted]

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cc: [redacted]

called [redacted] 7/2/98 - This letter needed clarification of the facts. Since the two officers (VIES) that control NEWCO have less than $10.0 mm, the formation of NEWCO and subsequent acquisition do not meet the size-of-person test required by 801.11. As a result, the transaction is not reportable and the acquiring person does not have to determine the size-of-transaction. (PS) (RS) - Concurs