

801.1(0)(a) - Non profit

[REDACTED]

[REDACTED]

[REDACTED]

February 25, 1999

**VIA HAND DELIVERY**

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Federal Trade Commission  
Premerger Notification Office  
Room 323  
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Washington, DC 20580

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RECEIVED  
FEDERAL TRADE COMMISSION

Re: Confirmation that no HSR Filing is Required

Dear Dick:

I am writing to confirm that no Hart-Scott-Rodino ("HSR") filing is required for the following transaction. The names used below are not the real names of the parties.

Hospital System A (which is a non-stock, non-profit corporation) is going to make an investment in Hospital B (which is also a non-stock, non-profit corporation). Hospital System A will make a cash contribution of \$1 million to Hospital B and a cash contribution of \$9 million to Foundation B, which is a charitable foundation that is wholly controlled by Hospital B. Foundation B will remain under the complete control of Hospital B.

In exchange for its cash contribution, Hospital System A will receive the right to appoint 3 of the 15 Board members of Hospital B. The other 12 seats on the Board of Hospital B will be self-perpetuating — that is, the 12 Board members holding these seats will choose their own successors. Hospital System A will also receive the right to a portion of the future stream of net income of Hospital B in proportion to the investment made by Hospital System A.

[REDACTED]

Most decisions by the Board of Hospital B will require only a simply majority approval. However, a few types of decisions will require "super-majority" approval. In these cases, actions can be approved only if a majority of the directors appointed by Hospital System A (that is, at least 2 of the 3) approve of the action and a majority of the other directors (that is, at least 7 of the 12) approve of the action.

The actions that will require approval of a super-majority of the Board of Hospital B are:

- ◆ borrowing \$1 million or more;
- ◆ amending the articles, the by-laws, or the agreement with Hospital System A;
- ◆ creating joint ventures with other parties;
- ◆ making investments of over \$250,000;
- ◆ approving annual and capital budgets and strategic plans;
- ◆ selling or transferring substantially all of the assets of Hospital B;
- ◆ taking any act that would contravene the agreement with Hospital System A;
- ◆ reorganizing Hospital B into any other legal form; or
- ◆ making a request for additional contributions to the capital of Hospital B or making distributions from Hospital B.

Based on our discussion, it is my understanding that this transaction is not reportable because Hospital System A is not gaining control of or acquiring any assets. Rather, it is simply gaining a minority, non-controlling interest in Hospital B.

After you have had a chance to review this letter, please give me a call and let me know whether you agree with my conclusion that no filing is required.

Sincerely,

[Redacted Signature]

2/25/99 advised under that no HSR reportable event was taking place as a result of the above described transaction between Hospital System A and Hospital B. (M. Vasquez concurs)

Richard Smith