

LAW OFFICES

June 17, 1999

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FEDERAL TRADE COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

**VIA FED EX**

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

Material may be subject to  
discovery pursuant to 16 C.F.R.  
§ 803.3. See 16 C.F.R. § 803.3  
for more information regarding  
discovery.

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

Dear Mr. Smith:

This letter summarizes the informal interpretation, pursuant to 16 C.F.R. §803.3, you provided [redacted] and me over the telephone on June 10, 1999 relating to the proposed transaction described herein.

The proposed transaction contemplates signing a "joint operating agreement" for the joint management of the operations of a number of separately owned pediatric facilities and pediatric units of hospitals (the "Pediatric JOA") and the formation of a not-for-profit, non-stock corporation. The board of the Pediatric JOA will oversee management of the pediatric operations of the various hospital participants, and management will be directed by a common CEO. The parties to the Pediatric JOA will be Hospital A, which operates a single pediatric hospital, and another joint operating entity (also a not-for-profit corporation) that manages the overall operations of four separately owned hospital systems (the "General JOA").<sup>1</sup> Essentially, the General JOA will be ceding its management of the pediatric facilities of its participants to the Pediatric JOA.

The Pediatric JOA agreement will provide that, among other things, Hospital A and the General JOA will share profits and losses from the joint operation of the pediatric facilities. Hospital A's share will be approximately two-

<sup>1</sup> As we explained to you, the General JOA was formed by a similar joint operating agreement. Under the General JOA agreement, each of the hospital system members share profits and losses from their joint operations and is governed by a JOA board of directors. No single hospital system has the right to appoint a majority of directors of the General JOA corporation's board.

[REDACTED]  
Richard Smith, Esq.  
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thirds and the General JOA's share will one-third. Additionally, Hospital A will have the right to appoint 14 of the 22 voting members of the Pediatric JOA's board of directors and the General JOA has the right to appoint seven board members.

However, Hospital A and the hospital participants of the General JOA will at all times retain title to their pediatric facilities and will bear the risk of loss with respect to those facilities. Additionally, in the event that the Pediatric JOA is terminated, any assets owned by the hospital participants prior to the formation of the Pediatric JOA will continue to be owned by the respective participants. Hospital A and the hospital participants of the General JOA will also each retain the right to appoint their own boards. Hospital A and the hospital participants of the General JOA will also retain certain powers, including the right to approve mergers, consolidations, dissolutions or sales of substantially all of the assets of their respective pediatric facilities. Note, however, that the Pediatric JOA may on its own transfer up to \$3 million of participant's pediatric assets without the approval of the hospital participant, but only if the assets are no longer required in the operation of the Pediatric JOA.

You informed us that the transaction described herein does not constitute a presently reportable transaction under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, because there will be no transfer of beneficial ownership of any assets. Additionally, you also explained that the formation of the Pediatric JOA corporation is not reportable under 16 C.F.R. §801.40 if that corporation will have total assets of less than \$10 million. In addition, Hospital A and the General JOA will each be obtaining only fractional "membership" interests in the Pediatric JOA corporation and therefore will not be acquiring any assets or voting securities thereof.

Please call me if this letter does not reflect the advice that you gave to Mr. [REDACTED] and me on June 10, 1999.

Thank you very much for your assistance in this matter.

Sincerely,  
[REDACTED]

[REDACTED] 7/6/99 writes confirms that in first sentence of first full paragraph  
of 1999, hospital participants will have benefit of [REDACTED] in value  
of their respective hospitals. In last sentence of same  
paragraph, Pediatric JOA will, on its own, transfer a maximum total of \$3M of  
participant's pediatric assets. However, money is credited on basis of participant  
and not on basis of Pediatric JOA. Attached writer that transaction is not reportable  
R.B. Smith