

Victor L. Cohen
Premerger Notification Office
6th & Pennsylvania Avenue
Federal Trade Commission
Washington, D.C. 20580

Dear Victor:

The purpose of this letter is to describe the transaction which we discussed orally last week in order to determine whether Hart-Scott-Rodino clearance is required.

The transaction involves two non-competing, not-for-profit in a major metropolitan area. The smaller (the) is a primary and secondary without any It is financially impaired, which has restricted the provide to its community. The larger (the is a well established which provides a substantial amount of as well as primary and secondary It is affiliated with a

The leadership of the and has asked it to become what under state law can be described as the "sponsor" of the sponsor, the would be expected to provide and administrative support to the in obtaining funds to maintain and develop its and facilities.

Another primary purpose of the sponsoring arrangement will be to facilitate education. Thus, the second on the

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faculty of the affiliated school. This is expected to attract higher quality to become members of the , with a corresponding improvement In for the community served by the

The sponsorship arrangement contemplated by the arrangement at issue would be effected by amendments to the By-laws, which would give the sponsor the right to appoint or remove natural persons (individuals) as the "members" of the would have the authority under the By-laws to select the Board of Trustees of the

Applicable regulations requiring state approvals for certain changes of control expressly recognize the distinction between natural persons and corporations becoming members. Under these regulations, control is "presumed to exist if any person. is a member of a not-for-profit corporation which member is other than a natural person." (Emphasis added.) Thus, state approval would be required if the state itself became the sole member, but by definition the appointment of natural persons as members with authority to appoint trustees is not an appointment of a controlling person which will require this approval.

recognized distinction between individuals corporations as members seems appropriate. The individual members selected by the sponsor, and the members of the Board of Trustees selected by these members, would be selected in their individual <u>capacity, rather than as rep</u>resentatives of the "sponsoring" The **T** Board of Trustees, not the nor the members it selects, would be responsible for operating the Indeed, under general provisions of fiduciary law and state regulatory requirements, the Board of Trustees has a fiduciary responsibility to the The majority of the trustees initially selected under the proposed sponsorship is likely to consist of current Board members. In the future additional persons from the community who are dedicated to serving the will also be selected to Board of Trustees. the

The proposed changes to the By-laws would not change the

It would continue as a separat

for the community it serves and its business and
operations would not be merged, consolidated or combined with those
of the although the would be

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expected to provide administrative support when such arrangements would result in efficiencies.

In the future, transactions between the and the would be conducted on an "arms-length" basis.

As an example, as part of the sponsorship arrangement, the intends to loan funds to the to permit it to improve its facilities and programs. This loan, which would not otherwise be available to the from normal banking sources, would be pursuant to a normal arms-length loan agreement.

sponsorship relationship and to prevent either the sponsor or the members it selects from exercising control over the amendments to the By-laws which create the sponsorship arrangement will also restrict and limit sponsor and member influence over operations.

These amendments to the By-laws will specifically prohibit either the sponsor or the member from exercising authority over: (1) the appointment or dismissal of managementstaff; (2) approval of evel employees and operating and capital budgets; (3) adoption or approval operating policies or procedures; (4) approval or certificate of need applications filed by or on behalf of the (5) approval of debt necessary to finance the cost of compliance with operational or physical plant standards required by law; (6) approval of contracts for management or for clinical services; and (/) approval of settlements of administrative proceedings or litigation to which the members may have the authority to approve settlements of litigation is a party, except that that exceed insurance coverage or any applicable self-insurance fund./

Because the proposed "sponsoring arrangement" involves the appointment of natural persons as members, coupled with the imposition of the restrictions on the sponsor's and members authority described above, and because there will be no merger, consolidation or combination of the business and operations of the two the state has advised the proposed sponsoring organization that the arrangement will not result in a new "controlling" person under state law amounting to a change in the "operator" of the transaction.

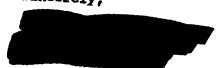
As a consequence, a state certificate of need would not be required for the transaction.

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of course, both the that if the litself were to become the sole member or if the nature of the arrangement between the should change in the future so that their business and operations were to become combined, and/or if the then the state would expect the then the state would expect the making any such change. The comply. If that were to occur we would expect to file for Hart-scott clearance at the same time.

Please let me know your reaction to this description. If you have any other questions, I will be happy to try and answer them.

Sincerely,



3/9/93 The decision on the top of page 1 is based on the major bactors that @ the sponsor can both appoint bank remove the natural suson members of an a result the sponsor has the goments relief the trusties it wants and 3 while the sponsor and members have limits on this genera over the PNN Office downs such a the trusties do not. The As in the part, the PNN Office downs such a control of anon-profits as an arret acquisition.

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