

February 3, 1999

VIA HAND DELIVERY

Richard B. Smith, Esq.
FEDERAL TRADE COMMISSION
Room H-323, Drop H-301
6th & Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Reportability of Proposed Formation of 501(c)3
Health Care Holding Company (See My Letters of
June 16 and October 6, 1998 to You)

FEDERAL TRADE
COMMISSION
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Dear Dick:

This is a request for confirmation that the transaction described herein is not reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. §18a ("HSR Act"). As we discussed, the proposed transaction is the transfer of membership interests in two hospitals to a newly formed 501(c)3 entity ("Newco") that will hold the membership interests of the two hospitals, each of which is currently controlled by a separate unaffiliated ultimate parent entity (collectively, hereinafter the "Parents"). The Parents will each have the right to appoint an equal number of all of Newco's corporate members as well as an equal number of its board of trustees. As we discussed, we do not believe this transaction is reportable under the HSR Act and request your confirmation of their interpretation.

The parties to the proposed affiliation are Religious Order ("RO"), a nonprofit entity that is currently in a position to control the designation of the six individuals who are the sole corporate members of a nonprofit hospital corporation ("Hospital A"), which six individuals are religious sisters of RO, and Community Board ("CB"), a nonprofit entity that is currently the

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sole corporate member of another nonprofit hospital corporation ("Hospital B"). RO and CB propose to transfer to the newly formed Newco all of their membership interests so that Newco will become the sole corporate member of Hospital A and Hospital B. Under Newco's bylaws, RO and CB will each have the right to appoint four members of Newco out of a total of eight members (the "Corporate Members"). The Corporate Members will have the right, among other things, to appoint the President and Chief Executive Officer, amend the certificate of incorporation or bylaws, and dissolve, liquidate, or sell Newco.

Newco will also have a sixteen person Board of Trustees to direct Newco's business. The RO Corporate Members and the CB Corporate Members will each have the right to appoint six persons to the Board of Trustees. These twelve persons will select four additional persons to serve on this board. During the first three years, the President and Chief Executive Officer will be one of the CB Corporate Members and thereafter the Board will be expanded to seventeen persons and the President and Chief Executive Officer of Newco (appointed by the eight Corporate Members) will serve as the seventeenth Trustee on Newco's Board in an ex-officio capacity with full voting rights. To implement the proposed affiliation, Hospital A and Hospital B will each adopt new bylaws and/or amended certificates of incorporation that acknowledge that Newco is the sole corporate member of each of them.

In order to achieve "acquisition refunding" status under the Internal Revenue Code for the tax-exempt debt of RO and CB, the transaction will be structured, for tax purposes, as a "failed" tax-free reorganization under the Internal Revenue Code. This requires characterizing for tax purposes the contribution to Newco of Hospital A by RO (via the transfer of membership interest) and of Hospital B by CB (via the transfer of membership interest) as asset acquisitions pursuant to an Asset Control Transfer Agreement pursuant to which, for tax purposes, Newco would be deemed to acquire the assets and operations of Hospital A and Hospital B.

Under the tax analysis, as consideration for the contributions of RO's and CB's membership interests in Hospital A

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and Hospital B, and thus control of the hospital assets of Hospital A and Hospital B: (a) Newco will assume liabilities for existing debt relating to the transferred hospitals which debt will be immediately defeased upon issuance of the tax exempt bonds; (b) RO and CB will each receive a 50 percent interest in Newco through the ability to appoint 50 percent of the Corporate Members of Newco; and (c) RO and CB will each receive from Newco \$100,000 in cash as "boot."

For at least two years after the date of the tax-exempt acquisition refunding bond issuance, RO and CB would remain in existence as unrelated separate entities (unrelated to each other and unrelated to Newco) and Hospital A and Hospital B would remain in existence as separate corporate entities under the control of Newco. After the formation of Newco is consummated, RO and CB would continue to engage in business operations, including operations that may involve some health care related activities.

In our view there is no substantive or material change in the proposed structure of the transaction as previously described to you in our letters of June 16, 1998 and October 5, 1998, (copies of which are attached) and the end result will be the same. We believe that the transaction, is not reportable under the HSR Act, and would appreciate confirmation of our conclusion.

Should you have any questions regarding this request or the proposed transaction, please contact me.

Very truly yours,
[REDACTED]

2/4/99 Left phone mail message for writer. Since
[REDACTED] transfer of hospitals to Newco by RO and CB are nonreciprocal
Attachments as acquisitions by Newco, Newco can acquire one of the hospitals
without reporting but its acquisition of the second hospital is
potentially reportable since Newco has 50% of the first acquired
hospital. If size of person and size of territory tests are met
for either the acquisition of Hospital A or B, and the subsequent
acquisition of either A or B, then a report must be made. Newco is
not controlled by anyone, as was the earlier conclusion. RBS/Smith