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August 25, 1999

**BY FACSIMILE**

Mr. Patrick Sharpe  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
6<sup>th</sup> Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: [REDACTED]

Dear Mr. Sharpe:

Thank you for taking the time earlier today to discuss the filing issues I described. Below, I have tried to describe the key features of the proposed transaction we discussed. I appreciate your offer to review the alternative structures of the transaction and provide me with your analysis.

The proposed transaction involves the creation of a joint operating entity in the health care area. The parties to the transaction intend to affiliate and combine their operations through the creation of a new nonprofit corporate entity, which will serve as the managing member of various nonprofit entities currently controlled by or affiliated with each party.

One party to the transaction (Party A) is nonprofit, membership corporation which previously combined the operations of several hospitals and related non-profit health care entities into a joint operating company. The assets operated by Party A were not transferred to Party A, but remain with the members of Party A. Subsequently, Party A has obtained assets of its own, which now have a book value of approximately \$40,000,000 (and believed to have a fair market value in excess of \$10,000,000), and annual net sales in excess of \$100,000,000.

*a / as  
of E.* Entities within the ultimate parent entity of Party A have total assets valued in excess of \$100,000,000.

The other party to the transaction (Party B) is a hospital organized as a non-profit, non-member corporation, which may be reconstituted as a non-profit health care system with a

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member prior to the transaction. Party B has total assets and annual net sales in excess of \$100,000,000.

Party A and B intend to combine their operations through the formation of Newco, under one of the following three scenarios.

In #1, it doesn't appear the parties are combining operations. The assets remain with A.

2  
A & B can each appoint 3 members  
I assume B will have the power to appoint 2 of the 3 members  
wrong right  
Not reportable

Create Newco by reconstituting Party A (through any necessary changes to Party A's articles of incorporation and/or bylaws). Under this scenario, Party B would become a "System Member" of Newco with specified powers. The current members of Party A would be combined and reconstituted as the only other System Member of Newco. Each System Member shall have the power to appoint 2 members of Newco's Board of Directors (which Board shall consist of 16 to 18 members). System Members of Newco would also have the authority, exercised through their unanimous consent, to: a) approve amendments to corporate documents, elect and remove members of Newco's Board (other than directors appointed by the System Members directly); b) approve the dissolution, merger or consolidation of Newco; c) admit new system members to Newco; d) approve strategic plans and strategic financial plans for Newco; e) approve and terminate the President/CEO of Newco; and, f) approve financial transaction approval guidelines.

Under Scenario 1, Party B would not contribute any assets to Newco. Party A's existing assets (approximately \$40,000,000) would be held by Newco after Party A was reconstituted as Newco.

The remaining 2 members will be jointly appointed by the System Members (A & B).

In Scenario 2, a new corporate entity, Newco, would be created by Party A and Party B, as a non-profit, membership corporation with the same structure and authority for System Members as described above in Scenario 1. Under Scenario 2, no assets would be contributed to Newco by Party A or Party B at the time Newco was created. However, Scenario 2 contemplates that Newco would acquire the assets of Party A through a statutory merger between Newco and Party A, with Newco being the surviving entity.

not to be reported

Potential reportable

In Scenario 3, Newco would be created as a new corporate entity by Party A and Party B, as in Scenario 2. Subsequent to the creation of Newco in Scenario 3, Newco would purchase the assets of Party A in a separate transaction.

Potential reportable

I would appreciate your thoughts on the following notification issues. First, would a filing be required under Scenario 1 for the acquisition of the described membership interest in a non-profit corporation (Party A) by Party B, where Party A holds approximately \$40,000,000 in

As we are being acquired, not reportable

[Redacted]

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assets? Second, under Scenario 2, would a filing be required for the creation of Newco or the acquisition by Newco of Party A's assets through the described statutory merger? Finally, under Scenario 3, would a filing be necessary for the creation of Newco or the acquisition by Newco of Party A's assets through a purchase transaction?

I appreciate your assistance in this matter. Please give me a call if you have any questions or need additional information.

Sincerely,

[Redacted signature]

called Mr. [Redacted]  
8/26/99 - facts are  
not clear

[Redacted]

called [Redacted] 8/26/99  
and discussed the issues  
(see notes) and clarification  
of the scenarios presented

PS