801.70, 802.70

[redacted]

March 24, 1999

VIA FACSIMILE (202-326-2624)
and VIA FEDERAL EXPRESS

Richard B. Smith, Esquire
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th & Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Joint Operating Arrangement

Dear Dick:

This letter is to confirm our telephone conversation of March 23, 1999, in which you and I discussed whether the filing of a Notification and Report Form under the Hart-Scott-Rodino

[redacted]

A and B propose to organize a non-profit (pursuant to Section 501(c)(3) of the Internal Revenue Code), non-stock, non-member corporation ("NEWCO"). Pursuant to an Integration Agreement, NEWCO would operate A and B as a unified healthcare delivery system (the "System") within a

[redacted]

The NEWCO board of directors would serve as the primary governing body for the

[redacted]

appointed by B. The remaining four board members would be elected by the nine A and B appointees. NEWCO's board would meet on a regular basis and exercise ongoing authority over the

(a) To approve capital and operating budgets for the System;

(b) To approve strategic partnerships and affiliations; and

(c) To recommend fundamental changes in A or B (e.g., amendment of charter documents, sale of substantially all assets, dissolution, merger, liquidation or consolidation).

The existing boards of A and B would remain in place and would exercise authority over specific matters related to their respective organizations and assets that are not delegated to either NEWCO or B's parent, including the right to approve any fundamental changes recommended by the NEWCO board.

A "Contribution Percentage" would be calculated for each of A and B based on the relative historical earnings of the hospital owned by each. It is expected that the Contribution Percentages will be approximately 65% for A and 35% for B. A and B will fund the annual capital needs of NEWCO and the System in accordance with the Contribution Percentages. In addition, the annual earnings of NEWCO and the System will be shared by A and B in accordance with their Contribution Percentages.

The parties would agree to refrain from any affirmative action to terminate the Integration Agreement or dissolve the System during the first three years after implementation; provided that either A or B may terminate the Agreement unilaterally during the first 18 months if, among other matters, continued participation in the System [redacted] terminating party. Following such three-year period, the occurrence of certain events will be deemed to constitute constructive withdrawal by A or B from the System, following which the non-withdrawing party may (i) purchase the withdrawing party based on fair market value; (ii) require the withdrawing party to purchase the non-withdrawing party based on fair market value; or (iii) cause the System to be dissolved. In the event of dissolution, the parties would be restored to their pre-affiliation positions, to the extent reasonably possible.

[redacted]

[redacted]

understanding is correct. Your assistance in this matter is greatly appreciated.

Very truly yours,

[redacted]

A Professional Limited Liability Company

[redacted]

[redacted] 3/26/99 Advised writer that formation of [illegible] Nuevo was non-reportable under 801.40. It does not have [illegible] in assets and, as a 501(c)(3) non-profit, would not issue voting securities. Advised writer, however, that before the events noted in the penultimate paragraph on pg 2, particularly events (i) and (ii), take place, an analysis must may be made as to HSR reportability. Writer was in agreement. (He received letter and agreed.)

R B Smith

[redacted]