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March 28, 2001

VIA FEDERAL EXPRESS

Joel I. Klein  
Assistant Attorney General  
Antitrust Division  
Department of Justice  
Washington, D.C. 20530

Re: Michigan Hospital Group, Inc. – Request for Business Review Letter  
(Our File: PENNO/93002 – 006)

Dear Mr. Klein:

Pursuant to the Department of Justice Business Review Procedure, 28 CFR § 50.6, we respectfully request a statement of the Department's present enforcement intentions regarding Michigan Hospital Group, Inc. ("MHG"). MHG has been incorporated to negotiate contracts on behalf of nine geographically dispersed community hospitals in Michigan with insurance companies, employers and managed care plans for the provision of primary care hospital services. Based on the nominal competitive overlap of the participating hospitals and the likely transactional efficiencies to be gained, we believe that MHG is not likely to cause any anticompetitive effects. Of course, should the Department have insufficient data to reach a similar conclusion, we would be happy to supplement this letter with whatever additional information required.

A. The Parties

Michigan Hospital Group, Inc., was incorporated as a Michigan nonprofit corporation on January 9, 2001 to pursue appropriate cooperative measures between non-competing hospitals in Michigan. (Tab 1.) MHG's principal place of business is located at 1009 West Green Street, Hastings, Michigan, 49058. Mr. Wade W. Nitz is the incorporator and resident agent of MHG.

Nine hospitals have indicated interest in purchasing stock in MHG and have each contributed \$5,000 to fund initial legal and accounting expenses. These hospitals include:

1. Charlevoix Area Hospital  
Charlevoix, Charlevoix County, Michigan

2. Community Health Center of Branch County  
Coldwater, Branch County, Michigan
3. Gerber Memorial Health Services  
Freemont, Newaygo County, Michigan
4. Gratiot Community Hospital  
Alma, Gratiot County, Michigan
5. Marlette Community Hospital  
Marlette, Sanilac County, Michigan
6. Memorial Medical Center of West Michigan  
Ludington, Mason County, Michigan
7. Pennock Hospital  
Hastings, Barry County, Michigan
8. Port Huron Hospital  
Port Huron, St. Clair County, Michigan
9. West Branch Regional Medical Center  
West Branch, Ogemaw County, Michigan

MHG's members range in size from 33 staffed beds to 173 staffed beds, with an average of 94 staffed beds and an average daily census of 45 patients. A map of the state of Michigan showing the locations of the participating hospitals can be found at Tab 2. Also enclosed at Tab 3 is a copy of selected pages of the American Hospital Association's 2000 AHA Guide.

**B. Purposes and Objectives**

Independent community hospitals are at a significant disadvantage when negotiating contracts with state-wide managed care plans. The analysis and negotiation of managed care contracts are disproportionately expensive for smaller hospitals than for large, urban hospitals. Similarly, it is disproportionately expensive for payors to negotiate contracts with small, geographically dispersed community hospitals than to negotiate contracts with hospitals in large urban areas. From both the provider and the payor perspectives, such transactional costs can be significant in relation to the cost of the primary care hospital services involved.

The fundamental purpose of the venture will be to facilitate managed care contracting between the member hospitals and large third-party payors. Member hospitals will benefit from less costly financial and legal review of managed care contracts and more efficient contract negotiations. As the joint venture develops, MHG will collect and analyze data from each member hospital, create databases, prepare statistical analyses, compare actual utilization and cost management against

relevant benchmarks, and furnish recommendations to enable participating hospitals to better manage input costs. MHG will also use the data when negotiating payor contracts.

It is anticipated that MHG will evaluate and negotiate managed care contracts on behalf of its members with any interested payor. MHG will also accommodate those payors willing to negotiate a base contract collectively and negotiate specific pricing parameters directly with individual members. Although MHG may be called upon to evaluate or negotiate risk-based contracts, MHG's participating hospitals do not intend to share significant financial risk through MHG in the near term. A list of each member hospital's largest non-governmental payors is attached at Tab 4.

MHG is currently a shell corporation whose sole purpose is to provide a vehicle for collecting funds from participating hospitals and paying the developmental costs to be incurred by the venture. Although the preparation of corporate bylaws and participating hospital agreements has been delayed to conserve costs, the parties recognize that these documents will need to incorporate certain safeguards to alleviate antitrust concerns. MHG will be a non-exclusive network, and member hospitals will be free to contract directly with managed care plans and to join other provider networks. All proprietary data collected from participating hospitals will be treated in strict confidence. Steps will be taken to ensure that sensitive financial information will be aggregated and that no individual member will have access to any other member's costs or prices. Thus, there should be few spillover effects.

Based on the procompetitive purpose of Michigan Health Group and the transactional efficiencies likely to be achieved, we believe that MHG is a *bona fide* joint venture that should be evaluated under the traditional rule of reason analysis. Due to the nominal competitive overlap of the participating hospitals, the anticompetitive effects of the venture, if any, should clearly be outweighed by MHG's procompetitive benefits.

### C. Nominal Competitive Impact

MHG and its participating hospitals contend that there is nominal competitive overlap between any two of more of MHG's current members. Enclosed at Tab 5 is a disk entitled "Michigan Cooperative Spreadsheet" that contains patient origin data compiled by the Michigan Health & Hospital Association for calendar year 1999. Due to confidentiality constraints, hospital-specific data for non-participating hospitals was not available to counsel.<sup>1</sup> Nevertheless, the data were sufficient to show that there is very little competitive overlap among the participating hospitals.

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<sup>1</sup> Absent competitor-specific patient origin data, MHG is unable to define the relevant market for each member hospital or estimate the potential increase in market concentration attributable to MHG's proposed contracting activities. In this case, however, we do not believe MHG raises sufficient competitive concerns to require that more sophisticated analysis. However, if the Department determines otherwise, counsel will attempt to facilitate confidential production of the full database by the Michigan Health & Hospital Association.

Charlevoix Area Hospital ("Charlevoix") is a general acute care hospital with 33 staffed beds and an average daily census of 15 patients. (Tab 3.) The table at Tab 6 presents Charlevoix's inpatient discharges in descending order by zip code. Approximately 75% of Charlevoix's 1999 inpatients were discharged into three geo-zip areas. Charlevoix's ten most significant zip codes accounted for 92.2% of its 1999 inpatient discharges. Into that area, only four patients were discharged by other MHG hospitals.

Community Health Center of Branch County ("Community") is a general acute care hospital with 88 staffed beds and an average daily census of 38 patients. (Tab 3.) The table at Tab 7 presents Community's 1999 patient discharges by zip code. Of its 3,634 total inpatient discharges, approximately 75% of its patients were discharged into three geo-zip areas. Community's ten most significant zip codes accounted for 88% of its inpatients in 1999. A total of seven patients were discharged into this area by five of the remaining eight MHG member hospitals.

Gerber Memorial Health Services ("Gerber") is a general acute care hospital with 73 staffed beds and an average daily census of 30 patients. (Tab 3.) In 1999, Gerber discharged 2,367 patients in Michigan, approximately 75% of which were discharged into its five most significant geo-zip areas. (Tab 8.) Gerber's top ten zip codes accounted for approximately 85% of its discharges. Of those ten zip codes, double digit overlap is noted in 49304, into which Memorial Medical Center of West Michigan discharged 69 patients. In this same zip code, however, 500 hundred patients were discharged by non-MHG hospitals.

Gratiot Community Hospital ("Gratiot") is a general acute care hospital with 127 staffed beds. (Tab 3.) The table at Tab 9 presents Gratiot's patient discharges by zip code. Eleven zip codes account for approximately 75% of Gratiot's 1999 discharges, and 30 zip codes account for approximately 90% of its discharges. In only one of these 30 zip codes (48064) does another MHG hospital discharge at least 10 patients. In this zip code, less than 8% of the patient discharges are attributable to MHG hospitals.

Marlette Community Hospital ("Marlette") is a general acute care hospital with 91 staffed beds and an average daily census of 58 patients. (Tab 3.) The table at Tab 10 presents Marlette's patient origin data. Approximately 75% of Marlette's patients were discharged into its top nine zip codes. Another 15% of its patient discharges were distributed among another nine zip codes. Although significant overlap is observed between Marlette and West Branch Regional Medical Center, the overlap should not be problematic from an antitrust perspective.

More than nominal patient overlap between Marlette and West Branch Regional Medical Center was observed in five zip codes.<sup>2</sup> In each of these geo-zip areas, one of the hospitals accounted for a substantial number of the patient discharges while the other hospital added fewer, albeit a significant number of, incremental patient discharges. Of course, one cannot conclude that any one or more of the noted zip codes constitutes a relevant market for antitrust purposes. More significant to the antitrust analysis is the presence of other competitors. In the areas accounting for

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<sup>2</sup> The five zip codes include 48416, 48422, 48453, 48454 and 48466.

75% and 90% of Marlette's patient discharges. MHG hospitals account for only 27% and 16%, respectively, of all patients discharged into those areas.

Memorial Medical Center of West Michigan ("Memorial") is a general acute care hospital with 85 staffed beds and an average daily census of 38 patients. (Tab 3.) Memorial's patient origin data is presented at Tab 11. Memorial reported 2,929 patient discharges in 1999, of which approximately 75% were discharged into five geo-zip areas. Approximately 90% of Memorial's patient base is attributed to twelve geo-zip areas. More than nominal overlap is observed in two geo-zip areas (49420 and 49304) between Memorial and Gerber. However, in both of these individual zip codes, and in Memorial's primary and secondary service areas generally, MHG will cause nominal incremental concentration.

Pennock Hospital ("Pennock") is a general acute care hospital with 88 staffed beds and an average daily census of 37 patients. (Tab 3.) The table at Tab 12 presents Pennock's patient discharge data by zip code. Pennock's top four zip codes represented approximately 73% of its total inpatient discharges, while 90% of its patients were discharged into its top ten geo-zip areas. Only five patients were discharged by other MHG hospitals into the area comprised of Pennock's ten most significant zip codes.

Port Huron Hospital ("Port Huron") is the largest of the MHG members, with 173 staffed beds and an average daily census of 105 patients. (Tab 3.) The table at Tab 13 presents Port Huron's patient origin data. Port Huron attracts approximately 75% of its inpatients from ten zip codes and 90% of its patients from 23 zip codes. The only double digit overlap with another MHG hospital is with Marlette in 48471 and 48419. In those two zip codes, if they were to constitute a properly defined relevant market, MHG hospitals would have a share of nearly 27%. Looking at the broader picture, however, MHG will not increase concentration significantly in Port Huron's primary catchment area, and it will only increase Port Huron's penetration in the expanded service area from 38.8% to 39.5%.

West Branch Regional Medical Center ("West Branch") is an acute care hospital with 88 staffed beds and an average daily census of 42 patients. (Tab 3.) Approximately 75% of West Branch's patients were discharged into nine zip codes, and a total of approximately 90% of its patients were discharged into 17 geo-zip areas. (Tab 14.) With the exception of 48624 and 48629, into which Gratiot discharged 30 and 8 patients respectively, none of the zip code that comprise West Branch's extended service area accounted for more than four patient discharges by MHG hospitals collectively.

The data show very little competitive overlap among the MHG hospitals, and significant penetration of non-MHG hospitals in each member hospital's primary and extended service areas. The parties therefore contend that the operation of MHG as described will have nominal anticompetitive effects.

D. New Members

If MHG is successful in controlling costs and attracting managed care contracts, it is likely that similarly situated hospitals will also desire to join Michigan Hospital Group. The parties intend to limit future membership to hospitals that present nominal patient overlap to MHG's then-current members. MHG intends to refuse membership to any hospital for which 10% of its inpatient discharges fall into geo-zip areas that, in the aggregate, also represent at least 10% of the total inpatient discharges of any MHG member hospital. Although MHG has no current intention to expand its membership, the quantitative limitation proposed should minimize any potential anticompetitive effects attributable to any membership configuration in the future.

E. Conclusion

Michigan Hospital Group, Inc., is a *bona fide* joint venture designed to facilitate managed care contracting between small geographically dispersed community hospitals and large third-party payors. Based on the nominal competitive overlap among the member hospitals and the steps to be taken to protect the confidentiality of hospital-specific competitively sensitive data, it is not likely that MHG will cause any anticompetitive effects. MHG, by its counsel, respectfully requests a statement of the Department's present enforcement intentions regarding this venture.



Thank you for your prompt consideration of this request. Please call me should you have any questions or require additional information.

Sincerely,

HALL, RENDER, KILLIAN, HEATH & LYMAN, P.S.C.

Clifton E. Johnson

cc: David Jordan, Antitrust Division, Department of Justice  
Wade W. Nitz, Chief Financial Officer, Pennock Hospital  
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