

February 25, 1999

Via Facsimile and U.S. Mail

376-2147

Ms. Carla G. Spainhour

FRIDAY, ELDREDGE & CLARK

2000 Regions Center

400 West Capitol

Little Rock, Arkansas 72201-3493

Re: Conway Regional Surgery Center, LLC ("Surgery Center")

No-action Request No. 99-001

Dear Ms. Spainhour:

The Staff of the Arkansas Securities Department has reviewed your letter of January 26, 1999, wherein you request the Arkansas Securities Commissioner to approve the transfer of Units in the Surgery Center, owned by Dr. Jerry Dixon, which will take place within two years of Dr. Dixon's purchase of the Units. The staff is considering your letter as a "no-action" request pursuant to Rule 206.01(A) of the Rules of the Arkansas Securities Commissioner.

On October 2, 1997, the Department acknowledged an exemption filing, pursuant to Ark. Code Ann. § 23-42-504(a)(9) and Rule 504.01(a)(9)(A), made by the Surgery Center to cover sales of Units in the Surgery Center. Dr. Dixon purchased his Units pursuant to the exemption and signed a "Subscription Agreement" indicating he acquired the Units "solely for investment purposes, and not with a view to the resale, fractionalization or other distribution thereof." Dr. Dixon is now seeking to dispose of the Units because he will be relocating his practice from Conway, Arkansas to Benton, Arkansas and will no longer conduct surgeries in the Surgery Center. Dr. Dixon's relocation is due to his father having suffered a stroke and Dr. Dixon's need to live near him.

As you are aware, securities sold in Arkansas pursuant to Ark. Code Ann. ' 23-42-504(a)(9) and Rule 504.01(a)(9)(A) require each investor to purchase with "investment intent." Rule 102.01(14) provides that:

"Securities purchased under the Act and these Rules with 'investment intent' cannot be purchased with a view to, or for resale in connection with any distribution or hypothecation. Securities purchased with investment intent cannot be disposed of unless the securities are registered under the Act or, in the opinion of the issuer, an exemption from the registration requirements of the Act is available. . . . Where securities are purchased under the Act for investment, investment intent shall be presumed if the purchaser retains such securities for two (2) years from the date of the sale. However, any disposition of the securities within two (2) years of the date of purchase, in the absence of an

unforeseeable change of circumstance, shall create a presumption that the person did not purchase the securities with investment intent. . . ."

It is your opinion that Dr. Dixon's relocation, precipitated by the unforeseen illness of his father, which caused the need to sell his Units is an "unforeseeable change of circumstance" as contemplated by Rule 102.01(14). Based upon these facts, as well as your opinion, the Staff will recommend that the Commissioner take no action against the exemption by which the offering of the Units was undertaken.

Please note that the position of the Staff is based solely upon the representations made in your letter and applies only to the transaction identified therein. Different facts or circumstances might, and often would, require a different response. The position expressed deals only with anticipated enforcement action by the Department and does not purport to be a legal opinion.

Sincerely,

BRUCE H. BOKONY

CHIEF COUNSEL