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VIA FEDERAL EXPRESS

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United States Department of Justice  
Antitrust Division  
Main Justice Building  
10th and Constitution Avenue, N.W.  
Room 3218  
Washington, DC 20530

Re: Proposed merger of CVT Surgical Center ("CVT") and Vascular  
Surgery Associates of Baton Rouge ("VSA")

Dear Sirs:

On behalf of CVT and VSA, we hereby request a business review letter pursuant to 28 CFR §50.6 and a statement by the Department of Justice ("DOJ") of its present enforcement intention with respect to the proposed merger of CVT and VSA. On the basis of the information presented below, CVT and VSA respectfully submit that the proposed merger will not alter the market power of these medical corporations nor adversely affect competition, but will enhance patient care and result in administrative efficiencies with cost benefits to vascular surgery patients of the South Louisiana market area.

CVT and VSA are Louisiana Professional Medical Corporations located in Baton Rouge, Louisiana, a metropolitan area of approximately 550,000 residents. CVT employs six cardiovascular-thoracic surgeons who perform a broad range of surgical procedures for heart, lung and circulatory disorders. The CVT surgeons operate at the three principal surgical hospitals in Baton Rouge as well as at NorthOaks Medical Center in Hammond, Louisiana, approximately one hour's drive from Baton Rouge. VSA employs three surgeons, and contracts with a semi-retired fourth surgeon, in a practice limited to peripheral vascular surgery. The VSA surgeons operate in the Baton Rouge hospitals and hold consulting privileges in hospitals and other health care facilities in Baton Rouge and surrounding communities within the metropolitan area (Gonzales, Zachary, Plaquemine and Denham Springs). Each of the corporations operates a vascular laboratory facility which provides noninvasive ultrasonic testing services for the respective practices and for other physicians and hospitals.

As discussed below, although CVT surgeons are available for the vascular procedures in which VSA specializes, the procedures which CVT and VSA perform in common constitute less than 12.5% of CVT revenue and less than 15% in number of procedures. Yet similarities in support staff,

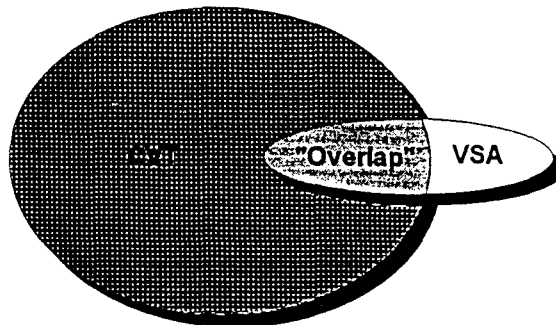
equipment and technology, patient population and other aspects of the practices present obvious, significant opportunities for synergy and efficiency through merger. CVT and VSA envision a complete consolidation of the complementary practices with reorganization of all personnel, business and patient-care aspects of the two practices. CVT and VSA anticipate that the larger referral and patient base of the merged entity will improve patient care by allowing further specialization by individual surgeons and acquisition of expensive, state-of-the-art equipment and technology. The capital base and service capacity will allow the merged entity to compete and care for large patient populations under risk-based contracts with managed care entities. And, competitive bidding for managed care contracts will ultimately result in realization by payors/patients of the cost benefits from administrative efficiencies to be realized from the merger.

Our firm has been jointly retained by CVT and VSA for the purpose of obtaining the review letter requested herein. In the course of our preparation of this request, we have obtained from each entity certain information for purposes of determining the relevant "product" and "market" and other information which we believe to be necessary for the DOJ analysis. However, in compiling the information for this letter, no pricing or cost information, information regarding numbers of specific procedures, or any other information of competitive value has been transmitted by our firm to either CVT or VSA, and we are informed that no such information has been exchanged by the entities. In addition, all discussions and information regarding the merger have been kept confidential, and to our knowledge, the medical community is generally unaware that such a merger is contemplated. In order to avoid unnecessary disruption of business, upset of employees, etc., we are very hopeful that analysis by the DOJ will not involve disclosure of the potential merger at this preliminary stage to the South Louisiana medical community. If such disclosure is necessary prior to release by the DOJ of its review letter, we would appreciate prior notice thereof so that potential disruption can be minimized.

Following is a summary of the information upon which CVT and VSA base their conclusion that the proposed merger will not enhance the market power of these entities nor result in adverse competitive effects, as discussed in the joint release by the DOJ and the Federal Trade Commission of 1992 Horizontal Merger Guidelines (hereinafter, "Guidelines"):

**Market definition.**

*Product Market.* CVT and VSA regularly perform hundreds of types of surgical procedures within their recognized specialties. Of those procedures, however, only approximately 60 procedures are performed in common by the two practices, based on an analysis of procedures performed by each practice during 1995, as identified by Current Procedural Terminology ("CPT") code. The CPT codes for procedures performed in common are listed in Exhibit A (identified hereinafter as the "Overlap") and are submitted for purposes of DOJ analysis as the relevant "product". During 1995, the Overlap procedures accounted for approximately 12.5% of CVT revenue from surgical procedures and approximately 15% in number of procedures performed by CVT. The portion of each practice represented by Overlap procedures can be graphically represented as follows:



Based on the nominal portion of the CVT practice represented by the Overlap procedures, CVT and VSA submit that their practices are complementary rather than appreciably competitive. In the merged entity, the VSA surgeons will operate as the "vascular department," performing exclusively carotid and peripheral vascular procedures on which their training and experience has been concentrated, leaving the CVT surgeons increased capacity for, and specialization in, cardiac and thoracic procedures.

*Geographic market.* The relevant market for Overlap procedures encompasses the geographic area within a one and one-half hour (1-1/2) drive of Baton Rouge, Louisiana, including the South Louisiana cities of Hammond, New Orleans, Houma, Lafayette and Thibodaux (the "Market Area"). That radius is determined based upon a number of factors including the following:

1. CVT has found it competitively necessary and economically justifiable to maintain continuous coverage of Hammond, Louisiana, a distance of approximately one hour's drive from CVT's Baton Rouge offices. The coverage is by regular rotation of Baton Rouge based surgeons who commute to Hammond to perform surgical procedures. Clearly, if CVT has determined that it is feasible and economically justifiable to serve Hammond, a town of less than 20,000 residents, an hour's drive from Baton Rouge, it is equally feasible and justifiable for surgeons in other cities to serve Baton Rouge from roughly equivalent distance.
2. A very large, aggressive, New Orleans-based, multi-specialty clinic (The Ochsner Clinic), which employs in excess of 340 physicians in total, has established a Baton Rouge office and based 71 physicians in Baton Rouge, including a vascular specialist, three general surgeons and a cardiothoracic surgeon. The Ochsner Clinic also employs six cardiovascular-thoracic surgeons and six general surgeons in its New Orleans office (driving distance approximately 1 1/4 hours) some or all of whom are available for Overlap procedures. During the past year, New Orleans-based Ochsner Clinic cardiovascular surgeons have demonstrated the feasibility of serving Baton Rouge from New Orleans (and vice-versa) by providing services in Baton Rouge in response to short-term staffing demands of the Baton Rouge office. The Ochsner Clinic clearly faces virtually no barriers to rapid supply response in the event that the merged entity attempted any price increase for the Overlap procedures.

3. In addition to The Ochsner Clinic, other cardiovascular practices within the Market Area advertise, solicit referrals and draw patients from the greater Baton Rouge metropolitan area (e.g., Cardiovascular Institute of the South, with offices in Houma, Lafayette, Thibodaux and Lake Charles, La., and Cardiovascular Clinic based in Lafayette, La.). Similarly, VSA and CVT market their respective practices and obtain patients from these cities within the Market Area. Information is unavailable to CVT/VSA regarding the number of patients which are presently referred from the Baton Rouge metropolitan area to other cardiovascular clinics or providers within the Market Area. There can be little doubt, however, that these providers would be capable of and quite willing to respond to demand that might result from any attempt by the merged entity to unilaterally increase fees for the Overlap procedures. Those services could be provided in other cities within the Market Area or in Baton Rouge hospitals by non-resident surgeons, such as in the case of CVT's service of Hammond, LA.

In total, 82 surgeons within the Market Area identify (in Yellow Pages advertising) vascular surgery as a specialty. The distribution of those surgeons is as follows: Baton Rouge (18), New Orleans (48), Lafayette (11) and Houma (5). With the exception of two general surgeons who list "vascular" as a specialty, however, the foregoing does not include (i) numerous general surgeons who provide many of the Overlap vascular procedures,<sup>1</sup> (ii) neurosurgeons (8 in Baton Rouge and others in the Market Area) who are also available for the Overlap carotid procedures, or (iii) the many cardiologists who are now providing vascular stents, vessel balloons and similar Overlap procedures traditionally offered only by surgeons.

Clearly, there are many surgeons and other specialists within the Market Area ("uncommitted entrants") who are available for "quick and uncommitted supply responses" in the event that the merged entity attempted any "small but significant and non-transitory price increase."<sup>2</sup> And the supply response can be made without significant cost of entry or exit. Premium medical office space, for example, is available at reasonable rates, and the commute for the providers within the Market Area is nominal. As stated above, a similar, regular commute has been demonstrated by CVT to be justifiable. Further, there are no procedural barriers to entry by Market Area surgeons into the Baton Rouge Metropolitan area. The two largest hospitals in Baton Rouge (Baton Rouge General and Our Lady of the Lake) have "open staff" policies under which qualified surgeons are granted privileges irrespective of the number of surgeons of a particular specialty which may already be on staff at the hospital. The surgeons of CVT and VSA are in no position with either hospital to unilaterally deny privileges to additional providers of Overlap procedures in the Baton Rouge hospitals.

Considering the many potential providers of Overlap procedures within the Market Area, the number of surgeons involved in the proposed CVT/VSA merger will be significantly less than 20% of

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<sup>1</sup> See DOJ Business Review Letter dated August 28, 1987 (proposed merger of Surgical Associates of Western Connecticut, P.C. and Danbury Surgical Associates, P.C.) in which the DOJ recognized that general surgeons perform vascular surgery and compete with vascular surgeons.

<sup>2</sup> See Guidelines at Section 1.0 - 1.32.

the total number of surgeons available for the Overlap procedures. It is, accordingly, very unlikely that the merged entity will have market power or ability to unilaterally increase prices for the Overlap procedures. In any event, such market power or price control is generally unavailable to providers of Overlap procedures as discussed below.

#### **Potential Adverse Competitive Effects.**

CVT and VSA submit that there is negligible potential for adverse competitive effects as a result of their proposed merger. As discussed above, there are currently many providers of Overlap procedures and many additional uncommitted entrants of various specialties within the Market Area should any attempted price increase generate supply response opportunities. Providers of Overlap procedures, however, have virtually no control of the prices received for their services nor the ability to increase prices, irrespective of the market concentration or market power of the providers of Overlap procedures.

This lack of market power and price control is due primarily to the fact that the majority of the vascular Overlap procedures are performed for Medicare/Medicaid patients for which federal and state authorities dictate a very inelastic fee schedule. In excess of 60% of the revenue from Overlap procedures of both CVT and VSA is generated by procedures for which the fees are fixed by governmental entities. CVT/VSA submit that the price constraining effect of the governmentally imposed fee schedule is central to evaluation of the potential for adverse competitive effects of the merger of two practices which serve predominately Medicare/Medicaid patients.<sup>3</sup> Further, the vast majority of the remainder of the patients of each practice are now covered by large, managed care entities which exercise market purchasing power and price control over surgeons' fees. That control is exercised through referrals of large numbers of patients to networks of providers over broad geographic areas who have agreed to reduced fees for services and/or risk-based contracts in exchange for volume commitments. Under these circumstances, not only is there no ability of a provider group to unilaterally increase prices, there is compulsion to accept discounts and fee reductions to maintain necessary patient volume.

#### **Efficiencies.**

CVT and VSA anticipate that their merger will produce significant efficiencies and benefits for the patients and payors of the Market Area as well as for the merging entities and their surgeons/owners. Among these benefits and efficiencies are the following:

1. *Patient Care.* The larger patient base of the merged entity will result in improved patient care by allowing further specialization with volume sufficient to maintain high standards of proficiency in the individual procedures. In addition, the larger volume will support the significant

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<sup>3</sup> Compare similar relevance of import quotas to evaluation of competitive effects, as discussed in Guidelines at Section 1.43.

cost of maintaining state-of-the-art equipment and technology necessary for diagnosis and treatment of vascular disorders. For example, current patient testing volumes of the individual practices do not economically justify the cost of state-of-the-art color duplex ultrasound vascular testing equipment (\$150,000 - \$250,000 per machine) desired by each practice; CVT/VSA anticipate, however, that the volume of the merged entity will justify such equipment with resulting benefit to their patients. In total, CVT and VSA have invested hundreds of thousands of dollars in diagnostic and testing equipment, much of which is duplicative and underutilized. CVT and VSA anticipate that the volume of the merged entity will allow more efficient use of expensive equipment and that, in the future, otherwise inefficient expenditures for duplicative equipment can be redirected to the latest in equipment and technology.

2. *Cost Benefit.* CVT and VSA also anticipate significant cost savings from efficiencies of scale and reductions in obviously duplicative administrative costs (facilities, equipment, personnel, etc.). In addition, the larger provider group and patient base will support formalized utilization review and case management, and will also provide the larger ownership and capital base necessary to undertake risk-based (capitated) contracts for large, managed care patient populations. Under current market conditions, of course, not only will the cost savings from administrative efficiencies, but even the risk premium assumed by the merged entity's surgeons/owners under risk arrangements, will be realized by the payors (and ultimately the patients) in the form of reduced rates under the competitively bid managed care contracts.

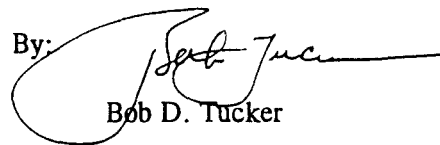
### Conclusion

VSA and CVT submit that the larger, merged entity of combined specialties is now necessary for their continued ability to provide highest quality patient care on an economically feasible basis. Our clients, accordingly, would appreciate your earliest possible review of this request so that the proposed merger can be expeditiously consummated. We will, of course, be pleased to provide any additional information which you may require and would welcome the opportunity to meet with you, at your convenience. Thank you for your consideration of this request.

Very truly yours,

KANTROW, SPAHT, WEAVER & BLITZER  
(A PROFESSIONAL LAW CORPORATION)

By:



Bob D. Tucker

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