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WILLIAM R. CREASEY

July 26, 1991

Honorable James F. Rill  
Assistant Attorney General  
Department of Justice  
Antitrust Division  
10th Street & Constitution Ave., N.W.  
Washington, D.C. 20530

Re: Transplant Associates at Baylor University Medical Center, P.A.-  
Request for Business Review

Dear Mr. Rill:

Transplant Associates at Baylor University Medical Center, P.A. ("Associates") respectfully requests that the Antitrust Division of the United States Department of Justice, pursuant to the provisions of 28 C.F.R. § 50.6, review and state its present enforcement intentions with respect to a proposed arrangement to assist Associates in negotiating fixed fee agreements between Associates and health insurance companies.

Associates is a provider-based, preferred provider organization composed of approximately 85 physicians from numerous medical specialties who are drawn together in "teams" to perform liver and kidney transplants at Baylor University Hospital in Dallas, Texas. Associates has entered into, and will continue to negotiate on an ongoing basis, contracts with various health insurance companies and intermediaries ("Health Plans") to provide organ transplant services to the Health Plans' members. These contracts fall into two general categories.

The first category consists of contracts to provide transplant services at a discount, based upon a percentage of the usual customary and reasonable charges of the respective physicians involved in a particular organ transplant procedure. This category of contracts does not present an antitrust problem in that each individual physician establishes his own

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customary fee schedule independently of any input from Associates or from any other physician, and is paid by Associates based upon the agreed-upon discount from such ordinary fee.

The second category of contracts are based upon a fixed fee. This category presents a potential problem from a stand point of the antitrust laws in that, to negotiate fixed fee contracts that are economically viable, Associates -- comprised of and governed by physicians -- needs information from which it can negotiate a fixed fee that is low enough to be attractive to Health Plans, and yet high enough that Associates' own member physicians will not decline to participate in rendering contracted services. (The member physicians are true independent contractors who may either elect, or not elect, to participate in any particular procedure.)

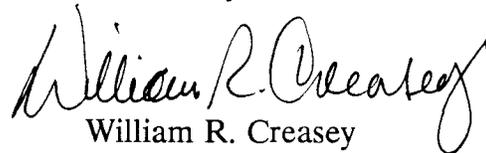
To avoid any allegation that the compilation of data by Associates constitutes any form of price-fixing or other anti-competitive practice, Associates is proposing to enter into an agreement with an accounting firm that has expertise in the health care industry ("Consultant"). Through contract with a third party ("Research Firm"), Consultant will assemble a data base of prevailing charges in the Dallas, Texas, area, particularly in regard to physicians practicing at Baylor University Medical Center, for the various procedures, skills and services ordinarily involved in liver and kidney transplants. Thus equipped, Consultant will analyze and evaluate fixed fee proposals and make recommendations to enable Associates to consummate economically viable contracts.

It is anticipated that Bland, Garvey & Taylor, the firm currently handling Associates' accounting work will be "Consultant"; and that Professional Business Management, Inc., which currently provides medical billing services to Associates will be "Research Firm". Regardless of the identity of the firm performing such roles, the firm will act entirely independent of any control of Associates. All information obtained by Consultant and Research Firm and used by each of them in performing its respective services will remain the exclusive proprietary and confidential information of Consultant and Research Firm, as the case may be. The physician members of Associates shall have no right of access to any pricing information made available to Consultant by Research Firm or to any of the source data compiled by Research Firm in providing such information to Consultant.

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Enclosed as Exhibits A and B, respectively, are the agreements to be entered into between Associates and Consultant and between Consultant and Research Firm. If you should require and any additional information or documentation, regarding Associates or the proposed contractual arrangements, please do not hesitate to let us know, and we shall endeavor to supply it.

Yours truly,



William R. Creasey

WRC:ss  
Enclosures