



February 17, 1994

Mr. Robert L. Abramowitz  
Morgan, Lewis & Bockius  
2000 One Logan Square  
Philadelphia, Pennsylvania 19103-6993

94-04A  
ERISA SEC.  
3(33), 4(b)(2)

Dear Mr. Abramowitz:

This is in reply to your correspondence on behalf of the Sisters of St. Francis of Philadelphia (hereinafter, the Order). Specifically, you ask whether benefit arrangements that twelve institutions of the Order establish and maintain for their employees are church plans within the meaning of section 3(33) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA).

Your correspondence and the accompanying documents contain the following facts and representations. The Order, a religious congregation of women, was established within the Roman Catholic Church (hereinafter, the Church) in 1855. Each member of the Order takes vows of poverty, chastity and obedience.

The Order is governed by a general minister, by its elected councillors, and by its provincial ministers, all of whom are members of the Order.<sup>1</sup> One of the Order's main activities is operating health care facilities to further the Order's mission within the Church.

You further represent that, in 1981, in furtherance of its mission within the Church, the Order established the Franciscan Health System (hereinafter, FHS) to control and coordinate the Order's medical facilities. FHS is a Pennsylvania nonprofit, membership corporation.

You describe the manner in which FHS is subordinate to the Order. Specifically, the general council of the Order serves as the corporate membership of FHS, and the FHS corporate membership appoints a board of directors to govern FHS (hereinafter, the FHS Board).

You indicate that FHS is the coordinating institution for eleven nonprofit medical facilities of the Order (hereinafter, collectively, the Hospitals).<sup>2</sup> They are: St. Francis Community Hospital, Federal Way, Washington (hereinafter, Hospital A); St. Francis Medical Center, Trenton, New Jersey (hereinafter, Hospital B); St. Joseph Hospital and Health Care Center, Lancaster, Pennsylvania (hereinafter, Hospital C); St. Mary Hospital, Langhorne, Pennsylvania (hereinafter, Hospital D); St. Anthony Hospital, Pendleton, Oregon (hereinafter, Hospital E); St. Francis Hospital, Wilmington, Delaware (hereinafter, Hospital F); St. Joseph Hospital and Health Care Center, Tacoma,

Washington (hereinafter, Hospital G); St. Elizabeth Hospital and Health Care Center, Baker, Oregon (hereinafter, Hospital H); St. Agnes Medical Center, Philadelphia, Pennsylvania (hereinafter, Hospital I);<sup>3</sup> St. Joseph Hospital, Reading, Pennsylvania (hereinafter, Hospital J); and St. Mary Hospital, Philadelphia, Pennsylvania (hereinafter, Hospital K).

Further, you describe the Hospitals as subordinate to the Order and to FHS. FHS is the sole corporate member of each of the Hospitals and appoints the board of trustees of each (hereinafter, collectively, the Hospital Boards). Bylaws under which the Hospitals operate require one-third of trustees on each of the Hospital Boards to be members of the Order. Moreover, those bylaws also require one of four provincial ministers of the Order to serve on each of the Hospital Boards.

Each of the Hospitals, FHS, and the Order are listed in The Official Catholic Directory (P.J. Kenedy & Sons) (hereinafter, the Directory). Accordingly, the group tax exemption letter issued to the United States Catholic Conference by the Internal Revenue Service (hereinafter, IRS) pursuant to section 501(c)(3) of the Internal Revenue Code (hereinafter, the Code) appears to include the Order, FHS, and each of the Hospitals.

The subjects of your request for an advisory opinion are the employee benefit arrangements (hereinafter, collectively, the Plans) that FHS and the Hospitals established for employees. You clearly indicate that not all employees of FHS or of the Hospitals participate in all the Plans.

You represent that FHS is responsible for several Plans. First, FHS established the FHS Consolidated Pension Plan for FHS employees and for employees of Hospitals J and K. Second, FHS established the FHS Consolidated Health and Welfare Plan in which employees of FHS and of Hospitals D, I, J, and K participate.<sup>4</sup> Third, FHS established a deferred compensation plan for only its own employees (hereinafter, the FHS Employees' Revenue Plan) and a deferred compensation plan for employees of the Hospitals (hereinafter, the Hospital Employees' Revenue Plan). Finally, FHS is the policyholder for a life insurance and accidental death and disability policy (hereinafter, the FHS Accident Plan) that covers its employees.

You further represent that each of the Hospitals separately established benefit plans (hereinafter, collectively, the Hospital Plans).<sup>5</sup> Also, each of the Hospitals has adopted for its own employees the life insurance and accidental death and dismemberment policy for which FHS is policyholder (hereinafter, the Hospitals' AD & D Plans).<sup>6</sup>

Moreover, you indicate that each of the Plans is operated by one of several Employee Benefit and Administrative Committees (hereinafter, collectively, the Committees). The Committees administering the FHS Consolidated Pension Plan, the FHS Consolidated Health and Welfare Plan, the FHS Employees' Revenue Plan, and the Hospital Employees' Revenue Plan were established by the FHS Board.

Each of those Committees is for the sole purpose of administering one of the Plans, and each consists of three or more members appointed by the FHS Board. Also you indicate that each of the Hospital Boards has established one or more Committees for the sole

purpose of administering benefit arrangements for its own employees, and each of the Hospital Boards appoints the members of its Committee(s). You further represent that most of the Committees appointed by the Hospital Boards include at least one member of the Order.

To further document your request you submitted private letter rulings that IRS issued to many of the Plans. Each of the rulings concludes that one or more of the Plans are church plans within the meaning of Code §414(e).<sup>7</sup> You also represent that no Plans providing pension benefits elected to be covered by the provisions of ERISA pursuant to Code §410(d).

Your request for an advisory opinion regarding "church plan" status involves application of the provisions of sections 4(b)(2) and 3(33) of Title I of ERISA to the facts presented. Section 4(b)(2) of ERISA excludes from coverage under Title I of ERISA any plan that is a church plan as defined in section 3(33) of ERISA. The term "church plan" is defined in section 3(33) of ERISA, in pertinent part, as:

... a plan established and maintained (to the extent required in clause (ii) of subparagraph (B) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1986.

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(C) For purposes of this paragraph--

(i) A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(ii) The term employee of a church or a convention or association of churches includes--

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(II) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of the Internal Revenue Code of 1986 and which is controlled by or associated with a church or a convention or association of churches;...

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(iii) A church or a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1986 shall be deemed the employer of any individual included as an employee under clause (ii).

(iv) An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches....

It appears that the Order is an integral part of the Church by virtue of the religious and health care ministries it performs. Furthermore, the Order is exempt from tax pursuant to section 501(c)(3) of the Code, the Order is controlled by the Church, and it is clear that the Order is "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA because the Order clearly shares common religious bonds and convictions with the Church.

Through the Order the Church controls FHS and the Hospitals. First, the Church controls FHS through the Order because the Order's governing body serves as the corporate membership of FHS. Second, the Church through the Order and FHS controls the Hospitals because the Order's governing council, as the corporate membership of FHS, appoints and may remove all trustees on the Hospital Boards.

In addition, FHS and the Hospitals are "associated with" the Church, within the meaning of section 3(33)(C)(iv) of Title I of ERISA, because of factors that assure they adhere to the tenets and teachings of the Church and thus evidence that they share common religious bonds and convictions with the Church. Those factors include Church control of FHS through the Order and Church control of the Hospitals through the Order and FHS, as discussed above; Directory listings applicable to FHS and to the Hospitals; participation by members of the Order, who serve as its general council, in the FHS corporate membership; and participation by members of the Order, including the Order's provincial ministers, in the Hospital Boards. Also, because of the applicable Directory listings corresponding to the group exemption IRS granted to the Church, FHS and the Hospitals are exempt from tax in accordance with section 501(c)(3) of the Code.

Accordingly, the Department of Labor (hereinafter, the Department) concludes that individuals whose employment is with FHS or with the Hospitals are employees of organizations that are civil law corporations exempt from tax pursuant to section 501(c)(3) of the Code and that are controlled by, or associated with, the Church within the meaning of section 3(33)(C)(ii)(II) of Title I of ERISA. In accordance with section 3(33)(C)(iii) of Title I of ERISA, the Church is deemed the employer of these individuals for purposes of the church plan definition in section 3(33); and the Church, as employer, is deemed to have established and to maintain the Plans.

In addition to the above reason for concluding that the Plans meet the church plan definition in section 3(33), the Plans may be considered one or more church plans by operation of section 3(33)(C)(i) of Title I of ERISA because the Committees' administration of the Plans further assures that the Church is deemed to maintain the Plans. Section 3(33)(C)(i) applies to the Plans because the principal purpose or function of each of the Committees is administration of one or more of the Plans for the provision of employee retirement and welfare benefits and because the Committees are controlled by and "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA. It appears that the Committees for the FHS Consolidated Pension Plan, the FHS

Consolidated Health and Welfare Plan, the FHS Employees' Revenue Plan, and the Hospital Employees' Revenue Plans are controlled by the Church through the Order and the FHS Board, which appoints one or more Committees for those Plans. It also appears that each of the Committees for the Hospital Plans is controlled by the Church through the Order, FHS, and its respective Hospital Board because of the Hospital Boards' appointment of the members of the Committees for their respective Plans.<sup>8</sup> Furthermore, because the Church's control of the Committees and the presence of any members of the Order who serve on the Committees assure that the Committees adhere to the tenets and teachings of the Church, they evidence that the Committees share common religious bonds and convictions with the Church.<sup>9</sup> Consequently, the Committees are "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA.

For the above reasons and based on your representations, it is the opinion of the Department that the Plans constitute church plans within the meaning of section 3(33)(A) of Title I of ERISA by operation of ERISA section 3(33)(C)(iii). In addition, ERISA section 3(33)(C)(i) appears to describe the Plans. Because church plans described in section 3(33) of Title I of ERISA are excluded from the requirements of Title I of ERISA pursuant to section 4(b)(2) thereof, the Plans are not required to comply with the provisions of Title I of ERISA as administered by the Department.

This letter constitutes an advisory opinion under ERISA Procedure 76-1 and, accordingly, is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions.

This letter relates solely to application of the provisions of Title I of ERISA and, therefore, is not determinative of any particular tax treatment under the Code. We note, specifically, that it may be advisable to seek the views of IRS concerning requirements applicable to employee health benefit arrangements of FHS or of the Hospitals pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985.

Sincerely,

ROBERT J. DOYLE  
Director of Regulations  
and Interpretations

<sup>1</sup> Materials you submitted mention four provinces within the Order: Sacred Heart Province serving Washington and Oregon; St. Anthony Province serving New Jersey and the Lancaster area of Pennsylvania; Immaculate Conception Province serving the Philadelphia and Reading areas of Pennsylvania; and St. Joseph Province serving Delaware.

<sup>2</sup> Materials you submitted indicate that FHS coordinates twelve medical facilities. However, you include only eleven of them in your request for an advisory opinion. Accordingly, this advisory opinion does not apply to plans for employees of St. Joseph Hospital in Towson, Maryland.

<sup>3</sup> ERISA Opinion 86-19A concluded that certain plans of Hospital I for its employees were "church plans" within the meaning of section 3(33) of Title I of ERISA. The plans described in ERISA Opinion 86-19A are not within the scope of this advisory opinion. They included a defined benefit pension plan; health and hospitalization benefits; life and accidental death and dismemberment insurance; long term disability insurance; dental benefits; vision benefits; and health maintenance organization participation.

<sup>4</sup> ERISA Opinion 86-19A did not address Hospital I employees' participation in the FHS Consolidated Welfare Plan. The opinions expressed in this letter specifically apply to the Consolidated Welfare Plan and to Hospital I employees' participation in it.

<sup>5</sup> Hospital A has two tax-sheltered annuity programs, a medical benefit program, a dental benefit program, and a long term disability insurance program. Hospital B has a retirement plan; a dental plan; health plans that include hospitalization, major medical benefits, and medical/surgical benefits; and a disability plan. Hospital C has two money purchase plans, a hospitalization and medical benefits plan, a plan that permits employees to participate in a health maintenance organization, two long term disability plans, and a dental plan. Hospital D has a defined benefit pension plan, a health benefits plan, and a long term disability plan. Hospital E has a defined contribution pension plan, a health benefits plan, and a dental plan. Hospital F has a pension plan, a health benefits plan, a disability plan, and a dental plan. Hospital G has two tax-sheltered annuity programs, two dental care programs, a long term disability program, a group health plan, and a medical care plan. Hospital H has a retirement plan, a health plan, and a dental plan. Hospital J has a health plan, a dental plan, a disability plan, and a life insurance plan. Hospital K has two health plans and a disability plan.

<sup>6</sup> St. Joseph Hospital of Towson, Maryland, has also adopted the FHS life insurance and accidental death and dismemberment policy for its own employees. However, as noted above, none of its plans for its employees are the subject of this advisory opinion.

<sup>7</sup> On March 22, 1988, IRS issued a private letter ruling for the FHS Consolidated Health and Welfare Plan. On September 12, 1989, IRS issued a private letter ruling for the FHS Consolidated Pension Plan. On June 17, 1988, the IRS issued a private letter ruling for both the FHS Employees' Revenue Plan and the Hospital Employees' Revenue Plan. You also submitted the following private letter rulings issued to the Hospitals by IRS: a letter dated April 18, 1988, regarding Hospital A's tax-sheltered annuity plans; a letter dated March 22, 1988, regarding the dental plan, major medical plan, hospital service, and medical-surgical plan of Hospital B; a letter dated April 15, 1988, regarding two money purchase plans for Hospital C's employees; a letter dated May 27, 1988, regarding Hospital D's pension plan for its employees; a letter dated June 17, 1988, regarding the defined contribution retirement plan of Hospital E; a letter dated May 27, 1988, regarding

the pension plan of Hospital F; a letter dated May 27, 1988, regarding the dental plan of Hospital G; and a letter dated March 22, 1988, regarding the retirement plans of Hospital H.

<sup>8</sup> While you indicate that each of the Plans is administered by one of the Committees, you do not specifically describe whether the Committees administering the Hospitals' AD & D Plans and the FHS Accident Plan are controlled by FHS or by the Hospitals. However, because FHS is the policyholder for both the FHS Accident Plan and the Hospitals' AD & D Plans, we assume for purposes of this opinion that Committees administering those Plans are controlled in one of two ways: either the FHS Accident Plan is administered by a Committee that FHS controls and each of the Hospitals' AD & D Plans is administered by a Committee that its respective Hospital Board controls or both the FHS Accident Plan and the Hospitals' AD & D Plans are administered by a Committee that FHS controls.

<sup>9</sup> As noted above, the Church controls the Committees either through the Order and FHS or through the Order, FHS, and the Hospitals.