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MAIL: P.O. BOX 13167
AUSTIN, TEXAS 78711-3167

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State Securities Board

200 E. 10th Street, 5th Floor
Austin, Texas 78701
Phone (512) 305-8300
FAX (512) 305-8310

March 24, 1997

Ms. Kathryn K. Lindauer
Jenkens & Gilchrist
2200 One American Center
600 Congress Ave.
Austin, Texas 78701

Re: Austin Diagnostic Clinic Association

Dear Ms. Lindauer:

This letter is in response to your letter dated July 12, 1996, and received by this Agency on July 15, 1996; your letter dated July 16, 1996, received July 17, 1996; and two facsimiles, one dated and received February 20, 1997, the other dated and received March 18, 1997.

Your July 12 letter describes the proposed transaction by Austin Diagnostic Clinic Association ("ADC"), a Texas professional association, whereby a limited partnership will be created by ADC and certain limited partnership interests will be distributed to shareholders of ADC. The letter asks whether the proposed distribution must first be registered under the Texas Securities Act.

According to your submissions, ADC owns certain unimproved real estate which it intends to transfer to a newly-created limited partnership (the "Partnership"). The general partner of the Partnership will be a wholly-owned subsidiary of ADC and will own a 1% interest in the Partnership. Initially, ADC will be the sole limited partner of the Partnership and will own 99% of the partnership interests. The partnership agreement will provide for two classes of limited partnership interests: (1) Class A limited partnership interests ("Class A Interests"), having a right to all future appreciation of the real estate in excess of amounts paid as a priority return to the holder of Class B limited partnership interests and (2) Class B limited partnership interests ("Class B Interests"), reserving to ADC a priority distribution in an amount equal to the fair market value of the real estate contributed by ADC and a priority return on such contribution equal to a market rate of interest. The Class B Interests will be retained by ADC; Class A Interests will be distributed as discussed below.

ADC proposes to distribute to its existing shareholders, as compensation, 80% of the Class A Interests. This distribution will be on a pro rata basis, in accordance with the ownership of the ADC shareholders in ADC. You have stated that no commission or remuneration will be paid or given in connection with this distribution; also, ADC does not plan to provide any offering materials to the

distributees. Further, you have submitted that because the fair market value of the real estate, in addition to some anticipated appreciation, is reserved to the holder of the Class B Interests, the Class A Interests should have little or no value at the time of the distribution.

You stated that the recipients of Class A Interests are not required to make any payment in exchange for the distribution of these interests and that they will be distributed as compensation, but such compensation will be in the nature of a bonus. No recipient is required to perform any services in connection with the distribution that are not already required under the recipient's current employment agreement with ADC. It is further stated that the Class A Interests are entitled to receive distributions from the Partnership only to the extent that funds exist after payment to the holder of the Class B Interests of the fair market value of the real estate, at the inception of the Partnership, plus a priority return as described above.

In addition, you have submitted that the Partnership Agreement provides that Class A Interests may only be transferred: (i) to other holders of Class A Interests, (ii) at death of a Class A Interest holder, and (iii) during the lifetime of a holder of a Class A Interest, to the holder's spouse or lineal descendants or to a trust for the benefit of the holder, the holder's spouse or lineal descendants. With respect to any other transfer of Class A Interests, the Partnership retains the right of first refusal.

Finally, any proposed transferee of Class A Interests will be required to certify to the Partnership that the transferee:

(a) has received full and complete information relating to the Partnership and its operations, and has had the opportunity to ask questions of representatives of the General Partner relative to the proposed investment and all such questions have been answered to the transferee's full satisfaction;

(b) has sufficient net worth to sustain a loss of the entire investment in the Partnership without material economic hardship if such a loss should occur;

(c) is acquiring the Interest for the transferee's own account, not as nominee for any other person or entity, and not with a view to distribution or further transfer thereof and the transferee does not presently have any reason to anticipate any change in the transferee's circumstances or other particular occasion or event which would cause the transferee to sell the Interest;

(d) has knowledge and experience in financial and business matters and is capable of evaluating the merits and risk of an investment in the Partnership and the suitability of the Interest as an investment for the transferee; **and**

(e) has been made aware, by those individuals with whom the transferee has dealt in connection with the acquisition of the Interest, that: (i) the investment in the Partnership is speculative and a high risk of loss of the entire investment in the Partnership exists, (ii) the transferee must bear the economic risk of such investment for an indefinite period of time because the Interests in the Partnership have not been registered under the Securities Act of 1933, as amended (the "Securities Act") or applicable state securities laws and therefore cannot be sold unless subsequently registered under the Securities Act and such state laws or unless an exemption from such registration is available, (iii) no assurances can be made or have been made regarding any economic advantages (including tax) which may inure to the transferee's benefit as a result of the acquisition of the Interest, and (iv) no assurances can be made concerning return on the investment in the Interest.

Based upon the foregoing, the staff of the State Securities Board will recommend no action to require registration of the securities to be distributed in the manner described above. Further, the staff will recommend no action to require the registration of ADC as a dealer in connection with the proposed distribution of Class A Interests to the existing shareholders of ADC.

Please note that this Agency has not made an independent investigation of the facts, but has relied solely upon the information you have provided. If this information is incorrect or changes substantially, the staff would reconsider the matter and the opinion stated above would be void.

I trust this answers your inquiry. If we may be of further service, please feel free to write or call.

Very truly yours,

DENISE VOIGT CRAWFORD
Securities Commissioner

David Weaver
General Counsel

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