

exemption, refer to the Notice of Proposed Exemption published on May 5, 2003 at 68 FR 23766.

FOR FURTHER INFORMATION CONTACT: Mr. Khalif I. Ford of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

Raleigh Pathology Laboratory Associates, P.A. Profit Sharing Plan (the Plan) Located in Raleigh, NC

[Prohibited Transaction Exemption 2003-28; Exemption Application No. D-11171]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,¹ shall not apply to the exchange of an unimproved waterfront lot (the Pine Knoll Shores Lot) owned by the Plan and allocated to the individually-directed account (the Account) in the Plan of James R. Edwards, M.D., for one unimproved tract of land (Parcel One) owned personally by Dr. Edwards and his spouse, Mrs. Delores Edwards.

This exemption is subject to the following conditions: (a) The exchange of the Pine Knoll Shores Lot between the Account and Dr. and Mrs. Edwards for Parcel One is a one-time transaction.

(b) The fair market value of the Pine Knoll Shores Lot and Parcel One is determined by qualified, independent appraisers, who will update their appraisal reports at the time the exchange is consummated.

(c) For purposes of the exchange, Parcel One has a fair market value that is no less than the fair market value of the Pine Knoll Shores Lot at the time the transaction is consummated.

(d) The terms and conditions of the exchange are at least as favorable to the Account as those obtainable in an arm's-length transaction with an unrelated party.

(e) The exchange does not involve more than 25 percent of the Account's assets.

(f) The exchange allows the Account to divest itself of property that is susceptible to hurricane damage and high maintenance costs, and it permits the Account to acquire virtually maintenance-proof property having increased liquidity.

(g) Dr. Edwards is the only participant in the Plan whose Account is affected by the transaction and he desires that such transaction be consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 24, 2003 at 68 FR 37545.

FOR FURTHER INFORMATION CONTACT: Ms. Blessed ChukSORji, telephone (202) 693-8567. (This is not a toll-free number.)

Valley OB-GYN Clinic P.C. Employees Pension Plan (the Plan) Located in Saginaw, Michigan

[Prohibited Transaction Exemption 2003-29; Application No. D-11172]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan of \$550,000 (the Loan) by the Plan to Valley OB-GYN Realty Company (the Company), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

a. The Loan does not exceed 25% of the total assets of the Plan at any time;

b. The terms of the Loan are at least as favorable to the Plan as those terms which would exist in an arm's-length transaction with an unrelated party;

c. The Loan is secured by a building which has a fair market value, as determined by an independent, qualified appraiser, of at least 150% of the outstanding principal balance of the Loan (plus accrued but unpaid interest) throughout its duration (unless other property is pledged as collateral, as noted below in condition f.);

d. An independent, qualified fiduciary (the Independent Fiduciary) reviews the proposed terms and conditions of the Loan, and determines that the Loan is in the best interest and protective of the Plan and its participants and beneficiaries;

e. The Independent Fiduciary monitors the Loan throughout its duration and takes whatever actions are necessary to safeguard the interests of the Plan and its participants and beneficiaries; and

f. The Plan has the right, under the terms of the Loan and mortgage note related thereto, to require the Company to pledge additional property as collateral for the Loan, in the event such

property is needed to maintain full collateralization at the amount specified herein.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 24, 2003 at 68 FR 37546.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 693-8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of September, 2003.

Ivan Strasfeld,

*Director of Exemption Determinations,
Employee Benefits Security Administration,
Department of Labor.*

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¹ For purposes of this exemption, references to specific provisions of title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.