

of publicly—traded securities from non-ERISA accounts (the Accounts) of Concord Hospital, Inc. and its parent corporation, Capital Region Health Care Corporation; (2) the transfer of \$3,761,319 of publicly-traded securities from the Plan to the Accounts in August of 1994; and (3) the proposed transfer of approximately \$3.6 million from the Plan to the Accounts, provided the following conditions are satisfied: (a) The decision for the Plan to enter the subject transactions was made at the recommendation of the Plan's independent investment advisor; (b) the Plan has not paid and will not pay commissions or other fees in connection with the subject transactions; (c) the transactions involve publicly-traded securities, the fair market values of which were based upon published prices on established markets; and (d) the Plan's independent fiduciary has reviewed the transactions and has determined that the transactions were in the best interest of the Plan and protective of the rights of the participants and beneficiaries of the Plan.

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 November 3, 1995 at 60 FR 55857.

EFFECTIVE DATE: This exemption is effective July 7, 1994.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Larson Distributing Co. Profit Sharing Plan (the Plan) Located in Denver, Colorado

[Prohibited Transaction Exemption 96-4; Exemption Application No. D-10083]

Exemption

The restrictions of section 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 (1) the extension of credit to the Plan (the Loan) by Larson Distributing Co., Inc. (the Employer), the sponsor of the Plan, with respect to the Plan's investments in annuity accounts maintained with USG Annuity and Life Co. and All American Life Insurance Company (the Annuities), and (2) the Plan's potential repayment of the Loan (the Repayments); provided the following conditions are satisfied:

(A) The Plan does not pay any interest or incur any expenses with respect to the Loan;

(B) The Repayments are restricted solely to the amounts recovered by the Employer on behalf of the Plan (the Recovery Amounts) in litigation concerning the Annuities; and

(C) To the extent that Loan exceeds the total Recovery Amounts, the Repayments shall be waived.

For a more complete statement of the facts and representations supporting the exemption, refer to the notice of proposed exemption published on November 3, 1995 at 60 FR 55881.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Retirement Savings Plan and Trust for Employees of the J.H. Heafner Company, Inc. (the Plan) Located in Lincolnton, North Carolina

[Prohibited Transaction Exemption 96-5; Exemption Application No. D-10125]

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 sale of the Plan of certain limited partnerships units (the Units) in two limited partnerships to the J.H. Heafner Company, Inc. (Heafner), provided the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) the Plans pays no commissions or other expenses in connection with the transaction; and (c) the Plan receives no less than the greater of: (1) Its cost for the Units; or (2) the fair market value of the Units on the date of the sale.

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 November 3, 1995 at 60 FR 55862.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219-8881 (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 exemptions 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) These exemptions are 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 these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 25th day of January 1996.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration.*
[FR Doc. 96-1777 Filed 1-30-96; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-09627, et al.]

Proposed Exemptions; Hassan Zekavat, M.D., P.A. Money Purchase Pension Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name,

address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete

statement of the facts and representations.

Hassan Zekavat, M.D., P.A. Money Purchase Pension Plan (the Plan)
Located in Moorestown, New Jersey

[Application No. D-09627]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (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: (1) The purchase by the individual accounts (the Accounts) in the Plan of Hassan Zekavat and Poursan Zekavat (the Zekavats) from a certain limited partnership (the Partnership), a party in interest with respect to the Plan, of interests (the Interests) in the Partnership; and (2) the sale back to the Partnership of the Interests, provided that the following conditions are met:

1. The fair market value of the real property (the Property) which is the sole asset of the Partnership upon which is based the value of the Interests is established by an appraiser independent of the Plan, the Zekavats and Hassan Zekavat M.D., P.A. (the Employer);

2. The Accounts pay no more than current fair market value for the Interests in the Partnership as of the time of purchase;

3. The Interests account for no more than 25 percent of the assets of each Account as of the time of purchase;

4. The purchase of the Interests is a one-time transaction for cash;

5. An independent fiduciary approves on behalf of the Accounts the proposed purchase of the Interests from the Partnership;

6. No additional capital contributions or other contributions will be made by the Accounts to the Partnership;

7. The Partnership will only sell the Property, in any future sale of the Property, to an unrelated third party and the independent fiduciary must approve such sale;

8. Each Account receives no less than fair market value for its Interest in the Property as a result of any sale of the Property to a third party.

9. If an independent fiduciary so determines, the Partnership must repurchase the Interests for cash at a price set forth by an independent

appraiser chosen by the independent fiduciary acting on behalf of the Accounts;

10. The Partnership cannot sell the Property, admit additional partners or allow the general partners to sell their Partnership interests to a third party without the consent of the independent fiduciary;

11. The independent fiduciary receives disclosure of the annual financial report of the Partnership containing a balance sheet and a statement of changes in financial position within 90 days after the end of Partnership's taxable year; and

12. All above transactions are determined by an independent fiduciary to be in the best interests of the Accounts and the Plan.

13. The Independent Fiduciary shall approve and monitor the lease between the Partnership and the Employer; and the lease between Zekavat & Associates ("Related Party Leases").

Summary of Facts and Representations

1. The Employer is engaged in the business of a medical practice in Moorestown, New Jersey. Hassan Zekavat is the sole shareholder and the president of the Employer. He and his wife, Poursan Zekavat, are the trustees of the Plan and participants in the Plan. The Plan is a money purchase plan which had six participants. Only the Accounts in the Plan of Hassan Zekavat and Poursan Zekavat will invest in the Partnership. As of October 31, 1994, the Account balance of Hassan Zekavat was \$1,304,000 and the Account balance of Poursan Zekavat was \$297,000.

2. The Partnership is the York House East Ltd. limited partnership, a New Jersey partnership of which Hassan Zekavat is a general partner with a 63 percent capital and profits interest and Poursan Zekavat is a general partner with a 37 percent capital and profits interest.¹ In February, 1979 the Partnership purchased the Property, located in Moorestown, for \$400,000 from an unrelated party. A mortgage on the Property is held by Commerce Bank of Cherry Hill, New Jersey, a party unrelated to the Plan or the Employer. The balance remaining on the mortgage was \$289,203 as of May 1, 1994.

The Property consists of a two-story office building constructed in 1970, with 24 separate office suites. In 1994 the Property had a 91.6% occupancy rate with a yearly rental income of \$190,682. The Employer and a business

¹ Section 3(14)(G) of the Act defines the term "party in interest" with respect to a plan to include a partnership which is 50 percent or more owned by a 50 percent or more owner of an employer of employees covered by the plan.

operated by the Zekevat's son, Zekevat & Associate, lease office suites in the building under a lease agreement with yearly rent of \$22,000 and \$6,000 per year respectively, with options extending until 1998.

3. Colin L. Necky (Necky), a real estate appraiser located in Cherry Hill, prepared an appraisal (the Appraisal) on the Property dated April 18, 1994. The applicant represents that Necky is independent of the Employer and the Plan. Utilizing the cost, income and comparable sales approaches to value, Necky estimated that the Property had a fair market value of \$980,000 as of the date of the appraisal.

4. The Accounts now propose to purchase Interests in the Partnership from the Partnership and to become limited partners with a combined 37 percent capital and profits interest.² The Accounts will pay no more than current fair market value for their Interests in the Partnership as of the date of acquisition. The purchase of the Interests will be entirely for cash. The Accounts will pay no fees or commissions in regard to the proposed transaction. As limited partner, the Accounts will receive a cumulative priority return of eight percent on its initial capital contribution. That is, net cash from operations will be distributed first to the Accounts as a limited partner in payment of the priority return.

The applicant represents that the investment in the Partnership will represent less than 25 percent of the assets of each of the Accounts. The proceeds of the investment will be used to pay the existing mortgage and to fund planned capital improvements on the Property. The initial Account purchase of Interests in the Partnership, the possible sale of the Property to a third party and the sale back of Interests to the Partnership will be approved in advance by an independent fiduciary on behalf of the Accounts and the Plan.

5. The Employer has selected Michael J. Winter (Winter), an employee of the Chase Manhattan Bank, to serve as independent fiduciary for the Accounts

in regard to the acquisition, and ownership or disposition by the Accounts of the Interests in the Partnership. According to the applicant, Winter has no other relationship to the Plan or the Employer. Winter is currently employed in the real estate resources department of the Chase Manhattan Bank and represents that he has had many years of experience involving the acquisition, management and disposition of industrial, commercial and residential real estate. Winter acknowledges that he understands the duties of a fiduciary under the Act. Winter reviewed the Appraisal which discloses existing leases, vacancies and the Property's net income. In view of the potential appreciation in the value of the Property and the priority return of eight percent on the Plan's initial contribution, Winter believes that the proposed investment is in the best interests of the Plan and its participants. Winter will make certain that the Plan does not pay more than fair market value for the 37 percent Interest in the Partnership.

Winter states that he will exercise the rights of the Plan in the Partnership in the best interests of the Plan. Also, Winter will: (a) Approve the Related Party Leases and monitor them on an on going basis for the Plan; (b) approve changes to the Related Party Leases; and (c) take any and all required actions to protect the Plan in the event of default under the Related Party Leases.

6. Further, the Partnership Agreement has been amended to provide that the independent fiduciary's approval is necessary before the Partnership makes any sale of the Property to a third party. The applicant represents that this third party will be unrelated to the Plan, Zekavats or the Employer and that such sale will be at fair market value. Also, the Partnership Agreement has been amended to require the Partnership to repurchase the Accounts Interests, if, in the opinion of the independent fiduciary disposing of the Interests to the Partnership is in the best interests of the Accounts. Such "put option" will be for cash at a price set forth by an independent appraiser chosen by the independent fiduciary acting on behalf of the Plan.

The Plan will not make a decision to acquire or sell an Interest in the Partnership without the approval of the independent fiduciary. Furthermore, the Plan will not be permitted to invest additional money in the Partnership or make any additional capital contributions to the Partnership. In the event of the need of cash with respect to the Property, such cash will come from the general partner. However,

under the Partnership Agreement the Plan's percentage interest in the Partnership cannot be changed and will not be changed by virtue of the contribution by the general partner.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) An independent fiduciary has determined that the proposed purchase of the Interests is in the best interests of the Plan; (2) the fair market value of the Property will be established by a real estate appraiser independent of the Plan and the Employer; (3) the Plan will pay no more than current fair market value for the Interests; (4) the Accounts may require the Partnership to repurchase the Interests at a price set forth by an independent appraiser chosen by the independent fiduciary; (5) the sale of the Property by the Partnership or interest in the Partnership to an unrelated third party will require the consent of the independent fiduciary; and (6) the Independent Fiduciary shall approve and monitor the Related Party Leases and take all required action to protect the Plan in the event of default.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

Rose's Stores, Inc. Retirement Savings 401(k) Plan (the Retirement Savings Plan) Located in Henderson, NC

[Application No. D-10062]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) 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 (1) the past acquisition and holding by the Rose's Stores, Inc. Variable Investment Plan (the Variable Investment Plan) of subscription rights (the Subscription Rights) offered by Rose's Stores, Inc. (the Employer) to purchase shares of new common stock (the New Stock) upon the emergence of the Employer from bankruptcy; (2) the past acquisition and continued holding by the Variable Investment Plan and subsequently, the Retirement Savings Plan, of warrants (the Warrants) to purchase shares of the Employer's New

²The applicant represents that, subsequent to the Plan's investment in the Partnership, the ongoing lease between the Partnership and the Employer will not be a prohibited transaction because the Partnership is a "real estate operating company" under 29 CFR 2510.3-101(e) and, therefore, the real estate held by the Partnership does not constitute plan assets. The Department expresses no opinion herein in that regard. The applicant states that the Partnership is a real estate operating company pursuant to the regulation, because at least 50 percent of its assets are invested in real estate, the Partnership has the right to substantially participate directly in the management or development activities, and in the ordinary course of business the Partnership engages in real estate management or development.

Stock; and (3) the proposed acquisition of shares of the New Stock by the Retirement Savings Plan upon the exercise of the Warrants.

This proposed exemption is subject to the following conditions:

(a) The acquisition and holding of the Subscription Rights and the Warrants by the Variable Investment Plan occurred in connection with the Employer's bankruptcy proceeding pursuant to which all holders of the old common stock (the Old Stock) of the Employer were treated in the same manner.

(b) The Variable Investment Plan had little, if any, ability to affect the negotiation of the Employer's plan of reorganization with respect to the bankruptcy proceeding.

(c) The Subscription Rights and the Warrants were acquired automatically and without any action on the part of the Variable Investment Plan.

(d) The Variable Investment Plan did not pay any fees or commissions in connection with the receipt and holding of the Subscription Rights and the Warrants, nor will the Retirement Savings Plan pay any fees or commissions in connection with the holding and exercise of the Warrants.

(e) Any decision to exercise the Warrants now held by the Retirement Plan will be made by participants in accordance with the terms of such Plan.

EFFECTIVE DATE: If granted, this proposed exemption will be effective February 7, 1995 with respect to the acquisition and holding by the Variable Investment Plan of the Subscription Rights and April 28, 1995 with respect to the acquisition and holding by the Variable Investment Plan (and subsequently the Retirement Savings Plan) of the Warrants.

Summary of Facts and Representations

1. The Retirement Savings Plan is a defined contribution plan that provides for participant-directed investments. As of September 30, 1995, the Retirement Savings Plan had total assets of approximately \$59,025,284 and 9,155 participants. First Union National Bank of North Carolina serves as the trustee (the Trustee) of the Retirement Savings Plan but it exercises no investment discretion over the assets involved in the transactions that are described herein.

The Retirement Savings Plan was formed, effective July 1, 1995, as the result of the merger of the Variable Investment Plan and the Rose's Stores, Inc. Profit Sharing Plan (the Profit Sharing Plan). The terms of the merged plan are consistent with those of the Variable Investment Plan, which was amended to reflect the merger. The name of the merged plan was changed

to "Rose's Stores, Inc. Retirement Savings 401(k) Plan."

Both the Variable Investment Plan and the Profit Sharing Plan had common participants and shared the same bank trustee. The Subscription Rights and the Warrants that are described herein were assets of the Variable Investment Plan but they were never assets of the Profit Sharing Plan.

2. The Employer is a Delaware corporation maintaining its principal place of business in Henderson, North Carolina. The Employer operates a chain of retail stores called "Roses" in 11 southeastern states of the United States.

3. The Employer recently emerged from a reorganization proceeding under Chapter 11 of Title 11 of the United States Code. Under the bankruptcy proceeding, the First Amended Joint Plan of Reorganization of Rose's Stores, Inc. (the POR) was approved and confirmed by the U.S. Bankruptcy Court for the Eastern District of North Carolina, Raleigh Division (the Court) on December 14, 1994. A modified and Restated First Amended Joint Plan of Reorganization (the Modified POR) was confirmed by the Court on April 24, 1995 and became effective on April 28, 1995 (the Effective Date). It is represented that the Variable Investment Plan had little, if any, bargaining power in the structuring of the POR or the Modified POR.

4. Under the terms of the POR, the holders of record of the Old Stock, as of February 7, 1995, were entitled to purchase shares of New Stock at a subscription price of \$6.50 per share. Each holder received one Subscription Right for each 1.8758 shares of Old Stock owned as of February 7, 1995, provided that the aggregate amount of subscription proceeds received in connection with the Subscription Rights on or before March 31, 1995 totaled at least \$25 million.³

³ Because the Variable Investment Plan provided for participant-directed investments, one investment option offered to participants was the Company Stock Fund which was invested in shares of Old Stock. As of September 1, 1993, the Variable Investment Plan held 255,290 shares of Old Stock. At the time of the bankruptcy filing described herein, the Variable Investment Plan's Advisory Committee determined that the investment by such plan in the Old Stock would be discontinued as of September 1, 1993. However, the Advisory Committee also determined that it would permit each participant to direct, in writing, that the portion of his or her Variable Investment Plan account balance that was invested in the Company Stock Fund on September 1, 1993 remain so invested until such time as the participant directed otherwise. Participants were advised that there were risks associated with the continued investment in the Old Stock due to the Employer's reorganization proceeding. Because some participants elected to have their accounts remain invested in the Old Stock, the Variable Investment

5. To effect Subscription Rights, each holder, including participants in the Variable Investment Plan, was notified of the Subscription Rights.

Approximately 300 participants elected to exercise Subscription Rights. A check in the amount of the total subscription price that was attributable to the Subscription Rights was issued by the Variable Investment Plan's former trustee and held in escrow by State Street Bank and Trust Company (State Street), as distribution agent, pending a determination of whether a \$25 million threshold amount had been achieved. In the event that the threshold was achieved and the exercise of the Subscription Rights became effective, an amount equal to the total price attributable to the Subscription Rights would have been deducted *pro rata* from other assets in a participant's account. Because the \$25 million threshold amount was not achieved, State Street returned the check to the trustee. No adjustments were ever made to participants' accounts due to Subscription Rights nor did any affected participants pay any fees or commissions in connection with the receipt and holding of the Subscription Rights.

6. By its terms, the Modified POR entitled holders of record of the Employer's Voting Common Stock and Non-Voting Class B Stock (i.e., the Old Stock) to receive their *pro rata* share of 4,285,714 Warrants that were issued by the Employer within 30 days after the Effective Date of the Modified POR. The Employer's Old Stock was also cancelled and extinguished.

7. Each Warrant⁴ entitles the holder to purchase one share of New Stock during the period commencing on the date the Warrants were issued and ending on the seventh anniversary of the Effective Date. Under the Modified POR, the initial exercise price of the Warrants per share of New Stock is \$14.45. This price has been determined by dividing the amount of the Employer's unsecured creditors' allowed claims (and reserve disputed claims) (collectively, the Recovery Amount) as of the Effective Date by 10 million (the total number of shares of New Stock to be issued under the

Plan continued to hold shares of the Old Stock until April 28, 1995 which is the Effective Date of the Modified POR (see Representation 6).

⁴ The Warrants are treated as separate securities under the Federal securities laws. Although the Warrants were originally quoted on the NASDAQ system, they were subsequently delisted due to the absence of two market makers making a market for such securities. According to the applicant, the Warrants were relisted by the NASDAQ on October 13, 1995.

Modified POR).⁵ As reported in the Wall Street Journal on December 11, 1995, the trading prices for the Warrants on the NASDAQ were as follows: (High) $\frac{3}{16}$, (Low) $\frac{1}{8}$, (Close) $\frac{3}{16}$, (Net Change) 0.

8. The exercise price will be adjusted on each of the first three anniversaries of the Effective Date to reflect changes in the Recovery Amount on each of these three dates. The exercise price will be adjusted on the fourth, fifth and sixth anniversaries of the Effective Date to equal 105 percent, 110 percent and 115 percent, respectively, of the Recovery Amount divided by 10 million shares. The exercise price is also subject to further adjustment.

9. No participant in the Variable Investment Plan has paid any fees or commissions in connection with the holding of the Warrants and no participant in the Retirement Savings Plan will pay any fees or commissions in connection with the continued holding or exercise of the Warrants. With respect to the exercise of the Warrants, the Trustee will follow the participant's directions. Under such circumstances, a participant will exercise Warrants pursuant to procedures and forms that will be established by the Retirement Savings Plan's Advisory Committee. Such procedures may provide that the exercise price under the Warrants will be paid from that portion of the participant's account that is invested in assets other than in the Employer's securities. In the event that the fair market value of the New Stock is less than the exercise price under the Warrants, it is represented that a participant will not exercise Warrants to acquire shares of New Stock.

10. The Employer represents that it has analyzed the impact of the POR and the Modified POR on the Variable Investment Plan and the Retirement Savings Plan. In particular, the Employer has analyzed the prohibited transaction implications of the automatic exchange of the Old Stock previously held by the Variable Investment Plan for the Warrants under the Modified POR and the acquisition and holding of the Subscription Rights by the Plan under the POR. For these reasons, the Employer has concluded that these transactions have resulted in

prohibited transactions in violation of the Act. Therefore, the Employer has requested retroactive exemptive relief from the Department.⁶

11. In summary, it is represented that the transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The acquisition and holding of the Subscription Rights and the Warrants by the Variable Investment Plan occurred in connection with the Employer's bankruptcy proceeding pursuant to which all holders of the Old Stock of the Employer were treated in the same manner; (b) the Variable Investment Plan had little, if any, ability to affect the negotiation of the Employer's plans of reorganization with respect to the bankruptcy proceeding; (c) the Subscription Rights and the Warrants were acquired automatically and without any action on the part of the Variable Investment Plan; (d) the Variable Investment Plan did not pay any fees or commissions in connection with the receipt and holding of the Subscription Rights and the Warrants nor will the Retirement Savings Plan pay any fees or commissions in connection with the continued holding and exercise of the Warrants; and (e) any decision to exercise the Warrants now held by the Retirement Savings Plan will be made by participants in accordance with the terms of such plan.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons within 10 days of the publication of the notice of proposed exemption in the Federal Register. The notice will be provided to interested persons by posting and by first class mail. Such notice will inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments are due within 40 days of the publication of the proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Department of Labor, telephone (202) 219-8881. (This is not a toll-free number.)

⁶As noted above, the POR was confirmed by the Court on December 14, 1994. However, the applicant explains that there could be no assurance that the POR would become effective. The applicant also explains that it was required to meet several financial hurdles in order for the Modified POR to become effective. One of these hurdles, according to the applicant, culminated in the negotiation of a revolving credit agreement, the closing of which occurred on April 27 and 28, 1995 with unrelated lenders.

W.W. Taylor, Jr., M.D., P.C. Money Purchase Pension Plan (the Plan)
Located in Memphis, Tennessee

[Application No. D-10118]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, 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 past contribution by W.W. Taylor, M.D., P.C. (the Employer) to the Plan of certain publicly traded securities (the Securities), provided: (a) The contribution was a one-time transaction; (b) the Securities were valued at their fair market value as of the date of the contribution as determined by an independent broker; (c) no commissions were paid in connection with the transaction; and (d) the Securities represented less than 25% of the assets of the Plan at the time of the contribution.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective October 7, 1994.

Summary of Facts and Representations

1. The Plan is a defined contribution money purchase pension plan that currently has 7 participants and had assets of \$721,597 as of June 30, 1995. W.W. Taylor, M.D. (Dr. Taylor) is the trustee of the Plan.

2. On October 7, 1994, and November 2, 10, 17 and 22, 1994, the Securities were transferred from a corporate account of the Employer to an account of the Plan in order to satisfy the minimum funding requirements of the Plan for the year ending June 30, 1994. The Securities consisted of 100 shares of Sofamor/Danek Group, Inc. (S/D), valued at \$18 per share, for a total value of \$1,800; 100 shares of GTE Corporation (GTE), valued at \$30.25 per share, for a total value of \$3,025; and 470.108 shares of Putnam Corporate Asset Trust, valued at \$40.01 per share, for a total value of \$18,809.02. Thus, the total contribution of the Securities was valued at \$23,634.02. The values of the Securities were obtained from the New York Stock Exchange firm of Morgan Keegan & Company (MK).

3. The applicant represents that the contribution in kind of the Securities

⁵The applicant represents that the Old Stock and the New Stock constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act and therefore, the ownership of such stock by either the Variable Investment Plan or the Retirement Savings Plan would satisfy the requirements of section 407(a) of the Act. However, in this proposed exemption, the Department expresses no opinion on whether the requirements of section 407 have been met.

instead of cash was made in error. Ms. Nancy Cochran of Burleigh-Dunger-Cochran (BDC) in Memphis, Tennessee, an independent firm which provides pension consulting and administrative services to the Plan, has represented that the Plan and the Employer each maintain a separate brokerage account with MK. Ms. Cochran represents that prior to the contribution of the Securities, Dr. Taylor called BDC to inquire whether the contribution could be made by the transfer of funds from the Employer's brokerage account at MK to the Plan's brokerage account. BDC informed Dr. Taylor that this could be done, but since BDC did not specify that it meant that only a cash disbursement was permissible, Dr. Taylor understood the response to mean that the contribution could be paid by the transfer of either cash or marketable securities. As a result of this misunderstanding, Dr. Taylor instructed the broker at MK to transfer the Securities directly from the Employer's account to the Plan's account to satisfy a portion of the required contribution to the Plan.

4. Michael D. Uiberall, C.P.A., an independent certified public accountant with Uiberall, Lieb, Blockman, Perry, P.C. (ULBP) in Memphis, Tennessee, represents that ULBP is the certified public accounting firm for the Employer. He further represents that in the process of preparing the Employer's 1994 U. S. Corporate Income Tax Return in late January or early February, 1995, it came to ULBP's attention that the Employer had contributed the Securities to the Plan. ULBP contacted Dr. Taylor, who did not realize that this was a prohibited transaction. On the contrary, Dr. Taylor was of the opinion that this had been a permissible transaction. ULBP then contacted BDC, which followed up with Dr. Taylor in resolving this issue by filing a request for the exemption proposed herein. The applicant represents that neither the Plan nor the Employer is the subject of an investigation or enforcement action by the Department or the Internal Revenue Service.

5. The applicant represents that the transaction was in the best interest of the Plan. The Plan had already purchased shares in two of the three investments involved in the subject transaction before the erroneous transfers occurred. The Plan held 100 shares of GTE and 150 shares of S/D prior to the subject transaction. The applicant represents that had cash been contributed to the Plan, the same Securities would have been purchased by the Plan on the open market. The Securities represented approximately

3.5% of the Plan's assets as of the time of the contribution. Further, since the time of the contribution, the Securities have appreciated in value by 11.45%. The applicant also states that since no brokerage commissions were paid with respect to the transfers as they would have been had the Securities been purchased on the open market, the Plan has saved additional money by virtue of the contribution in kind.

6. In summary, the applicant represents that the subject transaction satisfies the criteria contained in section 408(a) of the Act because: (a) The contribution was a one-time transaction; (b) no commissions were paid by the Plan in connection with the transfer of the Securities; (c) the Securities were valued by MK, an independent brokerage firm, as of the dates of each transfer; (d) the transaction occurred as a result of a misunderstanding between Dr. Taylor and the pension consulting firm of BDC; and (e) when the prohibited transaction was discovered by the Employer's independent C.P.A. firm, the Employer requested the exemption proposed herein.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (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 of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction 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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional 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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 25th day of January, 1996.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration.*

Department of Labor.

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**[Prohibited Transaction Exemption 96-06;
Exemption Application No. D-09987, et al.]**

Grant of Individual Exemptions; WLI Industries, Inc. Employees' Stock Ownership Plan (the Plan), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The