U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

July 31, 2001

FLSA2001-18

Dear ***Name****,*

This is in response to your request for an opinion as to the compensability under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. 201 et seq., of the time spent in various activities by employees of your client, a hospital you have characterized as "nonprofit." These employees are nurses, some of whom perform the activities in question in hopes of obtaining and maintaining membership in the hospital's Clinical Career Advancement Program (CCAP), which results in their receipt of higher pay. You have asked if these activities may be excluded from compensable hours of work by virtue of being considered either non-compensable volunteer services or non-compensable training activity. We regret the delay in responding to your inquiry.

The activities in question involve, in part, participation in community service activities, such as taking blood pressure at a health fair, teaching child care classes to expectant parents, participating in "career day" at a local school, helping the Red Cross, or helping with the hospital picnic. The activities may be in programs sponsored either by the hospital or by community organizations.

Other activities in question involve employee attendance at patient care conferences, task force meetings, and committee meetings. These meetings may involve such subjects as consideration of which heart monitor should be used by the hospital, development of a pain management program, oversight of compliance with ethical obligations, development of quality assurance, or determining how a particular hospital department should be redesigned. Nurses who attend these conferences and meetings during their normal duty hours are compensated for this time, but you ask if nurses who come in on their days off or stay after their regular working hours for such meetings need be compensated for such time.

A final category of activities involves attendance at out of town continuing education conferences or meetings, for which the hospital pays conference admission fees and travel and lodging expenses. Both CCAP and non-CCAP participants participate in all these activities.

The compensation requirements of the FLSA apply to employees, a term defined by Section 3(c) of the Act as "any individual employed by an employer." An "employer" includes "any person acting directly or indirectly in the interest of an employer in relation to an employee." Section 3(d). And Section 3(g) states that "employ" means "to suffer or permit to work." These terms have been construed expansively in order to effectuate the broad remedial purposes of the Act.

While the definitions which trigger application of the FLSA are very broad, their reach is not unlimited. There are certain circumstances under which individuals working on the premises of another are not considered employees subject to the compensation requirements of the Act. Individuals may work for charitable, civic or religious nonprofit enterprises without expectation of compensation and be considered a "volunteer" not included in the definition of "employee" subject to the requirements of the Act. Such activities have been described as "ordinary volunteerism." Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290, 303 (1985). In determining whether a particular activity involves "ordinary volunteerism," the Department considers a variety of factors, including the nature of the entity receiving the services, the receipt by the worker (or expectation thereof) of any benefits from those for whom the services are performed, whether the activity is less than a full-time occupation, whether regular employees are displaced, whether the services are offered freely without pressure or coercion, and whether the services are of the kind typically associated with volunteer work.

It has been determined, however, that employees subject to the Act may not choose to "decline" the protections of the Act by performing activities for their employer that the employer and employees have characterized as "volunteer" services. Tony and Susan Alamo Foundation, supra, at 302. In that case, the Supreme Court was concerned that unless employees were barred on a general basis from "volunteering" to perform any services for their employers there would be potential for the coercion of uncompensated

services, to the detriment of the purposes of the Act. Id. The Court did not wish to allow the prohibition against employees waiving their protections under the Act to be circumvented by characterizing work as "volunteer" services, citing Barrentine v. Arkansas-Best Freight System, Inc., 450 U.S. 728 (1981) and Brooklyn Savings Bank v. O'Neil, 324 U.S. 697 (1945). Accordingly, where employees of a non-profit organization perform "volunteer" work of the same type that constitutes their normal work activity, we have uniformly taken the position that the "volunteer" work is compensable. This concern extends to both non-profit and for-profit employers.

You have indicated that the nurses' activities described above may be performed under the direction and control of the hospital, or in some instances under the direction and control of a civic or charitable organization such as the Red Cross. As explained above, the nurses cannot classify these activities as "volunteer" services when they are performed under the direction and control of their employer, the hospital. The time spent in such activities is compensable work time when it is subject to the control of the hospital. It would seem particularly inappropriate to consider the time spent at patient care conferences and task force meetings as non-compensable "volunteer" time when that activity seems to be so closely related to the nurses' normal duties. The time spent by the nurses in activities under the control of other entities, however, may be considered "ordinary volunteerism" if the criteria for that type of activity described above are satisfied. These conclusions apply equally to all nurses, whether or not they have chosen to participate in the CCAP.

You have also asked if the time spent at out-of-town conferences and meetings may be considered non-compensable because attendance at these functions is the result of the employee's decision to take a day off to pursue a personal interest. In light of the sponsorship by the hospital of the nurses' participation in these activities by payment of their fees and expenses, we do not believe the attendance at these functions be characterized as purely personal. A determination as to the compensability of this time would seem to depend on the application of the criteria in 29 C.F.R. 785.27 relating to the compensability of time spent in training. In particular, it is necessary to determine if attendance at the conferences trains the nurses for a new position, as opposed to providing training to enable them to perform their current duties more effectively. The former time is non-compensable, whereas the latter is compensable. Unfortunately your letter does not provide enough information for us to determine if this time is compensable or not under these criteria.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a different conclusion than the one expressed herein. This opinion is also provided on the basis that it is not sought on behalf of a client or firm which is under investigation by the Wage and Hour Division, or which is in litigation with respect to, or subject to the terms of any agreement or order applying, or requiring compliance with the provisions of the FLSA.

We trust that the above information is responsive to your inquiry.

Sincerely,

Thomas M. Markey
Acting Administrator

*Note: * The actual name(s) was removed to preserve privacy.*