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April 21, 2004

Hon. S. Randolph Sengel  
Commonwealth's Attorney  
520 King Street  
Alexandria, Virginia 22314

Dear Mr. Sengel:

This is a request for an advisory opinion as to whether my participation in activities and discussions to be set forth herein below would constitute a violation of the Comprehensive Conflict of Interests Act.

Inova Health System has announced its plans to close the 15-bed inpatient psychiatric unit at Inova Alexandria Hospital (IAH). The unit is scheduled to close on September 1, 2004. Because of the many impacts this closure may have on the residents of the City, the City Council, the Sheriff's Office, the Community Services Board, the Office of Alexandria Mental Health, Mental Retardation and Substance Abuse, and others, have been involved in many discussions about this intended closure. The City Council has appointed two members of the Council, Rob Krupicka and Paul Smedberg, to assess the impacts and to explore the possibility of keeping the unit open.

My husband, Dr. F. J. Pepper, is the Chief of the Department of Psychiatry at IAH and treats a number of patients on the psychiatric unit. Per informal conversations with you, I understand that because of his relationship to the unit and his involvement there, I would have a conflict of interest in participating in any City Council discussions about the preservation of the unit and have accordingly recused myself whenever the issue has been raised before the Council. Also, I understand that it would not be appropriate for me to lobby my colleagues.

*"Home Town of George Washington and Robert E. Lee"*

On April 23, 2004, the City Council will be visiting Alexandria Hospital for breakfast, a work session, and a tour. The tour will not include the psychiatric unit. During the work session there will be a report on the status of the psychiatric unit. Would I have a conflict of interest if I listened to the report and any discussion without comment?

Thank you for your kind attention to my request for an advisory opinion.

Sincerely,



Redella S. "Del" Pepper  
Vice Mayor



# COMMONWEALTH of VIRGINIA

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April 22, 2004

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The Honorable Redella S. Pepper  
Vice Mayor  
301 King Street, Suite 2300  
Alexandria, Virginia 22314

Dear Vice Mayor Pepper,

This will acknowledge receipt of your letter of April 21, 2004, in which you request an opinion regarding the application of the Virginia State and Local Government Conflict of Interests Act to your participation in discussions by City Council of the proposed closing of the psychiatric unit at Inova Alexandria Hospital.

The Act is intended to preclude government officials from acting upon transactions or contracts in which they have a personal interest. There are two issues here: whether or not you have a "personal interest"<sup>1</sup> in the closing of the unit, and whether the closing of the unit is a "transaction"

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<sup>1</sup> "Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$10,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$10,000 annually; (iv) ownership of real or personal property if the interest exceeds \$10,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of (i) or (iv) above.

subject to action by City Council. Although not stated in your letter, it is presumed for the purpose of this opinion that your husband receives in excess of \$10,000 annually in compensation as a result of his relationship with the psychiatric unit at the hospital. Assuming this is the case, you do have a personal interest in the matter.

It is less clear from your inquiry in what sense the closing of the psychiatric unit at the hospital may or may not be a "transaction" which is considered by City Council. For purposes of application of the Act, a transaction is any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated. Virginia Code § 2.2-3101.

Your inquiry does not set forth circumstances under which City Council might take or contemplate official action in relation to this matter. Whereas it seems clear that City Council has no direct regulatory authority over the hospital by the exercise of which it could prohibit the hospital from closing the unit, this does not, in my view, mean that Council could not take "official action" with respect to this matter. The possibility of some action by Council is implied by the fact that, as noted in your inquiry letter, "Council has appointed two members of the Council, Rob Krupicka and Paul Smedberg, to assess the impacts and to explore the possibility of keeping the unit open." If Alexandria Hospital requires approval of City Council for any matters related to its continuing operation,<sup>2</sup> and if Council determines to condition such approval upon continuing operation of a psychiatric unit at the hospital, such action by Council could constitute a "transaction" within the meaning of the Act in which you should not participate. For the sake of this opinion, I presume, out of an abundance of caution, that some official action related to this matter is contemplated by Council.

The Act provides certain requirements for exclusion from participation in transactions in which a government official has a personal interest. Virginia Code § 2.2-3112 states: "any disqualification under the provisions of this subdivision shall be recorded in the public records of the officer's or employee's governmental or advisory agency. The officer or employee shall disclose his personal interest as required by § 2.2-3114 E or § 2.2-3115 E and shall not vote or in any manner act on behalf of his agency in the transaction. The officer or employee shall be prohibited from (i) attending any portion of a closed meeting authorized by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) when the matter in which he has a personal interest is discussed and (ii) discussing the matter in which he has a personal interest with other governmental officers or employees at any time."

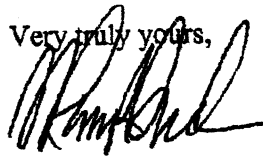
In applying these requirements to future actions by Council, it seems clear that you would be required to recuse yourself from any vote by Council on any matter pertaining to the hospital's operation of the psychiatric unit. Pursuant to the provisions of § 2.2-3112 of the Act, with regard to the meeting of April 23, 2004 about which you inquire, your attendance at that meeting would be

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<sup>2</sup> For example, City of Alexandria Budget Memo # 63, dated April 19, 2004 from City Manager Phil Sunderland indicates the City contributes \$700,000 annually to Inova Alexandria Hospital to fund inpatient indigent care. In addition, the City also contributes, through the Alexandria Health Department, funding for special consultation and diagnostic testing for Casey Clinic patients. This amount is recommended to increase in FY 2005 to \$309,000.00.

permitted so long as the meeting is open to the public. If the meeting is a closed meeting from which the public is excluded, you should not attend. If the meeting is open to the public and you do attend, you should refrain from participation in discussion of matters regarding operation of the psychiatric unit with other government officers or employees.

Very truly yours,

A handwritten signature in black ink, appearing to read "S. Randolph Sengel". The signature is fluid and cursive, with a large initial "S" and "R".

S. Randolph Sengel  
Commonwealth's Attorney