ICU Medical, Inc.

<u>VIA FACSIMILE – 203-849-9470</u>

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Mr. Tim Lucas
Director of Research and Technical Activities
File Reference 194-B
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Re: Proposed Statement of Financial Accounting Standards, Consolidated Financial

Statements: Purpose and Policy

Dear Mr. Lucas:

ICU Medical, Inc. is pleased to submit its comments on the proposed statement of Financial Accounting Standards. ICU Medical designs and manufactures disposable medical devices, and is a publicly-held.

ICU Medical opposes the issuance of the proposed Statement in its current form. It suggests, instead, that it be withdrawn. The current consolidation model, based on controlling financial interest, has worked well for almost forty years. The Board should focus its efforts on how to apply the current model to increasingly complex organizational structures.

Practice under Accounting Research Bulletin No. 51 and FASB Statement 94 has evolved over a long period of time, and its application to most situations is well defined. It uses a objective and verifiable concept of ownership as a basis for consolidation. Additional guidance related to special purpose entities, partnerships and certain not-for-profit organizations might be needed, but the existing framework is sound and there does not appear to be any demand among users for major changes of the type proposed.

The proposed Statement would replace the existing framework with a subjective evaluation of when control exists, and that will introduce many new questions that will likely cause more diversity in practice than currently exists, as well as exasperate uncertainties as to the correct application of a very basic accounting principle among prepares, users and auditors of consolidated financial statements.

If the Board determines to issue the proposed Statement in its current form, it should take extraordinary steps to publicize the practical impact of all major changes and try to discover and deal with all potential questions and implementation problems before the

Statement is issued. It should then publish detailed procedural guidance before the Statement is to become effective.

The following comments address the specific issues upon which comment was requested.

<u>Issue 1:</u> The proposed definition of "control" in paragraph 6 and the characteristics discussed in paragraphs 10 through 14 might be acceptable as a broad principle, but the principle as stated could not be implemented without the descriptive guidance that follows. That guidance has such significant flaws that a common understanding and application of the proposed Statement's definition of control will not be achieved.

<u>Issue 2:</u> ICU Medical believes that circumstance "a," a majority voting interest or the right to appoint a majority of the members of a corporation's governing body, should be the sole rebuttable presumption of control.

Circumstance "b," a large minority voting interest with no other party or organized group having a significant voting interest, does not lead to a rebuttable presumption of control. The circumstance implicitly assumes that the majority will acquiesce or continue to acquiesce to the minority's significant influence even when the majority does not perceive that it is their best interest to do so. That acquiescence can only lead to a conclusion that the minority does control if the minority's ability to control has actually and meaningfully been tested, or actual control is established through other factors.

Circumstance "c," the unilateral ability to obtain a majority voting interest or the right to appoint a majority of the members of a corporation's governing body, does not provide a rebuttable presumption of control. It is nascent control, that might or might not ever rise to actual control in the future. The unilateral ability to gain control may give the holder some significant influence, but that influence does not rise to control until and unless the actual right to control is obtained.

Circumstance "d," a sole general partner in a limited partnership where no other partner or organized group of partners has the current ability to dissolve the partnership or otherwise remove the general partner, does not lead to a rebuttable presumption of control. The "current ability" of the limited partners to dissolve the partnership or otherwise remove the general partner can only be accurately determined if it is tested, but it is an actual right held by the limited partners. To implicitly assume that the limited partners will not exercise that right if it is in their best interest to do so flies in the face of reality, unless it can convincingly be demonstrated that they will not exercise it.

There are several other specific concerns. The ability to influence or control because of a creditor arrangement (including through certain types of preferred stock) that arise or might arise on default by the debtor should not be considered control for purposes of consolidation unless the stockholder intends to retain control, since the control is otherwise temporary. This would apply primarily to circumstances "a" and "c" above.

The parent should have a financial interest, as well as a voting interest, in the subsidiary if the subsidiary is to be consolidated. This appears to be required by the ability to

"increase its benefits and limit its losses from that other entity's activities" but paragraph 14 seems to dismiss the need for a financial interest by pointing to the ability of the parent to increase its benefits through "other means." That is too simplistic, as the use of "other means" often must be balanced against the rights of other owners.

The actual consolidation procedures when control might be presumed to exist, but where there is no equity ownership (or financial interest), need to be defined. Would the entire financial position and results of operations of the entity in question be consolidated and then eliminated as a minority interest? That would not appear to be very useful.

Issue 3: A December 15, 1999 effective date is too soon. The proposed Statement would be a very significant change for some companies, and there is not sufficient time to develop implementation guidance as suggested above in time for orderly implementation. We suggest the effective date be deferred at least one year from the date proposed.

Upon implementation, restatement in the manner proposed is appropriate.

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ICU Medical would be pleased to discuss its views further with the Board or its staff.

Very truly yours,

Francis J. O'Brien

Chief Financial Officer