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To: _____

From: Transactional Attorneys Working Group Audit Team

Date: _____, 2004

Re: Focused Legal Assessment—Proposed Work Plan

The purpose of this memorandum is to describe our approach to the focused legal assessment we have been asked to perform for the _____ (“_____”). This pro bono engagement will include advising you, your board of directors, employees and agents concerning _____’s current governance practices and liability exposure and recommending specific actions to improve governance, eliminate or mitigate exposure and reduce future exposures. In addition, we will undertake such other legal matters associated with the focused legal assessment that you bring to our attention or, upon our identifying such matters, you direct us to pursue. We appreciate your confidence in us and look forward to working with you on this project.

BACKGROUND

We view the focused legal assessment as an important tool for you and your board to establish priorities for specific governance and compliance initiatives. As you will see from the proposed work plan described below, these assessments typically cover multiple areas of risk. We would be pleased to discuss with you additional areas of legal risk that you would like us to include in our work plan, should you determine that we have overlooked any matters you believe need to be addressed.

The principal use of a legal assessment for an organization’s management and board leadership is to have their organization identify areas of legal risk so they can be addressed before they become problematic or to improve upon an organization’s practices. The Pro Bono Initiative’s Transactional Attorney Working Group is conducting this legal assessment on a pro-bono basis. The scope of this legal assessment is outlined below.

WORK PLAN

Our recommended work plan for the legal assessment begins with a detailed review of _____’s governance and operations related to specific areas of legal risk _____ may face.

Our assessment will include a review of certain _____ documents, agreements with third parties, forms and filings, and policies and procedures. We will also conduct interviews with key _____ employees and agents, but only after consultation with you.

AREAS OF LEGAL RISK ASSESSMENT

We recommend that the risk assessment include, at a minimum, an examination of the following legal risk areas:

1. Taxation Compliance. The issues assessed will include:
 - (a) Sec. 501(c)(3): Overall compliance with the requirements for maintaining exempt status.
 - (b) Sec. 501(c)(3): Avoidance of inurement/private benefit.
 - (c) Sec. 4958: Intermediate sanctions compliance, including reviews of transactions with insiders, executive compensation/benefits and conflicts/dualities policy and procedure.
 - (d) Sec. 501(h): Lobbying activity.
 - (e) Sec. 511-514: Unrelated business taxable income, including reviews of Forms 990 and 990-T for compliance.
 - (f) Form 990 filings as they relate to executive compensation, particularly nonqualified deferred compensation and incentive compensation.
 - (g) Employer filings, particularly for distinctions between employees and independent contractors.
 - (h) Affiliates, if any, with emphasis on consolidation for tax planning.
 - (i) State tax filings and registrations, as applicable.
2. Employee Benefits Compliance. This component will include a general review of _____ employee benefit plans and policies. We will not conduct an in-depth assessment of these plans unless our general review suggests problems may exist and you direct us to pursue them.
3. Insurance. This component will include a general review of the organization's existing insurance coverage to determine the sufficiency thereof both in terms of types and amounts of coverage.
4. Corporate Governance and Internal Controls. This component will include a general review of the organization's articles of incorporation and bylaws as well as board minutes, training materials and policies and procedures related to internal controls and procedures.
5. Privacy and Intellectual Property. This component will include a review of the organization's policies and procedures related to privacy and protection of intellectual property.
6. Additional Assessments. Our assessment can also include an examination of the following risk areas: information technology rights and responsibilities; compliance with terms and conditions of all litigation settlements, consents decrees, and mediation results; and compliance with relevant labor and employment laws. At your direction, we will be pleased to discuss the feasibility of examining any of these risk areas.

DELIVERABLES

Our deliverables will include a single, integrated written report identifying (a) the risks considered, (b) the sources utilized, (c) the specific findings categorized by level of risk, and (d) our prioritized recommendations to _____. A real value of a legal risk assessment is (1) the assignment of a degree of legal risk to each finding and (2) a specific recommendation for each finding for mitigating or minimizing the legal risks identified. With this information, _____ should be able to prioritize its efforts to achieve full compliance or optimal risk reduction.

INITIAL DOCUMENT REQUEST LIST

To begin our assessment, we will need to review the materials listed in Exhibit A. To avoid duplicating costs, we can review the other materials at _____; we will need to have one of your trusted staff members organize the documents into the categories described above in a secure room or file. If you would prefer to copy all the documents, we can arrange to have them delivered to us.

ATTORNEY-CLIENT PRIVILEGE

Because this legal risk assessment is being undertaken at your request to enable _____ to evaluate its own governance procedures and legal risk on matters which could result in litigation, communications to us as your pro-bono legal counsel are subject to the attorney-client privilege. In addition, our Legal Risk Assessment Report is attorney work product and, therefore, is also privileged.

Inasmuch as _____ is a corporation rather than an individual, the privilege does not extend to everyone associated with _____. Under federal case law, the privilege remains intact so long as the communications are between counsel and only those (a) who would ordinarily be participants in the corporate decision-making process in the reduction of the specified risk and (b) who are then, in fact, participants in that process.

All the persons who fit this description are collectively called the “corporate control group.” Sharing communications and/or attorney work product outside the relevant corporate control group, even if only inadvertently, waives the privilege and could make such work product discoverable in litigation. This risk should be avoided at virtually all costs, unless _____ decides that its best interests are served by waiving the privilege.

Obviously, different legal risk assessment projects will have (or might have) different corporate control groups, since certain senior managers may have no role whatever in risk reduction in specified areas. We will work directly with you to identify the appropriate corporate control group for each aspect of the legal assessment. Both in our report and in any oral or written communications with _____ concerning the legal risk assessment, we will remind all involved of the importance of the privilege and of the dangers inherent in its waiver.

* * *

All of us on your project team look forward to working with you and your colleagues on this assessment. If you have any questions, please do not hesitate to call us.

Exhibit A

INITIAL DOCUMENT REQUEST LIST

1. The current articles of incorporation and corporate bylaws, including all amendments.
2. Corporate structure chart.
3. Tax exemption application (IRS Form 1023) and the determination letter from the Internal Revenue Service confirming tax-exempt status.
4. Governing board and committee minutes for the past two years.
5. All agreements with directors, officers and other insiders. This should include both written agreements and descriptions of any oral agreements between _____ and such individuals. All amendments, attachments and exhibits should be included with such agreements. All employment and independent contractor agreements with directors, officers or other insiders should be included in these materials.
6. Any documentation relating to whether _____ has made any interest-free or below market rate loans or guaranteed any loans to directors, officers, senior management, faculty, physicians or other insiders.
7. List of accounts and/or notes receivable and payable owed to or by any related entity to or by any board member, officer, employee or any of their relatives.
8. Any contracts with any third parties for billing services within the last three years.
9. All scholarship and/or grant awards or related documentation for the last three years.
10. Copies of all scholarship/grant applications and selection materials.
11. All financial and/or targeted audit reports for the last three fiscal years.
12. Current corporate compliance plan and code of conduct.
13. Conflict/duality of interest policies and questionnaires, all statements submitted pursuant thereto and all known actual or potential interested transactions for the previous three years.
14. Other policies and procedures, including: (a) non-retaliation policy; (b) voluntary disclosure; (c) codes of ethics; (d) document retention; (e) intellectual property; (f) confidentiality; and (f) other policies and procedures adopted pursuant to the corporate compliance plan.
15. Material third party contracts, including, without limitation, leases.
16. All agreements with employees and independent contractors, whether written or oral. All amendments, attachments and exhibits should be included with such agreements. Examples include:
 - (a) Employment and independent contractor agreements;

- (b) Arrangements involving loans, practice support assistance, guarantees or similar employee benefits;
 - (c) Leases and subleases;
 - (d) Supply, or joint or group purchase agreements;
 - (e) Installment sale agreements;
 - (f) Secrecy, confidentiality or non-compete agreements; and
 - (g) Service and maintenance agreements.
17. _____'s employee manual and any materials distributed to new employees, including, without limitation _____'s, policy and procedures manual, business office policy and procedures manual and staff handbook.
 18. Federal and state tax returns for the past three years, including Forms 990, 990-T and 1099.
 19. Prior IRS audit reports, private letter rulings and technical advice memoranda Annual auditor's letters to management.
 20. Audit or other reports by or to another regulatory agency.
 21. Annual financial statements for the past three years.
 22. Employee benefits plans and policies (summary plan descriptions, annual reports).
 23. All material licensing, development and consulting agreements, acquisition agreements and documents, assignments, other grants of rights, confidentiality agreements, escrow agreements, and any other agreements and material documentation relating to (i) the grant to the organization of rights in intellectual property, and (ii) the granting by the organization of rights in and to any intellectual property, and (iii) restrictions on the organization's ownership, right to use, or right to dispose of, any intellectual property.
 24. All computer, data processing and data communications equipment, and products and services agreements, including (i) any agreements relating to Internet, Intranet, extranet and other online products and services, or linking, hosting, outsourcing or other similar arrangements, (ii) information technology consulting services, (iii) hardware and software maintenance agreements and (iv) any other computer, electronic data processing and data communications agreements relating to the current operation, products and services of the organization, or its products, services and other projects in development.
 25. A schedule of all U.S. and foreign patents, registered copyrights, material unregistered copyrights, domain name registrations, trademarks, service marks, trade names, slogans, logos, brands, trade dress and similar designations of source or origin, and any registrations and applications pertaining to the foregoing, that relate to the current operation, products and services of the organization or its products and services in development, indicating for each the nature of the organization's interest thereto (e.g., owned, licensed, loaned).

26. A schedule of all (i) material off-the-shelf computer programs, databases and other software, (ii) proprietary or customized computer programs, databases and other software (indicating the creators of such software), and (iii) any and all other material information technology systems, data, content, methods, processes and other intellectual property that relate to the current operation, products and services of the organization or its products, services and other products in development, identifying and providing a brief description for each of the items (i), (ii), and (iii) above.
27. A description of the policy of the organization with respect to the protection of (i) trade secrets and proprietary information, or (ii) any property in the nature of intellectual property, including copies of any policy statements, manuals, and other documents reflecting or referring to any such policies.
28. All filings, compliance reports, deficiency notices, applications and correspondence of the organization with, all documents relating to investigations or reviews of the organization conducted by, and all approvals, authorities, determinations, rulings and orders relating to the organization of the: (a) U.S. Patent and Trademark Office; (b) U.S. Copyright Office, and (c) Federal Trade Commission, that relate to privacy or intellectual property.
29. All correspondence involving the organization relating to any claim or assertion of misappropriation or infringement (i) by the organization of intellectual property rights of a third party, or (ii) by a third party of the organization's intellectual property rights, in either case whether or not the issue has been resolved.

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