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Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Date 7/14/98 7/15/98

Surname [redacted]

Contact Person: [redacted]

Telephone Number:

In Reference to:

CP:E:EO:T:1

U 12 . 501.00-00

Date: MAY 6 1998

Employer Identification Number: [redacted]
Key District : Midstates

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

Information presented discloses that you were incorporated on [redacted] as a Domestic Non-Profit Corporation under the laws of the State of [redacted] [redacted] of your Bylaws lists your objectives and purposes as follows:

a. To promote and enhance the availability of psychiatric services within the community;

b. To increase and enhance the availability of psychiatric services, including individual, family and group psychotherapy, for the medically indigent:

c. To providing training for individuals and families in order to reduce the incidence of child abuse and to reduce the long term effects of past abuse;

d. To provide parent training and coping skills training to parents including, adolescent parents to promote appropriate parenting skills and reduce the risk of abuse;

e. To design, develop, and locate funding for and/or provide services that are needed but not yet available within the community;

[redacted]

f. To increase the availability of substance abuse treatment and education for adults, adolescents and children.

In your application, you state that you are an outpatient psychiatric treatment facility. Your professional staff includes [redacted] also serve as CEO and COO of your organization, respectively. For the services provided by [redacted] and [redacted] you indicate that both receive [redacted]% of receivables plus salary. There is no cap on the amount either of these two may receive.

Your current sources of financial support for services you provide are Medicaid, insurance companies, managed care organizations, and clients who pay their own fees. In the future, you expect sources of funding to be from foundations, private donations and contracts.

Section 501(c)(3) of the Internal Revenue Code (the Code) provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, scientific or educational purposes, provided no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(b)(1) of the Income Tax Regulations (the regulations) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes and (b) do not expressly empower the organization to engage, other than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in its articles of incorporation, be distributed for one or more exempt purposes to the federal government, or to a state or local government, for a public purpose, or by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the former organization was organized.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes if it engages primarily in activities which accomplish one or more such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities are not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(e)(1) of the regulations states that an organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization will not be considered as operated exclusively for charitable purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in Code section 501(c)(3) in its generally accepted legal sense. The promotion of health, including mental health, has long been recognized as a charitable purpose. See Restatement (Second), Trusts, sec. 368 and sec. 372; IV Scott on Trusts (3d ed. 1967), sec. 368 and sec. 372; and Rev. Rul. 69-545, 1969-2 C.B. 117.

Rev. Rul. 69-545, 1969-2 C.B. 117, acknowledges that the promotion of health is a charitable purpose within the meaning of section 501(c)(3) of the Code provided that certain other requirements are met. Rev. Rul. 69-545, in part, establishes a community benefit standard that focuses on a number of factors to determine whether a hospital operates to benefit the community as a whole rather than private interests. A significant fact in this revenue ruling is control of a tax-exempt hospital by a board of trustees composed of independent civic leaders.

Rev. Rul. 69-266, 1969-1 C.B. 151, provides that an organization formed and controlled by a doctor of medicine, hired to conduct research programs consisting of examining and treating patients who are charged the prevailing fees for services rendered, is not exempt under section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279, 283 (1945), the Court stated that "the presence of a single ... [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly ... [exempt] purposes."

To qualify for exemption under section 501(c)(3) of the Code, an organization must be organized exclusively for an exempt purpose. In your case, your Articles of Incorporation do not specifically limit your purposes to one or more purposes described in section 501(c)(3) of the Code and do not have an appropriate dissolution clause for an organization described in section 501(c)(3), as required by sections 1.501(c)(3)-1(b)(1) and 1.501(c)(3)-1(b)(4) of the regulations respectively. Furthermore, the Employee Agreements between you and the three persons who perform your professional and administrative services indicate that you pay [redacted] [redacted]% of receivables for professional services and $[redacted] per year for administrative services. [redacted] receives $[redacted] a year for professional services and [redacted]% of receivables and [redacted], receives $[redacted] per year for professional services and [redacted]% receivables for performing administrative services and there is no cap limiting the total amount either person may receive. These arrangements may lead to inurement, which is prohibited by section 1.501(c)(3)-1(c)(2) of the regulations.

Finally, your organization resembles the organization described in Rev. Rul. 69-226, supra. You appear to be controlled by a doctor and two other persons providing professional and administrative services. You charge patients the prevailing fees for services rendered and do not have a charity care policy for persons lacking insurance coverage or who are otherwise unable to pay for your services. In fact, a pamphlet that you distribute describing your activities states as follows: "[redacted]" There is no broad community benefit that results from the way in which your organization is operated. Therefore, you do not satisfy the community benefit standard of Rev. Rul. 69-545, supra.

Hence, for the reasons stated above, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code. You must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be

represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court for the United States for the District of Columbia determine that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service

1111 Constitution Avenue, N.W.
Washington, D.C. 20224

For your convenience, our fax number is If you have any questions, please contact the person whose number and telephone number are shown in the heading of this letter.

Sincerely,
(signed) Marvin Friedlander

Marvin Friedlander
Chief, Exempt Organizations
Technical Branch 1