

F. CORPORATE PRACTICE OF MEDICINE

by

Charles F. Kaiser III and Marvin Friedlander

1. Introduction

Some states--California, Texas, Ohio, Colorado, Iowa, Illinois, New York and New Jersey--preclude hospitals from employing physicians to provide out-patient services. These states legislate what is known as the corporate practice of medicine doctrine. The rationale for prohibiting employment of physicians by hospitals is derived from the concept that individual physicians should be licensed to practice medicine not corporations. See *Painless Parker v. Board of Dental Examiners*, 216 Cal. 285, 14 P.2d 67 (1932). The basic premise is the divided loyalty and impaired confidence between the interests of a corporation and the needs of a patient. In practice, states with corporate practice of medicine laws permit formation and licensure of business corporations established as professional service corporations (but not a non-profit corporation) to practice medicine but only if controlled by physicians. See *State Prohibition on Hospitals Employment of Physicians*, "Department of Health and Human Services, Office of Inspector General," Document No. OEI-01-91-00770 (November, 1991).

The problem for a tax exempt hospital that wants to operate a wholly-owned, out-patient clinic in a state with corporate practice of medicine laws is the clinic can't incorporate under the state's non-profit laws. Because professional service corporations are intended to operate as business enterprises, recognition of IRC 501(3) exemption requires a considerable number of safeguards to ensure charitable organization and operations. This article discusses exemption considerations where a hospital establishes an entity to provide out-patient physician services in states with corporate practice of medicine laws. It also provides samples of exemption determinations issued in each such state.

2. What do Corporate Practice of Medicine Laws Require?

The corporate practice of medicine laws require corporations created to employ physicians in an outpatient clinic to be incorporated under the state's professional service corporate laws. The laws also require all providers of medical services to be licensed. Often, the laws mandate that all stock in the corporation providing the services be held by a physician licensed in the state and all members of the board of directors be physicians licensed by the state. Generally, one physician holds all the stock, but New York state law indicates all physicians employed by the professional service corporation may be shareholders.

3. How is the Professional Service Corporation Established to Obtain Exemption?

A professional service corporation issues all of its stock to a physician shareholder who normally becomes the corporate director. A physician shareholder is a licensed physician who is generally employed on the administrative staff of an IRC 501(c)(3) hospital (or a tax-exempt entity within the affiliated hospital system) which acts like a parent of the professional corporation. The physician shareholder may also be an employee of the professional service corporation. The physician shareholder, the professional service corporation (hereafter Professional Corporation) and the IRC 501(c)(3) hospital (hereafter the Parent) enter into a contractual arrangement--a shareholder control agreement--whereby all structural and financial control over the Professional Corporation is transferred to the Parent. Under the shareholder control agreement, the physician shareholder becomes a controlled physician shareholder by agreeing to hold the stock for the benefit of the Parent. This type of legal arrangement is often referred to as a "captive professional corporation."

In addition to the shareholder control agreement, control is exercised by the Parent over the director(s), the controlled, physician shareholder and the Professional Corporation through the following types of documents: by-laws, articles of incorporation, employment agreement (between the controlled, physician shareholder and the Parent), trust agreement (replaces a shareholder control agreement), and a management agreement with an affiliated entity (in certain circumstances this is used by the Parent to assure further day-to-day control).

The Service requires the Parent to provide a written representation that it will exercise all of its rights in law and equity to prevent diversion or wasting of the Professional Corporation's charitable assets. This is done as an additional safeguard to any actions the state may take since the state's authority to enforce charity on a Professional Corporation is not entirely clear.

IRC 501(c)(3) status for the Professional Corporation is based on derivative exemption through an integral part analysis. The Professional Corporation is treated as performing an essential function that furthers an exclusively exempt purpose of the Parent that controls it. See Rev. Rul. 78-41, 1978-1 C.B. 148.

4. Problems Created by Corporate Practice of Medicine Laws

A. Legal Verses Beneficial Ownership of Stock

The Service is interested in receiving assurances, such as an opinion from the state attorney general, that legal ownership of the stock of a captive Professional Corporation, not beneficial ownership, is sufficient to comply with the requirements of the state laws. This gives the Service certainty that beneficial ownership of the Professional Corporation

can be held by a non-physician. In all states where the Service has issued determinations, the Service has received this information.

B. Articles of Incorporation

To be exempt under IRC 501(c)(3), an organization must be organized and operated exclusively for exempt purposes. In this regard, it must satisfy the organizational and operational tests set forth in Regs. 1.501(c)(3)-1(a). The organizational test requires that "organizational language" be included in an organization's articles of incorporation limiting its purposes to one or more exempt purposes, not expressly empowering it to engage in activities which are not in furtherance of one or more exempt purposes (other than as an insubstantial part of its activities), ensuring that its assets are dedicated to one or more exempt purposes on dissolution, etc. Often, this language when read in conjunction with the laws created to govern a Professional Corporation formed under a state's business corporation laws appears to be inconsistent. Thus, the Service is interested in receiving assurance that the organizational language is not contrary or incompatible with the language or intent of the statute(s) creating the Professional Corporation. In all states where the Service has issued determinations, the Service has received this information.

C. Does the State Attorney General Safeguard IRC 501(c)(3) Professional Corporations?

As previously noted, the Service requires the incorporating IRC 501(c)(3) entity, generally, the Parent, to make written representations it will exercise all of its rights in law and equity, which, like the attorney general, would prevent diversion or wasting of a charitable asset of the Professional Corporation.

D. All Stock of Corporation Held by Physicians

Key documents of the Professional Corporation such as articles of incorporation, by-laws, shareholder control agreements, employment agreements, and trust agreements should provide that all the rights in the stock held by the physician shareholder are transferred to the Parent.

This is a problem area because often these documents are not created with an exempt organization in mind. Frequently, in the four corners of these documents, structural and financial control still remains with the physician, the shareholder, or the director which is inconsistent with exemption. Strict attention to all sections of these documents is paramount to ensure the Parent is in control.

E. No Bifurcation of Control

Unlike a non-profit corporation, a Professional Corporation is controlled by its shareholder(s) in addition to its board of directors. Therefore, articles of incorporation and by-laws have to be closely examined to determine that no powers adverse to charity are still held by the physician shareholder(s).

F. No Community Board of Directors

In many corporate practice of medicine states, the Professional Corporation's board of directors must be comprised of licensed physicians. This is inconsistent with the community board concept which is integral to the charitable promotion of health. See the FY 1997 CPE article, Tax-Exempt Health Care Organizations Community Board and Conflicts of Interest Policy.

To solve this problem, the IRC 501(c)(3) Parent should elect or appoint physician board members who have no financial interest in the Professional Corporation. Further, the Professional Corporation's by-laws should provide the Parent has the following powers:

1. the right to amend, alter, or repeal the certificate of incorporation and by-laws.
2. the right to approve significant actions including (i) the annual operating and capital budgets and material deviations from such budgets, (ii) the sale, lease, mortgage or other transfer or encumbrance of real or certain valuable personal property, (iii) the merger, acquisition, consolidation, liquidation, or dissolution, (iv) the right to elect directors, appoint directors, establish or change the number of directors, as well as remove directors at any time with or without cause, (v) the settlements of claims and litigation, and (vi) the selection of auditors.

In some states, licensing laws prevent the Parent from electing or appointing the board. However, the Professional Corporation's board can be controlled in other ways. Either the shareholder control agreement or the employment agreement is used to control the physician-director's actions. These agreements provide that the physician director is required on any matter submitted for a vote to the director to vote only as approved in advance and in writing by the Parent.

G. Non-Profit? That is the Question

To accommodate charity, the Service has been willing to recognize exemption of Professional Corporations only in states with active corporate practice of medicine laws. Therefore, applicants seeking exemption that are formed in states without corporate practice of medicine laws should be formed under the state's non-profit corporate laws.

5. Requirements for IRC 501(c)(3) Exemption

The following information is generally required in articles of incorporation, by-laws, shareholder control agreements, and employment agreements. The placement of this information may vary from applicant to applicant. For example, some applicants use employment and management agreements instead of shareholder control agreements to bond the physician shareholder to the Parent. The important point is, whatever contractual device is used; the Parent obtains complete power to ensure that the Professional Corporation's activities always accomplish charitable purposes.

A. Shareholder Control Agreement

Generally, the Professional Corporation, the Parent, and the physician shareholder enter into a shareholder control agreement. A shareholder control agreement is a legally binding contract which regulates the actions of a holder of stock to the terms of the agreement. Under the shareholder control agreement, the physician shareholder agrees to hold and vote the stock for the benefit of the Parent. The shareholder control agreement should:

1. Recite the organizational language of IRC 501(c)(3) and impose those provisions on the operation of the Professional Corporation.
2. Recite that the physician shareholder and directors (when there is no community board) must vote each and every share of the corporation's stock only as approved in advance and in writing by the Parent.
3. Recite that the Parent has the power over the controlled physician shareholder to initiate any and all actions regarding the election and removal of the corporation's board of directors.
4. Recite that if the controlled physician shareholder's employment with the Parent is terminated for any reason, the Parent shall have the power to designate the person to whom the stock will be transferred. This is done in order to enable the Parent to appoint another of its physician employees as the owner of the corporation's stock. In conjunction with this requirement, the Parent may require the physician shareholder on the date of signing the

shareholder control agreement or employment agreement to tender all the stock endorsed in blank for transfer to the Parent to be held in escrow until the end of the shareholder's term.

5. Provide that the physician shareholder must give the Parent written notice of intent to dispose of the corporation's shares and such notice shall be deemed to be a binding offer to sell such shares to a designee of the Parent.
6. Provide that each share of stock be affixed with a legend stating it is subject to the shareholder control agreement.
7. Recite that the shareholder physician shall not transfer, encumber, or otherwise dispose of (by sale, pledge, gift, devise, or other disposition) any shares of the stock now or hereafter held of record or beneficially owned by the shareholder physician except as approved by the Parent.
8. Recite that the Professional Corporation's stock is limited to a nominal value of \$1.00 per share.

B. Board of Directors

1. If allowed under state law, all of the corporation's directors should be appointed by the Parent. Thus, the Parent's community board exercises full control over the activities of the Professional Corporation. If this is included in the shareholder control agreement, it may not be needed in the by-laws.

C. By-laws

1. If allowed under state law, the by-laws should provide all of the directors are appointed or elected by the community board of the Parent and the directors can be removed with or without cause.
2. The by-laws should prohibit any appreciation received by the shareholder upon the disposition of the stock.
3. The four corners of the by-laws should be thoroughly reviewed to determine if the physician shareholder has any remaining powers which are inconsistent with IRC 501(c)(3) status.

D. Articles of Incorporation

1. The Professional Corporation's articles of incorporation should include the organizational language of IRC 501(c)(3) and state it is operated to further the charitable purposes of the Parent, an IRC 501(c)(3) organization.
2. The articles should provide for a waiver of preemptive rights, which read as follows:

No holder of any share of any class of capital stock of the corporation shall be entitled, by preemptive or other right, to subscribe for or otherwise to purchase any share of any class of capital stock which the corporation may issue. No share of any class of capital stock of the corporation shall be subject to any such preemptive or similar right.

E. Physician Employment Agreements

Because this is a Professional Corporation, it is important for the employed physicians to understand the corporation's charitable goals. The individual physician's employment agreement should contain the following provisions:

1. The agreement states the corporation is formed by the Parent to further its IRC 501(c)(3) charitable purposes.
2. The agreement recites that all services to patients are provided on a nondiscriminatory basis as detailed in a separate charity care policy of the corporation.

F. Physician Compensation

1. The administrative file should contain information indicating who determines and approves physician compensation. It should also state if any physician employees and/or independent physicians who contract with the Professional Corporation are on the body which approves physician compensation.
2. The administrative file should contain information stating that for each physician employee and/or physician independent contractor, total compensation (base, benefit and bonus) is reasonable for the geographic locale and physician specialty. Where physicians receive incentive compensation or compensation based on revenues, the Service is concerned that such compensation programs could, if various charitable safeguards are not present, result in possible unreasonable, total compensation. Therefore, the administrative file should contain representative employment contracts (with names deleted) for each different way an incentive is calculated.

3. See this years CPE article Physician Incentive Compensation for a discussion of physician compensation.

G. Conflicts of Interest Policy

The Professional Corporation's by-laws should contain a substantial conflicts of interest policy such as the updated example contained in this years CPE article Revised Conflicts of Interest Policy.

H. Charity

The Professional Corporation should demonstrate it promotes health in a way that benefits the community through, for example, a separate charity care policy in its corporate name. The Parent's charity care policy is not enough.

I. Hospital Representations

To reduce the likelihood of private benefit through physician ownership, the Service requests the Parent to make the following written representations during the application process:

1. The Parent's shareholder control agreement with the designated physician shareholder is enforceable at law and in equity.
2. The Parent will not suffer or permit the physician shareholder (together with all successors, heirs and assigns of the physician shareholder and all subsequent designees holding the corporation's stock) to financially benefit in any manner, directly or indirectly, from the physician shareholder's legal ownership of the stock of the corporation as the designee and fiduciary of the Parent.
3. The Parent will expeditiously and vigorously enforce all its rights in the shareholder control agreement and will pursue all legal and equitable remedies to protect its interest in the assets and stock of the corporation.

6. Conclusion

When the Service reviews IRC 501(c)(3) applications for Professional Corporations, it must be careful to determine from all documents submitted that charitable safeguards are in place. Because each state's requirements under the corporate practice of medicine laws differ in subtle ways, the Service must work with the applicants to ensure the necessary language is included and is enforceable so that, in the end, structural and financial control shifts to the Parent.

To aid in determining Service application processing requirements in states with corporate practice of medicine laws, this article includes exhibits of the relevant portions of those favorable determinations.

EXHIBIT A

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Contact Person: C. Kaiser, Esq.

Telephone Number: (202) 622-6487

Marietta, OH 45750-9990

In Reference to: CP:E:EO:T:1

Date:

Employer Identification Number:

Key District: Cincinnati, OH

Accounting Period Ending: September 30

Foundation Status Classification: 509(a)(3)

Form 990 Required: Yes

Dear Applicant:

This is in regard to your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code ("Code").

You were formed by a public charity described in sections 501(c)(3) and 170(b)(1)(A)(iii) of the Code. You were created to recruit and employ physicians to service the medical needs of the people in community. You are organized as a for-profit professional corporation. You serve as the physicians' services component of integrated delivery system.

Board of Directors:

You have a five person Board of Trustees. Your Board is comprised of two members of the Board of Trustees of and three individuals who are administrative personnel of Your Code of Regulations provides that all Trustees are to be appointed by . Thus, community Board of Trustees exercises full control over your activities.

Corporate Practice of Medicine:

You were incorporated under the State of Ohio's for-profit professional corporation act, Ohio Revised Code ("O.R.C.") at Chapter 1785. Chapter 1785 provides that a clinic must be created as a for-profit professional corporation ("PC") which is physician controlled and owned, which requirement was confirmed in an opinion of the state's Attorney General.

Articles of Incorporation:

Your Articles of Incorporation include specific language to limit your activities to one or more exempt purposes sufficient to satisfy the organizational test of section 501(c)(3) of the Code. The opinion of the state's Attorney General stated that such language does not violate the state's professional corporation act. Your Articles also specify that your relationship with _____ is that you are operated exclusively for charitable purposes within the meaning of section 501(c)(3) Code, including for the purpose of furthering the charitable purposes of _____, an organization exempt from federal taxation under section 501(c)(3) of the Code.

Your Articles contain a conflicts of interest policy identifying situations where conflicts might arise. Your policy insures that your Trustees will exercise their powers in good faith and in your best interests.

Your Articles prohibit the receipt by your shareholders of any appreciation upon the disposition of their stock.

Code of Regulations:

Your Code of Regulations provides the following:

1. At all times, no more than 20 percent of your Trustees may be physicians who are employed by you or who directly or indirectly receive compensation from you for providing clinical services.
2. Your Board of Trustees has the power to delegate Board powers to committees comprised of physicians that have authority over the clinical aspects of your activities.
3. Your Board of Trustees is appointed by _____. Thus, _____ community Board of Trustees exercises full control over your activities.

Stockholder Control Agreement:

You are controlled by and for the benefit of _____. This has been assured by issuing all of your stock to _____, a licensed physician, who is a member of _____ administrative staff, whereupon you, _____, and _____ entered into a Shareholder Control Agreement ("SCA"). Under the SCA, _____ agreed to hold your stock in a fiduciary capacity for _____.

the benefit of This arrangement is legal in the State of Ohio because the Ohio Attorney General rendered an opinion that legal ownership of the stock of a PC, not beneficial ownership, is sufficient to comply with the requirements of O.R.C. at Chapter 1785.

The following provisions are contained in the SCA:

1. The recital of the section 501(c)(3) organizational language and the imposition of these restrictions on your operations.
2. The controlled physician-shareholder is required to vote each and every share of your stock on any matter submitted for a vote to your shareholders, only as approved in advance and in writing by . Thus, has the power to require the controlled physician-shareholder to initiate any and all actions regarding the election and removal of your Board of Trustees.
3. If the controlled physician-shareholder's employment with is terminated for any reason, shall have the power to designate the person to whom your stock will be transferred.
4. Each share of your stock is affixed with a legend stating it is subject to the SCA.
5. The SCA contains a mandatory right of first refusal providing that the shareholder-physician shall not transfer, encumber, or otherwise dispose of (by sale, pledge, gift, devise, or other disposition) any of your shares of capital stock now or hereafter held of record or beneficially owned by the shareholder-physician.
6. The SCA provides that the physician-shareholder must first give written notice of intent to dispose of your shares, and such notice is deemed a binding offer to sell such shares to a designee of .
7. The SCA provides that any offer for the sale of your stock shall only be made to and accepted by a designee of .

8. The SCA limits the price of your stock to a nominal \$1.00 per share.

Physician Employment Agreements:

Your physician employment agreements ("PEA") state that you are formed by _____ to further its section 501(c)(3) charitable purposes. Like _____, you will participate in Medicare and Medicaid. The PEA states that services will be provided to patients without discrimination as to ability to pay.

_____ directly negotiates the compensation arrangements with your employee physicians. The physicians' salaries are based on comparable compensation earned by physicians practicing in the community. _____ employs third party surveys to determine the normal range of salaries for physicians in their given specialties. The compensation includes a cap or ceiling based upon reasonable compensation for the specialty.

The PEA provides that the physician receives a base salary plus a productivity bonus. The bonus is calculated on total revenues generated by the physician and any nurse practitioners working directly under the physician's supervision. In determining the amount of the bonus the following factors are considered:

1. Quality of care being provided by the physician to the patient is not diminished during the period covered by the bonus.
2. The total compensation, the base, bonus, and other benefits is reasonable within the meaning of section 501(c)(3) of the Code.
3. Eligibility to receive incentive compensation is based on certain community benefit criteria such as the number of Medicare and Medicaid patients treated, number of charity care patients treated, participation in community education and scientific programs, plus traditional factors such as efficiency, quality of care, intensity of services required, patient satisfaction, hours worked and level of experience and expertise required.

Fees:

Your fee schedule is formally adopted by your Board of Trustees. However, through its management agreement with you establishes the fee schedule for the employed physicians. The fee schedule is based on the usual, customary, and reasonable charges for medical services in the community.

Charity:

You have submitted budgets listing allowances for charity care, Medicaid, Medicare, and information stating the level of such care. You have adopted a separate charity care policy. You have obtained a provider number in order to provide services to Medicare and Medicaid patients.

Representations:

has made the following written representations:

1. SCA with the designated physician-shareholder is enforceable at law and in equity.
2. will not suffer or permit the physician-shareholder (together with all successors, heirs and assigns of the physician-shareholder and all subsequent designees holding your stock) to financially benefit in any manner, directly or indirectly, from the physician-shareholder's legal ownership of your stock as designee and fiduciary.
3. will expeditiously and vigorously enforce all its rights in the SCA and will pursue all legal and equitable remedies to protect its interest in your assets and stock.

Your Code of Regulations provides that no more than 20 percent of your Trustees may be physicians who are employed by you or directly or indirectly receive compensation from you for providing clinical services. Together with all the facts and circumstances you have submitted this limitation on representation on your Board of Trustees of "interested physicians" demonstrates that you are not organized for the benefit of the physicians you employ.

Although you are organized as a for-profit professional corporation in order to comply with the requirements of state

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law, you are in fact controlled by, operated for the benefit of, and provide an essential service for I, an organization recognized as exempt under section 501(c)(3) of the Code. This is evident by the facts surrounding your formation and the controls imposed upon your shareholders by the SCA. As a controlled organization of , you operate as an integral part of the hospital and its integrated delivery system. Because you provide an essential service for ... and are in effect controlled by I, your operations further its exempt purposes. In reaching this conclusion we are relying, in part, on the fact that retains such close supervision and control over your organization and operations that you function as an integral part of .

Accordingly, based on the information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3).

This ruling is conditioned upon your not violating the federal anti-kickback restrictions contained in section 1128(b) of the Social Security Act, 42 U.S.C. sections 1320a-7b(b)(1) and (2), which prohibit the payment of remuneration in return for the referral of Medicare or Medicaid patients.

We have further determined that you are not a private foundation within the meaning of section 509(a) of the Code, because you are an organization described in the section(s) indicated above.

If your sources of support, or your purposes, character, or method of operation change, please let your key district know so that office can consider the effect of the change on your exempt status. In the case of an amendment to your organizational document or bylaws, please send a copy of the amended document or bylaws to your key district. Also, you should inform your key district office of all changes in your name or address.

As of January 1, 1984, you are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more you pay to each of your employees during a calendar year. You are not liable for the tax imposed under the Federal Unemployment Tax Act.

Since you are not a private foundation, you are not subject to the excise taxes under Chapter 42 of the Code. However, you are not automatically exempt from other federal excise taxes. If you have any questions about excise, employment, or other federal taxes, please contact your key district office.

EXHIBIT B

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: C. Kaiser, Esq.

Telephone Number: (202) 622-6487

Houston,, TX 77092

Refer Reply to: CP:E:EO:T-1

Date:

Employer Identification Number:
Key District: Midstates
Accounting Period Ending: June 30
Foundation Status Classification: 509(a)(3)
Form 990 Required: Yes

Dear Applicant:

This is in regard to your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code ("Code").

You are a Texas non-profit corporation created to provide out-patient clinical services in your community. You were incorporated by _____, a section 501(c)(3) organization. _____ operates various hospitals and a number of long term health centers in 6 states. _____ is your sole corporate member.

You were formed to provide medical services at various SCH hospitals and primary care sites which are being created or purchased. At the present time, you employ 9 primary care physicians who work in conjunction with _____, an affiliated health care entity. In the future, your activities will expand to include scientific research, medical education through grants and scholarships, and general education on health.

Acquisition of Practices

You state that you will purchase medical practice assets in compliance with all state and federal laws, including Medicare fraud and abuse statutes, and that such assets purchased will be at or below fair market value based on written appraisals.

Charity

You have adopted a policy of nondiscrimination with respect to Medicare and Medicaid patients. In addition, you are committed to provide a level of medical care, consistent with your available resources, on an emergency and non-emergency basis

to persons who lack the financial resources to pay for all or a portion of such care.

Governance

Because of Texas corporate practice of medicine laws you must be governed by a Board comprised of licensed physicians who are actively engaged in the practice of medicine. However, for you to meet and retain exemption through its community Board and as your sole member is required, by the Service, to reserve certain significant structural and financial powers. powers which are included in your By-laws are as follows:

1. The right to amend, alter, or repeal your Certificate of Incorporation and By-laws.
2. The right to approve significant actions including (i) the annual operating and capital budgets and material (\$5,000) deviations from such budgets, (ii) the sale, lease, mortgage or other transfer or encumbrance of real (with no monetary limits) or personal property (starting at \$5,000), (iii) the merger, acquisition, consolidation, liquidation, or dissolution of your corporation, (iv) the giving and seeking of grants, (v) physician compensation agreements including benefits and incentives, (vi) the right to elect Directors, appoint Directors, establish or change the number of Directors, as well as remove Directors at any time with or without cause, (vii) the settlements of claims and litigation, and (viii) the selection of your auditors.

Fees

Fees for medical services are established by you subject to approval by

Compensation

Your Board employs a "Network Board Physician Compensation Committee" for the purpose of establishing, evaluating and administering physician compensation. The Committee consists of at least one senior management representative, one representative of senior management at each of affiliated entities where your employed physicians maintain privileges, and other non-physician representatives as may be selected by your President. The Committee is responsible for evaluating and implementing appropriate compensation levels based on national surveys. You state that all compensation including base, benefits and incentives will be at fair market value and be

comparable to compensation received by other similar physicians in the geographical area.

Your physician employment contracts which contain incentive compensation will include caps. In addition, contracts involving incentives based on revenues will be based on revenues generated by your physician and/or medical personnel working directly under his/her supervision. You will be careful in any compensation arrangement to have the criteria or standards measured so they do not penalize physicians who perform charitable services that generate little or no revenues. Your compensation program is structured to recognize the charitable or community aspects of the physician's employment with an exempt health care provider, such as serving Medicaid or charity care patients or providing educational programs.

Conflicts of Interest Policy

You have amended your By-laws to include a substantive conflicts of interest policy.

Representations

makes the following written representations:

- a. rights as enumerated in your By-laws and Certificate of Incorporation are enforceable at law and in equity;
- b. will not suffer or permit the physician Directors or officers (together with all successors and all subsequent designees) to financially benefit in any manner (except for reasonable compensation for services performed or reimbursement of monies used for your benefit), directly or indirectly, because of their relationship with you; and
- c. will expeditiously and vigorously enforce all its rights in your organization and will pursue all legal and equitable remedies to protect its interest in your assets.

In order to comply with the requirements of Texas State law, your Board of Directors is comprised of all physicians. However, you are, in fact, controlled by, operated for the benefit of, and provide an essential service for , an affiliated organization recognized as exempt under section 501(c)(3) of the Code. This is evident by the facts surrounding your formation and operation. As a controlled organization, you operate as an integral part of integrated delivery system. Because you provide an

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essential service for and are subject to control, your operations further its exempt purposes.

Accordingly, based on the information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3).

This ruling is conditioned upon your not violating the federal anti-kickback restrictions contained in section 1128(b) of the Social Security Act, 42 U.S.C. sections 1320a-7b(b)(1) and (2), which prohibit the payment of remuneration in return for the referral of Medicare or Medicaid patients.

We have further determined that you are not a private foundation within the meaning of section 509(a) of the Code, because you are an organization described in the section(s) indicated above.

If your sources of support, or your purposes, character, or method of operation change, please let your key district know so that office can consider the effect of the change on your exempt status. In the case of an amendment to your organizational document or bylaws, please send a copy of the amended document or bylaws to your key district. Also, you should inform your key district office of all changes in your name or address.

As of January 1, 1984, you are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more you pay to each of your employees during a calendar year. You are not liable for the tax imposed under the Federal Unemployment Tax Act.

Since you are not a private foundation, you are not subject to the excise taxes under Chapter 42 of the Code. However, you are not automatically exempt from other federal excise taxes. If you have any questions about excise, employment, or other federal taxes, please contact your key district office.

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of Code sections 2055, 2106, and 2522.

Donors (including private foundations) may rely on this ruling unless the Internal Revenue Service publishes notice to

EXHIBIT C

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number: C. Kaiser, Esq.

(202) 622-6487

Refer Reply to:

CP:E:EO:T:1

Date:

Poughkeepsie, NY 12601

Employer Identification Number:

Key District: Northeast

Accounting Period Ending: December 31

Foundation Status Classification: 509(a)(1)&170(b)(1)(A)(iii)

Form 990 Required: Yes

Dear Applicant:

This is in regard to your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code (Code).

You were formed by _____ and _____, public charities described in sections 501(c)(3) and 170(b)(1)(A)(iii) of the Code. Both _____ and _____ have Boards of Directors comprised primarily of civic leaders. You were created to employ physicians to service the medical needs of the people in your community. You operate clinics and thereby serve as the primary care component of _____ and _____ integrated delivery system.

Board of Directors

You currently have a one person Board of Directors. Your By-laws provide that your Board can only be comprised of individuals who (1) are authorized by law to practice medicine in the State of New York, (2) are or have been engaged in the practice of medicine in your corporation, and (3) are members of the medical staff of either _____ or _____

Corporate Practice of Medicine

New York state law dictates that you can only incorporate as a for-profit professional corporation. This is confirmed by a stipulation in an advisory opinion of the State of New York Commissioner of Taxation and Finance, Advisory Opinion - Petition No. C891003B, TSB-A-90(3)C, dated January 26, 1990 (1990 New York Tax Lexis 97).

Articles of Incorporation

Your Articles of Incorporation include specific language to limit your activities to one or more exempt purposes to comport with the "organizational test" of section 501(c)(3) of the Code. Your Articles also specify that you are operated to further the charitable purposes of _____ and _____, and prohibit the receipt by your shareholders of any dividends and appreciation upon the disposition of their stock.

By-laws

Your By-laws provide the following:

1. Article II, section 12, provides that shares in your corporation may only be issued to individuals who subscribe to the Shareholder Agreement (SA) adopted by the Board.
2. Article III, section 3, provides that shareholders elect your Directors.
3. Article III, section 7, provides that any or all of your Directors may be removed with or without cause by the vote of your shareholders.

Your By-laws also contain a conflicts of interest policy identifying procedures to be employed when a possible financial conflict arises. Your policy helps to insure that your Directors will exercise their powers in good faith and in your best interests.

Shareholder Agreement

The SA is between _____, the physician-shareholder, and you. _____ is an employee of _____. There will be a second SA between a physician employee of _____ and you. The following provisions are contained in the current SA (and will be contained in any future SAs):

1. The physician-shareholder agrees to operate you exclusively for the fulfillment of section 501(c)(3) charitable purposes.
2. If the physician-shareholder is disqualified or dies, _____ or _____ as the case may be, shall have the power to designate the

person to whom your stock will be transferred.

3. Each share of your stock is affixed with a legend stating it is subject to an SA between the physician-shareholder and _____ or _____ as the case may be.
4. The physician-shareholder and you shall not transfer, sell, encumber, pledge, or otherwise dispose of any of your shares of capital stock now or hereafter held of record except as provided in the SA.
5. The SA provides that the physician-shareholder must vote his share in you to elect specifically named individuals selected by _____ or _____ who will be your only Directors.
6. The SA instructs the Director to elect specifically named individuals selected by _____ or _____ who will be your officers.
7. Neither the physician-shareholder nor you shall issue or sell any of your respective unpaid, unissued or treasury stock to anyone without your resolution passed by unanimous consent in writing of the stockholders.
8. The SA limits the price of your stock to a nominal \$1.00 per share.
9. The SA cannot be terminated or amended without the prior written consent of _____ and _____.
10. The covenants in the SA bind all respective heirs, executors, administrators, successor and assigns of the parties to this agreement. Further, all covenants and obligations contained in the original SA are binding upon any successor physician-shareholders.

Physician Employment Agreement

You are indirectly controlled by _____ and _____ Control, by _____ and _____ is assured through the specific terms contained in the Employment Agreements (EAs) between the physician-shareholder and both hospitals. Currently, there is an EA between _____ and _____. There will be a

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second EA between another physician and . Under the EA, all of your stock is issued to a licensed physician who becomes a shareholder and because of the EA also becomes a employee; whereupon, under the terms of the EA, you and the physician(s) must enter into an SA. Thus, under the terms of the EA and SA, or any other successor physician-shareholder(s) agrees basically to hold your stock in a fiduciary capacity for the benefit of and . This type of arrangement is legal in the State of New York and you have submitted legal authority to that effect.

The following provisions binding the physician-shareholder employee are contained in the current EA (and will be contained in any future EAs):

1. He will provide administrative services for you, provide services requested by , practice medicine for you and will exert his best efforts to cause your physicians to carry out your charitable mission.
2. He will insure you are organized and operated exclusively for the section 501(c)(3) charitable purposes of promoting health.
3. He will insure you will seek tax exemption under section 501(c)(3) of the Code.
4. He will cause each recommendation of the Primary Care Oversight and Compensation Committee (Primary Committee) (described on page 6 of this letter) to be promptly considered by your Board, and no recommendation of the Primary Committee shall be effective unless adopted by your Board. However, he agrees to give 30 days notice prior to refusing to act upon or vote in favor of a resolution contrary to a recommendation of the Primary Committee.
5. can terminate his employment at any time upon 30 days notice, whereupon he is to resign as your officer and Director, and transfer his stock to another physician designated by (or , as the case may be) for the sum of \$1.00. To secure his performance of this provision, the physician-shareholder shall on the date of signing the EA tender all your stock, duly endorsed in blank for transfer to to be held until the end of his term.
6. No initial transfer of stock shall be made unless the physician-shareholder enters into an EA with (or

St. Francis, as the case may be) containing the terms described herein.

7. Except as provided in the EA, the physician-shareholder is prohibited from transferring, encumbering, or pledging his or any of your unpaid, unissued or treasury stock to any third party.
8. The physician-shareholder will provide emergency room services at _____ and will provide indigent and Medicaid services to patients at all of your clinic locations.
9. The physician-shareholder will comply with the terms of the SA and will not terminate or enter into any amendments to the SA without the prior written consent of _____ or _____.
10. The physician shareholder irrevocably waives any right to dividends or distributions from you, and the only payments he can receive from you are reasonable compensation for services rendered as an employee.
11. The physician-shareholder shall give _____ three months notice prior to any vote or consent to any one or more of the following actions affecting you:
 - a. amendment of the SA;
 - b. dissolution, merger, consolidation or other corporate reorganization;
 - c. voluntary bankruptcy or assignment for the benefit of creditors;
 - d. commencement of any litigation;
 - e. employment, engagement, or discharge of a physician;
 - f. sale or lease of real property;
 - g. borrowing or lending of money; and
 - h. entering into any agreement with any of your physician employees, or renewal, termination or amendment of any such agreement.

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Primary Care Oversight and Compensation Committee

The Primary Committee established by _____ and _____ is comprised of at least 6 members. One half of the members are appointed by _____ and one half by _____. It contains individuals broadly representative of the public and the communities served. Board members of _____ and _____ are eligible to serve. Practicing physicians affiliated with your corporation, as well as officers, department heads and other employees, cannot constitute a majority of the Primary Committee.

The Primary Committee makes the following recommendations to your Directors:

1. compensation for all physician-employees;
2. your budget;
3. provision of management, administrative, and billing services;
4. establishment of additional practice locations;
5. the level and quality of community services provided by physician-employees;
6. decisions involving cost efficient operations;
7. long range planning; and
8. actions required for you to operate according to your charitable mission and to maintain your status under section 501(c)(3).

Recommendations of the Primary Committee require adoption by your Board of Directors. However, your shareholder-Director agrees to provide his employer, _____, with 30 days notice prior to refusing to act upon or adopting a resolution contrary to a recommendation of the Primary Committee. Because the physician-shareholder tendered his stock, duly endorsed in blank for transfer to _____ until the end of his term he is ultimately controlled by _____ (and/or _____, as the case may be) because of the Director's employment agreement which shifts control of your corporation to _____. Thus, _____ and _____ community Board of Directors, through its control of the Primary Committee, exercises additional important control over your charitable activities.

Fees

Your fee schedule is formally adopted by the Primary Committee which is independent. The fee schedule is based on the usual, customary, and reasonable charges for medical services in your community.

Charity

You have adopted a separate charity care policy. You provide nondiscriminatory services to Medicare beneficiaries and Medicaid recipients. You also provide services to the indigent and have a sliding fee scale for patients who are unable to pay their charges in full. Your Medicare and Medicaid policy includes access to all covered inpatient, outpatient, and diagnostic services that are available to non-Medicare and Medicaid patients. You participate in Medicaid under fee-for-service arrangements at all of your clinic locations as well as serving Medicaid patients enrolled in managed care plans.

Representations

and have made the following written representations:

1. The EA with the designated physician-shareholder is enforceable at law and in equity.
2. and will not suffer or permit a physician-shareholder (together with all successors, heirs and assigns of the physician-shareholder and all subsequent designees holding your stock) to financially benefit in any manner, directly or indirectly, from the physician-shareholder's legal ownership of your stock as or designee and fiduciary.
3. and will expeditiously and vigorously enforce all their rights in the EA and will pursue all legal and equitable remedies to protect their interests in your assets and stock.

Rationale

The information you submitted establishes that because of New York state corporate practice of medicine laws you cannot

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accomplish your exempt purpose of providing outpatient clinical services to the community other than as a for-profit professional corporation. However, you meet the requirements of federal tax exemption because your structural and financial components are, in fact, controlled by the Primary Committee comprised of independent civic members chosen equally by _____ and _____, both organizations recognized as exempt under section 501(c)(3) of the Code. In essence, through the terms of the By-laws, EA, and SA the Primary Committee acts as your community Board of Directors and _____ and _____ retain ultimate control over your activities and finances.

Further, you operate as a direct provider of medical services to your community. You provide nondiscriminatory services to Medicare beneficiaries and Medicaid recipients. You also provide services to the indigent and have a sliding fee scale for patients who are unable to pay their charges in full. Your Medicare and Medicaid policy includes access to all covered inpatient, outpatient, and diagnostic services that are available to non-Medicare and Medicaid patients. Therefore, your operations further a section 501(c)(3) charitable purpose.

Accordingly, based on the information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3).

You have represented that all assets acquired and all rental fees you pay under any lease will be at or below fair market value and will be the result of arm's-length negotiations. We are not, however, making a determination that the purchase or lease of any property is, in fact, at fair market value.

This ruling is conditioned upon your not violating the federal anti-kickback restrictions contained in section 1128(b) of the Social Security Act, 42 U.S.C. sections 1320a-7b(b)(1) and (2), which prohibit the payment of remuneration in return for the referral of Medicare or Medicaid patients.

We have further determined that you are not a private foundation within the meaning of section 509(a) of the Code, because you are an organization described in the section(s) indicated above.

If your sources of support, or your purposes, character, or method of operation change, please let your key district know so that office can consider the effect of the change on your exempt status. In the case of an amendment to your organizational

EXHIBIT D

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: C. Kaiser, Esq.

Telephone Number: (202) 622-6487

Binghamton, NY 13903

Refer Reply to: CP:E:EO:T:1

Date:

Employer Identification Number:
Key District: Northeast (Brooklyn)
Accounting Period Ending: December 31
Foundation Status Classification: 509(a)(3)
Form 990 Required: Yes

Dear Applicant:

This is in regard to your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code (Code).

You were formed by _____ a public charity described in sections 501(c)(3) and 170(b)(1)(A)(iii) of the Code. _____ is the sole voting member of several other not-for-profit corporations all of which are public charities, including _____

_____, your co-applicant, each of which has a Board of Directors comprised primarily of civic leaders.

You were created to employ physicians to service the medical needs of the people in your community. You operate your own medical facilities, you staff hospital clinics for _____ Hospitals, and you provide clinical, administrative, and teaching support to the hospitals within the _____ system. Therefore, you serve as the physician component of _____ integrated delivery system.

Board of Directors

You currently have a six person Board of Directors. Your Bylaws provide that your Board can only be comprised of individuals who (1) are authorized by law to practice medicine in the State of New York, (2) are or have been engaged in the practice of medicine in your corporation, and (3) are members of the medical staff of UHS Hospitals

Corporate Practice of Medicine

New York state law dictates that you can only incorporate as a for-profit professional corporation. This is confirmed by a

stipulation in an advisory opinion of the State of New York Commissioner of Taxation and Finance, Advisory Opinion - Petition No. C891003B, TSB-A-90(3)C, dated January 26, 1990 (1990 New York Tax Lexis 97).

In an earlier dictated determination letter, the Service recognized a New York clinic as exempt under section 501(c)(3) of the Code. During the application process, the Service requested that you make amendments to certain documents to be in conformity with the previous favorable determination. You submitted information indicating that these changes would not comply with written directions you received during the course of your incorporation from the New York State Health Department's Office of Counsel. Therefore, you have adopted a modified operating structure with the characteristics described below.

Certificate of Incorporation

Your Certificate of Incorporation includes specific language to limit your activities to one or more exempt purposes to comport with the organizational test of section 501(c)(3) of the Code (Article IX). Your Certificate of Incorporation provides the following:

1. Paragraph Second states that you have been organized to practice the profession of medicine and provides that these services will be available to all persons without regard to race, color, creed, sex, age, or ability to pay for the services.
2. Subparagraph Second(d) states that you will support the post-graduate training programs of Hospitals and the training of medical students of the at
3. Subparagraph Second(e) states that you will engage in medical research as a means of seeking to alleviate human suffering.
4. Subparagraph Second(f) states that you will support UHS Hospitals by providing physicians to participate in its administration, patient education, quality assurance, and utilization review activities.
5. Paragraph Ten prohibits you from engaging in any activity not permitted for an exempt organization.
6. Paragraph Eleven provides that no substantial part of your activities shall consist of lobbying and prohibits your participation in any political activity.

7. Paragraph Twelve provides that shareholders shall not be entitled to receive dividends or distributions and prohibits any part of your net earnings from inuring to the benefit of any individual.

8. Paragraph Thirteen provides that in the event of your dissolution, any remaining assets shall be distributed to UHS, UHS Hospitals, the UHS Foundation, or other exempt organizations.

Bylaws

Your Bylaws provide the following:

1. Article III, Section 3.2, provides that shares in your corporation may only be issued to individuals who subscribe to the Shareholder Agreement (SA) adopted by the Board.

2. Article V, Section 5.1, provides that shareholders elect your Directors.

3. Article V, Section 5.2, provides that any or all of your Directors may be removed with or without cause by the vote of your shareholders.

4. The Directors have adopted, as part of your Bylaws, a preamble declaring the corporation's intention to support the charitable purposes of Hospitals and the integrated delivery system.

5. Article X, Section 10.1, provides at the time a shareholder relinquishes his/her stock, the shareholder may only transfer his/her shares to the corporation and will receive an amount not in excess of the par value of the stock (\$1.00), that being the amount he/she paid for the stock.

6. Article XIV, Section 14.2, of your Bylaws provides that, on an annual basis, a study will be conducted by a nationally recognized accounting firm to review the reasonableness of the compensation received by your physicians. The results of these studies are reported to the Board of Directors of your co-applicant, in furtherance of its commitment to assure that you continue to operate in a manner consistent with your tax exempt status.

7. Article XV, Section 15.1, expands upon the provisions of your Certificate of Incorporation which prohibits the distribution of dividends as profits to shareholders, states that no part of your net earnings will inure to the benefit of any individual and prohibits the granting of pecuniary benefits of

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any kind to any shareholder, Director, officer, or employee except reasonable compensation and reimbursement for reasonable expenses incurred in effecting the corporate purposes.

8. Article XVII states that each Director, officer, and shareholder agrees to be bound by the Certificate of Incorporation, the Shareholder Agreement the Service Agreement, and Bylaws and requires such person to resign his position if he is a party or witness in any legal challenge to the enforceability of such provisions.

9. Article XVIII requires that any amendment to the Bylaws, which in the opinion of _____ counsel may jeopardize your status as an exempt organization, must be approved in advance by the UHS Board of Directors.

Your Board has adopted a conflicts of interest policy identifying procedures to be employed when a possible financial conflict arises. Your policy helps to insure that your Directors will exercise their powers in good faith and in your best interests.

Service Agreement

A long term Service Agreement (MA) exists between you and _____, your co-applicant, which provides that _____ will be the exclusive provider of a wide range of management and support services for you. Under the terms of the MA, _____ will own all tangible assets which are required for your operation and will employ all staff used by you except licensed professionals who, under New York law, must be employed by a professional organization.

To assure your tax exempt status, you have also agreed that your co-applicant's (_____ s) Board will:

1. approve all physician compensation arrangements;
2. approve a joint operating budget for you and _____
3. approve the establishment of new practice locations;
4. develop long range plans; and
5. provide oversight of the community services you provide.

The MA also provides that your Board will adopt any action determined by your co-applicant () to be necessary to obtain/maintain your tax exempt status.

Shareholder Agreement

The SA is between your three physician-shareholders, and you. The following provisions are contained in the current SA (and will be contained in any future SAs):

1. The physician-shareholders agree to operate you exclusively for the fulfillment of section 501(c)(3) charitable purposes.
2. If a physician-shareholder is disqualified or dies, the physician-shareholder's stock will be sold back to you at its par value.
3. Each share of your stock is affixed with a legend stating it is subject to an SA between the physician-shareholders and you.
4. The physician-shareholders and you shall not transfer, sell, encumber, pledge, or otherwise dispose of any of your shares of capital stock now or hereafter held of record except as provided in the SA.
5. The physician-shareholders and you agree to cause your physicians to carry out your charitable mission.
6. The physician-shareholders agree to vote their shares to assure that you are in full compliance with the Hospital Professional Services Agreement (HSA) between you and Hospitals and the MA between you and including the obligation to implement recommendations made by and/or Hospitals.
7. No transfer of stock shall be made to a new physician-shareholder unless he or she executes a SA containing the terms described herein.
8. The physician-shareholders irrevocably waive any right to dividends or distributions from you, and the only payments they can receive from you are reasonable compensation for services rendered as employees.
9. The physician-shareholders agree to give three-months notice prior to any vote or consent to any one or more of the following actions:

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- a. amendment of the SA;
 - b. dissolution, merger, consolidation or other corporate reorganization;
 - c. voluntary bankruptcy or assignment for the benefit of creditors;
 - d. commencement of any litigation;
 - e. sale or lease of real property;
 - f. borrowing or lending of money; and
 - g. failure to implement a recommendation made by UMM and/or UHS Hospitals.
10. None of the physician-shareholders nor you shall issue or sell any of your respective unpaid, unissued or treasury stock to anyone without the written consent of shareholders of two-thirds of the outstanding shares.
11. The SA limits the price of your stock to a nominal \$1.00 per share.
12. The SA cannot be terminated or amended without 90-days prior written notice to and .
13. The covenants in the SA bind all respective heirs, executors, administrators, successors and assigns of the parties to this agreement. Further, all covenants and obligations contained in the original SA are binding upon any successor physician-shareholders.

Hospital Professional Services Agreement

The HSA exists between you and Hospitals in which you agree to provide a wide variety of physician services to Hospitals. This agreement provides:

1. You will provide Hospitals with a broad range of clinical and administrative services, including emergency medicine physicians to staff Hospitals' emergency departments, primary care physicians to staff Hospitals' clinics, pathology services, and faculty for Hospitals' teaching programs, all of which further Hospitals' charitable mission.

2. You agree to operate exclusively for charitable purposes and to engage in no activity which might jeopardize your or UHS Hospitals' exempt status.

3. Your physicians providing services under the HSA are required to participate in the Hospitals' quality improvement program and you have agreed to implement any recommendations developed through the Hospitals' quality assurance system. Failure to follow such recommendations will result in the immediate termination of the HSA.

4. Any fees charged by you for these services are subject to the approval of Hospitals.

5. Any physician provided by you under the HSA must be approved by Hospitals and is subject to removal upon request of Hospitals.

6. You will comply with and you will not amend the SA, your Bylaws, or your Certificate of Incorporation without prior written approval of Hospitals. Failure to comply with this requirement will result in the termination of the HSA and all other contractual agreements between you and Hospitals.

7. You have agreed to abide by the Hospitals' charity care guidelines and to provide services to all your patients and all patients of Hospitals without regard to payor class.

, your co-applicant, is a New York not-for-profit corporation whose sole voting member is , a public charity described in section 501(c)(3) and 170(b)(1)(A)(iii) of the Code. Board members of are appointed by , which may remove directors without cause. The Board of contains individuals broadly representative of the public and communities served. Board members of other system boards are eligible to serve. Practicing physicians affiliated with you, as well as officers, department heads, and other employees cannot constitute a majority of the Board of . was formed to provide management services to you on an exclusive basis, to hold all tangible assets required by you, and to employ most of the work force which supports your operation. Under the terms of the MA with you, will also:

1. approve all physician compensation arrangements;

2. approve a joint operating budget for you and ;

3. provide management, administrative, and billing services;
4. approve the establishment of additional practice locations;
5. provide oversight of the community services provided by you;
6. make recommendations involving cost efficient operations;
7. develop long range planning; and
8. recommend actions required for you to operate according to your charitable mission and to obtain/maintain your status under section 501(c)(3).

In addition to your contractual obligation to follow the direction of _____ in regard to the above enumerated matters, the MA provides that failure to follow such direction will result in the immediate termination of the MA and all other contractual agreements between you and _____ and includes the requirement that any loans or advances from _____ will become immediately payable.

The MA also provides that you will comply with and you will not amend the SA, your Bylaws, or your Certificate of Incorporation without prior written approval of _____. All contractual agreements between you and _____ and all outstanding loans and advances will become immediately due in the event that the SA, your Bylaws, or your Certificate of Incorporation are ever modified without the prior written approval of _____.

Fees

Your fee schedule will be formally approved by the Board of UMM. The fee schedule is based on the usual, customary, and reasonable charges for medical services in your community.

Charity

You have adopted a separate charity care policy. You provide nondiscriminatory services to Medicare beneficiaries and Medicaid recipients. You also provide services to the indigent and have a sliding fee scale for patients who are unable to pay their charges in full. Your Medicare and Medicaid policy includes access to all covered inpatient, outpatient, and diagnostic services that are available to non-Medicare and Medicaid patients. You participate in Medicaid under fee-for-service

arrangements at all of your locations as well as serving Medicaid patients enrolled in managed care plans.

Representations

, Hospitals, and have made the following written representations:

1. The MA and the HSA are enforceable at law and in equity.
2. , Hospitals, and will not suffer or permit a physician-shareholder (together with all successors, heirs and assigns of the physician-shareholder and all subsequent designees holding your stock) to financially benefit in any manner, directly or indirectly, from the physician-shareholder's legal ownership of your stock.
3. , Hospitals, and will expeditiously and vigorously enforce all their rights in the HSA and MA and will pursue all legal and equitable remedies to protect their interests in the HSA and MA.

Rationale

The information you submitted establishes that because of New York state corporate practice of medicine laws you cannot accomplish your exempt purpose of providing outpatient clinical services to the community other than as a for-profit professional corporation. However, you meet the requirements of federal tax exemption because your structural and financial components are, in fact, controlled by , whose Board is comprised of independent civic members chosen by UHS, which is recognized as exempt under section 501(c)(3) of the Code. In essence, through the terms of the Bylaws, , and , acts as your community Board of Directors and UHS retains ultimate control over your activities and finances.

Further, you operate as a direct provider of medical services to your community. You provide nondiscriminatory services to Medicare beneficiaries and Medicaid recipients. You also provide services to the indigent and have a sliding fee scale for patients who are unable to pay their charges in full. Your Medicare and Medicaid policy includes access to all covered inpatient, outpatient, and diagnostic services that are available to non-Medicare and Medicaid patients. Therefore, your operations further a section 501(c)(3) charitable purpose.

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Based on the information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3).

This ruling is conditioned upon your not violating the federal anti-kickback restrictions contained in section 1128(b) of the Social Security Act, 42 U.S.C. sections 1320a-7b(b)(1) and (2), which prohibit the payment of remuneration in return for the referral of Medicare or Medicaid patients. We express no opinion as to whether the purchase of a private group medical practice by you or your subsequent payment for physician services complies with these provisions. Further, we are not making a determination that the purchase of any property is in fact at fair market value.

We have further determined that you are not a private foundation within the meaning of section 509(a) of the Code, because you are an organization described in the section(s) indicated above.

If your sources of support, or your purposes, character, or method of operation change, please let your key district know so that office can consider the effect of the change on your exempt status. In the case of an amendment to your organizational document or bylaws, please send a copy of the amended document or bylaws to your key district. Also, you should inform your key district office of all changes in your name or address.

You are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more you pay to each of your employees during a calendar year. You are not liable for the tax imposed under the Federal Unemployment Tax Act.

Because you are not a private foundation, you are not subject to the excise taxes under Chapter 42 of the Code. However, if you are involved in an excess benefit transaction, that transaction might be subject to the excise taxes of section 4958. Additionally, you are not automatically exempt from other federal excise taxes. If you have any questions about excise, employment, or other federal taxes, please contact your key district office.

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for federal estate

EXHIBIT E

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Contact Person: Lawrence M. Brauer

Telephone Number: (202) 622-6466

In Reference to: CP:E:EO:T:1:LMB

Chicago, IL 60601

Date:

Employer Identification Number:
Key District: Midstates (Dallas, TX)
Accounting Period Ending: December 31
Foundation Status Classification: 509(a)(2)
Form 990 Required: Yes

Dear Applicant:

This is in regard to your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

Organization

You were incorporated as a for-profit organization by _____, (the "Medical Center"), a public charity described in sections 501(c)(3) and 170(b)(1)(A)(iii) of the Code. You were created to operate an outpatient medical clinic providing primary care services to patients of the Medical Center and to members of the community. Your articles of incorporation provide that you are organized and shall be operated exclusively for charitable, scientific and educational purposes within the meaning of section 501(c)(3) of the Code. Your articles of incorporation also provide that medical or surgical treatment, consultation or advice may be given by your physician employees only if they are licensed pursuant to the Illinois Medical Practice Act of 1987, as amended, 225 ILCS 60/1 et seq.

Governance

Your Bylaws provide for a Board of Directors consisting of one to five members. Your Directors must be employees or Directors of the Medical Center and duly licensed to practice medicine pursuant to the Illinois Medical Practice Act of 1987, as amended, 225 ILCS 60/1 et seq. Under your Bylaws, no shares may be transferred to any person who is not an employee of the Medical Center. Dr. _____ a licensed physician and Vice President of Medical Affairs of the Medical Center, owns all

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of your issued and outstanding stock and is also the only member of your Board of Directors.

Letter Agreements

On December 29, 1994, August 27, 1996 and October 15, 1996, you entered into letter agreements with Dr. and (collectively referred to as the "Letter Agreements"). Pursuant to these Letter Agreements, Dr. and agree:

1. They will operate your organization exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code.
2. They will not sell, assign, encumber, pledge, distribute or otherwise dispose of their shares in any manner without the Medical Center's prior written consent.
3. They will vote their shares only in a manner approved in advance by the Medical Center.
4. In the event they are required to vote their shares, they will give the Medical Center written advance notice of their intended action, will not vote any shares until they have received written approval from the Medical Center and will vote their shares in the manner specified in the written notice.
5. They will not take any actions to amend your Bylaws without the Medical Center's prior written consent.
6. They have no economic rights in your organization to profits, distributions or for other purposes.
7. The Medical Center has the option at any time to either acquire the shares held by Dr. and or to cause them to sell their shares to any qualified person the Medical Center designates.
8. They have delivered a stock power in blank transferring their shares of stock of your organization to a licensed designee of the Medical Center, such designee to be determined at the date of actual transfer.
9. The reverse side of all stock certificates evidencing ownership of stock in your organization bears a legend restricting the transfer of these shares in accordance

with the December 29, 1994 letter agreement, as amended.

10. Neither they nor your organization will issue or sell any of your unpaid, unissued or treasury stock to anyone without a resolution adopted by your organization that is passed by the unanimous consent of all of your shareholders.
11. The price of the shares of stock of your organization shall not exceed one dollar (\$1.00) per share.
12. The Letter Agreements may not be amended or terminated without the prior written consent of the Medical Center.

The Medical Center has represented that its rights, as set forth in the Letter Agreements, are enforceable at law and in equity; that it will not suffer or permit your physician shareholders, Directors or officers (and all successors and subsequent designees) to financially benefit in any manner, directly or indirectly (except for reasonable compensation for services performed and reimbursement of monies used for your benefit) because of their relationship with your organization; and that it will expeditiously and vigorously enforce all of its rights in your organization and will pursue all legal and equitable remedies to protect its interests in your assets.

Based on the terms of the Letter Agreements and the representations made by the Medical Center, Dr. _____ is holding your stock in a fiduciary capacity for the benefit of the Medical Center. Thus, the Medical Center's community Board of Directors exercises full control over your activities, so that you are controlled by, and for the benefit of, the Medical Center.

Conflicts of Interest

Your Bylaws include a substantial conflicts of interest policy that helps demonstrate that you promote the health of the community as a whole rather than benefit private interests.

Corporate Practice of Medicine

Under Illinois law, a nonprofit corporation may be formed only for the purposes expressly stated in the statute. The practice of medicine is not one of the purposes that is expressly stated in the statute. See 805 ILCS 105/103.05. Thus, a nonprofit corporation may not engage in the practice of medicine.

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See Berlin v. Sarah Bush Lincoln Health Center, No. 95-MR-7 (Ill. Cir. Ct., 5th Dist., 1995); aff'd, No. 4-95-0569 (Ill. App. Ct. 1996).

You have advised us that the Illinois Attorney is authorized to render opinions only to statutory clients (e.g., state agencies, legislators) and therefore does not respond to requests from private individuals for interpretive opinions. You have further advised us that individuals with the office of legal counsel for both the Illinois Attorney General and the Secretary of State have informed you that there is no authority which supports the ability of a not-for-profit entity to be incorporated to practice medicine and that they based this conclusion on the language of Section 103.05 of the Illinois Not-For-Profit Act, the provisions of the Professional Corporation Act, 805 ILCS 10/1 et seq., the provisions of the Medical Corporation Act, 805 ILCS 15/1 et seq., and the recent decision of the Illinois Appellate Court in Berlin v. Sarah Bush Lincoln Health Center, supra.

Therefore, you were incorporated as a for-profit professional corporation ("PC") under the Illinois Business Corporation Act, 805 ILCS 5/3.05 and the Illinois Medical Corporation Act, 805 ILCS 15/1 et seq. Under Illinois law, a professional corporation may engage in the practice of medicine only if all the officers, directors and shareholders are licensed physicians, 805 ILCS 15/13, and only if medical services are rendered by licensed employees. 805 ILCS 15/2.

Purchase of Medical Practice

You purchased certain assets of an Illinois medical corporation operating a five-physician internal medicine practice. Dr. _____ was not one of the physicians associated with this practice. You submitted an appraisal supporting the purchase price you paid for these assets.

Physician Employment Agreements

In connection with your purchase of the medical practice, you entered into employment agreements with each of the five physicians who were the shareholders of _____ The Medical Center directly negotiated these agreements with the physicians. Under these agreements, bonuses are a direct function of the physicians' productivity and time devoted to providing medical care to their patients. These bonuses are determined regardless of the nature of the patient, the ultimate

payor or whether payment is ultimately received. Based on independent third party surveys, the physicians' total current compensation is comparable to the compensation earned by other internal medicine physicians.

Charity

You treat indigent patients who are unable to pay for the medical care they receive and treat patients who are eligible for Medicare and Medicaid benefits. You participate in the residency program at a local medical college by accepting medical residents for training rotations and you accept medical students from several local medical schools for one month rotations. In addition, some of your physicians participate in a lecture series sponsored by the Medical Center that address medical issues of interest to the community and are open to the general public. You have represented that you will sponsor no less than 12 free health education seminars or other similar programs each year for members of the community.

Conclusion

In order to comply with the requirements of Illinois law, you are organized as a for-profit professional medical corporation. However, you are, in fact, controlled by, operated for the benefit of, and provide an essential service for the Medical Center, a section 501(c)(3) organization controlled by a community Board of Directors. As an organization controlled by the Medical Center, you operate as an integral part of its integrated delivery system. Because you provide an essential service for the Medical Center and are, in effect, controlled by the Medical Center, your operations further its exempt purpose.

Accordingly, based on the information supplied, and assuming your operations will be as stated in you application for recognition of exemption, we have determined that your are exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3).

This ruling is based, in part, on the decision in Berlin v. Sarah Bush Lincoln Health Center, No. 95-MR-7 (Ill. Cir. Ct., 5th Dist., 1995); aff'd, No. 4-95-0569 (Ill. App. Ct. 1996). In the event that this decision is subsequently reversed or the applicable law in Illinois changes, our conclusion as to the recognition of your organization as one described in section 501(c)(3) of the Code may be affected.

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This ruling is also conditioned upon your not violating the federal anti-kickback restrictions contained in section 1128(b) of the Social Security Act, 42 U.S.C. sections 1302a-7b(b)(1) and (2), which prohibit the payment of remuneration in return for the referral of Medicare and Medicaid patients. We express no opinion as to whether your purchase of assets or assumption of liabilities of any medical practice or your payment for physician services complies with these provisions. Furthermore, we are not making a determination that the purchase or lease of any property or of a medical practice is in fact at fair market value.

We have further determined that you are not a private foundation within the meaning of section 509(a) of the Code, because you are an organization described in the section(s) indicated above.

If your sources of support, or your purposes, character, or method of operation change, please let your key district know so that office can consider the effect of the change on your exempt status. In the case of an amendment to your organizational document or bylaws, please send a copy of the amended document or bylaws to your key district. Also, you should inform your key district office of all changes in your name or address.

As of January 1, 1984, you are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more you pay to each of your employees during a calendar year. You are not liable for the tax imposed under the Federal Unemployment Tax Act.

Because you are not a private foundation, you are not subject to the excise taxes under Chapter 42 of the Code. However, if you are involved in an excess benefit transaction, that transaction might be subject to the excise taxes of section 4958. Additionally, you are not automatically exempt from other federal excise taxes. If you have any questions about excise, employment, or other federal taxes, please contact your key district office.

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of Code sections 2055, 2106, and 2522.

Donors (including private foundations) may rely on this ruling unless the Internal Revenue Service publishes notice to

EXHIBIT F

Internal Revenue Service

Mount Holly, NJ 08060

Department of the Treasury

Washington, DC 20224

Contact Person:

C. Kaiser, Esq.

Telephone Number:

(202) 622-6487

In Reference to:

OP:E:EO:T:1

Date:

Employer Identification Number:
Key District: Northeast (Brooklyn)
Accounting Period Ending: December 31
Foundation Status Classification: 509(a)(2)
Form 990 Required: Yes
Effective Date of Exemption: March 9, 1998

Dear Applicant:

This is in regard to your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code (Code).

You are a for-profit professional corporation (PC) which provides primary care medical services in New Jersey. You were formed by and are a part of the _____, a section 501(c)(3) parent of a community health care system which includes _____ (_____, a section 501(c)(3) hospital. You were created to employ physicians to service the medical needs of the people in your community. You serve as the physician component of _____ integrated delivery system.

Board of Directors

You currently have a two person Board of Directors. Your By-laws provide the Board can only be comprised of individuals authorized to practice medicine in the State of New Jersey.

Corporate Practice of Medicine

New Jersey state law dictates you can only incorporate as a for-profit professional corporation. This is confirmed by The Professional Service Corporation Act, N.J.S.A. 14A:7-1 et seq. (PSA), section 13.35-6.16(f)(4) of the New Jersey Administrative Code and a March 5, 1998 advisory opinion from the Attorney General of the State of New Jersey.

Certificate of Incorporation

New Jersey corporate practice of medicine laws do not permit to serve as your shareholder, but control by and commitment to section 501(c)(3) purposes is insured because of language in your Certificate of Incorporation. Article Three of the Certificate limits your activities to one or more exempt purposes in compliance with the organizational test of section 501(c)(3) of the Code and specifies that you are operated to further the charitable purposes of

. insures control over you through your physician shareholder/Director. Your physician shareholder/Director is Dr. , who must be an employee of , a member of Hospital's medical staff, and must have entered into a shareholder agreement (SA) with you and . Further, control of your activities is assured because of a management agreement with), an affiliated section 501(c)(3) organization whose member is . Therefore, the SA, together with the shareholder's/Director's employment with and the interrelated management agreement between you and ensures continued structural and financial control as well as day-to-day management control over you.

By-laws

You state your By-laws satisfy the statutory requirements of the PSA and the Business Corporation Act (BCA).

Article III, section 6 provides that shareholder's hold legal title to your shares solely for the benefit of MHA; shareholders must be employed by MHA and must execute a SA in a form approved by MHA; and shareholders are prohibited from entering into a voting trust agreement, proxy, or any other type of agreement vesting another person with authority to exercise voting power of any or all shares held by a shareholder. You state that section 14A:5-15 of the BCA contemplates and permits fiduciary ownership of shares of a for-profit, New Jersey business corporation.

Article III, section 7 provides shares may only be transferred to you or to an individual eligible to be a shareholder under your By-laws. Each shareholder and Director agrees (a) that your shares shall be transferable only in accordance with the restrictions established in your Certificate, By-laws and SA; and (b) not to transfer, sell, encumber, pledge or otherwise dispose of his or her stock except as provided for in the Certificate, By-laws, and SA.

Article III, section 8 provides the SA shall govern the disposition of your shares upon the death or disqualification of a shareholder; except as otherwise provided in the SA or if the SA is not in effect following the death of the shareholder or within 90 days following his or her disqualifications to own the shares, the shares shall be transferred to, and acquired by, you or other individuals qualified to own shares, subject to the approval of you and ; and if the transfer or acquisition does not occur, you shall purchase and redeem all of the shares at par.

Article III, section 9 limits the price of your stock to a nominal \$1.00 per share and expressly prohibits the sole shareholder from receiving dividends and appreciation upon the disposition of the stock.

Article IV, section 1 provides Directors are elected from nominees designated by .

Article IV, section 2 provides the Board can only be comprised of individuals who are employed by

Article IV, section 3 provides for the removal of your Directors with or without cause.

Article X, section 2 provides amendments, alterations and repeal of provisions in the By-laws that confer rights on MHA shall not be altered, amended or repealed without the prior written consent of ..

Shareholder Agreement

You are controlled by . Control by is assured through the specific terms contained in the SA between you, your shareholder/Director and . Under the SA, all of your stock is issued to a licensed physician who is your sole shareholder as well as an employee of . Thus, under the terms of the SA, the shareholder/Director or any other successor physician shareholder/Director agrees to hold your stock in a fiduciary capacity for the benefit of . This type of arrangement is legal in the State of New Jersey and you have submitted legal authority to that effect.

The following provisions bind the shareholder/Director:

1. The shareholder/Director will insure you are organized and operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code.

3. If the shareholder/Director is disqualified or dies, shall have the power to designate the person to whom your stock will be transferred.
4. The shares shall contain a restrictive legend with respect to the SA.
5. The shareholder (including any successor shareholder) will not issue or authorize the issuance of any additional shares or amend your Certificate of Incorporation or By-laws in a manner adverse to the purposes set forth in the SA or without the prior written consent of .
6. The SA shall remain in effect until terminated by you.
7. The SA cannot be terminated without your, ., and the shareholder's or successor shareholder's signature.
8. The SA may not be assigned by you, the shareholder, or any successor shareholder without the prior written consent of
9. The shareholder can only sell, assign, transfer, pledge or otherwise hypothecate the shares as provided in the SA.
10. The covenants in the SA bind all respective heirs, executors, administrators, successors and assigns of the parties.
11. The SA instructs the Director to elect specifically named individuals selected by who will be your officers.
12. Neither the shareholder nor you shall issue or sell any of your respective unpaid, unissued or treasury stock to anyone without your resolution passed by unanimous consent in writing of the stockholders.
13. In the event your shareholder(s) or Director(s) are required to vote, the shareholder(s) and/or Director(s) will give written advance notice of their intended

actions listed in this paragraph, will not vote until they receive written approval from MHA and will vote in the manner specified in the written notice. The actions subject to this procedure are:

- (a) dissolution, merger, consolidation or other corporate reorganization;
- (b) voluntary bankruptcy or assignment for the benefit of creditors;
- (c) the election, appointment, resignation and/or removal, with or without cause, of your Directors;
- (d) the election, appointment, resignation and/or removal of any officers;
- (e) the adoption, amendment, revision or deletion of your Bylaws and the creation or approval of any amendments, alterations or restatements or other revisions to your Certificate of Incorporation and/or Bylaws;
- (f) the adoption of your annual capital and operating budgets;
- (g) the approval of unbudgeted capital or operating expenditures to be undertaken individually or collectively by you and any subsidiary corporations where the cumulative amount of such unbudgeted expenditures exceeds the sum of \$100,000;
- (h) the borrowing of funds or lending of funds, including capital and operating leases;
- (i) the approval of the purchase or sale of any real property by you or any subsidiary corporation, and the approval of the creation of a mortgage, lien, or any other

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security interest in your real or personal property;

- (j) determinations of how any and all excess cash generated by you shall be spent; and
- (k) the cessation or any change in your provision of services to Medicare and Medicaid recipients and its provision of charity care services in accordance with the policies established by

Charity

You have adopted a separate charity care policy.

Conflicts of Interest Policy

You have adopted a substantive conflicts of interest policy.

Representations

has made the following written representations:

- a. s rights as enumerated in your Certificate of Incorporation, By-laws and Shareholder Agreement with dated March 20, 1998 (and all subsequent Shareholder Agreements) are enforceable at law and in equity;
- b. will not suffer or permit the shareholder-Director or officers (together with all successors and all subsequent designees) to financially benefit in any manner (except for reasonable compensation for services performed or reimbursement of monies used for your benefit), directly or indirectly, because of their relationship with you; and
- c. will expeditiously and vigorously enforce all its rights in your organization and will pursue all legal and equitable remedies to protect its interest in your asset.

Rationale

The information submitted establishes that because of New Jersey state corporate practice of medicine laws you cannot accomplish your exempt purpose of providing outpatient clinical services to the community other than as a for-profit professional corporation. However, you meet the requirements of federal tax exemption because your structural and financial components are, in fact, controlled by , which is recognized as exempt under section 501(c)(3) of the Code and whose Board is comprised of independent civic members. In essence, through the terms of the Certificate of Incorporation, Bylaws, SA and management agreement, acts as your community Board of Directors and retains ultimate control over your activities and finances.

Further, you operate as a direct charitable provider of medical services to your community. Therefore, your operations further a section 501(c)(3) charitable purpose.

Based on the information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3).

This ruling is conditioned upon your not violating the federal anti-kickback restrictions contained in section 1128(b) of the Social Security Act, 42 U.S.C. sections 1320a-7b(b)(1) and (2), which prohibit the payment of remuneration in return for the referral of Medicare or Medicaid patients. We express no opinion as to whether the purchase of a private group medical practice by you or your subsequent payment for physician services complies with these provisions.

We have further determined that you are not a private foundation within the meaning of section 509(a) of the Code, because you are an organization described in the section(s) indicated above.

If your sources of support, or your purposes, character, or method of operation change, please let the Ohio EP/EO key district know so that office can consider the effect of the change on your exempt status and foundation status. In the case of an amendment to your organizational document or bylaws, please send a copy of the amended document or bylaws to the Ohio EP/EO key district. Also, you should inform the Ohio EP/EO key district office of all changes in your name or address. The mailing address for that office is: Internal Revenue Service, EP/EO Customer Service, P.O. Box 2508, Cincinnati, OH 45201.