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December 27, 2011

Bernard Mitchell Alter, Esq.
Alter & Barbaro
Attorneys and Counselors at Law
26 Court Street, Suite 1812
Brooklyn, NY 11242

Dear Mr. Alter:

With reference to your correspondence which stated that the District Attorney is pressing forward with the theory that I wrongfully demanded premiums from the nurses with regard to the following offenses: PL 155.35 GRAND LARCENY IN THE THIRD DEGREE (3 counts) and PL 155.30-1 GRAND LARCENY IN THE FOURTH DEGREE (17 counts) Workers' Compensation Law Section 31 - Agreement for Contribution by Employee Void, it is of my opinion, that Mr. Scott E. Jaffer perjured himself on these accounts.

A. In the case of **PL 155.35** Grand Larceny in the Third Degree (3 counts), the court is satisfied that I did not "steal" the money and the case has been dismissed. Kindly provided us with a letter from the District Attorney stating that this case was dismissed by January 3, 2012.

B. In the case of **PL 155.30-1** Grand Larceny in the Fourth Degree (17 counts), Workers' Compensation Law Section 31- Mr. Jaffer made reference to this law implying that the agency's relationship with the nurses is employer to employee and that W2 forms are issued. "NY Workmen's Compensation Law 31 states, "*No agreement by an employee to pay any portion of the premium paid by his employer to the State Insurance Fund or to contribute to a benefit fund or Department maintained by such employer or to the cost of mutual insurance or other insurance, maintained for or carried for the purpose of providing compensation as herein required, shall be valid, and any employer who makes a deduction for such purpose from the wages or salary of any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor.*"

This is not so as the nurses are considered Independent Contractors and receive 1099s. The nurses signed an agreement with the Agency that they are Independent Contractors and they are responsible to pay for their own Disability Insurance, Workmen's Compensation, Social Security, Health Insurance and Malpractice Insurance.

There is case law to support an insurer's right to charge premiums for independent contractors of an employer "if there is reasonable risk that the {Workers'} Compensation Board would hold persons to be employees rather that independent contractors." Commissioners of the State Insurance Funds v. Rivington Farm Dairy, Inc., 16 A.D.2d 58, 225 N.Y.S.2d 486 (1st Dept. 1962). But see Matter of For-Med Medical Group v. New York State Insurance Fund, 207 A.D.2d 300, 615 N.Y.S.2d 399 (1st Dept. 1984) (holding that there was no reasonable risk that 35 doctors who maintained offices at petitioner's premises would be deemed employees rather than independent contractors by Worker's Compensation Board).

Therefore, if there is a reasonable risk that the Worker's Compensation Board could conclude that the for-profit corporation's instructors are employees under the Worker's Compensation Law, the insurance company would be permitted to charge the insured premiums for such PERSONAL

Kindly forward to me a letter from the District Attorney which shows that the case was dismissed by January 3, 2012 or I will have no other recourse but to file a grievance against you.

Please be guided accordingly.

Sincerely,

Harry Dorvilier