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To: Scrushy, Richard
CC: Hervey, Jason; Eric R. Hanson (E-mail)
Subject: CONFIDENTIAL -- ATTORNEY-CLIENT PRIVILEGED
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Richard -- It was good talking to you today.

As we have previously discussed, I would appreciate a clear statement from you tomorrow concerning my role as counsel or co-counsel in all the litigation.

As we discussed, I need to immediately file an appearance in the court in the class action cases as counsel to the individual defendants and co-counsel (with Haskell Slaughter) to the Company. (I have already told Mike Redeker today that he and Tom Krebs would remain the lead in the class action case so this would not affect them.) As we discussed, there are four important reasons for me to be "at the table" in all the cases. First, I will be committed to representing you personally even if a conflict arises in representing the Company and you at the same time. Second, as Company counsel as well as and counsel to individual management, my fees should be mostly covered by your D&O insurance. Third, since I have extensive experience as class action defense counsel in this type of case, the media will regard my role as a litigation counsel more credibly than if I am just identified as doing public relations. This has already been mentioned in the WSJ/NYT's reporting. Finally, internally at Patton Boggs, as I explained to Eric Hanson, I should have no problem clearing the representation so long as I am defense counsel in the litigation.

I believe you stated that Alston and Bird may have been retained for the class action case. Since I will be co-counseling this with Haskell Slaughter, I do not believe we need Alston and Bird at this time.

Regarding the SEC investigation, I and Patton Boggs will also be representing the Company as well as you and the management team personally to the extent it becomes necessary. I have also told the SEC that Fulbright (Peter Unger) will also be involved in discussions with the SEC to the extent it is helpful in the conduct of their outside review. I feel strongly that to avoid compromising Fulbright's outside review, they should not be seen as representing the Company as an advocate. I would appreciate your emphasizing this point tomorrow.

I assume that Bill Horton is fine with all this.

As we also discussed, It would also be helpful for me to enter appearances as company co-counsel to Tom Fox in the Qui Tam case and individual counsel to the named management defendants (if any) so I can be in a position to approach the Justice Department re. a settlement. Perhaps I might as well also enter an appearance in the derivative case on the same basis. The latter, however, could well be stayed pending the SLC's investigation.

Going forward, I will remain in daily (hourly sometimes) ongoing consultation and communications with Eric Hanson and Jason Hervey on all matters, particularly the coordination of legal/media/lobbying strategies.

Agenda

The agenda for tomorrow is as follows. I understand I will start with a meeting at your house.

1. Fulbright Report. Goal: Start with review of Richard Scrushy knowledge of CMS rule change, time line, etc., in order to make findings on this issue in the next ten days. Then proceed with Company review. Another possible subject for review: an assessment of financial strength of company, financial reporting, etc.

2. Pro-active press stories in two areas, neither of which focuses on HealthSouth:

--Why and how CMS new rule was born in bureaucratic confusion and will have devastating impact on seniors -- this is not about HealthSouth but about the confused CMS. Core example of confusion is Mr. Scully -- who when he presided over the FAH that strongly supported concurrent therapy, then he allowed 1753 to issue, then he made it effective only July 1, then he said it was a "gray area," then a week later he said it was not, etc. W. Post target newspaper, or National Journal/Roll Call.

--Growing opposition to CMS new rule among national associations, senior citizens, physical therapists, hospitals, and other providers and caretakers concerned about senior citizens who rely on Medicare. NY Times is target/WSJ too.

3. Lobbying effort: Eric Hanson to report. Goal: To suspend implementation of new CMS rule pending rulemaking procedure, with notice and comment.

4. Grassroots organization: To assist in the two non-HealthSouth press stories described in #2 and the lobbying effort described in #3, we need to retain an outside organization that specializes in generating grassroots communications -- by email and phone/mail. I have consulted with many people over the weekend, and I have two recommendations. A "Coalition" of hospitals, PT providers, therapists, and senior citizen groups can be organized, and individuals can be encouraged to communicate their opposition.

5. Third Party Legal Challenge to CMS: Preparing a case that might be filed by representatives of seniors, physical therapists and hospitals, including their trade associations, seeking to enjoin the new CMS rule until a valid rulemaking, notice and comment, etc., has been conducted. We have assessed this case already, as have your other attorneys. I believe it suggests a strong likelihood of success.

Look forward to seeing you tomorrow. And thanks to you, Eric and Jason for trusting me so much as you have. I promise you I am totally 100% committed.