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5 *Attorneys for Receiver*
Robert Sillen

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARCIANO PLATA, et al.,
Plaintiffs,
v.
ARNOLD SCHWARZENEGGER, et al.,
Defendants.

Case No. C01-1351 TEH

**DECLARATION OF MARTIN H. DODD
IN SUPPORT OF RECEIVER'S
OPPOSITION TO MOTION OF NON-
PARTY MEDICAL DEVELOPMENT
INTERNATIONAL FOR ORDER
SHORTENING TIME**

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I, Martin H. Dodd, declare as follows:

1. I am attorney licensed to practice before all the courts of the State of California and before this Court and am a partner in the law firm of Futterman & Dupree, LLP, attorneys for Receiver Robert Sillen. I make this declaration in support of the Receiver's opposition to the motion for an order shortening time brought by non-party Medical Development International ("MDI"). The facts set forth herein are based upon my own personal knowledge and if called as a witness I could testify thereto.
2. In or about early February 2007, the Receiver's Chief of Staff, John Hagar, requested that I undertake an analysis of the legality of the services being provided by MDI to CDCR at California State Prison, Los Angeles County ("LAC") and California Correctional Institute in Tehachapi ("CCI"). I reviewed the scope of work attached to the proposed contract between CDCR and MDI and many dozens of e-mails exchanged by State employees who had reviewed and considered the propriety of the contract. A number of those employees questioned whether MDI's proposed services under the contract violated the prohibition in California on the "corporate practice of medicine." I also reviewed a revised proposed scope of work that MDI developed in December 2006 in response to the concerns raised by the State employees. MDI was performing services at both LAC and CCI, but without any executed contract. My own legal research and analysis led me to conclude that, as described in the original and revised versions of the scope of work, there was a significant likelihood that MDI was exercising "medical judgment" and/or undue control over physicians that MDI had under contract and thus that MDI was violating the prohibition in California on the corporate practice of medicine.
3. I contacted Timothy Heffernan, counsel for MDI, and expressed my concerns about specific provisions of both the original scope of work and the subsequent scope of work proposed by MDI. I expressed to him my view that the services described in the both versions of the scope of work violated the law. Mr. Heffernan agreed that the provisions I pointed out to him, as drafted, raised legitimate questions about the lawfulness of MDI's

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services.

4. I also expressed to Mr. Heffernan the Receiver's very strong concerns about the propriety of the rates being charged by MDI. In addition, I informed Mr. Heffernan that the Receiver could not adequately evaluate whether the proposed contract with MDI was lawful without disclosure of the rates being charged by the physicians under contract with MDI and how those rates were established. Mr. Heffernan said that MDI had declined to provide that information to the Receiver because it was "proprietary" and that MDI would not provide that information unless the Receiver indicated a willingness to enter into a contract with MDI. For his part, Mr. Heffernan informed me that MDI was reaching the point where it would not continue to perform services without payment.
5. About two weeks later, I received a letter from James Walsh, local counsel for MDI. In that letter, Mr. Walsh argued that MDI's services were lawful, included a *third* proposed scope of work that modified the suggested contract language still further and proposed an entirely different rate structure than MDI had been using previously. Although Mr. Walsh asserted that MDI's services were lawful, he did not provide any opinion or analysis from the California Medical Board attesting to the legality of MDI's business model as applied to LAC and CCI. Moreover, MDI still refused to provide the Receiver with information pertaining to rates being charged by the doctors, contending that those rates were "proprietary." Thereafter, Mr. Heffernan contacted me by telephone and e-mail, inquiring as to whether the Receiver was prepared to enter into a contract with MDI and reiterating that MDI would cease performing services if the Receiver did not indicate a willingness to enter into such a contract.
6. The letter brief from Mr. Walsh did not answer all the Receiver's questions and, in fact, raised additional questions with respect to (a) MDI's actual relationship to the physicians it had under contract; (b) whether and to what extent MDI was exercising "medical" judgment as that term has been construed and understood in California; (c) what rates the physicians were charging; and, (d) what control MDI had exercised over the setting of

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those rates.

7. Because the letter brief failed to provide adequate answers to the Receiver's questions, I contacted employees at the California Department of Consumer Affairs ("DCA") – the parent agency for the California Medical Board responsible for enforcing the prohibition on the corporate practice of medicine – to get their guidance on whether MDI's services, as described in the three iterations of the scope of work, were lawful. The DCA employees reviewed the material and, because the various versions of the scope of work suggested the strong possibility that MDI was in violation of the law, they suggested that I obtain copies of sample agreements between MDI and physicians and hospitals in its "network" in an effort to determine more precisely the relationship between MDI and the providers. I contacted Mr. Heffernan, obtained sample agreements and forwarded them to the DCA.
8. The DCA staff generally agreed that the first and second versions of the scope of work, as drafted, described services that appeared to violate the prohibition on the corporate practice of medicine. They also agreed that the third, and most recent, proposed scope of work sent to me by Mr. Walsh did not fully address the issues or resolve the concerns expressed by the Receiver about the legality of the services. Moreover, they indicated that the sample agreements themselves raised additional questions, did not fully describe or disclose the actual relationship between MDI and the providers, did not adequately discuss or describe the rates those providers charged and, in the end, did not provide sufficient information for them to make a definitive determination regarding the lawfulness of MDI's activities.
9. On March 26, 2006, I sent a letter to Mr. Heffernan explaining that the information that had been provided by MDI continued to raise questions about the lawfulness of MDI's services and indicating that the Receiver could not, in good conscience, undertake an agreement with MDI if there was a chance that such a contract would violate State law. Rather than simply demand that MDI cease performance, on behalf of the Receiver, I

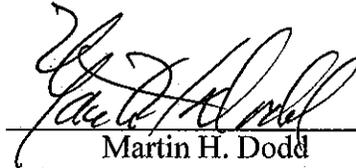
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offered MDI the possibility of a contract if MDI could provide the Receiver with all the factual information he had requested, as well as some indication from the appropriate State agencies that MDI's business model as applied to LAC and CCI was in fact lawful. I suggested that MDI provide such an opinion within 10 days. A true and correct copy of my March 26 letter is attached hereto as Exhibit 1. Rather than take the opportunity to obtain, or even to request additional time to obtain, such an opinion, MDI filed its motions.

10. Counsel for MDI did not contact me, as required by Civil L.R. 6-3, to request a stipulation for an order shortening time. The first time that I learned of the motion was when it arrived in my office by hand delivery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: April 5, 2007



Martin H. Dodd

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ATTORNEYS AT LAW

March 26, 2007

VIA FACSIMILE AND MAIL (703) 893-8029

Timothy E. Heffernan
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Drive, Suite 100
McLean, VA 22102

Re: Medical Development International

Dear Mr. Heffernan:

As you know, Robert Sillen, the Receiver for the California prison medical system, raised a significant question as to whether your client, Medical Development International ("MDI"), was violating the prohibition in California on the corporate practice of medicine and, thus, that the services being provided by MDI to the California prison system were unlawful. We reviewed the original Statement of Work in the unexecuted contract between MDI and the California Department of Corrections and Rehabilitation ("CDCR") pursuant to which MDI began performing services. That review convinced us that, as described, the services provided by MDI were not lawful. We also reviewed a proposed amended version of the Statement of Work which MDI had submitted to CDCR in December 2006, and which was presumably intended to address concerns raised by lawyers for the State about the legality of MDI's services as described in the original Statement of Work. We were not convinced that the proposed modifications, even if implemented, would render lawful the services performed by MDI.

You met with John Hagar and the Receiver in February and indicated that you would demonstrate to the Receiver's satisfaction that MDI was operating lawfully in California. Subsequently, you and I spoke and I pointed out the areas in the two versions of the Statement of Work that I believe indicated that MDI was violating the prohibition on the corporate practice of medicine. Thereafter, we received a letter from James Walsh which purported to explain why MDI was, in his opinion, operating legally and which included yet another proposed amended Statement of Work and a new proposed rate schedule. We thereafter sought and obtained from you forms of agreement that MDI utilizes with the healthcare providers and hospitals that it furnishes to CDCR. In the meantime, both John Hagar and I asked (and have asked again) that MDI provide us with information pertaining to rates that MDI has negotiated with such healthcare providers. You have taken the position that those rates are proprietary – notwithstanding that your client is doing business with a public agency – and would not share them with the Receiver unless and until the Receiver committed to formalizing a contractual relationship with your client.

We reviewed carefully Mr. Walsh's letter, its enclosed Statement of Work and the form agreements. Frankly, these documents raised as many questions as they answered and did not establish to the Receiver's satisfaction that MDI is now, or would under the proposed Statement of Work be, operating lawfully.

We discussed the various iterations of the Statement of Work and the pro forma provider agreements with attorneys in State government familiar with questions pertaining to the corporate practice of medicine. They agreed that the original Statement of Work in the unexecuted contract and the proposed Statement of Work MDI sent in December very likely described an unlawful arrangement. They also confirmed our belief that, contrary to Mr. Walsh's assertions in his letter, MDI is not operating as a locum tenens agency. Finally, just as we continue to have questions about the legality of MDI's operations after reviewing the most recent proposed Statement of Work and form agreements, the State lawyers also expressed concerns that MDI may be violating the law.

Specifically, our questions fall into several areas highlighted by the California Medical Board on its website in its discussion of the corporate practice of medicine. The Medical Board emphasizes that it is unlawful for an unlicensed entity to make the following types of decisions, among others:

- Selection, hiring/firing (as it relates to clinical competency or proficiency) of physicians, allied health staff and medical assistants.
- Setting the parameters under which the physician will enter into contractual relationships with third-party payers.
- Decisions regarding coding and billing procedures for patient care services.
- Approving of the selection of medical equipment and medical supplies for the medical practice.

In addition, the Medical Board also points out that the following business model is unlawful:

- Medical Service Organizations arranging for, advertising, or providing medical services rather than only providing administrative staff and services for a physician's medical practice (non-physician exercising controls over a physician's medical practice, even where physicians own and operate the business).

We also call to your attention an opinion of the California Attorney General from 2000 that opined that a business arrangement remarkably similar – at least outwardly – to that which MDI provides was illegal under the corporate practice of medicine doctrine. *See* 83 Op. Atty. Gen 170 (2000).

Timothy E. Heffernan

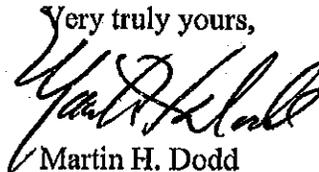
March 26, 2007

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We do not mean to say that we have concluded that MDI's actual operating structure and relationships are illegal in California; rather, we emphasize only that we have seen nothing that provides us any assurance that MDI is or will be operating legally and nothing that clearly addresses the various issues we have identified. As you can no doubt appreciate, the Receiver cannot be party to an arrangement that is, or that even may be, unlawful. While we recognize that MDI contends that it is operating lawfully, we have been and remain troubled by the absence of any adequate description or disclosure of the actual relationship between MDI and the providers it furnishes to CDCR, the unwillingness to disclose the rates MDI has negotiated with the providers, the murkiness and lack of precision in the form agreements insofar as the obligations of the service providers are concerned, and perhaps most of all -- given the strict prohibition on the corporate practice of medicine -- no opinion or analysis from a State regulatory agency attesting to the legal propriety of the services MDI is rendering or intends to render.

Accordingly, the Receiver is not prepared to execute an agreement with MDI unless, within 10 days of this letter, MDI provides verifiable, factual information satisfactory to the Receiver that will provide answers to the questions and concerns he has raised, as well as an opinion letter from an appropriate State agency that attests to the legality of MDI's operating model as it actually exists at the two prisons at which MDI is providing services.

Very truly yours,

A handwritten signature in black ink, appearing to read "Martin H. Dodd", written in a cursive style.

Martin H. Dodd

cc: Robert Sillen
Jared Goldman
John Hagar