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**PAISNER & CO**

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YOUR REF

OUR REF AMP/3840.21

DATE

4 November 1997

Dear Tony

**Haemophilia Society and its Groups**

When we met last week we discussed the problems that the Society has experienced in the past and is currently experiencing with certain local and special interest groups.

In particular you told me that the Manor House Group has recently made an application to the Department of Health for significant grant funding which could adversely affect the funding position of the Society.

You also told me that although the Society and the Group agree on the appropriateness of compensation for haemophiliacs affected by Hepatitis C through contaminated blood products, some of the members of the Manor House Group have indicated that they may wish publicly (and in the name of the Group) to pursue the campaign for compensation in a manner which might conflict with the approach and strategy being adopted by the Society.

These issues are both serious. The first, because of the damage which can be caused as a result of the message which is conveyed by multiple and/or conflicting funding applications (which usually indicates a disorganised charity or one in which there are internal disagreements or disputes). When they become public, internal disputes can have the effect of undermining the credibility and standing of the charity - perhaps its most valuable asset. Experience suggests that members, donors, external bodies and policy makers are less likely to listen to or to be supportive of charities which are perceived to be disorganised or in conflict.

The conduct of the campaign for compensation for Hepatitis C sufferers is important not only because of its general effect on the standing of the Society but also because of the need for the Society and its internal groups to follow carefully the guidelines on campaigning issued by the Charity Commission. These guidelines, as you know, are

complex and the Trustees must ensure that anybody speaking on behalf of the Society (whether s/he is member of Head Office staff or a representative of an internal group, such as the Manor House Group) is fully briefed on and follows the line adopted by the Society. This campaign requires extra care because of the possibility that it could be regarded as motivated by self-interest because some of the Trustees are Hepatitis C sufferers and some of the members of the Manor House Group are taking or considering legal action in their personal capacity. I know, of course, that this is not the case but unfortunately journalists often don't let the facts of a case stand in the way of a good story.

The Trustees of the Society, as charity trustees, have a duty to protect the assets of the Society including intangible assets such as its reputation. The reputation of the Society will suffer if internal disagreements become public and/or if the Charity Commission's guidelines on campaigning are not observed. In my opinion the Trustees might be criticised if they failed to take action in these areas.

I have reviewed the terms of the model rules and guidance issued by the Society to its local groups and special interest groups in the light of the problems with the Manor House Group and our recent experience with other groups. As a result of this review I am of the opinion that it would be prudent for the Trustees to take steps both to deal with the current situation with Manor House Group (which I understand may be urgent due to the likelihood that the Government will very shortly make an announcement on the subject of compensation for Hepatitis C sufferers) and more generally. The action I recommend is set out below.

**The Manor House Group**

In my opinion it is important that the Trustees take steps to ensure that (1) the campaign for compensation for Hepatitis C sufferers complies with the Charity Commission's guidelines and (2) when members of the Society speaking publicly, on behalf of the Society or any of its groups, they follow the policy and strategy of the Society on the campaign.

There is currently a divergence of opinion on the most appropriate method of pursuing the compensation campaign which means that achieving a uniform public position may be difficult or impossible to achieve. Recognising this, I believe that the Trustees would be well advised to proceed with care and to be seen to do so. To this end I recommend that they review the strategy which the Society has adopted on this issue. Hearing and considering the views of the Manor House Group will, of course, form a part of this review and I understand that, fortuitously, there is shortly to be a meeting between representatives of the Trustees and members of the Group.

The final decision on the campaign strategy of the Society is, however, one which can only be made by the Trustees when they have considered all the relevant factors, including the ramifications of the possible options on the effectiveness of the Society and the interests of Haemophiliacs thankfully not affected by Hepatitis C.

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Having reviewed the Society's campaign strategy the Trustees should, in my opinion, consider how best to ensure that the chosen approach is the only one disseminated in the name of the Society either from Head Office or by its local or special interest groups including the Manor House Group.

If the Trustees confirm the current strategy (or adopt another strategy at odds with the views of the Manor House Group) they will need to take steps in relation to the Manor House Group to ensure that we avoid a potentially damaging public disagreement when the Government announces the result of its review of the compensation issue and/or a breach of the Commission's guidelines on campaigning.

In this situation I would recommend that the Society advise the Group that whilst it remains a group of the Society it should not, without the prior consent of the Society, institute any contact with the media on the compensation issue and that it should refer all enquiries from the media for comment on the issue to Head Office.

This advice will need to be given to the Group in writing. I will be happy to prepare a draft letter incorporating these points for consideration by the Trustees.

#### Groups Generally

I recommend that the Society prepare and issue to all of its groups revised guidance to cover the difficulties experienced in the last year or so and in particular:-

1. provisions to deal with notification of and/or consent of the Society before pursuing disputes with external bodies (such as health authorities or hospitals),
2. public statements and contact with the media in relation to campaigns and/or matters of policy,
3. use of the charity's membership records and mailing list, and
4. applications for funding from central or local government or other sources to which the Society has sought or received funding.

I appreciate there is a difficult balance to be struck by the Trustees in relation to these matters. Quite naturally they will not wish unnecessarily to inhibit the work of groups. However, they must take steps to ensure that the good name of the charity is not prejudiced by a local or special interest group wishing to pursue a dispute or an agenda which is not compatible with the interests of the Society as a whole.

It is my invariable practice to include a confidential dispute resolution clause in the contracts I prepare for charity clients. The Trustees may consider it appropriate to incorporate into the revised guidance notes some mechanism for addressing disputes between the Society and individual local or special interest groups.

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Finally, I should mention that when dealing with disputes between the Society and local special interest groups it will be important for the Trustees to be alive to the prospect of actual or, perhaps more importantly, perceived conflicts of interest. In my opinion it would be advisable for individual Trustees to abstain from voting on contentious matters affecting a group of which they are also a member.

The subject of conflicts of interest also needs to be considered in relation to the campaign for compensation for Hepatitis C sufferers. I understand that in addition to including Hepatitis C sufferers, the Trustee Board also includes active members or supporters of the Manor House Group. I am not sure if any of the Trustees are also pursuing legal action in a personal capacity.

Unfortunately in this situation the conflicts of interest position is complex. However, the starting point in law is clear. The Trustees have an overriding duty to act in the best interests of the Society and when considering the policy and strategy of the Society on the compensation issue they must disregard their personal situations. For their own protection, I would advise any Trustee who is actively considering or pursuing legal action for compensation to abstain from any vote on matters relating to the campaign.

Similarly, I think that any Trustee who is an active member or supporter of the Manor House Group should abstain from voting on the issue of any action to be taken in relation to that Group. I appreciate that this may be a sensitive subject on which the Chairman may be inclined not to press the conflicts points. However, as the following quote from "Running a Charity" by Francesca Quint (a former Deputy Charity Commissioner) shows, abstention is lesser of the various options.

"If the trustee is appointed by, or a member of another body, he or she must remember that, as a trustee, his or her duty to the charity overrides all other obligations. If an irreconcilable conflict arises, he or she may have to avoid taking part in decisions of the charity, or attending meetings or, in extreme cases, to resign from one or other position."

I hope that the advice in this letter is clear but in the event that either you or the Trustees require further advice please do not hesitate to let me know.

Yours sincerely

GRO-C

ANNE MARIE PIPER