



March 1, 2004

Ms. Diana E. Murphy, Chair
United States Sentencing Commission
Attn: Public Affairs
One Columbus Circle, NE, Suite 2-500
Washington, D.C., 20002-8002

RE: Proposed Amendments to the U.S. Sentencing Guidelines
Chapter Eight: Sentencing of Organizations and Compliance Programs

Dear Ms. Murphy:

On behalf of the Providence Health System, I want to offer our formal comments to the United States Sentencing Commission's notice of proposed amendments to the Sentencing Guidelines that was published in the December 30, 2003 Federal Register. We wish to specifically address the second proposed amendment that establishes criteria for an effective program to prevent and detect violations of the law ("compliance programs").

The Providence Health System is a not-for-profit, Catholic health system that includes 18 acute care hospitals, 18 freestanding long term care facilities, clinics and physician groups, a health plan and home health agencies serving communities in Alaska, Washington, Oregon and California. Providence seeks to fulfill its mission of continuing the healing ministry of Jesus in the world of today, with special concern for those who are poor and vulnerable. Working with others in a spirit of loving service, we strive to meet the health needs of people as they journey through life. At the same time, like other health care providers, Providence must strive to achieve this mission while addressing a myriad of state and federal laws and regulations. Having operated a compliance program since 1997, it has been Providence's experience that an effective compliance program is a valuable tool for demonstrating its commitment to these mandates. Furthermore, as we have recently been evaluating the effectiveness of our past efforts, we are pleased that many of the changes that Providence is making to strengthen its program are consistent with the direction recommended by the Commission. The comments that follow are indicative of the support for the Commission's general direction as well as some specific observations.

Establishing Required Elements for What Constitutes an Effective Compliance Program

When the organizational sentencing guidelines first became effective on November 1, 1991 they created a set of voluntary incentives for adoption. Since that time, industry has gained experience with the seven elements of an effective compliance program. This

[2-201]

approach – while perhaps more theoretical when first posited over ten years ago – has now proven to be an effective management tool in fostering compliance and detecting violations of the law. Providence finds that the implementation specifications enumerated in the proposal for what constitutes an effective program are consistent with this experience and indicative of good industry practice. Given this perspective, it is hard to contemplate how an organization would justify a decision not to implement such a program. The duty that governance and management alike have to their stockholders, or in the case of a non-profit organization to their mission, suggests that the maturation of organization compliance as an established management practice provides a basis for making this a required approach. In short, compliance programs should not be voluntary. The work of the Ad Hoc Advisory Group on the Organizational Sentencing Guidelines and the proposed amendments supports this position as well.

Promotion of an Organizational Culture that Encourages a Commitment to Compliance With the Law

We want applaud in the strongest terms possible the direction taken by the Commission in recognizing the inseparable connection between an organization's culture and the effectiveness of its compliance program. It is true that education, policies, and audits are all part of an effective compliance program. However, it has been our experience that the most important deterrents to non-compliance are the values and culture that underlie the organization. For that reason, the compliance program within Providence has been known as the "Integrity Initiative." We have sought to stress the responsibility that each individual has to be accountable for the integrity of the decisions we make and the actions that we take. Our training materials have sought to position legal requirements within this context of business and organizational ethics and our core values. It has been our experience that the behavior of individuals and the organization as a whole is more properly motivated through this approach as opposed to exclusively relying on the more narrow rationale of regulatory requirements. As the Commission gains more experience in this regard we would hope that this might be an area of further development in subsequent revisions to the guidelines. For now, Providence believes the Commission's approach represents a positive and much-needed first step.

Expansion of the Scope of a Compliance Program

Under the current guidelines the objective of a compliance program is directed only to violations of criminal law and prevention of criminal conduct. The Commission proposes to expand the scope by defining the term "violations of law" to include non-criminal violations and regulatory violations. Providence supports this proposed expansion: Many of the areas in our program – while including those which constitute criminal actions – are addressing non-criminal actions. Furthermore, to the extent that the hurdle for reporting violations is set unnecessarily high (i.e., criminal behavior) it will serve only to limit reporting and the reach of an effective compliance program.

[2-202]

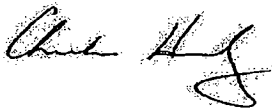
Establishing Program Responsibility

Much of the Commission's proposed direction represents what might be thought of as a "structural" approach to management: To the extent that certain structures are in place – policies, personnel, practices, and resources – it is assumed that a program will produce positive outcomes. Obviously, in the case of a compliance program these expected outcomes are the prevention and detection of violations of law. Consequently, it is important that authority for a compliance program be vested in a highly-placed individual within the organization and that they enjoy the support of and access to senior management and as appropriate governance bodies. Assuring that governance plays an active role in program oversight is another critical structural element in establishing an effective program.

However, as critical as these elements are – and as we have argued elsewhere, they should be required – they cannot in themselves "ensure the effectiveness of the program" as stated in § 8B2.1(b)(2). Operational management needs to be equally committed and this responsibility needs to be given equal attention in the proposed guidelines. Simply stated, the job of ensuring compliance is not the sole responsibility of the Compliance Officer. Even the language set forth by the Commission in establishing a rebuttable presumption concerning a program's effectiveness is an acknowledgement that violations of law can occur despite the existence of an effective compliance program. The Compliance Officer should have an affirmative obligation to establish a program that meets the required elements and review its effectiveness through comprehensive risk assessments and audits. To the extent that implementation is not effective then the Compliance Officer has a duty to inform both management and the Board. The Commission should not hold the Compliance Officer accountable for more than these responsibilities. Doing so is to fail to recognize the indispensable role of operational management in implementation. We would encourage the Commission to add language stressing this role that goes beyond that of the Compliance function.

Again, Providence appreciates the opportunity to share our perspectives with the Commission as it considers these important changes to the Sentencing Guidelines.

Sincerely,



Charles Hawley, Vice President
Government Affairs
Providence Health System

[2-203]