REPORT TO THE AUDIT AND COMPLIANCE COMMITTEE

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EXECUTIVE SUMMARY

This report will provide updates and highlights of the work of the Office of Compliance and Internal Audit since the last Board meeting, and will focus on FY10 compliance initiatives, risk updates, and resource management.

The Office of Compliance and Internal Audit continues to develop and implement HIPAA Security policies and procedures; provide oversight of management action plans to ensure compliance; conduct auditing and monitoring to identify and mitigate risk; develop and implement compliance training and certification/disclosure processes; and provide counsel and advice on compliance-related matters.

Work progresses on several key initiatives:

- Development of Compliance Scorecards, Compliance Employee Survey, and Compliance Performance Objectives
- Launch of our office's web site – web sites are now in Beta review
- Automation of compliance initiatives (annual certification, audit reports, training, etc.)
- Ensure HIPAA compliance
- Oversight of Management Action Plans to ensure deficiencies are addressed

We continue to recruit for two compliance auditors to support our clinical compliance efforts (billing and coding), and have begun the recruiting process to replace the Clinical Compliance Officer, who has accepted a position with Dr Satcher in the Center of Excellence on Health Disparities.

Working with our internal auditors, Deloitte and Touche, LLP, we continue to monitor management efforts to address issues identified in internal audits conducted in FY2009, and Deloitte will present its report to the Audit and Compliance Committee. Deloitte continues its audit work in the areas of Grants, Faculty Hiring, MMA Revenue Cycle, and HR Consultant and Temporary Hiring that will be completed by May 2010. Finally, Deloitte continues to assist MSM in updating our 2008 enterprise risk assessment and prioritizing compliance initiatives.

2009-2010 COMPLIANCE INITIATIVES UPDATE

Compliance Activities

- Compliance Scorecards (drafts attached for review and discussion)
  - Risk Assessment and Mitigation
  - Employee Compliance Survey
  - Key Incidents
  - Key Initiatives
  - Compliance Programs
- Code of Conduct
  - Development continues on annual certification process and will be implemented by Q4 2010.
- Training and Education
  - Development continues on mandatory web-based Code of Conduct and other relevant compliance training and is scheduled to be implemented in calendar year 2010.
  - Training on HIPAA Security Policies and Procedures will be developed and implemented by the end of calendar year 2010.
  - Strategy continues to improve use and quality of technology to deliver compliance messaging.
  - Continue to develop compliance website to provide direct access to additional resources, FAQs and external links for compliance-related information. Web sites are now in Beta testing and projected "go live" is Q2 FY2010.
  - Developed compliance performance objectives and working with HR to incorporate into FY2011 objective setting and review process.
- Executive Compliance Steering Committee ("ECSC")
  - Review of compliance initiatives and strategies.
  - Review and approval of Compliance Scorecards.
  - Discussion of risk assessments and action plans.
  - The Committee has stressed the importance of ensuring that responsibility for embedding compliance into institutional operations rests with academic and administrative functions and that oversight rests with the Office of Compliance and Internal Audit.

Auditing and Monitoring and Reporting Compliance Activities

- Internal Audit - Deloitte
  - In Process – MMA Revenue Cycle, Faculty Hiring Process, Temporary/Consultant Hiring Process, Grants/Contracts and Research.
- HIPAA Security and Privacy Regulations
  - RFP is being prepared to engage an outside third-party to conduct a thorough audit and review of our information technology systems to ensure HIPAA security and regulatory compliance.
- Follow-up HIPAA Security and Privacy Audit of MMA Clinical Departments
  - Discussed below in Risk Update
- MAG Mutual Risk Assessment – MMA Clinical Locations
  - Discussed below in Risk Update
- MMA Clinical Billing and Coding
  - Education and training continues, but billing and coding auditing has not occurred since December 2009
  - Baseline auditing will commence when the Compliance Auditor hiring process is complete

Policies and Procedures Development

- HIPAA Security policies and procedures were developed to support regulatory requirements, and were reviewed and approved through MSM's policy review process. However, the failure to internally resolve the issue of roles and responsibilities for HIPAA security compliance between IT and the Office of Compliance has prevented implementation. I continue to advocate for resolution of this outstanding issue and will move forward with policy/procedure implementation once resolved.
- Working with HR to hire a Disability Services Manager to ensure compliance with the requirements of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act for a formalized disability services function.

Technology Support

- Continue to work with IT to develop a database to track auditing/monitoring and compliance matters, conduct trend analysis, and prepare customized report to management and the Board.
- Efforts to enhance compliance website are moving forward and the web site is in Beta testing.
- Continue efforts with IT to implement annual certification process for the Code of Conduct and compliance training, and annual conflict of interest disclosure requirements.
- Review of Banner implementation will be undertaken to determine suitability for process implementation of above initiatives.

RISK UPDATE

MAG Mutual Risk Management & Patient Safety Assessment – February 2010

- Assessment represented a comprehensive risk management review of key office systems impacting physician's and organization's professional liability exposures.
- Assessment based on information obtained from review of medical records and interviews with various staff members and physicians.
- Key recommendations represent significant potential exposures and should be addressed promptly.
  - Chart Review
  - Clinical Office Tracking Systems
  - Documentation
  - Emergency Preparation
  - Medical Records and Drug Handling/Security
  - Office Procedures
  - Practice Coverage
- MAG Mutual Assessment completed in May/October/November 2007 identified many of the same risks/exposures
  - Management Action Plan was developed in 2007/early 2008 to address
  - Results of the 2010 assessment indicate a failure to implement, oversee and/or sustain operational changes necessary to ensure compliance and mitigate risk
- MMA Leadership is currently developing a Management Action Plan to address deficiencies
  - Plan will be reviewed and approved by MMA Board of Trustees and the Executive Compliance Steering Committee prior to implementation
  - Plan will include roles/responsibilities and accountabilities to ensure successful implementation and ongoing management of operational activities
  - Follow-up assessment by MAG Mutual scheduled for May 2010

HIPAA Security and Privacy/Risk Management Audit of MMA Clinical Departments

- Follow-up HIPAA Security and Privacy Audit of MMA Clinical Departments
  - Initial audit conducted in April, 2009
  - Management Action Plan to address deficiencies was developed in late summer/early fall 2009 with a completed implementation date of December 31, 2009.
  - February 2010 mini-audit of Management Action Plan remediation identified continued non-compliance in several key areas.
    - Lack of approved policies and procedures governing operating procedures and accountability criteria.
    - Non-sterile equipment was found in patient exam rooms.

- Prescription forms were in plain sight in unlocked and unoccupied physician offices.
- Expired sample medications were found in sample closets, no sample inventory logs were in use, and no exam room cabinet inventory sheets were in use.

- Compliance failures led to illegal activity by MSM employee.
- Overall failure to implement, oversee and/or sustain operational process changes set forth in the management action plan.

❖ Corrective actions will be implemented within management action plan developed to address MAG Mutual assessment deficiencies and will be reviewed in May 2010.

Prescription Fraud Investigation

❖ MMA notified by several pharmacies of possible fraudulent prescriptions for Oxycontin, Roxicodone and Percocet submitted electronically or on written prescriptions under the names and DEA numbers of several MMA physicians.
❖ MSM employee identified as possible suspect responsible for theft and sale of fraudulent prescriptions.
❖ DEA and local police agencies are engaged and investigating with assistance from the Office of Compliance.
❖ Arrest warrant(s) will be issued by DEA and/or local authorities upon conclusion of investigation and as warranted.
❖ Internal investigation continues and appropriate disciplinary action will be taken as necessary and warranted.
❖ Root cause analysis will be conducted to address process failures and action plan will be developed as necessary.

COMPLIANCE OFFICE RESOURCE MANAGEMENT

I remain committed to addressing budget shortfalls during the FY2011 budget review process and am hopeful that solutions can be found to address the headcount deficiencies and budget shortfall. Donnetta Butler and I have agreed to meet at the beginning of the FY2011 budget review process to discuss options and possible solutions. I am also working with HR to review compliance function headcount and budget levels at comparable academic medical schools for comparison purposes and will discuss those results during our upcoming meeting. However, as part of this Committee's oversight responsibilities for compliance activities, the following information is provided to update the Committee about ongoing budget issues here at MSM.

❖ As noted last fall, the availability of financial resources to support compliance staffing needs remains a major concern. There continues to be a significant amount of identified risk that must be mitigated as soon as possible, and an adequate number of Compliance Office staff is critical to that effort. Unfortunately, we have not been able to hire, attract or retain individuals with the requisite skill set to meet the requirements of the office.
❖ As you may recall, we have been recruiting for two Compliance Auditor positions since January 2009. I was advised during the FY10 budget process that one position would be

frozen, and it remains so. Our maximum budget dollars for each position is $55,000. Salary demands from identified candidates have ranged from $63,000 to $85,000. We continue to source for qualified candidates, but have been unable to attract skilled individuals with the salary dollars we have to offer. Consideration was given to moving some of the dollars from the frozen position to the active position to meet salary demands, but the inability to replace the funds and hire a second auditor is problematic. The workload and risk in the billing/coding arena requires two full time positions.

- The individual in the Clinical Compliance Officer role has announced her decision to leave the Compliance function at the end of March for another position. One of the major stated reasons for the departure is a belief that her salary ($119,000) did not meet market rates.
  - I requested a compensation analysis from HR in 2009 for this position and was advised that the appropriate salary range was $109K-$165K, with an average of $141K. Based on that information, I requested a budget increase of $21K to increase the salary to $140K in line with market rates.
  - Unfortunately, the requested budget dollars were not approved.
  - It is imperative to the compliance work in the clinical area that the clinical compliance officer position be filled as quickly as possible.
  - There is concern that the failure to offer a market rate salary will prevent the ability to hire a competent individual for the role, but sourcing activities have begun.
- Shortly after my arrival in 2008, we identified the need to hire an institutional compliance officer to assist with the development and implementation of the compliance strategy.
  - The Office of General Counsel transferred a paralegal position and the associated budget dollars of $82K to the Office of Compliance to address the need.
  - A compensation analysis by HR resulted in a recommended increase of $43K to the base salary to meet an average market salary of $125K.
  - Shortly thereafter, the position was frozen for the remainder of FY09.
  - During the FY10 budget process, I requested an additional $43K to increase the institutional compliance officer salary to average market rates.
  - Unfortunately, the budget increase request was not approved and the position remains frozen at a base salary of $82K.

As previously discussed, the increased dollar requests in the FY10 budget were made to ensure that the Office of Compliance and Internal Audit has the resources it needs to ensure MSM meets its regulatory and legal obligations, and is a significant factor in the continued success of our program. I appreciate any guidance and feedback you may have in helping to address this difficult situation.

CONCLUSION

As noted in the Risk Updates section, we continue to be challenged by the failure to address compliance deficiencies in a timely fashion. The support of the Executive Compliance Steering Committee in ensuring the implementation of a more structured approach for resolving compliance concerns is critical and must include a commitment to setting objectives, measuring performance,

and leadership accountability for results. The use of compliance-related performance objectives, surveys and measurement scorecards will support these efforts.

Overall, I believe we are making progress in the development of MSM's compliance program and I am committed to ensuring that MSM can carry out its mission without significant risk exposure and remain compliant with legal and regulatory requirements.

Thank you for your continued support and guidance.