

Nelson Hardiman Obtains California Attorney General Approval of Nonprofit Transaction

Nelson Hardiman, LLP represented the interests of a physician, his data processing company, and a non-profit he founded and funded, with a complex transaction to place the physician's intellectual property and the non-profit's operational know-how into a well-financed, for profit enterprise. The existing arrangements between the physician (through his data processing company) and the nonprofit, allowed for complex analysis of rare diseases to optimize care for a few hundred patients at a time. Investors formed a 'Newco' to gain ownership and/or licensing of the valuable intellectual property of the physician and know-how of the nonprofit, and provided Newco with substantial working capital to ramp up the application of the operations to allow the new enterprise to treat thousands more patients. Both the physician and the nonprofit received substantial equity in Newco in exchange for the sale and licensing arrangements.

Under California law, any nonprofit that sells 'substantially' all of its assets must at least notify the California Attorney General ("CAG") in advance of the transaction. If the nonprofit wants the CAG to approve of the transaction, then a more robust process and application must be followed under the CAG regulations. There was a threshold issue of whether the nonprofit was transferring 'substantially all' of its assets; the regulations do not define this term, but the legislative history behind this requirement shows that the enactors considered 75% of the assets to equate to 'substantially all' – even though there is no such number in the law.

While the nonprofit is going to continue operations and research into other areas, it was not entirely clear that the transfer and licensing of its know-how and related operations was not equal to 75% of its present value, and the determination was made to file with the CAG under the rules, maintaining the ability to assert this was not a transfer of 'substantially all' of its assets. The CAG issued multiple requests for information and assessments, which were all provided.

After a series of meetings with the clients, counsel, and the CAG representatives, the CAG approved the transaction, subject to certain future share transfer restrictions that were acceptable to the client.

Nelson Hardiman has significant experience in advising and litigating on behalf of nonprofits, advocating for them in IRS and CAG matters, as well as in the various courts.

About Nelson Hardiman

Nelson Hardiman LLP is the premier healthcare and life sciences firm in Los Angeles, serving healthcare providers, investors, and organizations that need a hard-to-find level of quality advice on the most sensitive industry issues. The firm's litigation practice specializes in defending fraud and abuse and whistleblower actions, government investigations, reimbursement disputes, and other complex business disputes. Nelson Hardiman regularly serves as outside counsel for healthcare system clients and medical staff representation. Nelson Hardiman's transactional group handles healthcare organization acquisitions, sales, investment, and financings, and Nelson Hardiman's regulatory team advises on compliance with licensing, operational, and reimbursement issues across the full continuum of healthcare industry sectors, with expertise on Medicare and Medicaid requirements, privacy and data security, FDA, and many more matters. The firm has earned a singular position reputation nationally for its leadership in addressing issues in behavioral health. More information about the firm is available at www.nelsonhardiman.com or at 310.203.2800. For more information, please [contact us](#).