Working Document: Meeting with Client re Legal Risk Assessment

Project Overview

Materials reviewed to date

- Client strategic plan, website, audited financial statements, insurance summaries and applications, and 20__ governance review materials
- multiple resources relating to nonprofit risk management and legal audits

What we propose

Multi-stage process:

- today: high-level risk identification
- today/near-future: management priority determination and instructions
- balance of quarter and beyond: targeted fact-finding, assessment and development of recommendations and documents as appropriate

What we attach

- risk identification working document for use as possible discussion platform

Note: This document does not reflect or constitute legal advice. This is a sample made available by the Organizations and Transactions Clinic at Stanford Law School on the basis set out in nonprofitdocuments@law.stanford.edu. Your use of this document does not create an attorney-client relationship with the Clinic or any of its lawyers or students.
Risk identification: three ways to come at it

High-level categories

- third-party claim for personal injury (physical or emotional harm) (e.g., program client)
- third-party claim for property damage (e.g., auto accident)
- third-party claim for breach of contract and economic loss (e.g., vendor, ABC partner)
- third-party claim arising from action of another party collaborating with Client (e.g., contractor, ABC partner)
- IRS audit or enforcement action relating to compliance with tax-exemption requirements (e.g., lobbying, dealings with related parties)
- AG investigation or claim relating to compliance with governance requirements (e.g., conflicts of interest, use of charitable assets)
- regulatory agency investigation or claim relating to compliance (e.g., health record privacy)
- failure to adequately secure rights (e.g., inability to use work-product or stop trademark infringement)
- claim by donor or other funder for failure to comply with restrictions on funds use

Risk-reduction tools

- employee, provider and volunteer screening
- employee and volunteer training and policies
- employee and volunteer monitoring
- waivers and releases from volunteers and clients (including IP)
- website terms
- facility inspections
- periodic board review of governance arrangements and internal controls
- periodic management/board risk assessment review
- compliance and reporting provisions in provider and strategic partner contracts
- indemnification and liability limitation provisions in provider and strategic partner contracts
- insurance protections

Identifying specifics

- brainstorm and identify potential risks by program and corporate function
- draft risk identification tool attached as Exhibit A

Goal: prompt thinking about Client concerns and priorities

Balance of discussion today

- hear Client project goals and reaction to approach
- use risk identification document as appropriate as tool for identifying Client concerns and priorities
- get instructions regarding initial focus and make plans for fact finding
The purpose of this document is to identify examples of potential risks, some generic and some specific to Client. The document does not reflect investigation of Client history or of any specific O&T concerns and does not constitute a comprehensive identification or prioritization of potential risks. It is intended as a discussion platform only and tool to prompt management thinking about (i) risks in programs and organizational activity and (ii) priorities for focused review.

<table>
<thead>
<tr>
<th>Function/Subject Matter</th>
<th>Activity or inactivity that could amount to legal risk</th>
</tr>
</thead>
</table>
| **Corporate governance** | - Board meets duty of care  
- Bylaws and other documents reflected in actual practice  
- Annual audit as required by the Nonprofit Integrity Act  
- Transactions with related parties properly approved and documented  
- Board minutes and other records properly maintained  
- Necessary forms and statements filed with CA Secretary of State and Attorney General |
| **Exempt status compliance** | - File accurate 990; make 990 or IRS determination letter publically available  
- Activities follow stated mission  
- No excessive lobbying  
- No endorsing candidates or engaging in electioneering on Client time or with Client resources  
- Corporate sponsorship conducted in line with IRS guidelines  
- Appropriate compensation and other transactions with related parties |
| **Fundraising** | - Misleading solicitation materials and oral representations  
- Use restricted funds as required by donors  
- Make required reports to donors  
- Maintain donor privacy  
- Register in other states where soliciting funds  
- Earned income relates to mission  
- Comply with applicable tax laws for joint fundraising/fiscal sponsorships  
- Keep proper records of endowment funds  
- Provide receipts for donations over $250  
- Comply with CA law regarding raffles/gaming |
| **Facilities/Property** | - Slip-and-fall and other accidents  
- ADA non-compliance  
- Obtain proper inspections/permits/building codes  
- File appropriate exemption forms for property tax and business license tax |
| **Intellectual property** | - Secure and enforce trademark and copyright rights  
- Proper use of copyrighted or trademarked material |
| **Employment** | - Distinguish between exempt and non-exempt employees  
- Distinguish between employees and independent contractors.  
- Withhold payroll taxes.  
- Make unemployment insurance payments.  
- Comply with fed/state wage and hour requirements |
<table>
<thead>
<tr>
<th>Category</th>
<th>Risks and Compliance Measures</th>
</tr>
</thead>
</table>
| **Website**                            | - Privacy policy that protects personal information  
                        - Terms of use that restrict the use of Client content                                         |
| **All Programs**                       | - Proper selection, training and monitoring of volunteers, employees, and contractors  
                        - Use of unlicensed professionals  
                        - Lack of, or improper, enrollment/consent/waiver forms  
                        - Direct harm to another person by a client while on the premises of Client facility or attending a workshop, seminar, or program of Client  
                        - Direct harm to another person or property caused by Client employee, contractor, volunteer or client  
                        - Injury to volunteers  
                        - Employees, volunteers or clients committing illegal activity on Client property, or using Client property  
                        - Sexual abuse prevention policies, training, and monitoring  
                        - Privacy protections for all users (e.g. HIPAA)  
                        - Screen users that could pose a danger to clients, employees, volunteers of Client  
                        - Injury resulting from action of referral partner |
| **Talk Line**                          | - Negligent advice  
                        - Protect the privacy of users  
                        - Employees or volunteers creating oral contracts with users  
                        - Providing inaccurate translations |
| **Counseling and Therapy Services**    | - Maltreatment by an Client employee, contractor, or volunteer (medical malpractice for psychiatrists) (ethical violations for counselors)  
                        - Inaccurate advice given by employees to public and private child welfare agencies, e.g., Child Protective Services |
| **Children’s Playroom, and Respite Care** | - Harm to a child caused by another user  
                        - Harm caused by a Client employee, contractor, or volunteer  
                        - Harm to a child resulting from negligence on the behalf of a Client employee, contractor, or volunteer  
                        - Child abandonment  
                        - Child abduction  
                        - Sexual violence, or the presence of sex offenders  
                        - Release of confidential information about children and/or parents/caregivers |
| **Seminars, Workshops, Service Provider Training** | - Accuracy of educational content  
                        - Secure rights in content, i.e., copyright |
| **All Partnerships**                   | - Client contract performance with partner MOUs and agreements  
                        - Claims against Client resulting from acts of partners  
                        - Complete due diligence and periodic reviews of partners’ performance |
- Use of Client facilities or assets by partners in a manner inconsistent with mission or tax-exempt purpose
- Use of Client name/intellectual property

| Child Advocacy Center | - Non-compliance with outbound leases  
|                       | - Landlord liability requirements  
|                       | - Acts of tenants/partners  
|                       | - Appropriate zoning/building entitlements  
|                       | - Facility infrastructure, e.g., IT networks, heating and cooling, plumbing, etc.  
|                       | - Security  
|                       | - Accreditation requirements |

**Note:**

Employment, professional licensure, counseling client privacy, ADA compliance and other facility compliance laws, and other matters are outside of [________] scope; they are noted here for information.