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TO: Hoyt C. Suppes, MSW
Executive Director
NASW Washington Chapter

FROM: Carolyn I. Polowy 
General Counsel, NASW

SUBJECT: NASW/CHAPTER LEGAL STRUCTURE

Your three letters dated October 15, 2009, one of which was addressed to Dr. Clark and two to Dr. Clark and me, raised several issues regarding NASW's corporate legal structure, its guiding corporate documents, the Chapter-National relationship and trademark/copyright issues. Your three letters are answered in this one reply and the requested documents are attached for your review.

The answer to your question about the legal relationship of the Chapters to National NASW requires a review of the structure of the Association. The Chapter-National structure of NASW is established in the NASW Bylaws which were last amended in August 2008. The overall purposes of NASW are set out in Article II of the NASW Bylaws, the second paragraph of which neatly summarizes the many individual points of the Article:

"The association shall at all times recognize and carry out a threefold responsibility:
(1) to promote activities appropriate to strengthening and unifying the social work profession as a whole, (2) to promote the sound and continuous development of the various areas of social work practice whereby the profession contributes to the meeting of particular aspects of human need, and (3) to promote efforts on behalf of human well-being by methods of social action. To these ends, the association shall formulate a program designed to attain its several objectives and shall so organize and use its resources as to maintain consistently a sound balance and integration of its general and special activities."

The Chapters are identified in Article XII as the means by which NASW accomplishes its program on the local level:

"The chapter is constituted to advance the purposes of the association on the local level and for the purpose of association administration and *is the basic administrative unit of the association.* (Emphasis added.) The chapter program and structure shall be designed to encourage and facilitate participation by the members."

The organization of the Chapters is described in Article XII.D.2 which authorizes the Chapters to have “sufficient officers to discharge the functions usually carried by a chairperson, secretary, and treasurer and governing board of directors” and in Article XII.D.3 which authorizes each Chapter to have a set of bylaws which shall be consistent with the national Bylaws and meet the “standards established by the national association.” In Article XII.D.4 the chapters are required to follow the nominations and election procedures that meet standards established by the national Board of Directors.

Several other provisions make it abundantly clear that Chapters, as administrative units of the Association, must follow the policies and directives of the National Board:

- Article XII.E. states that the “...programs, policies, and actions taken by the chapters shall be consistent with the official position and policy of the Association.”
- Article XII.F. identifies the ways in which Chapter activities are financed. These include direct Chapter rebates from member dues, Chapter Development Fund grants for small chapters, supplemental grants at the discretion of the national Board of Directors and funds raised by the Chapters “...in accordance with the accepted procedures of the association. Because NASW is one organization, the funds that are allocated to the Chapters and Chapter assets would be considered a part of NASW’s total assets if NASW as a corporation were in bankruptcy or had to reorganize.
- Article XII.G. allows the Chapters “...in consultation with the national Board of Directors,...(to) ...initiate and develop regional organizations of chapters for administrative, staffing, and/or organizational purposes.”
- Article XII.H. makes Chapters accountable to the national Board of Directors “...through regular review, for expending funds, using staff, and carrying on activities in accordance with the program and policy objectives of the association, with appropriate sanctions for noncompliance.”
- Article XII.I. has several provisions that identify the responsibility of the Chapters in regard to the staffing of Chapter offices. The personnel practices are “standardized nationally” and all personnel actions are conducted “in consultation with the National Office” and in compliance with the affirmative action policy.
- Article XVI.E. gives the national Board of Directors the authority to withhold Chapter dues rebates if the Chapter is in violation of the bylaws or fails to meet affirmative action goals as established by the Board of Directors.

The Bylaws and Certificate of Incorporation of NASW are attached to this memo.

As Chapters are unincorporated administrative units of NASW, they have the specific powers granted in the NASW Bylaws and any specific additional authority granted by the NASW Board of Directors. They do not have independent powers to operate, make policy for NASW or expend resources in a manner contrary to NASW directives and overall program goals.

You have also asked whether paid NASW staff or elected Chapter Presidents' service on the national Board of Directors could be considered illegal or violate IRS or other federal statutes or state regulations. In general, the service of paid Chapter staff or elected Chapter Presidents on the elected National Board of NASW as a non-profit corporation could create a number of legal issues. These include:

Divided Loyalties: The duty of loyalty is a corporate law requirement for Board members that is recognized in Delaware corporate law and is a requirement of most of the other states. (NASW is incorporated in Delaware.) If a Chapter Executive Director is elected or appointed to represent the interest of Chapters on the Board, it is would inherently require that the person's loyalties would be divided between the Chapter and the national Board. This is particularly the case because the Executive Director is evaluated by a Chapter Board and could be penalized because of positions taken or not taken on the National Board. As to the Chapter President, that person would always be wearing two equal hats in decision-making when the interests of the national organization should be the principal concern for a national Board member. The issue of loyalty has occasionally been addressed by the courts. In *Professional Hockey Corp. v. World Hockey Assoc. (WHA)*, 191 Cal. Rptr. 773 (Cal. App. 1983), the court discussed the issue of hockey team owners' loyalties and what their duty was to the WHA when making decisions for the World Hockey Association. The Court stated that "...when the representatives of the various teams sit as the board of trustees of the WHA it is not their club, their bylaws, their personal concept of duty which control their obligations and duties as trustees. The law requires, irrespective of the competitive personal feelings that the various owners of teams may have towards each other, when they or their representatives sit on the board of directors of WHA to the extent they have common corporate goals, they have a duty to make decisions for the benefit of the corporation, the hockey league as a whole." It would be unwise for NASW to institutionalize a practice or Bylaws change that creates potential or actual issues of divided loyalties for elected Board members. Another example of such a conundrum would be the issue of who an Executive Director or Chapter President elected to the National Board would represent in Delegate Assembly – the Chapter or the National Board of Directors.

Conflict of interest: Recurring conflict of interest issues could limit the individual's ability to participate in Board decision-making. Issues that would directly affect the Chapters and, in particular, the staff member's Chapter would pose conflicts for the Board member, most likely requiring his/her recusal from the discussion and vote. This interferes with the operations of the Board and would limit the board member's effectiveness in representing the Chapters' interests to the Board. Moreover, the Chapter Executive Director's employment agreement requires her/him to identify potential or actual conflicts to the Chapter Board which then puts the employment of the Chapter Executive Director in jeopardy if a conflict cannot be resolved. The Chapter President could also experience conflicts in decision making or the allocation of resources when the interests of the National organization should predominate.

IRS Form 990: The revised Form 990 requires NASW to identify the total number of directors on the NASW Board of Directors and to identify any that were not" independent

directors” during the tax year. A director who is compensated as an employee of the organization or of a related organization is not considered an “independent” director. While not prohibited, the presence of Directors who are not “independent” raises a flag for IRS in a review of the NASW Form 990.

D&O Liability Insurance: If the NASW Board member is also a Chapter Executive Director or President, actions taken by the Executive Director or President in the Chapter may be imputed to the National Board and limit the application of the Board’s D&O coverage in a matter involving the Chapter. In addition, the coverage may not be available if the Executive Director or President has a claim against national NASW.

Executive Director Employment Contract: The responsibilities of the Chapter Executive Director are set out in the Executive Director’s employment contract which is reviewed and signed by a National Office manager and the Chapter President. That agreement identifies the duties of the Chapter Executive Director and could not include responsibilities to serve on a National Board of Directors, when that is the body overseeing the Chapter’s operations. In addition, service on the National Board would cut into the time that the Chapter Executive Director had to devote to Chapter duties. How would the various duties be prioritized? Answering that question demonstrates the multiple issues that could arise for an Executive Director in the application of the Employment Contract.

The plethora of potential problems and legal issues for a Chapter Executive Director or President who would serve on the NASW National Board of Directors provides ample reason to prohibit such a practice.

In regard to your question regarding the review of NASW credentials to insure that they are protected by trademark registration to the extent permissible, that is an excellent suggestion and is being pursued. The ACSW is currently registered and the other credentials are being prepared for registration.

Thank you for your letters and interest in these important issues. I trust that this information will provide the answers you requested.

Encs:
NASW Certificate of Incorporation
NASW Bylaws