U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

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For Immediate Release
Monday, Nov. 3, 2003

Grassley Urges Tenet to Provide More Documents to Committee

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, has urged the Tenet Healthcare Corporation to comply fully with his document request as part of the committee's investigation of the company, and in keeping with company officials' statements about their willingness to change the company's culture.

The text of Grassley's letter to the company's chairman follows.

October 31, 2003

VIA FACSIMILE: (805) 563-7070
ORIGINAL BY U.S. MAIL

Edward A. Kangas
Chairman
Tenet Healthcare Corporation
3820 State Street
Santa Barbara, CA 93105

Dear Mr. Kangas:

In your letter dated October 10, 2003, you make assurances to the Senate Finance Committee (Committee), on behalf of Tenet Healthcare Corporation (Tenet), that you understand the Committee's concerns about the appearance of conflict and lack of significant change in the corporate culture and management team at Tenet. In pertinent part, your letter states:

> The integrity of our corporate culture and senior leadership is critical to resolving the significant issues we face. Our aim is to build a company known for the quality of both its patient care and its people. In doing so, we have confidence in the management team we are assembling at Tenet, and in the direction the company is taking in terms of quality, ethics and compliance. As you mention, of course, the proof is in the pudding. We could not agree more. We know we must demonstrate to you, and all of our constituents, significant

> progress in restoring the reputation of this company. We intend to do so.

On September 5, 2003, the Committee requested documents and information from Tenet about patient deaths and complications due to medically unnecessary heart surgeries and procedures at Redding Medical Center (Redding/RMC). Through its attorneys, Tenet has been producing documents and information responsive to the Committee's request. First and foremost, however, the Committee sought the findings and results of Tenet's independent consultant, the Mercer Human Resource Consulting, Inc. (Mercer), a subsidiary of Marsh & McLennan Companies, retained to review the cardiology program at RMC. Unfortunately, Tenet has chosen not to provide the Committee with this critical information. Tenet and its attorneys assert that the responsive documents contain information protected under the attorney-client privilege and attorney work product doctrine.

As Chairman of the Committee, I am perplexed by Tenet's decision not to share Mercer's independent findings of what happened at Redding. It is perplexing because there is no better way for Tenet to demonstrate its intent to restore its reputation and credibility to America's taxpayers, the community of Redding, California, the employees, staff, physicians, and perhaps most significantly, the patients at RMC (not to mention the Committee itself), than for Tenet to openly and publicly reveal what went wrong at Redding. It is especially shocking in light of the fact that Tenet proclaimed so publicly that it would get to the bottom of the problems at RMC.

Tenet not only took upon itself an affirmative obligation to investigate the events at Redding, it implicitly took upon itself the obligation to disclose what failures occurred at Redding. On November 1, 2002, three days after the Federal Bureau of Investigation (FBI) raided RMC, Tenet held an extraordinary conference call for its investors and the investor community. Those invited to sit in on the call included a virtual who's who of Wall Street financial institutions, including: Bank of America Securities, Credit Suisse First Boston, Goldman Sachs, J.P. Morgan, Lehman Brothers, Merrill Lynch, Morgan Stanley, and Salomon Smith Barney, among others. Mr. Jeffrey Barbakow attempted to reassure Wall Street, saying:

> *Tenet's stock has come under tremendous pressure this week*, beginning Monday with a research report raising questions about Medicare outlier payments, then continuing with erroneous rumors throughout the week, and then yesterday with a report of an investigation involving one of our hospitals in northern California. Our ability to communicate quickly and fully throughout the week has been hampered . . . *Those of you that know us know that we value our investors and try to be as open and available as we can . . . Throughout this week there have been many erroneous rumors creating turmoil in our stock.*
> (emphasis added).

Mr. Barbakow, and five other Tenet representatives, spoke for well over two hours and pointedly stated that he wanted to "answer your questions." Addressing the FBI's raid at Redding, Mr. Barbakow said, "[w]e are cooperating fully with federal officials in their investigation and we are conducting our own investigation." Further, he emphasized to all participants, "I want to clarify that we have no reason to believe that this is anything other than an isolated instance involving these

two physicians practicing at one hospital." Before turning things over to Ms. Christi Sulzbach to explain the "appropriate steps to ensure that quality has been and continues to be provided for all patients," Mr. Barbakow made a personal plea to Wall Street:

> I became Chairman and CEO during a time of terrible turmoil, when the company's credibility was nil. It took years for us to earn our credibility back. Years. And it was hard won. I am not willing to lose that. The innuendo and rumors of this week are personally offensive . . . *I need first to ensure that our hospitals and our managers are doing the right thing. And are living up to our standards. In Redding, and everywhere else. And I need to demonstrate to all of you that you can trust this company and that you can trust me.* (emphasis added).

It is not necessary to rehash Tenet's history of profiting at the expense of its patients again here. Needless to say, it appears that Tenet's immediate concern in the aftermath of the Redding raid was to calm Wall Street by promptly taking action to demonstrate that Tenet itself was not at fault, but that two rogue doctors were to blame. Next, Ms. Sulzbach took over the conference call and made the following representations with regard to Tenet's plight with RMC:

> The hospital believes that it has the appropriate utilization review and quality management processes in place to ensure that all care that is rendered to its patients is appropriate. The hospital continues to monitor these processes and to take all appropriate corrective action as necessary . . . We are going to do two things . . . we are going to retain an independent cardiologist, at least one, maybe two, because we have a cardiologist and a thoracic surgeon here, to do a retrospective review of the patient medical records that are at issue here. In addition to that, we are going to implement a concurrent review process so that if these physicians schedule procedures at the hospital, that we will have an independent physician review the patient medical records to ensure that in fact they agree, that person agrees, that the procedure is necessary.

In the following days and weeks, Tenet made further public statements attempting to calm Wall Street. A company press release issued three days later, on November 4, 2002, announced, "Tenet ... has hired the national medical audit practice of The Mercer Consulting Group, a respected, independent medical utilization expert to assist in reviewing treatments performed by the two doctors at Redding. Mercer will, in turn, hire independent, expert cardiologists to review patient records and internal documents regarding the cases." On November 7, 2002, the *Report on Medicare Compliance* reported, "Tenet's Senior Legal Counsel, Cheryl Wagonhurst, said a multidisciplinary team is conducting a review of Redding's cardiac surgery, and so far 'we have no evidence to support the [notion] there was any wrongdoing.'" With its stock continuing to struggle, Tenet attempted to reassure Wall Street in yet another company press release on November 18, 2002:

> Since allegations were raised regarding possible unnecessary care by two physicians who practice at Tenet's hospital in Redding, Calif., some have questioned the quality of our programs and controls in other Tenet hospitals. In light of this, we have initiated a review of compliance and quality at Tenet hospitals nationwide. This is in addition to the rigorous processes already in place. Last week, we assembled a team of experts in the areas of

> Compliance, Quality Management and Medical Affairs to design and launch this additional review. This team includes internal resources, as well as outside counsel and *experts from Mercer Consulting, a national quality management consulting firm. The purpose of this review is to ensure that our existing internal systems relating to quality, peer review and compliance are operating correctly.*
> (emphasis added).

A few months later, with its stock having fallen back close to the rock bottom levels experienced after the raid, Tenet apparently lost faith that independent findings would reassure its stockholders and investors. Quoting a Tenet spokesperson on April 28, 2003, *TheStreet.com* reported that, "'Tenet will not be commenting on the status or outcome of its internal investigation at Redding . . . [and] it's unlikely we'll be releasing the Mercer review when it's completed." Later that summer, on July 7, 2003, *The Redding Record-Searchlight* reported a Tenet spokesman saying, "the Mercer report is based on 'private patients' records' and that federal law prohibits disclosure of the information. 'It's kind of a moot point anyway because the doctors are no longer practicing at the hospital . . ..'" Apparently, it was easy for Tenet to make assurances and promises to demonstrate that "existing internal systems relating to quality, peer review and compliance [were] operating correctly [at RMC]," when it was self-serving to do so.

Presented with independent findings of what happened at RMC, Tenet has chosen to withhold that information from the Redding community. A few days later, however, Tenet apparently did not hesitate to share similar, but self-serving, information about another of its hospitals. On July 10, 2003, the *Los Angeles Times* (*The Times*) published an article about serious problems at Tenet-owned Queen of Angels-Hollywood Presbyterian Medical Center (Queen of Angels). According to the *The Times*, the California Department of Health Services (CDHS) discovered some startling failures in the peer review process at Queen of Angels:

> When state health inspectors looked through the files of thoracic surgery patients at Queen of Angels . . . they spotted a big problem. Some cases in which patients had died or experienced severe complications hadn't been reviewed by a panel of physicians, as required by law, to determine if the care was proper. That suggested that, at the very least, that surgeons might not be learning from mistakes. At worst, it could mean that bad doctors were practicing unchecked, endangering patient lives.

CDHS inspectors ultimately said the hospital board was at fault for failing to take responsibility for patient care. The *L.A. Times* also reported that the hospital board had retained Mercer to review the problems at Queen of Angels:

> *After scrutinizing dozens of files, Mercer identified major problems that hospital doctors didn't, administrators said.* In particular, four top members of the medical staff . . . were found to have provided inferior care, including unnecessary procedures and overly aggressive treatment, *according to interviews and a summary prepared by the hospital for The Times.*
> (emphasis added).

Evidently, Tenet believes it can pick and choose when it will release Mercer's independent findings about problems at Tenet hospitals. When it appears self serving, such as when Tenet seeks to place blame elsewhere, Tenet will release information. However, in other instances, such as with RMC, Tenet will proclaim that it hired Mercer, but then choose not to share Mercer's independent findings.

Your recent letter to the Committee closed saying, "this board will take whatever action is necessary to deal with Tenet's issues in a forthright and productive manner." My Committee staff have informed me that Tenet's attorneys will shortly provide the Committee with its detailed arguments as to why the Mercer documents may be protected under the attorney-client privilege and attorney work product doctrine. Regardless, in my opinion Tenet owes a duty to RMC patients, physicians, staff, the Redding community, and America's taxpayers to share what it knows. Simply said, Tenet must know that, sooner or later, what happened at Redding will come to light.

Finally, Tenet's announcement today that the U.S. Attorney's office in Los Angeles issued a new request for documents "primarily regarding certain cardiac physician arrangements, coronary procedures and billing practices at three Los Angeles-area hospitals owned by Tenet subsidiaries . . . [including] Centinela Hospital Medical Center, Daniel Freeman Memorial Hospital and USC University Hospital" adds to my concerns about Tenet's corporate governance practices with respect to federal healthcare programs. In light of this latest development and my doubts about the Mercer information, I request that Tenet comply with the attached request for documents.

If Tenet fails to fully comply with the Committee's requests, as Chairman of the Committee, I must consider all options to compel the production of critical information, including the issuance of a subpoena.

Sincerely,

Charles E. Grassley
Chairman

cc: Mr. Trevor Fetter
Chief Executive Officer and President

Mark Willett, Government Relations
VIA FACSIMILE: (805) 682-5462

THIRD REQUEST FOR DOCUMENTS

1. From October 1, 2002 to the present, all E-mails relating to Mercer, sent to or from any of the following: Mercer; any member of RMC's "Administrative Team"; any Tenet officer; any Tenet director.

2. From October 1, 2002 to the present, all documents, including but not limited to any communication (not including E-mails) relating to Mercer's review of the cardiology program and all related programs at RMC.

3. The findings and results of any Mercer review performed on behalf of Tenet relating to Queen of Angels–Hollywood Presbyterian Medical Center.

4. All documents relating to any actual or proposed contractual arrangement, whether written or oral, between Tenet and Mercer relating to Queen of Angels–Hollywood Presbyterian Medical Center.

5. From 1998 to the present, all E-mails relating to Mercer and/or peer review, sent to or from any of the following: Mercer; Queen of Angels' "Administrative Team"; any Tenet officer or director.

6. From 1998 to the present, all documents, including but not limited to any communication (not including E-mails) relating to Mercer, between any of the following: members of Queen of Angels' "Administrative Team"; any Tenet officer or director.

7. From 1993 to the present, the findings and results of any Mercer review published by Tenet or ever publicly available, in whole, in part, or in summary, to any person or entity.

8. All documents, including, but not limited to subpoenas or document requests received by Tenet from the United States Attorney's Office for the Central District of California relating to Centinela Hospital Medical Center, Daniel Freeman Memorial Hospital and USC University Hospital.