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March 27, 2012

Susan Brown – 0904966
Internal Revenue Service
TE/GE Exempt Organizations
N14 W24200 Tower Place Suite 202
Waukehsa, WI 53188

via e-mail
susan.brown@irs.gov

Re: Draft Document

Dear Ms. Brown:

Thank you for the opportunity to respond to your Draft Document, Form 886A, received March 15, 2012. It seems the Service has made up its mind on this, but I thought I would flesh out a point in my February 17, 2012, letter. I received no excess benefits.

Article IV, Section 8 of the Bylaws of the Law Project for Psychiatric Rights (PsychRights®) provides, "To the maximum extent allowed by law, the members of the Board of Directors and officers of the corporation shall be indemnified, defended and held harmless from all acts taken on behalf of the corporation."

The representation that caused the legal fees was taken on behalf of the corporation, Law Project for Psychiatric Rights. As I noted in my February 17th letter, the first $10,000 payment was made from PsychRights funds, but inasmuch as the legal fees were going to bankrupt PsychRights, I started paying what I could, expecting PsychRights to indemnify me if/when it was in a position so to do. I have paid $125,000 of my own funds and the lawyers are still owed an estimated almost $130,000.

Instead of PsychRights soliciting donations to cover its expense, it accepted the offer by the Center for the Study of Psychiatry (CSP) to set up the legal defense fund. The legal fees were and are the obligation of PsychRights. The name, "Jim Gottstein Legal Defense Fund," was picked because it was believed it would yield more donations. In sum, the legal fees were and are the obligation of PsychRights, not me. Thus, I received no excess benefit.

I was able to find just two court cases interpreting Treas. Reg. 53.4958, *Dzina v. U.S.*, 345 F.Supp.2d 818 (N.D.Ohio 2004) and *Caracci v. C.I.R.*, 456 F.3d 444, (5th Cir 2006). Neither case is directly applicable to the question at hand, but I would suggest the proposed IRS position here is as overreaching as the 5th Circuit concluded in *Caracci*.

Sincerely,

James B. (Jim) Gottstein, Esq.

cc: Steven Vogler, CPA