U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

http://finance.senate.gov

For Immediate Release
Thursday, Sept. 25, 2003

Grassley Expresses Concern Over Tenet's Commitment to Meaningful Reforms

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, today expressed concern that the Tenet Healthcare Corporation may not be conducting the reforms necessary to ensure taxpayers and Medicare beneficiaries of the proper use of tax dollars and the appropriate treatment of Medicare beneficiaries in the future.

Grassley sent a detailed letter to Tenet's new chairman of the board outlining a series of management changes that do not appear to substantially affect the structure that led to hundreds of lawsuits and numerous investigations into alleged patient deaths and complications due to unnecessary angioplasties, coronary bypasses, and heart catheterizations at Tenet's Redding Medical Center, as well as the billing of Medicare for apparently unnecessary services. Earlier this month, Grassley sent a detailed document request to the company seeking information about these allegations and its use of federal health care dollars. Referring to the company's statement that "until we have made good on these promises, these are only words," Grassley said, "I couldn't agree more with that characterization."

The text of today's letter follows.

September 26, 2003

VIA FACSIMILE: (805) 563-7070
ORIGINAL BY U.S. MAIL
Mr. Edward A. Kangas
Chairman
Tenet Healthcare Corporation
3820 State Street
Santa Barbara, CA 93105

Dear Mr. Kangas:

By letter dated, September 5, 2003, the Senate Finance Committee (Committee) advised Mr. Trevor Fetter, then Acting Chief Executive Officer and President, Tenet Healthcare Corporation (Tenet), that the Committee is investigating Tenet's corporate governance practices with respect to federal healthcare programs. As Chairman of the Committee, I requested that Tenet cooperate with a formal request for documents relating to, among other matters, allegations of patient deaths and complications due to unnecessary angioplasties, coronary bypasses, and heart catheterizations at Tenet's Redding Medical Center (RMC). By letter dated that same day, Mr. Fetter responded, stating, "please accept my sincere commitment to work with you to address the issues of concern to the Committee on Finance." As the Committee's investigation proceeds I expect that it will quickly become apparent whether Tenet is indeed committed to working with the Committee and "operating with the highest standards of quality, ethics, integrity and compliance."

The representations made by Mr. Fetter about substantial changes to Tenet's management, its board of directors, its governance and its business practices have been made before by Tenet. As the saying goes, the proof is in the pudding. A close look at Mr. Fetter's representations about substantial changes and restructuring, however, suggests to me that Tenet may be playing musical chairs to the same old music. On September 16, 2003, Tenet announced that its board of directors named Mr. Fetter as chief executive officer and also elected him as the tenth member and only management director on its board. Tenet's press release that day announced that:

> During the transition period that began last November, Tenet has taken critical steps to restructure the company and improve operations. These have included:
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> 1. Major changes in management. The top three corporate officers as of November 2002 have left and one-third of the company's senior executives have retired or been replaced.
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> 2. Significant changes in the board of directors. Three new independent members, including a non-executive chairman, have been elected, and new heads of the compensation, nominating and audit committees have been named.
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> 3. New corporate governance measures, including stricter standards of independence and stock ownership requirements for board members, election of all directors annually and expensing of stock options.
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> . . .
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> 10. Expansion and enhancement of compliance efforts, including the naming of a new chief compliance officer reporting directly to the board and retention of a former chief counsel in the Office of the Inspector General of the Department of Health and Human Services to assist in strengthening Tenet's compliance efforts.

These particular steps would appear to be a move in the right direction for Tenet. However, Tenet's actions with respect to each of these steps deserve further scrutiny. For instance, with regard to Tenet's major changes in management, Mr. Fetter was closely associated with Mr. Barbakow and Tenet throughout his career. According to information obtained from Tenet's website:

> [Mr. Fetter] is a key member of Tenet's new executive management team that is pursuing a new strategic direction for the company.
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> [He] *joined Tenet in 1995*. He served as Tenet's executive vice president and then chief financial officer and chief corporate officer in the Office of the President. *In*

> *these roles, he was responsible for the company's corporate functions, including the areas of finance, law, information systems, human resources, communication and administration, and was actively involved in the areas of future strategic initiatives, acquisitions and new ventures*.
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> Fetter left Tenet in February 2000 to serve as chairman and chief executive officer of Broadlane, Inc., a leading provider of cost management services to hospitals founded by Tenet and several other major health care providers. He returned to Tenet in November 2002 as president and was named acting CEO in May 2003. He continues to serve as chairman [and serves on the boards of] Broadlane.
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> Prior to joining Tenet, Fetter served as executive vice president and chief financial officer at Metro-Goldwyn-Mayer, Inc., where he had a broad range of corporate and operating responsibilities. Before joining MGM in 1988, Fetter worked in the investment banking division of Merrill Lynch Capital Markets, where he concentrated on corporate finance and advisory services for the entertainment and health care industries.
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> (emphasis added).

Mr. Fetter has had a close relationship with Mr. Jeffrey Barbakow dating back to his days at MGM and Merrill Lynch. Even while Mr. Fetter was chairman and chief executive of Broadlane, Inc. (Broadlane), he remained tied to Tenet by a continuing employment agreement that paid him over a quarter million dollars. Broadlane itself relied heavily on Tenet for both financing and business. Further, many Tenet executives, including Mr. Fetter and Ms. Christi Sulzbach, held, and likely still hold, thousands of shares in Broadlane. In light of the aforementioned longstanding relationships, it strikes me that Mr. Fetter is anything but *new* to Tenet.

With regard to the significant changes in Tenet's board of directors, a majority of directors – 6 out of 10, if Mr. Fetter is included – are holdovers from Mr. Barbakow's reign at Tenet. As far as the independence of the board, according to information reported by TheStreet.com last January, it appears that some of Tenet's current directors also have significant financial relationships with Tenet. For example:

- Mr. Lawrence Biondi, a director since 1999 and who chairs Tenet's ethics committee, also serves as president of Saint Louis University. In 1997 Saint Louis University sold Tenet its hospital and in 2001 it received $27 million from Tenet and the hospital.

- Mr. Floyd Loop, a director since 1999 and who sits on Tenet's audit, corporate governance, and ethics, quality and compliance committees, is Chief Executive Officer of the Cleveland Clinic Foundation. Last year the Cleveland Clinic Foundation received $4.7 million in partnership distributions and $3 million in fees from a joint venture with Tenet.

- Mr. Van Honeycutt, a director since 1999 and who sits on the audit and compensation committees, is chief executive officer of a company that received $1 million in consulting fees from Tenet in 2000.

- Mr. Sanford Cloud, a director since 1998 and chair of the corporate governance committee, is head of the National Conference for Community and Justice, which is slated to receive $500,000 in donations from Tenet over a five-year period.

- Ms. Monica Lozano, a director since 2002 and who sits on the corporate governance and ethics, quality and compliance committees, is President and Chief Operating Officer of *La Opinión*, a Spanish-language paper that last year received $118,000 in advertising fees from Tenet.

The aforementioned financial relationships, as well as others not detailed here, coupled with Mr. Fetter's claim in his letter, dated September, 5, 2003, that Tenet has "announced sweeping new corporate governance measures, including . . . establishing stricter director independence standards," raise perplexing questions about the nature of "independence standards" that allow Tenet to proclaim that "9 out of 10 Tenet's directors are independent." Further, directors Biondi, Loop, Honeycutt, and Cloud were all on Tenet's board while Mr. Barbakow and some of his handpicked executives successfully gamed federal healthcare programs.

With regard to Tenet's latest compliance efforts, Mr. Fetter states in his letter, dated September 5, 2003, that "we have expanded and enhanced our compliance efforts, named a new independent chief compliance officer reporting directly to the Board of Directors." It appears that somewhere along the way Tenet grasped the inherent conflict in having Ms. Sulzbach wear two hats as general counsel and chief compliance officer. However, it is noteworthy that Tenet chose to appoint Ms. Cheryl Wagonhurst as its new chief compliance officer. According to Tenet's press release, dated August 4, 2003, "Wagonhurst has worked as senior counsel at Tenet [since 1992] and was instrumental in establishing and implementing the company's compliance program." Given Ms. Wagonhurst's longstanding association with Tenet, working relationship with Ms. Sulzbach, and involvement with establishing and implementing Tenet's prior failed compliance programs, skeptics may differ with Tenet's proclamation about naming a new "independent" chief compliance officer.

For too long Tenet management appears to have been less interested in delivering quality care than in delivering quality profits and compensation packages to its executives. For too long Tenet's board appears to have sat idly on the sideline and tacitly, or perhaps expressly, allowed Mr. Barbakow and Tenet to profit at the expense of innocent victims and America's taxpayers. In any event, the logical question seems to be "where was the oversight from Tenet's board of directors?" As Tenet's new chief executive officer, Mr. Fetter claims that "Tenet's culture will rest on a foundation of ethics and compliance. And we've set a new tone. The tone is transparent, it is accessible. . . ." As Chairman of the Committee, I believe that transparency and accessibility will be fundamental to this Committee's investigation. Mr. Fetter also claims in his letter that "until [Tenet] has made good on these promises, these are only words." I could not agree more with his characterization.

My Committee staff informs me that Tenet has hired a new team of attorneys to deal with the Committee's document request. Consequently, I understand that Tenet did not produce documents on September 24, 2003, however, Tenet's attorneys assured Committee staff that Tenet would meet future deadlines. As Tenet's new chairman, I expect that you have confidence in Mr. Fetter's commitment that Tenet will cooperate with the Committee and that Tenet will comply with future deadlines established by the Committee. I am interested to learn, however, whether you share my concerns about the appearance of conflict and lack of significant change in the corporate culture and management team at Tenet.

I look forward to hearing your response by the close of business on October 15, 2003. If you have any questions, please contact Dan Donovan, Investigative Counsel for the Committee, at (202) 224-4515.

Sincerely,

Charles E. Grassley
Chairman

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