



NATIONAL ASSOCIATION OF STATE CHARITIES OFFICIALS (NASCO) ANNUAL REPORT ON STATE ENFORCEMENT AND REGULATION

January 2019 – March 2020

The National Association of State Charity Officials (NASCO) is an association of state offices charged with the regulation and oversight of charitable organizations and charitable solicitation in the United States.

www.nasconet.org

Introduction

The National Association of State Charity Officials (NASCO) is an association of state offices (attorneys general, secretaries of state and other offices) charged with the regulation and oversight of charitable organizations and charitable solicitation in the United States. NASCO provides a forum for states to share information and collaborate on matters of common interest related to charities oversight. NASCO also strives to provide a unified voice for state regulators to communicate with other regulatory and legislative agencies, the not-for-profit sector and its professional advisors. On a day-to-day level, we are a group of public servants committed to ensuring the integrity of the not-for-profit sector.

*The contents of this report are a representative sample of cases and other initiatives from **January 2019 to March 2020** in the areas of: **I. Deceptive Solicitation; II. Governance and Breach of Fiduciary Duties; III. Trust & Estate Issues; IV. Health Care; and V. Other, including Registration, Legislation, and Guidance.** Descriptions were provided by the relevant state, and questions regarding particular cases should be directed to that state. Contact information for state regulators can be found at www.nasconet.org. The contents of this report do not constitute legal advice and are not intended for legal citation.*

This report is being released in April 2020, during the COVID-19 pandemic, at a time of national uncertainty and distress. The not-for-profit sector has been especially hard hit by the crisis. Some charities – food banks, health care providers, legal aid providers – face increased demands on vital services with fewer resources and major logistical hurdles. Other organizations find their services, and cash flow, put on hold as their constituencies – students, theater audiences, museum goers – cannot gather. The importance of good governance and transparency has never been greater. During this time, regulators – most of whom are working from home – continue to provide support and guidance to the sector and conduct enforcement activity to promote trust in the sector. We welcome your input in these trying times.

Sincerely,

Yael Fuchs

President, NASCO

I. DECEPTIVE SOLICITATION

CA In January 2019, settled with **Giving Children Hope** and its principals to resolve claims that the charity misled the public by falsely claiming that 99% of contributions went to provide direct aid, when in fact that percentage relied on the use of vastly inflated valuation of gift-in-kind donations of pharmaceuticals. As part of the settlement, the charity, directors, officers and accountant paid \$410,000 to be used for state charity enforcement, will stop providing misleading reports, and the charity agreed to end its pharmaceutical gift-in-kind program. <https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-410000-settlement-giving-children-hope-after>

CA Charities **Catholic Medical Mission Board, Inc., Food for the Poor, Inc., and MAP International** report receiving hundreds of millions of dollars each year in pharmaceutical donations from U.S. drug companies. Most of the drugs are restricted only for distribution and use overseas. Despite these restrictions, all three charities use extremely high U.S. market prices in valuing the drugs. Using U.S. prices results in substantially inflated efficiency ratios based on the charities' reported revenue and program expenses. The charities solicited cash donations by claiming that 95% to 99% of "your donation" goes directly to charitable programs and that "administrative costs are less than 5% of our expenses." In fact, as much as 40% of the charities' cash donations are used to pay for administrative costs. The Registry of Charitable Trusts issued cease and desist orders against all three charities for making deceptive and misleading statements in the solicitation of charitable donations. On appeal, the administrative law judge affirmed the cease and desist orders and penalties totaling \$1,490,175. In addition, Government Code section 12599.6, subdivision (f)(2), which requires that charitable solicitations be conducted without unfair, deceptive, or fraudulent practices, was found to be narrowly drawn and not in violation of the First Amendment. The charities were ordered to immediately cease and desist from using the deceptive statements and pay the penalties within 30 days. The Attorney General adopted the Administrative Law Judge's decision on September 6, 2019.

<https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/pdf/decision-food-for-the-poor.pdf?>

<https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/pdf/decision-map-intl.pdf?>

<https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/pdf/decision-map-intl.pdf?>

CO In January 2020, an appellate administrative hearing officer upheld the SOS decision to deny registration renewal for **Infocision**, a professional fundraiser. In 2019, the SOS had denied registration renewal on the basis that it had been enjoined within the immediately preceding five years from engaging in deceptive conduct relating to charitable solicitations by the FTC (which is prohibited by 6-16-104.6(10), C.R.S.). In February 2020, Infocision filed an appeal in district court.

IL In March 2019, sued **Veterans Christian Network (VCN)**, and its founders, Todd and Priscilla Olshefski, for multiple violations of Illinois charity laws including failing to account and using charitable assets for their own personal benefit rather than for the benefit of veterans. The Olshefskis came to Illinois from out-of-state with a history of fraud and deceptive activity and managed to quickly set up operations with enough "window-dressing" (i.e., obtaining 501(c)(3) status using Form 1023EZ, conning a local business to rent them office space, and getting a printing company to print letterhead for them

as a donation) to give an outward appearance to local residents that they were legitimate. In August 2019, orders were entered in our civil case shutting VCN down and permanently enjoining Todd and Priscilla Olshefski from fundraising and from acting as charitable fiduciaries in Illinois. The defendants are also subject to a \$28K judgment (equal to the amount of charitable contributions we could show they deposited into VCN bank accounts but for which they could never account). A separate criminal case was brought against each of the Olshefskis for felony theft of charitable monies. Priscilla Olshefski pled guilty to felony theft of charitable monies and was sentenced to probation. Todd Olshefski was released on bond while awaiting trial in his criminal case.

MA In June 2019, the Massachusetts Attorney General's Office sued **Dawn Cardinal, founder of Destiny's Road Animal Rescue**, for allegedly mishandling hundreds of thousands of dollars of the charity's funds and using misleading and deceptive practices to solicit these funds from donors. <https://www.mass.gov/news/ag-healey-sues-animal-rescue-owner-for-misappropriation-of-charitable-funds>

MD Obtained an Assurance of Discontinuance on March 11, 2019, resolving allegations against **Stephen D. Everhart. Lion Fundraising, Police Journal and Fire Yearbook, and Lion Fraternal Order of Police Assistance Fund LLC**. The AOD follows a 2018 cease and desist order issued after an investigation revealed that over \$1 million in donations were solicited and received by Mr. Everhart since 2012 in violation of the Maryland Solicitations Act. Mr. Everhart posed as fake law enforcement charities to collect donations, and failed to register with the Secretary of State as either a charity or fundraiser before soliciting and collecting donations using a cash on delivery service. Donations were used for personal living expenses and not for a charitable purpose. <http://www.marylandattorneygeneral.gov/Press/2018/092818.pdf>

MD CopStress, Inc. & Richard Willard. Consent Order, April 16, 2019. Action against charity and its founder for allegedly misleading the public by claiming to operate programs for police officers such as police academy training, rapid response teams to mass casualty events, and licensed counseling for police suffering from post-traumatic stress disorder. The founder and operator ignored a restraining order and continued to solicit donations. A consent order was entered in April 2019. The order requires CopStress, Inc. and Willard to cease all charitable soliciting and turn over remaining donations to an organization whose mission matches charitable solicitations at issue in the case. <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-willard-copstress-settlement-20190502-story.html>

MD Animal Welfare Society of Howard County, August 22, 2019. Issued Cease and Desist Order against an animal charity that raised money to take care of animals in need but was failing to do so, falsely represented that it was a no-kill shelter, and filed false registration statements with the Secretary of State.

MD Trinity Syndicates Impact (TSI) & Christopher Tate aka Christopher Jefferson, February 7, 2020. Issued a Cease and Desist Order against the charity and its sole operator. Christopher Tate pretended to be a police officer and customs enforcement to solicit donations; used contributions for personal use instead of a charitable purpose; and filed false registration paperwork with their registration to the Secretary of State. Christopher Tate is also charged criminally for his actions.

MN In December 2019, Minnesota Attorney General Keith Ellison announced court approval of two settlement agreements that permanently ban **American Federation of Police and Concerned Citizens, Inc. (“AFPCC”)**, and related charity **National Association of Chiefs of Police, Inc. (“NACOP”)**, from soliciting charitable contributions in Minnesota. AFPCC is also required to pay restitution in the amount of \$298,637 — constituting every dollar that Minnesotans donated to it in the last six years. AFPCC and NACOP’s primary officers and directors also agreed to permanently refrain from doing business in Minnesota. In October 2018, the AGO sued AFPCC for deceiving Minnesotans in multiple ways, including by misrepresenting that donations would only be used to help families of police officers killed in the line of duty. However, the vast majority of AFPCC’s charitable program spending — 83% — went to paying its fundraisers and other for-profit agents to send mailers with claimed “public education” content, not providing aid to police families. The AGO also alleged that AFPCC misrepresented to donors that their money would be set aside for families in the donor’s local city or county by advertising an “Area Appeal” or “special campaign” for the families in a donor’s local area. In reality, donations were used for all of AFPCC’s expenses nationwide, and were not set aside for any specific city or state. Although NACOP was not a party to the AGO’s lawsuit, an investigation revealed that NACOP, which has a similar mission and which is run by the same leaders as AFPCC, used similar deceptive tactics. <https://www.nasconet.org/2019/12/minnesota-attorney-general-ellison-permanently-bans-two-charities-that-deceived-minnesotans-about-supporting-families-of-fallen-police-officers/>

OR Assurance of Voluntary Compliance against **Eberle Group/Fund Raising Strategies** that prohibits the dissemination of direct mail into Oregon for at least 3 years. Assurance was reached after Oregon brought an enforcement action to enforce Civil Investigative Demands in which the state sought the identity of its clients, copies of the solicitations sent to the state, and the amount of money raised in Oregon for each solicitation. CID after discovering the firm was associated with misleading solicitations for at least two different clients and apparent widespread misuse of joint cost allocations by other clients.

VA Continued litigation against **Service Dogs by Warren Retrievers, Inc. (“SDWR”)**, a Virginia-based organization that raises, trains, and places service dogs called “Diabetic Alert Dogs,” and Charles “Dan” Warren, Jr., SDWR’s president and chief executive officer. In May 2018, VA filed suit against Warrant and the organization, alleging that SDWR and Warren violated the Virginia Consumer Protection Act (VCPA) and the Virginia Solicitation of Contributions (VSOC) law by misleading and deceiving consumers about its Diabetic Alert Dog program; the dogs’ testing, training, skills, abilities, and efficacy; what goods or services would be included in the costs of the dogs; how the dogs could be paid for; how long consumers would have to pay for them; whether consumers could receive refunds; whether the program was endorsed by the JDRF; and whether Warren had served in the military. The Complaint seeks injunctions, restitution, civil penalties, and costs and attorneys’ fees, and the Commonwealth’s expenses. <https://www.oag.state.va.us/consumer-protection/index.php/news/283-may-8-2018-herring-files-suit-against-service-dogs-by-warren-retrievers>

WA In May 2019, obtained a stipulated judgment against Roy Haueter, members the Haueter family, their commercial fundraiser, and their four sham charities, which were most recently named **Children’s Hunger Relief Aid, Children’s Safety Society, Emergency Relief Network, and Search and Rescue Charities**. The defendants agreed to settle following an adverse summary judgment ruling in which the Court found the charities violated state law and existed merely to benefit the Haueter Family. The stipulated judgment resulted in a payment of nearly \$300,000, suspended penalties, dissolution of the nonprofits, and a lifetime ban on activity in the charity/nonprofit sector.

<https://www.atg.wa.gov/news/news-releases/ag-lawsuit-leads-lifetime-ban-family-who-used-charities-deceive-washingtonians>

WA On November 8, 2019, a judge ruled that **TVI/Value Village**, a for-profit business, deceived consumers into believing the company is a nonprofit or charity and that purchases benefited charities, when they do not. The judge ruled that Value Village knew or should have known its advertising was deceptive. A trial on the issue of penalties and other remedies is set for summer 2020.

<https://www.atg.wa.gov/news/news-releases/judge-rules-profit-value-village-violated-law-misled-washingtonians>

FTC In March 2019, the FTC announced a settlement with **Veterans of America (VOA)**. Filed as part of the Operation Donate with Honor sweep, the complaint alleged that the principal, Travis Deloy Peterson, made millions of unlawful robocall soliciting donations of cars, boats and other valuable items, ostensibly to benefit veterans. The scheme used several names, including Veterans of America, Vehicles for Veterans LLC, Saving Our Soldiers, Donate Your Car, Donate That Car LLC, Act of Valor, and Medal of Honor. The robocalls allegedly advised consumers that donations would support veterans causes and were tax deductible. The order settling these allegations banned Peterson from charitable solicitations and robocalling, and included a suspended judgment of \$541,032.

<https://www.ftc.gov/enforcement/cases-proceedings/182-3049/veterans-america>

SELECTED MULTISTATE ACTIONS

MO, FTC **Disabled Police & Sheriffs Foundation (DPSF)** (also doing business as **The American Police and Sheriffs Association**, and **Police Officers Safety Association**), and its founder and Executive Director David Kenik, are banned from soliciting charitable contributions under a settlement reached in early 2019 with the FTC and the state of Missouri, for falsely claiming that consumers’ donations would be used to help police officers and families of slain officers, provide life-saving equipment to law enforcement agencies, and provide advanced, specialized training for law enforcement officers and departments. DPSF was dissolved, and a court-ordered settlement imposed a judgement of \$9.9 million.

<https://www.ftc.gov/news-events/press-releases/2019/03/ftc-states-continue-fight-against-sham-charities-shut-down>

AR, CA, KS, KY, MN, OH, NY, TN In August 2019, eight states announced resolution of a multistate enforcement action against the **New Hope Foundation**, a sham national hospice charity located in Nashville, TN. The states alleged that in 2016, New Hope raised more than \$4 million but provided little if any program services. Revenue went to executive compensation and the organization’s for-profit fundraisers. As a result of the settlement, the organization will be dissolved, two of its officers are

banned from charity and fundraising activity, and the organization paid \$160,000 in damages.

<https://www.tn.gov/attorneygeneral/news/2019/8/1/pr19-28.html>

AK, CO, CT, DC, ID, IA, IL, KS, KY, LA, MS, MN, NE, NV, NH, NY, NC, OH, OK, OR, PA, TX, WI

In January 2020, 22 states and the District of Columbia, announced a multistate settlement with **PayPal Charitable Giving fund**, a 501(c)(3) nonprofit corporation and the charitable arm of PayPal, Inc. The Assurance of Voluntary Compliance was reached after a 2-year investigation concerning the adequacy of PPGF, which is a third party fundraising platform, disclosures to potential donors, including disclosures on the intended charity recipient, relationship between PPGF with enrolled vs. un-enrolled charities listed on its platform, PPGF's vetting process, the timing of donations, and PPGF's exercise and notice of its variance power to donors. The AVC required PPGF make unavoidable and prominent disclosures to donors regarding the identified concerns (e.g. donations/contributions are made to PPGF, not the chosen charity; notification to donors when donations are re-directed to one not selected by the donor) and it included a \$200,000 donation by PPGF to the National Association of Attorneys General for deposit into the NAAG Charities Enforcement and Training

Fund. <https://www.nasconet.org/2020/01/attorney-general-leads-multistate-settlement-with-paypal-charitable-giving-fund/>

NY, VA In March 2020, New York and Virginia announced a settlement to shut down three nonprofit entities for misleading donors after investigating the **Center for American Homeless Veterans, Inc. (CAHV)** and Brian Hampton, the charity's president and founder. The investigation revealed that Hampton, CAHV and its affiliated organizations, **Circle of Friends for American Veterans, Inc.** and **Put Vets First!**, reneged on fulfilling the promises of the charity and exploited the public's goodwill for supporting veterans. As a result of the settlement, CAHV and its two affiliated organizations have shut down, and CAHV and Circle agreed to pay \$100,000, which will be directed to three legitimate organizations that assist veterans and homeless individuals. Hampton will also be permanently banned from working on access to charitable assets or permitting him to be a decision-maker in any charitable organization. In New York, the matter is part of its ongoing **Operation Bottomfeeder**, an ongoing initiative that targets fraud networks of charities, for-profit fundraisers and other professionals that exploit popular causes and misrepresent how donations will be spent.

<https://www.oag.state.va.us/media-center/news-releases/1647-march-5-2020-herring-shuts-down-deceptive-homeless-veterans-charity>

https://www.scribd.com/document/450493540/Center-for-American-Homeless-Veterans-Consent-Judgment#download&from_embed

II. GOVERNANCE ISSUES AND BREACH OF FIDUCIARY DUTIES

CA The **Normont Terrace Coordinating Council ("Normont")** has not had any charitable programs for two years and the majority of the charitable assets were spent on attorney's fees relating to several board disputes. Two former board members misappropriated Normont's funds for uses such as paying for speeding tickets. A complaint for involuntary dissolution was filed with a stipulated judgment signed by the current board members. The court approved the stipulated judgment on January 15, 2019. Normont is being dissolved, and its assets will be transferred over to the California Community Foundation.

CT **Connecticut Landmarks ("CTL")** is a nonprofit organization that owns and shows historic house museums across Connecticut. The AG received allegations of neglect regarding two of the properties that CTL owns, and learned that CTL was considering income from a restricted endowment as unrestricted. The AG investigated CTL's handling of the two properties to determine whether CTL had breached its fiduciary duty of care and reviewed all of CTL's charitable gift funds to make sure that CTL was interpreting all of its charitable funds correctly. In January 2019, the AG issued a report on its findings and conclusions, which required CTL to alter some of its corporate practices and to adhere to the AG's interpretation of donor intent on two specific charitable gift funds. https://portal.ct.gov/-/media/AG/Charities/Connecticut_Landmarks_Final_Report.pdf?la=en

DC In 2018, pursuant to the District of Columbia Nonprofit Corporation Act, the AG launched an investigation into the **Archdiocese of Washington** regarding clergy abuse. Here is a link for the online complaint form OAG launched for victims to report their abuse. <https://oag.dc.gov/blog/new-way-victims-report-sex-abuse-clergy>

DC In 2019, pursuant to the District of Columbia Nonprofit Corporation Act, DC AG launched an investigation into the **National Rifle Association of America, Inc. (NRA)**, a 501(c)(4), and the **NRA Foundation, Inc., a 501(c)(3)**, for possible violations of the nonprofit laws, including concerns over self-dealing, waste, and prohibited transactions by a charitable organization. <https://www.nytimes.com/2019/07/12/us/nra-district-of-columbia-investigation.html>

DC In January 2020, the DC AG filed a lawsuit against the **58th Presidential Inaugural Committee** and two entities that own or control the Trump International Hotel in Washington, D.C., for abusing nonprofit funds to enrich the Trump family. In its lawsuit, the AG alleges that the Inaugural Committee, a nonprofit corporation, coordinated with the Trump family to grossly overpay for event space in the Trump International Hotel. Although the Inaugural Committee was aware that it was paying far above market rates, it never considered less expensive alternatives, and even paid for space on days when it did not hold events. The Committee also improperly used nonprofit funds to throw a private party for the Trump family costing several hundred thousand dollars. The AG's lawsuit seeks to recover the amount improperly paid to the Trump Hotel, and to direct those funds to suitable nonprofit purposes. <https://oag.dc.gov/release/ag-racine-sues-presidential-inaugural-committee>

FL The Department of Agriculture and Consumer Services issued 716 fines for a total of \$382,192 in Fiscal Year 18/19.

ID On February 11, 2020, Attorney General Curtis Hill took legal action against a Charlestown-based nonprofit organization called **Wildlife in Need (WIN)** that claims to rescue and rehabilitate wildlife before returning animals to their native habitats. In reality, Attorney General Hill alleges, under WIN director Timothy Stark's guidance, the nonprofit organization has a history of abusing animals, neglecting to provide basic necessities to animals, and forcing animals to live in deplorable conditions. Further, contrary to its stated purpose as a nonprofit corporation, WIN allegedly has failed to return animals to their native habitats and misapplied assets purportedly collected for animal care. The State has received a preliminary injunction in this matter permitting an inspection of the property. Additionally, WIN is ordered to provide adequate care to all animals, properly feed all animals, and provide adequate veterinary care to all animals. WIN must notify the Court of all animal births, deaths, and acquisitions over the pendency of the lawsuit. WIN is enjoined from transferring any animals or corporate assets over the pendency of the lawsuit unless Court approval has been obtained through a hearing on WIN's motion to transfer or remove animals or corporate assets. WIN is ordered to provide the State access to all of its animal records.

IL On March 5, 2020, the Illinois Attorney General announced a settlement with the **Puerto Rican Parade Committee (PRPC)**. The PRPC was an Illinois charity that ran an annual Puerto Rican Day Parade and Humboldt Park festival in Chicago. In July 2018, the Attorney General's office opened an investigation into the PRPC and its former president, Angel Medina, after receiving complaints about alleged financial misconduct, including hundreds of thousands of dollars in questionable spending. The PRPC filed for bankruptcy in 2017 saying it would need to sell its Humboldt Park property in order to resolve more than \$900,000 in debt. The bankruptcy court ordered that the property be sold with all net sale proceeds – totaling \$623,000 – to be held in escrow until all claims were resolved. The largest claim against the PRPC was filed by Martinez who claimed more than \$500,000 in mortgages on the property and sought more than PRPC's remaining assets. The Attorney General's office intervened, challenging Martinez's claims and alleged that Martinez violated state law governing charitable trusts in Illinois. As part of the settlement, Martinez agreed to withdraw portions of her claim and to cap her total recovery. She also agreed to cooperate with the PRPC in providing information about the committee's assets. Martinez is also prohibited from acting as a charity fiduciary in Illinois or serving as a trustee or board member for any nonprofit entity. Also under the settlement, once the PRPC's remaining assets are liquidated, the remainder of approximately \$30,000 from the sale of the Humboldt Park property must be paid to the Attorney General's Office for distribution to the Puerto Rican Cultural Center. The funds will be used by the Daniel Ramos Puerto Rican Festival Committee in order to continue the annual Puerto Rican Day Parade and Festival.

https://illinoisattorneygeneral.gov/pressroom/2020_03/20200305.html

NY In November 2019, the NYAG resolved its litigation against the **Donald J. Trump Foundation** and its directors, Donald J. Trump, Ivanka Trump, Eric F. Trump, and Donald J. Trump, Jr. In June 2018, the AG commenced a proceeding against the DJTF, alleging a pattern of persistent illegal conduct that includes extensive unlawful political coordination with the Trump presidential campaign, repeated and willful self-dealing transactions to benefit Mr. Trump's personal and business interests, and violations of basic legal obligations for nonprofit foundations. In November 2019, a NY judge awarded the Attorney General \$2 million in damages, finding that Mr. Trump's use of his Foundation for the benefit of his political campaign in January 2016 was a breach of fiduciary duty. Remaining claims and the dissolution of the Foundation were resolved through so-ordered stipulations. The Foundation agreed to dissolve

under judicial supervision, the parties agreed upon and the judge approved eight charities to receive the Foundation's remaining assets, Respondents Ivanka Trump, Eric F. Trump, and Donald J. Trump, Jr. agreed to undergo training on fiduciary duties, and Mr. Trump agreed to conditions and limitations in the event he starts another charity or serves on the board of a charity. The Attorney General also sent referral letters to the Internal Revenue Service and the Federal Election Commission.

<https://ag.ny.gov/press-release/2019/ag-james-secures-court-order-against-donald-j-trump-trump-children-and-trump>

NY In 2019, the NYAG continued its civil investigation into allegations that the **New York dioceses of the Catholic Church** and other church entities were aware of and potentially covered up allegations of extensive sexual abuse of minors. The investigation was launched in September 2018, along with a hotline. <https://ag.ny.gov/press-release/ag-underwood-announces-clergy-abuse-hotline-part-investigation-sexual-abuse-children>

NY In 2019, the NYAG launched an investigation into the **National Rifle Association of America, Inc. (NRA)** and its affiliated entities for possible violations of nonprofit laws, including concerns over self-dealing, waste, and prohibited transactions by a charitable organization.

OH In February 2019, an Ohio Attorney General investigation found that **Wings of Love Crusaders, Inc.** had accumulated an extensive amount of questionable expenses that could not be properly accounted for and/or justified. Under an Assurance of Discontinuance, Wings of Love Crusaders, Inc. agreed to maintain a board of five members, attend board governance training, pay a civil penalty of \$1,000 for its misuse of funds, and implement policies and procedures to prevent future misuse of funds. <https://www.ohioattorneygeneral.gov/Media/Newsletters/Nonprofit-news/May-2019/Enforcement-Actions-Help-Protect-Charitable-Sector>

OH In February 2019, the Ohio Attorney General entered into Assurances of Discontinuance with **Kelly Youth Services**, Joe Kelly, and Tiffany Kelly. An investigation found that Mr. and Mrs. Kelly failed to comply with the requirements of ORC 1716. Further findings indicated that Mr. and Mrs. Kelly breached their fiduciary duties of care to properly manage accounts, to comply with the law, and to act in the best interest of the charity. Kelly Youth Services failed to act to safeguard its charitable assets. The Assurances of Discontinuance agreed upon by Kelly Youth Services, Joe Kelly, and Tiffany Kelly require the organization to adopt proper internal controls to better safeguard its charitable assets. <https://www.ohioattorneygeneral.gov/Media/Newsletters/Nonprofit-news/May-2019/Enforcement-Actions-Help-Protect-Charitable-Sector>

OH In 2019, the Ohio Attorney General Office received complaints regarding **Marion Midget Football's** operation of a youth football league and the organization's radio station, WWGH Radio 107.1. Following an investigation, Marion Midget Football, Patsy A. Worcester, and Scott Spears entered into an Assurance of Discontinuance (AOD) in May of last year. Worcester resigned as the organization's Treasurer in April 2019 and is prohibited from serving as a nonprofit officer or board member, soliciting for charitable purposes, or incorporating a nonprofit organization for a period of five years following her resignation. Spears agreed to pay a total of \$12,500 in restitution and civil penalties. He also resigned as the organization's President in May 2019 and is prohibited from serving as a nonprofit officer or board member, soliciting for charitable purposes, or incorporating a nonprofit organization following the date

of his resignation. In addition to implementing internal controls and board governance practices, the organization agreed to relinquish the WWGH Radio 107.1 license to the FCC and must cease any involvement with the radio station. <https://www.ohioattorneygeneral.gov/Files/Briefing-Room/Newsletters/Nonprofit/Nonprofit-News-Fall-2019>

SC The Secretary of State filed 12 injunctions in Administrative Law Court and brought in fine revenue in excess of \$380,000 for charities, PFR, and raffles enforcement in its last fiscal year.

WA In mid-2019, the AG settled with a children’s nonprofit known as **Holiday Treasure Chest Charity Foundation**. In November 2018, the AG had filed suit against the charity and its executive director, Mark Bergeson (a.k.a. Mark Jensen), alleging that the charity made misrepresentations to potential donors and that Bergeson used the organization’s checking account for thousands of dollars of personal expenses. The lawsuit also alleged Bergeson gathered toys and other donations under the guise of distributing them to children in need but, instead, sold the valuable items on Internet auction sites and hoarded the rest in storage units throughout the Seattle area against the organization and obtained a consent decree in which the corporation dissolved and gave its assets to reputable area charities. Hundreds of children received toys and other holiday gifts as a result of the State’s actions. The litigation against Bergeson is ongoing. <https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-lawsuit-against-holiday-treasure-chest-founder>

WA In November 2019, filed suit against, and obtained receivership over **Veterans Independent Enterprises of Washington’s (VIEW)**, a veterans nonprofit in Tacoma, Washington, believed to have been the victim of grossly negligent mismanagement by the board and self-dealing and misappropriate of funds by its executive director. VIEW’s mission is to provide transitional housing and employment rehabilitation for veterans experiencing homelessness. A new bookkeeper named Rosemary Hibbler – a veteran and convicted felon who served time for forgery and theft from her prior employer – started in 2014 and almost immediately diverting funds and otherwise mismanaging the organization’s finances. The situation aggravated and, by the time the State intervened, VIEW faced eviction of its warehouse and offices (for a second time) and foreclosure of its transitional housing. The investigation determined that Hibbler spent hundreds of thousands of VIEW funds at casinos and on personal expenses like her own rent. Despite obvious financial mismanagement, the board continued to employ Hibbler and even promoted her to executive director. At the State’s request the Court appointed a general receiver. VIEW’s trajectory is vastly improved though litigation is still ongoing. <https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-lawsuit-against-veterans-charity-misusing-hundreds-thousands>

III. TRUST & ESTATE ISSUES

CA Bulgarian American Cultural Educational Society (BACES) was a mutual benefit society formed by Bulgarian immigrants in the 1940s. Using donations from its members, BACES purchased real property in Los Angeles. BACES built a building for its headquarters and meeting place. In 2015, the few remaining BACES members voted to convert the organization from a nonprofit mutual benefit to a for-profit corporation and distribute shares to the few remaining members. The building is worth approximately \$5 million. We received numerous complaints from the Bulgarian community about the conversion. We initiated an investigation and determined that the funds used to originally purchase the property were charitable assets and that the conversion to a for-profit corporation was an improper transfer of charitable assets. BACES agreed to convert back to a nonprofit organization, to open up the membership (one of the allegations is that members were purged from the organization), to elect a new board of directors, and to register with our office. BACES also agreed to reimburse our office \$50,000 in investigation fees and costs.

CA People v. William Shine (In re: Eva Lindskog Trust) Under the terms of the Eva Lindskog Trust, the trustee had a duty to use \$20 million in income-producing real property assets from Lindskog's estate to form and fund a charitable foundation. Instead of forming a foundation, trustee William Shine operated the Trust's rental properties at a loss for the next ten years without making any of the charitable donations the Settlor intended. CA's petition alleged numerous breaches of fiduciary duties, including: failure to form and fund a charitable foundation; failure to apply for tax-exempt status, failure to maintain books and records, failure to make charitable donations, and self-dealing. After a six-week bench trial, the court permanently removed Shine as trustee. Ultimately, the trial court found Shine liable for \$1.4 million in damages to the trust, plus CA's attorneys' fees and costs of \$1.7 million. Shine's appeal seeking indemnification under the Trust for his defense fees was denied given the substantial evidence of pervasive mismanagement, and CA Attorney General's \$1.7 million in attorney's fee award was upheld in its entirety.

CT High Legal and Fiduciary Fees Over the last year, Connecticut has increased its scrutiny of seemingly high fiduciary and legal fees as they relate to the settlement of estates. In analyzing the reasonableness of fees, Connecticut relies on the factors laid out in a 1923 court case and adopted by the probate court and the practice book. Probate courts have started to proactively bring these cases to our attention resulting in the litigation of approximately 7 high fee cases over the last year and 3 more in active status. Funds protected for the benefit of charitable beneficiaries totals \$ 315,813.

NH In re Trust of Mary Baker Eddy, 212 A.3d 414 (N.H.2019). Case focused on standing of potential beneficiaries to contest investment and grant making decisions made by a religious trust with \$27 million in assets. New Hampshire Supreme Court agreed with the Charitable Trusts Unit and adopted a form of the standing standards first proposed in a 1993 law review article by Mary Grace Blasko and largely followed in the Draft Restatement of Charitable Nonprofit Corporations. The court then denied standing to the petitioner, a Christian Science branch church from Melbourne, Australia, mainly because the Attorney General has exercised sufficient oversight over the charitable trust.

TX In the Estate of Alexander McClure Russ; Cause No. 2018PC2943; In the Probate Court No. 1 of Bexar County, Texas. A will and trust contest in the \$22 million estate of Alexander McClure Russ in which the AG represented The University of Texas System on behalf of The University of Texas McCombs School of Business and The University of Texas at Austin (UT-Austin). The case involved four potential wills and the decedent's nephew who appeared to have transferred over \$1 million from the decedent's estate as attorney in fact in the years immediately precedent the decedent's death. The case settled with \$9 million to UT-Austin.

TX In the Estate of Brenda Kay Dobbs, Deceased; Cause No. 17-E-2165; In the County Court at Law No. 1 of Ellis County, Texas. The Texas Attorney General intervened in a will contest where the will had already been probated and left Decedent's entire estate, worth over half a million dollars to "various abused women and children shelters." Contestants are Decedent's children that were disinherited in the will and are claiming that there was no charitable trust created. This case was settled with an outright gift of \$100,000 to be shared equally between a women's shelter and a children's home, with 60% of the remainder of the estate to be shared by those charities.

TX Frost Bank, Independent Executor of The Estate of Ola Mae St. Germain, Deceased v. The St. Germain Foundation, et al; Cause No. PR-79025-A; In the Probate Court of Galveston County, Texas. The Texas Attorney General intervened in a case in which the Independent Executor (Frost Bank) filed a Petition for Declaratory Judgment regarding the Estate of Ola Mae St. Germain and the Estate of Raymond J. St. Germain (the "Petition") worth between eighteen million (\$18,000,000) and twenty-two million (\$22,000,000) dollars. The Will bequeaths a gift to the Raymond and Ola Mae St. Germain Foundation, to be held in trust for a general charitable purpose. The Independent Executor's Petition states in part, that it is unable to locate the existence of the Foundation and on information and belief, it was never created. Among the relief that the Independent Executor is asking the Court to determine in its Petition, is whether the doctrine of *cy pres* applies to the gift to the Foundation, resulting in the residuary Estate passing to a charity for a general charitable purpose, or whether the gift to charity passes to the heirs. The heirs believe that the gift to the Foundation lapses, and thus the doctrine of *cy pres* should not apply. The Texas AG argues that lapsed gift rules of general probate law do not apply to charity dispositions when, as here, a general charitable intent is shown. There are Motions for Summary Judgment filed with the by the Heirs and the AG. This case is set for mediation in March 2020, for the parties to try to reach a settlement in the case.

IV. HEALTH CARE

CA On July 12, 2019, the Attorney General received written notice from **Air Force Village West, Inc.**, a California nonprofit public benefit corporation, seeking the Attorney General's approval of a proposed sale of its community care retirement community that includes a skilled-nursing facility, to Westmont Living Inc., a California for-profit corporation. The Attorney General's conditional consent was issued on August 29, 2019. <https://oag.ca.gov/charities/nonprofithosp#av>

CA On August 21, 2018, the Attorney General's Office received a notice from **Parkview Community Hospital Medical Center**, a California nonprofit public benefit corporation, seeking the Attorney General's approval to enter into an Asset Purchase Agreement with AHMC Healthcare, Inc., a for-profit corporation. Parkview Community Hospital Medical Center is a 193-bed licensed general acute care hospital located in the City of Riverside in Southern California. On January 4, 2019, the Attorney General approved the transaction with conditions.
https://oag.ca.gov/charities/content/nonprofithosp_archive#notice0

PA The PA AG oversaw a settlement of a longstanding dispute between the **University of Pittsburgh Medical Center (UPMC) and Highmark** after UPMC refused to contract with Highmark because it had become a competing integrated healthcare system. Through the settlement, the parties agreed to a ten year contractual relationship for essentially all of Highmark's commercial and Medicare Advantage insurance plans. The settlement resolves issues of affordable access to UPMC's providers. In February 2019, the AG had filed a suit against UPMC, arguing that its refusal to provide access was not compatible with its stated charitable purposes of providing the public with affordable access to high quality health care.
<https://www.attorneygeneral.gov/taking-action/press-releases/ag-shapiro-governor-wolf-announce-new-10-year-contract-between-upmc-and-highmark/>

WA In April 2019, Washington obtained consent decree requiring **St. Joseph Medical Center In Tacoma** and seven other **CHI Franciscan** hospitals to forgive as much as \$20 million in debt, pay \$2.22 million in refunds, pay the AGO \$2.46 million, and rehabilitate the credit of thousands of patients who qualified for charity care between 2012 and 2017 but did not receive it. The AG sued St. Joseph in 2017 alleging that the hospital repeatedly violated the Consumer Protection Act by failing to make charity care accessible to tens of thousands of low-income patients. State law requires that for patients whose incomes are at or below 200% of the Federal Poverty threshold, hospitals must provide oral and written notice that charity care is available, screen patients for eligibility before trying to collect payment, and refrain from demanding multiple income-related documents to prove eligibility. <https://www.atg.wa.gov/news/news-releases/following-ag-s-charity-care-lawsuit-st-joseph-parent-company-chi-franciscan-will>

V. OTHER, INCLUDING REGISTRATION, LEGISLATION, and GUIDANCE

AK In 2019, Alaska moved to online filing system for all charitable organizations and professional solicitors except for filers who are granted a waiver because they do not have “reasonable access to the Internet or to electronic equipment or software required to make the filing.”

AR Arkansas Act 108 allows for for-profit entities to convert to nonprofit entities upon filing amended articles of incorporation under either of Arkansas’s Nonprofit Corporation Acts and following the laws for charitable solicitation thereafter. The law went into effect on October 1, 2019.
[https://1.next.westlaw.com/Link/Document/FullText?findType=l&pubNum=1077005&cite=UUID\(IE79C3B8030-F411E99EB1F-1F7C1D04BAB\)&originatingDoc=NBE9457C0360511E99BE08596C0DCBCDB&refType=SL&originationContext=document&transitionType=DocumentItem&contextData=\(sc.Search\)](https://1.next.westlaw.com/Link/Document/FullText?findType=l&pubNum=1077005&cite=UUID(IE79C3B8030-F411E99EB1F-1F7C1D04BAB)&originatingDoc=NBE9457C0360511E99BE08596C0DCBCDB&refType=SL&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))

2019 Ark. Acts 108 (S.B. 142) *amending* Ark. Code Ann. § 4-33-202 (West 2019).

CA The Attorney General’s office created online webinars to assist charities with registrations, delinquencies and dissolutions.

<https://oag.ca.gov/charities/delinquency#webinar>

<https://oag.ca.gov/charities/dissolution#webinar>

<https://oag.ca.gov/charities/initial-reg#webinar>

CA The Attorney General’s office published a new guide to educate the public on the recommended research before supporting charitable causes through charitable fundraising platforms (e.g., Amazon, Facebook, GoFundMe, Google). The Guide also identifies legal duties and best practices for these platforms.

CO The Secretary of State’s office posted the first [list of 7,755 charities](#) eligible for Colorado’s new “Donate to a Colorado Nonprofit Fund,” which was created by SB 18-141. This program allows taxpayers to contribute part of their tax refund to an eligible charity, and goes into effect for the income tax year beginning on or after January 1, 2019.

DC Pending Legislation to enact a private cause of action for False or Deceptive Solicitation in conjunction with the District of Columbia Charitable Solicitation statute.

FL Department of Agriculture and Consumer Services added a provision to make it violation to commingle charitable and noncharitable assets in the same account. It is now a rebuttable presumption that commingled funds were not expended properly.

IL Enactment of the Illinois Trust Code: On July 12, 2019, Illinois’ Governor signed a bill enacting the Illinois Trust Code (ITC). The ITC generally conforms with the Uniform Trust Code (UTC), a comprehensive codification of the common law on trusts, as drafted, published and recommended by the National Conference of Commissioners on Uniform State Laws. The ITC will be effective as of January 1, 2020, and will govern all trusts in Illinois, including charitable trusts. With the adoption of the ITC, Illinois becomes the 34th state to adopt a version of the UTC. The ITC will replace the Illinois Trusts and

Trustees Act and bring Illinois up to date in the area of trust law. The Illinois OAG participated in the legislative process by reviewing the proposed legislation from the perspective of a charitable beneficiary, and we did recommend a few changes, particularly in the area of how beneficiaries receive notice from a trustee. Notably, the common law theories of *cy pres* and equitable deviation are codified in the ITC.

NH NH legislature made changes to an existing statute governing the attorney general's specific responsibilities for the review of health care acquisition transactions. The new statute increases the scope of the attorney general's responsibility to review of hospital transactions. Effective January 1, 2020.

NY In cooperation with the Chronicle of Philanthropy, the NYAG Charities Bureau conducted a webinar entitled Donor Advised Funds: A Regulator's Perspective.

<https://store.philanthropy.com/products/donor-advised-funds-a-regulators-perspective>

NY Electronic Registration. The AG's Charities Bureau launched a portal - <https://www.charitiesnys.com/checklist.html> - for electronic registration of charities in November 2018, and electronic registration became mandatory in January 2019. In Spring 2020, the portal will include a process for annual filings.

NY Recent Guidance from the Guidance New York Attorney General's Charities Bureau

AUDIT COMMITTEE REQUIREMENTS AND RESPONSIBILITIES UNDER NEW YORK'S NOT-FOR-PROFIT CORPORATION LAW, AS AMENDED THROUGH 2017

<https://www.charitiesnys.com/pdfs/AuditCommittees.pdf>

A GUIDE TO SALES AND OTHER DISPOSITION OF ASSETS BY RELIGIOUS CORPORATIONS PURSUANT TO RELIGIOUS CORPORATIONS LAW § 12 and NOT-FOR-PROFIT CORPORATION LAW §§ 510, 511 and 511-a

https://www.charitiesnys.com/pdfs/religious_corporations_disposition_assets.pdf

The Sale of Nonprofit Nursing Homes Pursuant to the Not-for-Profit Corporation Law

<https://www.charitiesnys.com/pdfs/NursingHomeSales.pdf>

OR Legislation modernizing the Nonprofit Corporation Act (ORS Chapter 65) passed during the 2019 session and became effective January 1, 2020. The legislation modernizes the statute without making significant policy changes. It allows for voting by email, allows members to provide email addresses for contact information, allows closing organizations to proceed with dissolution even if there are not have the minimum number of directors remaining, and provides a process for changing from member to nonmember structure when organization has lost track of its membership.

SC The South Carolina Secretary of State has launched a new website that has significant enhancements related to searchable data. Customers are now able to search charitable organizations, professional fundraising companies, counsels and commercial co-venturers as well as charitable organizations registered to conduct raffles from the new search feature. The most recent financial reports for the charities, raffles and joint financial reports are available for viewing.

<https://sos.sc.gov/online-filings/charities-pfrs-and-raffles/charities>

TX Prior to filing for Chapter 11 bankruptcy, Eden Home, a nursing home, pledged an account holding restricted donated funds as collateral for its bond debts. The Attorney General filed an adversary proceeding in the bankruptcy case seeking to protect restricted charitable assets from inclusion in the bankruptcy estate and to establish that the bond trustee does not have a valid lien on any restricted charitable funds.

TX SB 1969 (Tex. Bus. Orgs. Code § 22.516) Addresses defective corporate acts of a Texas nonprofit corporation by establishing a process by which a nonprofit, including a charitable nonprofit, can ratify acts that were made at a time when the authority to take such action was in question. Allows the corporation or certain interested parties to bring a court proceeding to determine the validity of a defective corporate act. Provides that a court proceeding that involves a charitable entity is considered a “proceeding involving a charitable trust” to which Chapter 123 of the Property Code applies (notice to AG must be given). The law went into effect on September 1, 2019.

TX HB 3365 (Tex. Bus. Org. Code § 79.003) The bill amends Texas Civil Practice & Remedies Code Ch. 79 relating to liability of persons assisting in hazardous or dangerous conditions (extends scope of disaster to include major disaster declared by US president or defined by Ch. 418 Tex. Gov’t. Code). It provides immunity from liability for persons acting to aid with disaster efforts at the request of a charitable organization. There is an exception only for intentional, willful, or wanton misconduct. It provides for immunity from liability for charitable organization for the acts or omissions of a person providing services at its request. This law went into effect June 2, 2019.

FTC The FTC, with NASCO and many state charity offices, joined charity regulators and members of the sector worldwide in **International Charity Fraud Awareness Week**, October 21 – 25, 2019. This social media campaign using hashtag #charityfraudout focused on educating charities and donors about various fraud threats. The 2019 campaign disseminated information for charities on cybersecurity and for donors on fundraising fraud.

<https://www.ftc.gov/news-events/press-releases/2019/10/ftc-joins-charity-regulators-around-nation-world-raise-awareness>

OTHER STATES Numerous state legislatures amended their statutes or rules governing charitable solicitation and registration.

-END-

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