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JAMES MATTHEWS  
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION  
Office: (602) 542-4242  
FAX: (602) 542-3583

August 11, 1994

Ms. Catherine R. Hardwick, Esq.  
Meyer, Hendricks, Victor, Osborn & Maledon  
The Phoenix Plaza  
2929 North Central Avenue  
Phoenix, AZ 85012-2798

RE: National Health Enhancement Systems, Inc.  
A.R.S. §44-1844(A) (14)

Dear Ms. Hardwick:

On the basis of the facts set forth your letters of July 27, 1994 and August 10, 1994 and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letters. Please be advised that the resale of the common stock acquired by employees upon exercise of the options will not fall under the exemption provided by A.R.S. §44-1844(A) (14) and would need to be conducted pursuant to registration or applicable exemption.

As this position is premised upon the facts set forth in your letters, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud and other provisions of the Act continue to be applicable.

We have attached a photocopy of your letters. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Dee Rid dell Harris".

DEE RIDDELL HARRIS  
Director of Securities

DRH:p gg

Attachment

Meyer  
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A Professional Association

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Attorneys at Law

Catherine R. Hardwick  
602-640-9323

July 27, 1994

Ms. Lynn Naefach  
Securities Division  
Arizona Corporation Commission  
1300 West Washington  
Phoenix, Arizona 85007

Re: National Health Enhancement Systems, Inc.  
File No. S-0033480-QUAL  
Effective: August 12, 1993  
Expires: August 12, 1994

Dear Ms. Naefach:

On behalf of National Health Enhancement Systems, Inc. (the "Company"), I request confirmation from the Securities Division of the Arizona Corporation Commission that with respect to securities issuable under the Company's Amended 1988 Stock Option Plan (the "Plan") as described below, the proposed manner of registration satisfies the requirements of A.R.S. § 44-1841. In accordance with the Division's policies, we have enclosed a check in the sum of \$200.00 representing the filing fee.

Under the terms of the Plan, the Company may grant two types of stock options: options intended to qualify as Incentive Stock Options ("Incentive Stock Options") under Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"); and other options not specifically authorized or qualified for favorable income tax treatment by the Code ("Nonqualified Stock Options"). The Plan authorizes the Company to grant options to purchase up to an aggregate of 700,000 shares of the Company's Common Stock. One-half of the authorized shares are reserved for issuance of Incentive Stock Options, and one-half are reserved for issuance of Nonqualified Stock Options.

The Company's current registration, File No. S-0033480-QUAL, qualifies all 700,000 shares issuable under the Plan. Notwithstanding this registration, it is the Company's position that under Arizona law, only the shares issuable pursuant to Nonqualified Stock Options must be registered. Accordingly, the Company has applied for renewal of its registration for shares issuable pursuant to Nonqualified Stock Options only.

Ms. Lynn Naefach  
July 27, 1994  
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A.R.S. § 44-1844.A(14) exempts the following transactions from the registration requirements of A.R.S. § 44-1841:

The sale or issuance of any investment contract or other security in connection with an employee's pension, profit sharing, stock purchase, stock bonus, savings, thrift, stock option or other similar employee benefit plan which meets the requirements for qualification under the United States internal revenue code.

Under the terms of the Plan, one-half of the total authorized shares are reserved for the exercise of Incentive Stock Options intended to meet the requirements of Section 422 of the Code. Under the above-cited exemption, the Company should not be required to register these securities.

Please confirm that the Company's position on this matter is correct. We have also filed, as of this date, a Form U-1 to renew the registration of the Nonqualified Stock Options. The Company will not issue any Incentive Stock Options or permit the exercise of any outstanding Incentive Stock Options under the Plan between the date of this letter and the date of your response.

We look forward to hearing from you on this matter. If you have any questions, please do not hesitate to call.

Very truly yours,



Catherine R. Hardwick

CRH:jvr  
Enclosure  
AAL27C93

cc: Jeff Zywicki

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August 10, 1994

VIA FACSIMILE: 542-3583

Ms. Pamela Georgelos  
Securities Division  
Arizona Corporation Commission  
1300 West Washington  
Phoenix, Arizona 85007

Re: No-Action Letter Request on behalf of  
National Health Enhancement Systems, Inc.

Dear Pamela:

This letter supplements our original letter to you dated July 27, 1994 regarding a request for a no-action letter on behalf of National Health Enhancement Systems, Inc. in connection with the exemption for the shares of the Company's Amended 1988 Stock Option Plan (the "Plan") subject to issuance pursuant to incentive stock options.

As you know, the Stock Option Plan is bifurcated: one-half provides for the issuance of incentive stock options, and the other half provides for issuance of non-qualified stock options. Only employees of the Company or its subsidiaries can be issued incentive stock options.

Pursuant to the Plan, the Board of Directors of the Company currently administers the Plan. The Board determines the individuals to whom, and the time or times at which, options shall be granted, the number of shares to be subject to each option, the duration of each option, the option price under each option and the time or times within which (during the term of the option) all or portions of each option may be exercised. In making such determinations, the Board may take into account the nature of the services rendered by such individual or class of individuals, their present and potential contributions to the Company's success, and such other factors as the Board in its discretion shall deem relevant.

Notwithstanding the Board's discretion, the exercise price of incentive stock options shall be no less than the fair market value of the Common Stock as of the date of grant. In addition, if incentive stock options are granted to employees owning 10% or more of the combined voting power of the combined classes of the Company's stock, the exercise price of incentive stock options granted to that individual shall be no less than 110% of the fair market value at the date of grant.

Ms. Pamela Georgelos  
August 10, 1994  
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In an abundance of caution, the Company registered all of the 700,000 shares subject to the Plan last year. At that time, the Form S-8 had already been filed with the Securities and Exchange Commission and the Company did not have sufficient time to obtain a no-action letter from the Arizona Corporation Commission. The Company decided the conservative position would be to register all the shares and seek a no-action letter at a later date. As the registration has just come up for renewal, we thought it appropriate to seek the no-action letter at this time.

If you have any additional questions regarding the Plan or our no-action letter request, please give me a call. We look forward to hearing from you.

Very truly yours,



Catherine R. Hardwick

CRH:jvr  
AAL28936

cc: Jeffrey T. Zywicki