

EXHIBIT A



November 22, 2016

VIA E-MAIL (KIRSTIN@JAHNLAW.COM) & CERTIFIED MAIL

Ms. Kirstin M. Jahn
Jahn + Associates
1942 Broadway, Suite 314
Boulder, CO 80302

Re: Mayo Clinic/Dr. Lippitt Copyright Matter

Dear Ms. Jahn:

As you know, Fredrikson & Byron, P.A. represents the Mayo Clinic ("Mayo"), and I write in response to your letter of November 10, 2016 regarding Mayo's use of the Quality Improvement Change Components chart ("Chart").

I assure you our client has no intention of infringing the valid rights of any other company or individual. Mayo owns many copyrights itself, and understands the value, importance and benefit of protecting those rights. However, we have further investigated this matter and remain confident that Mayo's use of its Chart did not infringe any valid copyrights owned by Dr. Lippitt in her Managing Complex Change Model ("Model").

Mayo conducted further internal research into the matter and determined there are a few misconceptions stated in your letter. First, we are not aware of any Mayo personnel who have attended a presentation given by Dr. Lippitt. Mayo's Chart emanated from an employee who encountered a version of the chart during her prior employment, and due to the differences in the Chart and Model, we do not believe this employee encountered Dr. Lippitt's Model. Furthermore, your statement that Mayo has acknowledged Dr. Lippitt's copyrights in the Chart are simply false. Mayo does not believe Dr. Lippitt owns copyrights in the Chart. Mayo's chart merely states it was "adapted" from the Model because this acknowledgement was on the original version of the chart and Mayo wished to ensure that Dr. Lippitt's factual contributions continued to be disclosed. However, facts are not protectable under copyright law, only the creative expression of those facts receive protection. As you can clearly see below, the creative expressions of the Chart and the Model are extremely different.

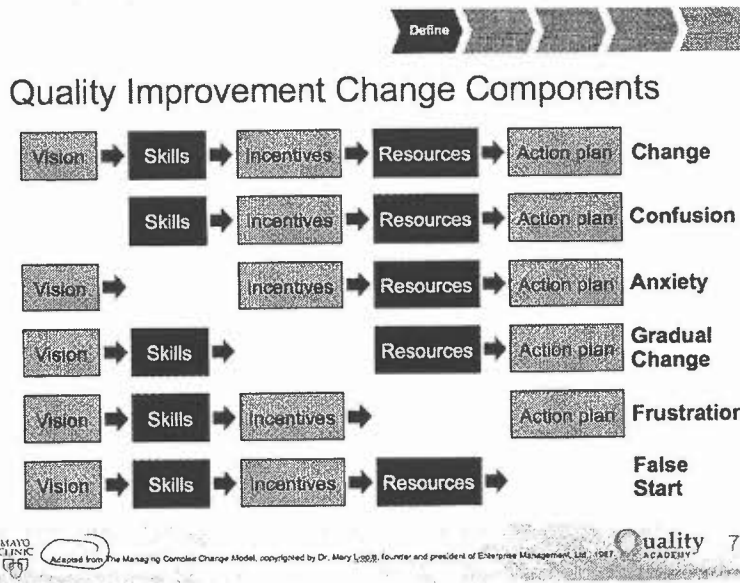
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55402-1425

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DR. LIPPITT MODEL



MAYO CHART

Mayo has been in Dr. Lippitt's shoes in such situations many times, so it can understand Dr. Lippitt's potential frustration with the limits of copyright protection. As a result, Mayo would like to provide Dr. Lippitt with some monetary amount in acknowledgement of her research and efforts in the field of managing complex change. Mayo is prepared to make Dr. Lippitt a final offer of \$10,000.

We believe that this amount is generous under any potential calculation of a settlement. Dr. Lippitt established that a five year license fee for the Model is \$8,000. Your letter also indicated Mayo could

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have purchased a copy of the Model for \$5. Mayo has not used the Chart for a five year period and yet is willing to offer Dr. Lippitt an amount in excess of her license fee.

This case does not involve egregious behavior or willfulness in a manner that would be recognized in an infringement suit, so the available statutory damages would be between \$750-30,000. In copyright infringement cases involving statutory damages, courts uniformly set award levels at a realistic amount under the circumstances, absent some type of egregious facts. In this situation, Dr. Lippitt's Model represents a very small portion of the overall work that is the subject of her copyright registration. The Chart was one page out of a 230 page internal presentation, and Mayo is not aware that any of its employees ever even encountered Dr. Lippitt's Model. Mayo did not remove the acknowledgement of Dr. Lippitt's factual contributions to the Chart, as it was not attempting to take credit for Dr. Lippitt's research. Mayo did not sell or otherwise profit from its use of the Chart. Plus, Dr. Lippitt herself has set the value of the work at either \$5 or \$8,000 for five years. Faced with these facts, we believe that the most a court would ever award for infringement would be \$8,000.

In addition to this amount, Mayo agrees to the following:

- It has already deleted the Chart from its presentation.
- It will not use the Chart or Model in the future, or any substantially similar representation thereof.
- It has not given anyone else permission to use the Chart.
- It acknowledges that Dr. Lippitt is the owner of the Model and that Mayo has no authority to grant use of the Model to anyone.

We certainly regret that Dr. Lippitt feels wronged in this matter and hope this offer will provide her with some measure of satisfaction. We look forward to her response.

Sincerely,



John Pickerill
Attorney
jpickerill@fredlaw.com
(612) 492-7306

cc: Brian Zargham, Mayo Clinic

EXHIBIT B



Harper IP Law, P.A.
2112 W. Marjory Avenue
Tampa, Florida 33606
March 15, 2017

Via UPS Ground and Email

John Pickerill, Esq.
Fredrikson and Byron
200 South Sixth Street, Suite 400
Minneapolis, Minnesota 55402

Confidential Settlement Communication under FRE 408

Subject: Mayo Clinic's Infringement of Dr. Mary Lippitt's Copyrights

Mr. Pickerill:

I represent Dr. Mary Lippitt (hereinafter Dr. Lippitt) and Enterprise Management Limited, Inc. (hereinafter EML) in regard to Mayo Clinic and the Mayo Foundation for Medical Education and Research's (collectively Mayo) infringement of Dr. Lippitt's copyrights.

You have previously corresponded with Kirstin M. Jahn (hereinafter Jahn) in regard to this matter. Please direct any further correspondence in this matter to me.

Please be on notice that Dr. Lippitt is prepared to file a copyright infringement action against Mayo Clinic if this matter cannot be resolved. Attached is a draft complaint for your consideration.

I have reviewed your correspondence with Jahn. I have the following comments.

Your statement that "Mayo first became aware of Dr. Lippitt's research in 2016" is not credible. Mayo Clinic's charts you cited in your correspondence with Jahn are nearly exact copies of Dr. Lippitt's Managing Complex Change Chart (hereinafter the MCC Chart).

It is true enough that there are copies of various versions of the MCC Chart on the Internet, but all such versions I have seen attribute their content to Dr. Lippitt. I have

John Pickerill
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little doubt that discovery will show that the charts Mayo Clinic's Quality Academy used from 2011 to 2015 were based on a copy of charts attributing their content to Dr. Lippitt.

Your statement that the MCC Chart is "factual chart displaying the idea of change management, which receives minimal, if any, copyright protection," is incorrect, unless of course, you disagree with the 10th Circuit's conclusion in 2013 that the MCC Chart was copyrightable (*Enterprise Management Ltd., Inc. v. Warrick*, 717 F. 3d 1112 (10th Cir. 2013).) I have little doubt a Federal District Court would accord this decision great weight in its rulings.

Furthermore, precedent, specifically *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991), does not require that every training work plow new territory or express familiar business concepts in wildly new ways. "Original, as the term is used in copyright, means only that the work was independently created by the author (as opposed to copied from other works), and that it possesses at least some minimal degree of creativity. [Citation omitted.] The requisite level of creativity is extremely low; even a slight amount will suffice. We attach an Amicus Brief from an unrelated case for your consideration making similar arguments.

And what is the basis for your statement that Dr. Lippitt "falsely alleg[ed] that a Mayo employee actually attended one of Dr. Lippitt's presentation"? Proving the non-existence of such a fact is essentially impossible, unless, of course, you have surveyed all persons employed by Mayo Clinic since 2011.

You have made this and other allegations that, in general, could only be based on a deep review of the history of Mayo Clinic's development of charts that are nearly identical to the MCC Chart. I see no evidence such a review has taken place, but rather simply boilerplate denials based on a conclusory review of only the most basic facts available in this case.

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Nevertheless, Dr. Lippitt and EML strongly prefer to settle this matter without the need for costly and time consuming litigation. The essential terms of our proposed settlement are as follows.

- A one-time payment of \$125,000.
- Your agreement not to use any chart or text similar to any of Dr. Lippitt's copyrighted materials unless Mayo Clinic enters into a licensing agreement with Dr. Lippitt.

Your previous offer of \$10,000 is inadequate. It is irrelevant that such an offer may or may not be larger than any anticipated licensing revenues – Mayo Clinic has infringed one or more of Dr. Lippitt's registered copyrights and statutory damages are available. Such damages could be substantial, particularly since we believe the evidence will show that Mayo Clinic's infringement was willful and in reckless disregard of Dr. Lippitt's rights.

Please respond to this communication on or before March 31, 2017. Our offer expires at that time.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Wayne V. Harper', with a long horizontal flourish extending to the right.

Wayne V. Harper
Attorney at Law