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QUESTIONS AND CASE PROBLEMS

- 7.1 HEM Pharmaceuticals Corporation designed a new drug, Ampligen, to fight chronic fatigue syndrome. Typically, new medicines go through several phases of clinical evaluation before approval by the Food and Drug Administration (FDA) and general release onto the market. As a part of the process, HEM began a clinical trial with ninety-two patients to evaluate the effectiveness, side effects, and risks of Ampligen. The patients signed consent forms that warned them of the experimental nature of Ampligen and the possible side effects. The patients were free to withdraw from the trial at any time, but if they remained in the study, they were required to accept the risks of treatment, forgo other drugs, not become pregnant, and submit to intensive and uncomfortable testing for one year. In return, after the trial ended, they would be entitled to receive Ampligen for a full year at no charge. At the end of the trial, a manager at HEM considered refusing to provide the year's supply of the drug to the patients free of charge on the grounds that there was no binding contract. If you were that manager's supervisor, what would you recommend? Why? [*Dahl v. HEM Pharmaceuticals Corp.*, 7 F.3d 1399 (9th Cir. 1993).]
- 7.2 Brian Olson, a hedge fund operator, sued his investing partners, Andreas Halvorsen and David Ott, for breach of contract, claiming that they had orally amended the compensation provisions in the operating agreements of their limited liability companies (LLCs). The written agreements provided that if a founder left, he would receive only his capital account and earned compensation for that year. Over a year-and-a-half period, Olson's lawyers prepared and circulated nine drafts of a new operating agreement that would have given each founder a declining percentage of his interest for six years upon retirement or death. None of the three founders ever