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State of California
DEPARTMENT OF JUSTICE



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April 7, 2015

Sent by Internet and U.S. Mail

Hooper, Lundy & Bookman, P.C.
Craig J. Cannizzo
575 Market Street, Suite 2300
San Francisco, CA 94105

RE: Proposed Change in Governance of The Hospital Committee for the Livermore-Pleasanton Areas doing business as ValleyCare Health System

Dear Mr. Cannizzo:

Pursuant to Corporations Code section 5920 et seq., the Attorney General hereby conditionally consents to the proposed change of control and governance of The Hospital Committee for the Livermore-Pleasanton Areas, a California nonprofit public benefit corporation, doing business as ValleyCare Health System, pursuant to the terms of the Affiliation Agreement dated September 26, 2014, by and between Stanford Hospital and Clinics, a California nonprofit public benefit corporation, now called Stanford Health Care.

Corporations Code section 5923, and California Code of Regulations, title 11, section 999.5, subdivision (f), set forth factors that the Attorney General shall consider in determining whether to consent to a proposed transaction between a nonprofit corporations. The Attorney General has considered such factors and consents to the proposed transaction subject to the attached conditions that are incorporated by reference herein.

Thank you for your cooperation throughout the review process.

Sincerely,

[Original Signed]

SCOTT CHAN
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

Conditions to Change in Control and Governance of The Hospital Committee for the Livermore-Pleasanton Areas doing business as ValleyCare Health System and Approval of the Affiliation Agreement between ValleyCare Health System and Stanford Hospital and Clinics¹

I.

These Conditions shall be legally binding on The Hospital Committee for the Livermore-Pleasanton Areas, a California nonprofit public benefit corporation, doing business as ValleyCare Health System, ValleyCare Medical Foundation, Inc., a California nonprofit public benefit corporation, ValleyCare Senior Housing, Inc., a California nonprofit public benefit corporation, ValleyCare Charitable Foundation, a California nonprofit public benefit corporation, and any other subsidiary, parent, general partner, manager, member, affiliate, successor, or assignee of any of the above-listed entities (collectively ValleyCare), Stanford Hospital and Clinics, a California nonprofit public benefit corporation, Stanford Health Care, a California nonprofit public benefit corporation, and any other subsidiary, parent, general partner, manager, member, affiliate, successor, or assignee of any of the above-listed entities (collectively Stanford), any entity succeeding thereto as a result of consolidation, merger, or acquisition of all or substantially all of the assets of ValleyCare, or the real properties on which the ValleyCare Facilities² are located, any and all current and future owners, managers, lessees, or operators of ValleyCare, and any and all current and future lessees and owners of the real property on which ValleyCare Facilities are located.

II.

The transaction approved by the Attorney General consists of the Affiliation Agreement by and Between Stanford Hospital & Clinics and The Hospital Committee for the Livermore-Pleasanton Areas doing business as ValleyCare Health System dated September 26, 2014, Amendment No. 1 to Affiliation Agreement dated March 9, 2015, and any agreements or documents referenced in or attached as an exhibit to the Affiliation Agreement. All the entities listed in Condition I shall fulfill the terms of the Affiliation Agreement, and any other documents referenced therein and shall notify the Attorney General in writing of any proposed modification or rescission of any of the terms of the Affiliation Agreement. Such notifications shall be provided at least thirty days prior to their effective date in order to allow the Attorney General to consider whether they affect the factors set forth in Corporations Code section 5923.

¹ On October 9, 2014, Stanford Hospital and Clinics filed amended Articles of Incorporation with the California Secretary of State that changed its name to Stanford Health Care.

² Throughout this document, the term "ValleyCare Facilities" shall mean ValleyCare Medical Center located at 5555 W. Las Positas Blvd., Pleasanton, CA 94588, ValleyCare Memorial Hospital located at 1111 E. Stanley Blvd., Livermore, CA 94550, and any other clinics, laboratories, units, services, or beds included on the license issued by the California Department of Public Health, effective December 9, 2014, unless otherwise stated.

III.

For five years from the closing date of the Affiliation Agreement, ValleyCare and Stanford, and all future owners, managers, lessees, or operators of the ValleyCare Facilities shall be required to provide written notice to the Attorney General 60 days prior to entering into any agreement or transaction to do any of the following:

(a) Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of ValleyCare Facilities;

(b) Transfer control, responsibility, management, or governance of ValleyCare Facilities. The substitution or addition of a new corporate member or members of ValleyCare or Stanford that transfers the control of, responsibility for or governance of the ValleyCare Facilities, shall be deemed a transfer for purposes of this Condition. The substitution or addition of one or more members of the governing body of ValleyCare or Stanford or any arrangement, written or oral, that would transfer voting control of the members of the governing body of ValleyCare or Stanford shall also be deemed a transfer for purposes of this Condition.

IV.

For five years from the closing date of the Affiliation Agreement unless otherwise stated, ValleyCare Facilities shall be operated and maintained as a licensed general acute care hospital (as defined in California Health and Safety Code Section 1250) and shall maintain and provide the following health care services at current³ licensure, types, and/or levels of services:

a) Twenty-four hour emergency medical services, including a minimum of 18 emergency beds/stations at ValleyCare Medical Center;

b) Acute psychiatric services, including a minimum of 14 beds and geriatric behavioral health services at ValleyCare Memorial Hospital;

c) Cardiac Services, including, but not limited to, the cardiac catheterization laboratory, and the designation as a STEMI Receiving Center at ValleyCare Medical Center;

d) Critical Care services, including a minimum of 9 Coronary Care beds and 13 Intensive Care beds at ValleyCare Medical Center;

e) Obstetrics Services, including a minimum of 15 beds at ValleyCare Medical Center;

f) Orthopedic services, including, but not limited to, joint replacement and spine care services at ValleyCare Medical Center;

g) Neonatal intensive care services, including a minimum of 10 neonatal intensive care beds at ValleyCare Medical Center;

³ The term "current" or "currently" throughout this document means as of December 9, 2014.

h) Women's imaging and mammography services including, but not limited to, those provided at ValleyCare Medical Center and ValleyCare Medical Plaza located at 5725 W. Las Positas Blvd., Pleasanton, CA 94588;

i) Urgent care services, including, but not limited to, those provided at the ValleyCare Medical Plaza located at 1133 E. Stanley Blvd., Livermore, CA 94550 and the ValleyCare Urgent Care located at 4000 Dublin Blvd., Suite 150, Dublin, CA 94568; and

j) Women's reproductive health care services for ten years from the closing date of the Affiliation Agreement, at ValleyCare Facilities.

ValleyCare Facilities shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

V.

For five years from the closing date of the Affiliation Agreement, ValleyCare Facilities shall:

a) Be certified to participate in the Medi-Cal program;

b) Maintain and have a Medi-Cal Managed Care contract with Alameda Alliance for Health (or its successor)⁴ to provide the same types and levels of emergency and non-emergency services at ValleyCare Facilities to Medi-Cal beneficiaries (both Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions, on the same terms and conditions as other similarly situated hospitals offering substantially the same services, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless the contract is terminated for cause.

c) Be certified to participate in the Medicare program by maintaining a Medicare Provider Number to provide the same types and levels of emergency and non-emergency services at ValleyCare Facilities to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care) as required in these Conditions.

VI.

For at least five years from the closing date of the Affiliation Agreement, ValleyCare shall maintain the "Alameda County Public Health Department Health Care Facilities' and Medical Service Providers' Mutual Aid Memorandum of Understanding" and any amendments and appendix thereto, and the Emergency Medical Services STEMI Receiving Center Agreement – County of Alameda and "Valley Care Health System" dated January 1, 2012 and any amendments and appendix thereto. ValleyCare must also must complete the contract terms for the "Contract for Home Delivered Meals" dated July 1, 2014, and "Contract Amendment" dated

⁴ If a Local Initiative Plan is no longer available, ValleyCare Facilities must have a Medi-Cal Managed Care contract with an entity that does provide Medi-Cal Managed Care coverage in Alameda County.

December 16, 2014 between County of Alameda and Hospital for Committee for Livermore (ValleyCare Health Systems).

VII.

For at least six fiscal years from the closing date of the Affiliation Agreement, ValleyCare shall provide an annual amount of Charity Care (as defined below) at ValleyCare's Facilities equal to or greater than \$1,344,720 (the Minimum Charity Care Amount). For purposes herein, the term "Charity Care" shall mean the amount of charity care costs (not charges) incurred by ValleyCare in connection with the operations and provision of services at ValleyCare Facilities. The definition and methodology for calculating "Charity Care" and the methodology for calculating "costs" shall be the same as that used by OSHPD for annual hospital reporting purposes.⁵ ValleyCare Facilities shall use and maintain a charity care policy that is no less favorable than ValleyCare Facilities' current charity care policy and in compliance with California and Federal law. The planning of, and any subsequent changes to, the charity care and collection policies, and charity care services provided at ValleyCare Facilities shall be decided by the ValleyCare's Board of Directors after consultation with the ValleyCare Charitable Foundation as set forth in Condition IX.

ValleyCare's obligation under this Condition shall be prorated on a daily basis if the closing date of the Affiliation Agreement is a date other than the first day of ValleyCare's fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose, CA Consolidated Metropolitan Statistical Area Base Period: 1982-84=100 (as published by the U.S. Bureau of Labor Statistics).

If the actual amount of charity care provided at ValleyCare for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, ValleyCare shall pay an amount equal to the deficiency to a tax-exempt entity that provides direct health care services to residents in ValleyCare's service area (15 ZIP codes), as defined on page 45 of the Health Care Impact Report, dated February 23, 2015, and attached hereto as Exhibit 1. Such payment shall be made within four months following the end of such fiscal year.

VIII.

For at least six fiscal years from the closing date of the Affiliation Agreement, ValleyCare shall provide an annual amount of Community Benefit Services at ValleyCare Facilities equal to or greater than \$3,686,381 (the "Minimum Community Benefit Services Amount"). For at least six fiscal years from the closing date of the Affiliation Agreement, the following community benefit

⁵ OSHPD defines charity care by contrasting charity care and bad debt. According to OSHPD, "the determination of what is classified as . . . charity care can be made by establishing whether or not the patient has the ability to pay. The patient's accounts receivable must be written off as bad debt if the patient has the ability but is unwilling to pay off the account."

programs shall be maintained with the same or greater level of financial support and in-kind services currently being provided:

- a. My Heart's Content;
- b. Laborist Program;
- c. Maternal child health programs including Childbirth Preparation Class, Lactation Program/Prenatal Education, Lamaze Prepared Childbirth Series, and New Mom's Support Group;
- d. Oncology programs including the Cancer Support Group and Cancer Survivorship Wellness;
- e. Pulmonary Rehabilitation Program, Phase III; and
- f. Pulmonary Rehabilitation Program, Phase II.

The planning of, and any subsequent changes to, the community benefit services provided at ValleyCare Facilities shall be decided by the ValleyCare's Board of Directors after consultation with the ValleyCare Charitable Foundation as set forth in Condition IX.

ValleyCare's obligation under this Condition shall be prorated on a daily basis if the effective date of the Affiliation Agreement is a date other than the first day of ValleyCare's fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Community Benefit Services Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose, CA Consolidated Metropolitan Statistical Area Base Period: 1982-84=100 (as published by the U.S. Bureau of Labor Statistics).

If the actual amount of community benefit services provided at ValleyCare for any fiscal year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, ValleyCare shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide community benefit services for residents in ValleyCare's service area (15 ZIP codes), as defined on page 45 of the Health Care Impact Report, dated February 23, 2015, and attached hereto as Exhibit 1. Such payment shall be made within four months following the end of such fiscal year.

IX.

For six fiscal years from the closing date of the Affiliation Agreement, ValleyCare's Board of Directors shall consult with the ValleyCare Charitable Foundation prior to making changes to medical services, community benefit programs, making capital expenditures including the spending of the funds for the "Capital Commitment" set forth in section 5.5 of the Affiliation Agreement, making changes to the charity care and collection policies, and making changes to the charity care services provided at ValleyCare Facilities. Such consultation shall occur at least thirty days prior to the effective date of such changes or actions unless done so on an emergency basis. The ValleyCare Charitable Foundation shall also approve all reports submitted to the Attorney General regarding compliance with these Conditions.

X.

Stanford shall make the \$3 million contribution to the ValleyCare Charitable Foundation as required under section 1.4.4 of the Affiliation Agreement (attached hereto as Exhibit 2.)

XI.

Within three years from the closing date of the Affiliation Agreement, Stanford shall make the \$50 million in capital as required under section 5.5, entitled in "Capital Commitment," of the Affiliation Agreement. (attached hereto as Exhibit 3.)

XII.

For six fiscal years from the closing date of the Affiliation Agreement, ValleyCare and Stanford shall submit to the Attorney General, no later than four months after the conclusion of each fiscal year, a report describing in detail compliance with each Condition set forth herein. The Chairman of the Board of Directors of ValleyCare and Stanford and the Chief Executive Officer at ValleyCare and Stanford shall each certify that the report is true and correct and provide documentation of the review and approval of the report by the ValleyCare and Stanford Board of Directors.

XIII.

At the request of the Attorney General, all parties listed in Condition I shall provide such information as is reasonably necessary for the Attorney General to monitor compliance with these Conditions and the terms of the transaction as set forth herein. The Attorney General shall, at the request of a party and to the extent provided by law, keep confidential any information so produced to the extent that such information is a trade secret or is privileged under state or federal law, or if the private interest in maintaining confidentiality clearly outweighs the public interest in disclosure.

XIV.

Once the Affiliation Agreement is closed, all parties listed in Condition I are deemed to have explicitly and implicitly consented to the applicability and compliance with each and every Condition and to have waived any right to seek judicial relief with respect to each and every Condition.

The Attorney General reserves the right to enforce each and every Condition set forth herein to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of any of these Conditions. Pursuant to Government Code section 12598, the Attorney General's office shall also be entitled to recover its attorney fees and costs incurred in remedying each and every violation.

ANALYSIS OF THE HOSPITAL'S SERVICE AREA

Service Area Definition

The Hospital's service area is comprised of 15 ZIP Codes, from which approximately 83% of its discharges originated in FY 2013. Approximately 64% of the Hospital's discharges came from the top four ZIP Codes, located in Livermore, Pleasanton, and Dublin. In FY 2013, the Hospital's market share in the service area was 21% based on inpatient discharges.

SERVICE AREA PATIENT ORIGIN MARKET SHARE BY ZIP CODE: 2013						
ZIP Codes	Community	Total Discharges	% of Discharges	Cumulative % of Discharges	Total Area Discharges	Market Share
94550	Livermore	1,876	22.0%	22.0%	4,063	46.2%
94566	Pleasanton	1,291	15.2%	37.2%	2,877	44.9%
94551	Livermore	1,214	14.3%	51.5%	2,868	42.3%
94568	Dublin	1,087	12.8%	64.2%	3,253	33.4%
94588	Pleasanton	721	8.5%	72.7%	1,769	40.8%
94583	San Ramon	182	2.1%	74.8%	2,418	7.5%
94582	San Ramon	141	1.7%	76.5%	1,725	8.2%
95376	Tracy	114	1.3%	77.8%	4,051	2.8%
94546	Castro Valley	83	1.0%	78.8%	3,855	2.2%
95391	Tracy	82	1.0%	79.8%	686	12.0%
95377	Tracy	80	0.9%	80.7%	1,765	4.5%
94526	Danville	75	0.9%	81.6%	2,251	3.3%
94506	Danville	59	0.7%	82.3%	1,319	4.5%
94552	Castro Valley	54	0.6%	82.9%	802	6.7%
94586	Sunol	16	0.2%	83.1%	82	19.5%
Sub-Total		7,075	83.1%		33,784	20.9%
All Other		1,438	16.9%			
Total		8,513	100%			

Source: OSHPD Patient Discharge Database, 2013

EXECUTION COPY

duly executed by authorized representatives of SHC or Governmental Bodies where appropriate, the following:

- 1.4.1 A certificate of the corporate Secretary or other authorized representative of SHC certifying to the incumbency of the respective officer(s) of SHC executing this Agreement and any other documents contemplated herein on behalf of SHC, dated as of the Effective Date;
 - 1.4.2 Evidence of the authorization and approval of the Board of Directors of SHC of SHC's performance of the Affiliation and the execution and delivery of this Agreement and the documents described herein;
 - 1.4.3 A certificate of status and good standing of SHC issued by the Secretary of State, dated the most recent practical date prior to the Closing;
 - 1.4.4 Three million dollars (\$3,000,000) to the Fundraising Foundation;
 - 1.4.5 A certificate of insurance evidencing directors' and officers' insurance coverage following the Effective Date for active officers and directors of VCHS for acts and omissions in the course of their duties, and a certificate of insurance evidencing directors' and officers' insurance tail coverage for the former officers and directors of VCHS for a period of three (3) years following the Effective Date for acts and omissions in the course of their duties; and
 - 1.4.6 A certificate of the Chief Executive Officer or Chair of the Board of Directors of SHC certifying to VCHS that, to his or her Knowledge, each of the representations and warranties of SHC contained in this Agreement is true, accurate and complete on and as of the Effective Date, and that, to his or her Knowledge, each and all of the terms, covenants and agreements to be complied with or performed by SHC on or before the Effective Date have been complied with and performed.
2. **INTERIM COVENANTS.** The provisions set forth in this Section 2 will apply during the period of time from the Execution Date through the earlier to occur of the Effective Date or the termination of this Agreement.
- 2.1 Reasonable, Good Faith Efforts. Each Party shall use reasonable efforts and act in good faith to obtain all necessary regulatory, corporate and other approvals and to take all such other actions as may be necessary or appropriate to effectuate the Affiliation as described in this Agreement, including such actions as may be reasonably necessary or appropriate to cause the conditions to the Closing in Section 3 to be satisfied.
 - 2.2 Exclusivity; Other Discussions.
 - 2.2.1 None of the VCHS Entities, their Affiliates or their respective officers, directors, employees, members or representatives will (i) solicit, initiate, encourage, induce or entertain any proposal from a third party concerning any transaction in the

as amended (the "Code"), and will not be merged into a for-profit entity, for at least five (5) years after the Effective Date.

- 5.3 Continuing Acute Care Operations. An acute care hospital licensed to provide health care services in both Livermore and Pleasanton which together offer an intensive care unit, obstetric services and an emergency department shall be maintained for at least five (5) years after the Effective Date.
- 5.4 ValleyCare Medical Foundation. Either (i) UHA, the SHC/Stanford University-affiliated medical foundation, will use commercially reasonable efforts to assume or enter into the existing or a new professional services agreement with ValleyCare Physician Associates, PC ("VCPA") to include all physicians affiliated with VCPA who meet UHA and SOM credentialing standards, or (ii) UMG will use commercially reasonable efforts to enter into employment agreements with substantially all physicians affiliated with VCPA who meet UHA and SOM credentialing standards.
- 5.5 Capital Commitments. SHC will ensure that \$50,000,000 in capital is committed at VCHS during the first three (3) years following the Effective Date for VCHS projects and corresponding capital needs including Electronic Health Records technology and systems and other important capital needs ("VCHS Projects"). Capital for VCHS Projects shall be deemed to be committed within such period in the amounts stated in related contracts, purchase orders, capital expenditures and applications for approval by the California Office of Statewide Health Planning and Development which result or would result in the addition to the consolidated balance sheet of VCHS (prepared in accordance with GAAP) of assets having a depreciable life of one (1) year or greater (collectively, "VCHS Projects Capital Commitments"). For the avoidance of doubt, the full amount of any VCHS Projects Capital Commitment made during the first three (3) years following the Effective Date shall count towards SHC's satisfaction of the \$50,000,000 requirement in this Section 5.5, even if some or all of the funds underlying such VCHS Projects Capital Commitment are expended after three (3) years following the Effective Date.
- 5.6 Medical Staff. Subject to Sections 3.15 and 5.4, the Affiliation shall not change the medical staff membership or privileges for members of the medical staff of VCHS Entities. This covenant shall not be construed to limit or restrict in any manner changes to the medical staff membership or privileges for members of the medical staff of VCHS Entities in any legally permitted manner consistent with applicable policies and procedures of VCHS Entities in effect at the time of such changes.
- 5.7 Employees. The Affiliation shall not negatively impact the employment status of substantially all of the employees employed by VCHS Entities as of the Effective Date. This covenant shall not be construed to limit or restrict in any manner (i) the exercise of VCHS's legal authority to terminate or condition employment relationships with its employees for any legally permitted reason or in any legally permitted manner or (ii) the right of VCHS to apply the policies or procedures of a VCHS Entity applicable to employees and in effect as of the time of application of such policies or procedures.