

September 26, 2019

**VIA EMAIL**  
**ORIGINAL TO FOLLOW BY MAIL**

State of California  
Department of Justice  
Charitable Trusts Section  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013-1230  
Attn.: Wendi Horwitz, Deputy Attorney General

Re: St. Mary's Medical Center – San Francisco  
Request for Amendment of Conditional Consent

Dear Ms. Horwitz:

On November 21, 2018, by correspondence addressed to the undersigned, the Office of the Attorney General of the State of California (“OAG”) issued the *Attorney General's Conditions to Change in Control and Governance of St. Mary's Medical Center and Approval of Ministry Alignment Agreement by and between Dignity Health and Catholic Health Initiatives* (the “Conditional Consent”). The Conditional Consent was granted in connection with the proposed change in governance and control of Dignity Health, a California nonprofit public benefit corporation (“Dignity Health”), which occurred pursuant to the terms of the Ministry Alignment Agreement, dated December 6, 2017, as amended, between Dignity Health and Catholic Health Initiatives (the “Ministry Alignment Agreement”). The transactions described in the Ministry Alignment Agreement closed on January 31, 2019 and became effective on February 1, 2019.

As further described below in this letter, St. Mary's Medical Center (“SMMC”), respectfully requests the OAG to amend Condition VIII of the Conditional Consent to eliminate Item (c) in order to permit SMMC to close and cease operating The Spine Center, a Section 1206(d) licensed hospital outpatient department.<sup>1</sup> This request is made pursuant to 11 CCR Section 999.5(h)(1) as a result of a change in circumstances that could not have reasonably been foreseen when the Conditional Consent was issued by the OAG.

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<sup>1</sup> Condition VII of the Conditional Consent obligates SMMC to continue to maintain and provide the health care services listed therein for a period of five years from the closing date of the Ministry Alignment Agreement. The Spine Center is listed as Item (c) of Condition VII as “Outpatient Services – The Spine Center.”

The Spine Center, which is also known as St. Mary's Spine Center, has continuously operated on SMMC's campus, located at 450 Stanyan Street, San Francisco, CA, for many years. A single physician practice, the SF Spine Group PC (the "Medical Group"), performs the professional medical services required by the outpatient service pursuant to a Medical Director and Professional Services Agreement ("PSA") with SMMC. In addition to providing physician and non-physician staff, supervision and coverage at The Spine Center, the Medical Group maintains a private practice in a medical office building owned by SMMC where the physicians have had a long-term lease.

In November 2018, SMMC initiated discussions with the Medical Group with the goal of extending the PSA while also making significant operational changes to The Spine Center, many of which would have allowed it to function as a more traditional hospital-based outpatient clinic. For example, historically, the Medical Group provided all physician and non-physician staff for The Spine Center. SMMC desired to transition the non-physician staff to hospital employee positions (consistent with the more traditional structure of a Section 1206(d) clinic). In February 2019, after several short term contractual extensions and requests for the Medical Group to actively engage in the discussions, the Medical Group communicated its intention to terminate the PSA and cease providing the physician staff, supervision and coverage for The Spine Center. In effect, the physicians ended the ongoing professional arrangement with The Spine Center and are now focused on working exclusively in their private practice located in SMMC's medical office building. This decision by Medical Group created an immediate staffing shortage for The Spine Center.

Subsequent efforts by SMMC to recruit physicians to provide coverage of The Spine Center were not successful. One such physician was Dr. Berger, a neuro-spine surgeon and current Chief of the Department of Neurosurgery at UCSF. This potential recruitment was particularly desirable because Dr. Berger's subspecialty would have allowed diversification of services offered within The Spine Center. However, the success of this recruitment was largely dependent upon the consummation of a broader joint venture arrangement between several Dignity Health hospitals, including SMMC, and UCSF; the joint venture arrangement, for unrelated reasons, was not realized. In addition, SMMC entered into discussions with Dr. Gidvani, an orthopedic surgeon in private practice in Los Gatos. Dr. Gidvani currently has privileges to practice at Dominican Hospital and recruiting him to SMMC would have been an optimal way to facilitate expansion of his practice within the Bay Area. Unfortunately, discussions stalled as Dr. Gidvani articulated concerns overextending himself (given the geographic reach of his expanded practice area) and about building a strong patient base, particularly given the direct competition that he would have faced from the Medical Group. All other local physician groups in the specialty are affiliated with Kaiser or Sutter and therefore were not pursued as viable coverage alternatives for The Spine Center.

The Medical Group's decision represents a change that could not have been reasonably foreseen when the CAG issued the Conditional Consent. Indeed, SMMC fully intended to continue operating The Spine Center, albeit with the operational changes referenced above. Although its action represents a loss for SMMC, the Medical Group will retain its emergency department call coverage arrangements with SMMC in the specialty of orthopedic and spine surgery, thus ensuring the continued availability of emergency services for the community at SMMC. The entire range of services currently offered by the Medical Group at The Spine Center (e.g., new patient consults, follow-up visits, post-operative appointments, EMGs, DME disbursement and injections) will continue to be offered to the community through the Medical Group's continued private practice in the medical office building adjacent to SMMC's campus. There are no anticipated changes to the Medical Group's various payor contracts, including Medi-Cal; their clearly expressed intention is to transition all existing Spine Center patients to their physician practice in the medical office building. Additionally, general orthopedic services will remain accessible in a clinic setting through the Sister Mary Philippa Clinic, a separate 1206(d) hospital outpatient department/clinic operated by SMMC that provides a wide range of outpatient services for patients who are uninsured, underinsured, or covered by the Medi-Cal program.

Alternatively, there are numerous other hospitals and clinics that offer orthopedic and spine-related services in SMMC's service area. Specifically, orthopedic and spine services may be accessed at Zuckerberg San Francisco General Hospital and Trauma Center, California Pacific Medical Center, Kaiser Foundation Hospitals (for members of the Kaiser Foundation Health Plan), and the UCSF Hospitals. As well, various private medical practices in and immediately adjacent to San Francisco offer spine-related professional services, including the Comprehensive Spine Center, Pacific Heights Spine Center, SpineCare Medical Group, and California Pacific Orthopaedics. As you will note, the spine care market in San Francisco is robust, which allows for the diverse patient demographics, including uninsured patients, to access much needed specialty care.

For the reasons set forth above, SMMC respectfully requests that Condition VII be modified to eliminate the reference to Item (c) (Outpatient Services – The Spine Center) from the list of services that SMMC is obligated to maintain for five years from the closing date of the Ministry Alignment Agreement.

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Wendi Horwitz, Esq.  
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If you have any questions or require any additional information or documents regarding the foregoing request, please do not hesitate to contact the undersigned.

Thank you in advance for your consideration of this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Auburn Daily".

Auburn Daily, JD, MPH  
Senior Counsel, Bay Area

cc: Suzan Vida Konell, Esq.  
Allison Cova, Esq.  
James Schwartz, Esq.