

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES
NORTH CENTRAL DISTRICT - GLENDALE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

PLEASANT CARE CORPORATION;
PLEASANT CARE OF NORTHERN CALIFORNIA, INC.; SNF PROPERTIES, INC.; EMBER CARE CORPORATION; ATLAS CARE ENTERPRISES, INC.; STOCKTON EDISON HEALTH CARE CORPORATION; AND PCC HEALTH SERVICES, INC.,

Defendants.

Case No.:

PERMANENT INJUNCTION
AND FINAL JUDGMENT

Plaintiff, the PEOPLE OF THE STATE OF CALIFORNIA, by and through their attorneys, Bill Lockyer, Attorney General of the State of California, Mark L. Zahner, Senior Assistant Attorney General, Alan B. Robison, Supervising Deputy Attorney General, and Arthur E. Shin, Deputy Attorney General, and Defendants PLEASANT CARE CORPORATION; PLEASANT CARE OF NORTHERN CALIFORNIA, INC.; SNF PROPERTIES, INC.; EMBER CARE CORPORATION; ATLAS CARE ENTERPRISES, INC.; STOCKTON EDISON

1 HEALTH CARE CORPORATION; AND PCC HEALTH SERVICES, INC., (collectively,
2 “Pleasant Care” or “Defendants”), by and through their attorneys, Law Offices of Paul Delano
3 Wolf, by Paul D. Wolf, and Lynn M. Keslar, and Hunter, Richey, Dibenedetto, & Eisenbeis,
4 LLP, by Win R. Richey, have stipulated that this Permanent Injunction and Final Judgment
5 (hereafter “PIFJ”) may be entered in the above-referenced action.

6 **I.**

7 **DEFINITIONS**

8 1. **Affiliate/s:** An affiliate of a person or entity, or a person or entity “affiliated” with a
9 specified person or entity means:

10 a. Any person or entity directly or indirectly owning, controlling, or holding with
11 power to vote twenty (20) per centum or more of the outstanding voting securities of such other
12 person or entity;

13 b. Any person or entity, twenty (20) per centum or more of whose outstanding
14 voting securities are directly or indirectly owned, controlled, or held with power to vote, by such
15 other person or entity; or

16 c. Any person or entity directly or indirectly controlling, controlled by, or under
17 common control with, such other person or entity.

18 2. **Control:** The term “control” (including the terms “controlling,” “controlled by,” and
19 “under common control with”) means the possession, direct or indirect, of the power to direct or
20 cause the direction of the management and policies of a person or entity, whether through
21 ownership of voting shares, by contract, or otherwise.

22 3. **Subsidiary:** The terms “subsidiary” or “subsidiaries” of a specified person or entity is an
23 affiliate controlled by such person or entity directly or indirectly through one or more
24 intermediaries.

25 4. **Covered Persons:** As used herein, Covered Persons include each of the named
26 Defendants, their subsidiaries and affiliates, and their respective officers, directors, employees,
27 partners, agents, representatives, subsidiaries, transferees, assigns, successors, contractors, and
28 subcontractors, consistent with the limitations set forth in the PIFJ. The term also includes those

1 employees of contractors and agents who, on a regular basis, (*i.e.*, more often than two weeks
2 over a 52-week period): (1) perform patient care or resident care duties; (2) make assessments of
3 patients or residents that affect treatment decisions or reimbursement; (3) perform billing,
4 coding, audit or review functions relating to quality of care; (4) make decisions or provide
5 oversight about staffing, patient care, resident care, reimbursement, policies and procedures, or
6 this PIFJ; or (5) perform any function that relates to or is covered by this PIFJ, including
7 individuals who are responsible for quality assurance, setting policies or procedures, or making
8 staffing decisions (excluding the Monitor). Notwithstanding the above, this term does not
9 include part-time or *per diem* employees, contractors, subcontractors, agents, and other persons
10 who are not reasonably expected to work more than 160 hours per year at facilities under this
11 PIFJ except that such individuals shall become “Covered Persons” at the point when they work
12 more than 160 hours during the calendar year at such facilities. “Covered Persons” does not
13 include private caregivers hired by any resident or the family or friends of any resident to
14 provide care to a resident of one of Defendants’ California skilled nursing facilities.

15 5. **Defendants:** As used herein Defendants shall include the named Defendants, and each
16 of them separately, as well as any corporation, limited liability company, partnership, or any
17 other legal entity or organization which any of the named Defendants (or any of each named
18 Defendant’s subsidiaries or affiliates) controls and which directly or indirectly controls any
19 California skilled nursing facilities.

20 6. **QAA Committee:** As used herein, QAA Committee means a Quality Assurance and
21 Assessment Committee pursuant to applicable law.

22 7. **Effective Date:** As used herein, is the date of the filing of this PIFJ.

23 8. **Effective Period:** As used herein, is the period of time the injunctive provisions of this
24 PIFJ are in effect, beginning on the date of the filing of this PIFJ.

25 9. **Facility or Skilled Nursing Facility:** As used herein, means each and every facility
26 licensed as a long-term nursing facility and located in California that is now or hereafter owned,
27 licensed, operated, managed, directed, administered, or controlled by any of the Defendants, their

28 ///

1 subsidiaries or affiliates either currently or at any time during the Effective Period of the PIFJ,
2 including Special Treatment Program behavioral units licensed as skilled nursing facilities.

3 10. **Resident** and **Patient**: As used herein, are used interchangeably, and any reference to
4 one includes the other.

5 11. **Communication System**: As used herein means any electronic system, call bells, lights,
6 or any other system or means used by residents to call for or attract the attention of the staff of
7 the skilled nursing facility.

8 12. **Licensed** or **Certified Staff**: As used herein, includes registered nurses, licensed
9 vocational nurses, certified nursing assistants, and any other staff providing care, treatment, or
10 services directly to the residents, who are required by the State of California to be licensed or
11 certified. Licensed or Certified Staff does not include private caregivers hired by any resident or
12 the family or friends of any resident to provide care to a resident of one of Defendants'
13 California skilled nursing facilities.

14 13. **Monitor** and **Monitoring**: As used herein, means to watch, observe, check for, and/or
15 keep track of compliance with the applicable provisions of this PIFJ to which the required
16 monitoring relates, including reviewing records when necessary. The monitoring required by
17 this PIFJ need not be constant and/or continuous, but may be periodic with a reasonable
18 frequency sufficient to achieve the goal(s) for which the monitoring is required.

19 14. **Patient Care Staff**: As used herein, means any staff in a skilled nursing facility in
20 California having responsibility for the direct care of a resident. This includes the following:
21 licensed staff; certified nurse assistants; restorative aides; rehabilitation aides; patient feeders;
22 wound care staff; anyone under any title who provides care to a resident; and any staff who are
23 making assessments (including, but not limited to, Minimum Data Set assessments) of residents.
24 "Patient care staff" does not include private caregivers hired by any resident or the family or
25 friends of any resident to provide care to a resident of one of Defendants' California skilled
26 nursing facilities.

27 15. **Pressure Ulcer**: As used herein, is synonymous with decubitus ulcer or pressure sore.
28 As used herein, a pressure ulcer is any lesion caused by unrelieved pressure that results in

1 damage to the underlying tissue(s). Although friction and shear are not primary causes of
2 pressure ulcers, friction and shear are important contributing factors to the development of
3 pressure ulcers. Stages of pressure ulcers are defined as follows:

4 a. “Stage I” – An observable, pressure-related alteration of intact skin, whose
5 indicators as compared to an adjacent or opposite area on the body may include changes in one
6 or more of the following parameters: skin temperature (warmth or coolness); tissue consistency
7 (firm or boggy); sensation (pain, itching); and/or a defined area of persistent redness in lightly
8 pigmented skin, whereas in darker skin tones, the ulcer may appear with persistent red, blue, or
9 purple hues.

10 b. “Stage II” – Partial thickness skin loss involving epidermis, dermis, or both. The
11 ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater.

12 c. “Stage III” – Full thickness skin loss involving damage to, or necrosis of,
13 subcutaneous tissue that may extend down to, but not through, underlying fascia. The ulcer
14 presents clinically as a deep crater with or without undermining of adjacent tissue.

15 d. “Stage IV” – Full thickness skin loss with extensive destruction, tissue necrosis,
16 or damage to muscle, bone, or supporting structures (e.g., tendon, joint capsule). Undermining
17 and sinus tracts also may be associated with Stage IV pressure ulcers. If eschar and necrotic
18 tissue are covering and preventing adequate staging of a pressure ulcer, the pressure ulcer shall
19 be considered a Stage IV.

20 16. **BMFEA:** As used herein, means Bureau of Medi-Cal Fraud and Elder Abuse of the
21 Office of the Attorney General of the State of California.

22 17. **OSHDP:** As used herein, means Office of Statewide Health Planning and Development.

23 18. **Physical Restraints:** As used herein, are any manual method, mechanical or physical
24 devices, material or equipment attached or adjacent to the resident's body that the individual
25 cannot remove easily, which restricts freedom of purposeful or voluntary movement or normal
26 access to one's body.

27 ///

28 ///

1 **II.**

2 **GENERAL PROVISIONS**

3 19. Nothing in this PIFJ, nor any act performed, nor any document executed pursuant to this
4 PIFJ, shall constitute a finding of any violation of any statutory, regulatory, common law, or
5 equitable duty, claim, or principle.

6 20. Venue lies in the County of Los Angeles because at least some of the acts and/or
7 omissions by the Defendants as alleged are claimed to have occurred within the County of Los
8 Angeles, State of California.

9 21. The venue for enforcement of any violation of this PIFJ shall lie in the County of Los
10 Angeles, in the County of Sacramento, or in a county where one or more alleged violations of
11 this PIFJ occurs. Jurisdiction for any other purpose is retained in this Court.

12 22. The injunctive provisions of this PIFJ are entered into pursuant to California Business
13 and Professions Code section 17203.

14 23. This PIFJ shall only apply to the skilled nursing facilities in California that are owned,
15 licensed, operated, managed, directed, administered, or controlled, now or hereafter, by one or
16 more of the Defendants, their respective subsidiaries or affiliates. This PIFJ shall not apply to
17 skilled nursing facilities in California that were once, but are no longer, owned, licensed,
18 operated, managed, directed, administered, or controlled by one or more of the Defendants, their
19 respective subsidiaries or affiliates.

20 24. The terms and conditions of this PIFJ shall not apply with respect to any facility in
21 California which is located on real property owned by any of the Defendants, provided, however,
22 that (a) such facility is wholly owned, licensed, operated, managed, directed, administered, or
23 controlled by an entity which is neither a subsidiary nor an affiliate of any Defendants; (b) the
24 Defendants' sole income from the operation of such facility is rental or mortgage income from
25 the real property on which the facility is situated, excluding buildings and improvements; and
26 (c) Defendants, their subsidiaries and affiliates maintain no service or operational contracts with
27 such facilities or their owners, management or other personnel.

28 ///

1 25. This PIFJ is applicable to and binding upon each of the Defendants, their subsidiaries,
2 and affiliates and each of their partners, directors, officers, employees, agents, representatives,
3 subsidiaries, transferees, assigns, successors, contractors, and subcontractors; provided, however,
4 that any such transferee, assign or successor shall not be subject to this PIFJ if such transferee,
5 assign or successor qualifies as a “bona-fide third party purchaser” as set forth in paragraph 26
6 below. With respect to such contractors and subcontractors, the provisions of this PIFJ apply
7 only to care or treatment of residents, or services performed by such contractors and
8 subcontractors at any skilled nursing facility in California owned, licensed, operated, managed,
9 directed, administered, or controlled by any of the Defendants or any of their subsidiaries or
10 affiliates.

11 26. If any of the Defendants sell, transfer, assign or convey in any manner any right, title or
12 interest in any California skilled nursing facility, currently or in the future, owned or controlled
13 by them or any of their subsidiaries or affiliates, or if any Defendants or any of their subsidiaries
14 or affiliates, shall change its name or the name by which any of them does business or by which
15 a skilled nursing facility does business, then such Defendant, its subsidiary or affiliate, as the
16 case may be, shall provide notice of such sale, transfer, assignment, or conveyance or change to
17 the Bureau of Medi-Cal Fraud and Elder Abuse (“BMFEA”) within thirty (30) days after the
18 effective date of such sale, transfer, assignment, conveyance or name change. Such notice shall
19 include the name, address, and telephone number of the new owner or new name; the Effective
20 Date; and pertinent terms of such sale, transfer, assignment, or conveyance. In the event that
21 such sale, transfer, assignment, or conveyance of the controlling equity interest in a California
22 skilled nursing facility shall be made for fair market value in an arms length transaction to an
23 entity that is neither a subsidiary nor an affiliate of any of the Defendants or their respective
24 subsidiaries or affiliates, such party shall be deemed a “bona-fide third party purchaser.” After
25 the Effective Date of such sale, transfer, assignment or conveyance, such bona-fide third party
26 purchaser shall not be subject to the terms and conditions of this PIFJ. Provided, however, that if
27 any Defendant or any of its subsidiaries or affiliates shall retain or at any time shall reacquire,
28 directly or indirectly, any interest in such facility that causes such facility to fall within the

1 definition of “affiliate” contained in this PIFJ, such facility shall continue to be bound by the
2 terms and conditions of this PIFJ. Defendants shall comply with all rules and regulations of the
3 California Department of Health Services (“DHS”) with respect to change of ownership of any
4 skilled nursing facility. For purposes of the PIFJ, a purchaser with knowledge of the existence of
5 this PIFJ shall not, for that reason alone, be deemed not to be a “bona-fide purchaser.”

6 27. Plaintiff agrees to release the Defendants and their officers, directors, and employees
7 from any further civil liability that the People may be able to assert pursuant to California
8 Business and Professions Code section 17200 *et seq.*, only for conduct regarding quality of
9 patient care, including staffing levels, arising on or prior to the Effective Date at any of
10 Defendants’ skilled nursing facilities located within the State of California. Plaintiff also agrees
11 to release Defendants and their officers, directors, and employees from any civil liability that the
12 People may be able to assert pursuant to Health and Safety Code section 1430(a) arising prior to
13 the Effective Date. Plaintiff also agrees to release Defendants and their officers, directors, and
14 employees from any civil false claims pursuant to California Government Code section 12651 *et*
15 *seq.*, and fraud (both statutory and common law), whether based upon alleged tort or any other
16 legal or equitable theory of recovery, whether based upon statute or common law or otherwise,
17 known or unknown for conduct, acts, and omissions arising out of or in connection with, quality
18 of patient care on or prior to the Effective Date at any of Defendants’ skilled nursing facilities
19 located within the State of California. Furthermore, Plaintiff agrees to release the Defendants
20 and their officers, directors, and employees from civil liability arising from California
21 Department of Health Services’ (DHS) deficiencies or citations issued before the Effective Date.

22 These releases do not cover the following:

- 23 a. Any type of conduct occurring after the Effective Date;
- 24 b. Criminal conduct occurring at any time;
- 25 c. Liability to the California Department of Health Services, the California
26 Franchise Tax Board, the Centers for Medicare and Medicaid Services, or the Office of the
27 Inspector General for conduct occurring at any time that would give rise to administrative fines,
28 penalties, or other relief that may be sought by such agencies;

1 d. The liability of any contractor or subcontractor at any time;

2 e. Any future enforcement proceedings based upon alleged violations occurring after
3 the Effective Date of the PIFJ.

4 28. Only the parties to this PIFJ may rely upon or enforce this PIFJ.

5 29. Nothing in this PIFJ shall preclude Defendants from contesting any citation or deficiency
6 or from challenging any present or future statute, regulation, or other requirement that is or
7 becomes covered by or related to this PIFJ.

8 30. In Part IV of this PIFJ – “INJUNCTIVE RELIEF – COMPLIANCE WITH STATUTES
9 AND REGULATIONS” – with respect to any reference to state or federal statutes or regulations
10 to be complied with, the actual language of the statutes and regulations, rather than the
11 description of the statutes and regulations contained within Part IV, shall control. The
12 Defendants shall comply with such statutes and regulations and any revisions of such statutes or
13 regulations effective subsequent to the Effective Date of the PIFJ; i.e., the conduct of Defendants
14 shall be governed by the language of the statutes and regulations in effect at the time of such
15 conduct. If any revisions to existing statutes or regulations result in the statutes or regulations or
16 their subdivisions being renumbered, then the statutes or regulations or subdivisions as
17 renumbered shall continue to be complied with by the Defendants.

18 **III.**

19 **TERM OF INJUNCTIVE RELIEF**

20 31. The obligations imposed by this PIFJ on Defendants shall become permanent, unless
21 modified pursuant to the provisions of Part VIII – “MODIFICATION OF INJUNCTIVE
22 RELIEF.”

23 **IV.**

24 **INJUNCTIVE RELIEF – COMPLIANCE WITH STATUTES AND REGULATIONS**

25 32. Pursuant to California Business and Professions Code section 17203, all Covered
26 Persons, while engaged in the conduct of any business activity involving or related to any
27 California skilled nursing facility owned, licensed, operated, managed, directed, administered, or
28 controlled by any of the Defendants, are enjoined and restrained from engaging in or performing

1 directly or indirectly any act that is in violation of any federal or state statute or regulation
2 governing the operation of a California skilled nursing facility with respect to the quality and
3 delivery of care or the physical environment in which such care is provided to patients of such
4 skilled nursing facility.

5 **V.**

6 **INJUNCTIVE RELIEF – PIFJ OBLIGATIONS**

7 33. Pursuant to California Business and Professions Code section 17203, all Covered
8 Persons, while engaged in the conduct of any business activity involving or related to any facility
9 owned, licensed, operated, managed, directed, administered, or controlled by any of the
10 Defendants, are ordered to comply with the following injunctive obligations during the Effective
11 Period:

12 **A. Compliance Program**

13 **1) Compliance Officer**

14 34. There shall be created and maintained the position of Compliance Officer, who shall have
15 responsibility over all California skilled nursing facilities licensed, operated, managed, directed,
16 administered, or controlled by Defendants, and whose responsibility will be to ensure that:

17 a. Policies and procedures are maintained or developed and implemented that are
18 designed to promote each skilled nursing facility’s full compliance with all applicable statutes,
19 regulations, policies, and this PIFJ;

20 b. Each skilled nursing facility has a system in place to respond to state, federal,
21 internal, and external reports of quality of care issues and such system functions adequately;

22 c. Policies and procedures are adopted and implemented that are designed to ensure
23 that each individual who is cared for at one of Defendants’ California skilled nursing facilities
24 receives at least the minimum level of care required by law; and

25 d. Services provided are evaluated on a regular basis and appropriate
26 recommendations are made where necessary to ensure each California skilled nursing facility
27 meets professional standards of quality.

28 ///

1 35. In the event a new Compliance Officer is appointed during the Effective Period,
2 Defendants shall notify the BMFEA, in writing, within fifteen (15) days of such a change.

3 36. The Compliance Officer shall be a member of senior management of the Defendants and
4 shall not be subordinate to the Defendants' general counsel or chief financial officer, shall make
5 regular (at least quarterly) reports regarding compliance matters directly to the President and/or
6 to the Board of Directors of the Defendants, and shall be authorized to report to the Board of
7 Directors at any time. The Compliance Officer shall be responsible for monitoring the day-to-
8 day activities engaged in by the Defendants to further their compliance objectives as well as any
9 reporting obligations created under this PIFJ. The Compliance Officer shall also ensure that
10 quality of care problems are being appropriately addressed and corrected pursuant to the
11 obligations detailed in Paragraph 34, above.

12 37. Defendants shall perform quality reviews as necessary to ensure that this PIFJ is being
13 implemented and complied with, and to ensure that Defendants are meeting their obligations
14 under state and federal regulations and statutes applicable to skilled nursing facilities in
15 California, which directly or indirectly affect the quality of care being provided to the residents
16 of such facilities, as required by applicable law.

17 **2) Facility Compliance Officer**

18 38. Defendants shall appoint a Facility Compliance Officer at each of the skilled nursing
19 facilities in California licensed, operated, managed, directed, administered, or controlled by
20 Defendants within sixty (60) days of the Effective Date of this PIFJ, and shall maintain a Facility
21 Compliance Officer at each of the skilled nursing facilities in California for the entire period of
22 this PIFJ. Each Facility Compliance Officer shall be responsible for implementing policies and
23 procedures designed to promote conduct that is in full compliance with the requirements set forth
24 in this PIFJ and with the requirements of the state and federal regulations and statutes applicable
25 to California skilled nursing facilities. Defendants shall notify the BMFEA of the names of each
26 Facility Compliance Officer, in writing, within thirty (30) days of the initial appointment of the
27 Facility Compliance Officer. A single Facility Compliance Officer may be responsible for more
28 than one facility, so long as the following requirements are met: each Facility Compliance

1 Officer for each skilled nursing facility in California shall be a member of facility management
2 who is directly involved in the oversight of patient care operations at the skilled nursing facility;
3 each Facility Compliance Officer shall be responsible for monitoring the patient care operations,
4 and any other operations or activities engaged in by Defendants that are addressed in this PIFJ, to
5 further the compliance objective as well as any reporting obligations created under this PIFJ; and
6 each Facility Compliance Officer shall also ensure that quality of care issues are appropriately
7 identified, addressed, and corrected. In the event a new Facility Compliance Officer is appointed
8 during the Effective Period, upon the request of BMFEA, Defendants shall notify the BMFEA,
9 in writing, within thirty (30) days of such a change.

10 **3) Compliance Committee**

11 39. To the extent not already established elsewhere in this PIFJ, the Defendants shall
12 establish a Quality Assurance Compliance Committee (hereafter “Compliance Committee”)
13 within ninety (90) days after the Effective Date of this PIFJ. The Board of Directors may
14 determine to appoint itself or a committee of its members to serve as the Compliance Committee.
15 The purpose of the Compliance Committee shall be to address issues concerning quality of care
16 at the Defendants’ nursing homes. At a minimum, the Compliance Committee shall include the
17 Compliance Officer, representatives from among senior personnel responsible for clinical
18 operations and quality of care, and any other appropriate officers or individuals necessary to
19 thoroughly implement the requirements of this PIFJ that relate to quality of care in the
20 Defendants’ nursing facilities. For each Compliance Committee meeting, there shall be senior
21 representatives from the facilities, chosen on a rotating and random basis, to report to the
22 Compliance Committee on the adequacy of care being provided at their facilities. The
23 Compliance Committee shall meet, at a minimum, every four (4) months.

24 **4) Board of Directors’ Committee**

25 40. Defendants shall create a committee as part of its Board of Directors to provide oversight
26 on quality of care issues (Quality Assurance Monitoring Committee). This Committee shall:

27 a. Review the adequacy of Defendants’ system of internal controls, quality
28 assurance monitoring, and patient care;

1 b. Ensure that Defendants’ response to state, federal, internal, and external reports of
2 quality of care issues is complete, thorough, and resolves the issue(s) identified; and

3 c. Ensure that Defendants adopt and implement policies and procedures that are
4 designed to ensure that each individual cared for at a Defendant’s facility receives the highest
5 practicable physical, mental, and psychosocial level of care attainable. The individuals who
6 serve on this Committee shall be readily available to the Compliance Officer and the Monitors
7 required under this PIFJ to respond to any issues or questions that might arise. The names of the
8 Board Members and the Charter for the Committee shall be provided to the BMFEA within
9 ninety (90) days after the Effective Date. When new members are appointed, or the
10 responsibilities or authorities of the Board Committee are substantially changed, Defendants
11 shall notify the BMFEA, in writing, within fifteen (15) days of such a change.

12 **5) Internal Audit and Review Functions**

13 41. To the extent not already established, Defendants shall, within one hundred twenty (120)
14 days after the Effective Date, create a program for performing internal quality audits and
15 reviews. The internal audits and reviews shall:

16 a. Make findings of whether the patients and residents at Defendants’ facilities are
17 receiving the quality of care and quality of life consistent with basic care, treatment, and
18 protection from harm standards, including, but not limited to, 42 C.F.R. parts 482 and 483 and
19 any other federal and California statutes, regulations, and directives;

20 b. Make findings of whether the policies and procedures mandated by this PIFJ are
21 created, implemented, and enforced;

22 c. Make findings of whether training is performed in accordance with this PIFJ;

23 d. Make findings of whether hotline complaints are appropriately investigated;

24 e. Make findings of whether all falls policies and protocols are adhered to;

25 f. Make findings of whether the reporting obligations are complied with in
26 accordance with this PIFJ; and

27 g. Make findings of whether corrective action plans are timely created,
28 implemented, and enforced.

1 **6) Confidential Disclosure Program**

2 42. Within ninety (90) days after the Effective Date, Defendants shall establish a disclosure
3 program that includes a mechanism (e.g., a toll-free compliance telephone line) to enable
4 individuals to disclose, to the Compliance Officer or some other person who is not in the
5 reporting individual's chain of command, any identified issues or questions associated with
6 Defendants' policies, conduct, practices, or procedures with respect to quality of care or a federal
7 health care program, believed by the individual to be a potential violation of criminal, civil, or
8 administrative law or the applicable standard of care. Defendants shall appropriately publicize
9 the existence of the disclosure mechanism (e.g., via periodic e-mails to employees or by posting
10 the information in prominent common areas such as the lobby, dining rooms, activity rooms,
11 waiting rooms) at each of its facilities.

12 43. The disclosure program shall emphasize a non-retribution, non-retaliation policy, and
13 shall include a reporting mechanism for anonymous communications for which appropriate
14 confidentiality shall be maintained. Upon receipt of a disclosure, the Compliance Officer (or
15 designee) shall gather the information in such a way as to elicit all relevant information from the
16 disclosing individual. The Compliance Officer (or designee) shall make a preliminary, good
17 faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained
18 all of the information necessary to determine whether a further review should be conducted. For
19 any disclosure that is sufficiently specific so that it reasonably: 1) permits a determination of the
20 appropriateness of the alleged improper practice; and 2) provides an opportunity for taking
21 corrective action, Defendants shall conduct an internal review of the allegations set forth in such
22 a disclosure and ensure that proper follow-up is conducted, including that the inappropriate or
23 improper practice ceases immediately.

24 44. The Compliance Officer shall maintain a disclosure log, which shall include a record and
25 summary of each allegation received (whether anonymous or not), the status of the respective
26 investigations, and any corrective action taken in response to the investigation. The disclosure
27 log shall be sent to the Monitor not less than monthly and shall be made available to the BMFEA
28 upon request.

1 **7) Ineligible Persons**

2 45. An “Ineligible Person” shall include an individual or entity who (a) is currently excluded,
3 debarred, suspended, or otherwise ineligible to participate in the Federal health care programs or
4 in Federal procurement or non-procurement programs, or (b) has been convicted of a criminal
5 offense that falls within the ambit of 42 U.S.C. section 1320a-7(a), but has not yet been
6 excluded, debarred, suspended, or otherwise declared ineligible.

7 46. “Exclusion Lists” include (a) the HHS/OIG List of Excluded Individuals/Entities
8 (available through the Internet at <http://oig.hhs.gov>), and (b) the General Services
9 Administration’s List of Parties Excluded from Federal Programs (available through the Internet
10 at <http://epls.arnet.gov>).

11 47. “Screened Persons” include prospective and current owners, officers, directors,
12 employees, contractors and agents of Defendants.

13 48. Screening Requirements Defendants shall ensure that all Screened Persons are not
14 Ineligible Persons, by implementing the following screening requirements (a) Defendants shall
15 screen all Screened Persons against the Exclusion Lists prior to engaging their services and, as
16 part of the hiring or contracting process, shall require such persons to disclose whether they are
17 an Ineligible Person, and (b) Defendants shall screen all Screened Persons against the Exclusion
18 Lists within 90 days after the Effective Date and on an annual basis thereafter, and (c)
19 Defendants shall implement a policy requiring all Screened Persons to disclose immediately any
20 debarment, exclusion, suspension, or other event that makes that person an Ineligible Person.

21 49. Nothing in this Section affects the responsibility of (or liability for) Defendants to refrain
22 from billing Federal health care programs for items or services furnished, ordered, or prescribed
23 by an Ineligible Person.

24 50. If Defendants have actual notice that a Screened Person has become an Ineligible Person,
25 Defendants shall remove such person from the responsibility for, or involvement with,
26 Defendants’ business operations related to the Federal health care programs and shall remove
27 such person from any position for which the person’s compensation or the items or services
28 furnished, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by

1 Federal health care programs or otherwise with Federal funds at least until such time as the
2 person is reinstated into participation in the Federal health care programs.

3 51. Pending Charges and Proposed Exclusions: If Defendants have actual notice that a
4 Screened Person is charged with a criminal offense that falls within the ambit of 42 U.S.C.
5 sections 1320a-7(b)(1)-(3), or is proposed for exclusion during his or her employment or
6 contract, Defendants shall take all appropriate actions to ensure that the responsibilities of that
7 person have not and shall not adversely affect the quality of care rendered to any beneficiary,
8 patient, or resident, or the accuracy of any claims submitted to any Federal health care program.

9 **8) Criminal Background Checks**

10 52. Defendants shall conduct criminal background checks of potential employees.
11 Defendants shall ensure that they: (a) comply with all federal and state requirements regarding
12 criminal background checks for potential employees; and (b) perform and complete a timely
13 criminal background check on all individuals offered employment in a position that involves
14 direct care of patients (and the offer of employment must be conditioned upon the results of the
15 check). For the purposes of this PIFJ, a timely criminal background check means a check
16 completed within thirty (30) days of the offer of employment to the individual. To the extent any
17 agency of any state has performed a criminal background check, Defendants may rely upon the
18 results of such criminal background check.

19 53. Each skilled nursing facility in California shall ask its job applicants on the application
20 for employment whether he/she has ever been convicted of any offense involving the abuse,
21 neglect, endangerment, or mistreatment of an elder or dependent adult, or any offense involving
22 theft or embezzlement from an elder or dependent adult.

23 54. Before hiring or contracting with any certified nursing assistant, each California skilled
24 nursing facility shall first contact the State nurses aide registry to inquire whether such individual
25 has ever had a finding entered into the State nurses aide registry concerning his/her abuse,
26 neglect, or mistreatment of residents, or misappropriation of their property, and each skilled
27 nursing facility shall not hire such individual if such a finding has been entered into the State
28 nurses aide registry.

1 **B. Independent Monitor**

2 55. Pursuant to a Corporate Integrity Agreement (CIA) entered into on or about this same
3 date between Defendants and The Office of Inspector General (OIG) of the United States
4 Department of Health and Human Services (HHS), within sixty (60) days after the Effective Date
5 Defendants shall, for a period of five years, retain an appropriately qualified monitoring team
6 (the “Monitor”), appointed by the OIG after consultation with Defendants, Defendants shall
7 consult with the BMFEA regarding the selection of the Monitor. The Monitor may retain
8 additional personnel, including, but not limited to, independent consultants, if needed to help
9 meet the Monitor’s obligations under this CIA. Defendants shall be responsible for all costs
10 incurred by the Monitor. As a condition to retaining the Monitor, Defendants shall require the
11 Monitor to enter into a subcontract with an individual or entity, approved by the OIG, that has
12 the requisite expertise, capacity and access to MDS data directly from CMS to perform quarterly
13 Quality Indicator data analysis reports of the type described in the attached Exhibit C. The
14 Monitor may be removed solely at the discretion of the OIG. If the Monitor resigns or is
15 removed for any reason prior to the termination of the CIA, Defendants shall retain another
16 Monitor appointed by the OIG, with the same functions and authorities. The Monitor may
17 confer and correspond with Defendants, BMFEA, and OIG on an ex parte basis.

18 a. The Monitor shall be responsible for assessing the effectiveness, reliability and
19 thoroughness of the following:

- 20 (1) Defendants’ internal quality control systems, including, but not limited to:
- 21 (A) Whether the systems in place to promote quality of care and to
22 respond to quality of care issues are acting in a timely and effective
23 manner;
- 24 (B) Whether the communication system is effective, allowing for
25 accurate information, decisions, and results of decisions to be
26 transmitted to the proper individuals in a timely fashion; and
27 (C) Whether the training programs are effective and thorough.

28 ///

- 1 (2) Defendants' response to quality of care issues, which shall include an
2 assessment of:
- 3 (A) Defendants' ability to identify the problem;
- 4 (B) Defendants' ability to determine the scope of the problem,
5 including, but not limited to whether the problem is isolated or
6 systemic;
- 7 (C) Defendants' ability to create a corrective action plan to respond to
8 the problem;
- 9 (D) Defendants' ability to execute the corrective action plan; and
- 10 (E) Defendants' ability to evaluate whether the assessment, corrective
11 action plan, and execution of that plan was effective, reliable, and
12 thorough.
- 13 (3) Defendants' development and implementation of corrective action plans
14 and the timeliness of such actions;
- 15 (4) Defendants' proactive steps to ensure that each patient and resident
16 receives care in accordance with:
- 17 (A) Basic care, treatment and protection from harm standards;
- 18 (B) The rules and regulations set forth in 42 C.F.R. Parts 482 and 483;
- 19 (C) State and local statutes, regulations, and other directives or
20 guidelines; and
- 21 (D) The policies and procedures adopted by Defendants and set forth in
22 the CIA; and
- 23 (5) Defendants' compliance with California's staffing requirements set out in
24 California Health and Safety Code section 1276.5.

25 b. The Monitor shall have:

- 26 (1) Immediate access to facilities, at any time and without prior notice, to
27 assess compliance with the CIA, to assess the effectiveness of the internal

28 ///

1 quality assurance mechanisms, and to ensure that the data being generated
2 is accurate;

3 (2) Immediate access to: (a) the CMS quality indicators; (b) internal or
4 external surveys or reports; (c) hotline complaints; (d) resident satisfaction
5 surveys; (e) staffing data in the format requested by the Monitor, including
6 reports of any facility where more than ten (10) percent of the staff are
7 hired on a temporary basis; (f) reports of abuse, neglect, or an incident that
8 required hospitalization or emergency room treatment; (g) reports of any
9 falls; (h) reports of any incident involving a patient or resident that
10 prompts a full internal investigation; (i) patient or resident records; (j)
11 documents in the possession or control of any quality assurance
12 committee, peer review committee, medical review committee, or other
13 such committee; and (k) any other data in the format the Monitor
14 determines relevant to fulfilling the duties required under the CIA; and

15 (3) Immediate access to patients, residents, and Covered Persons for
16 interviews outside the presence of Defendants' supervisory staff or
17 counsel, provided such interviews are conducted in accordance with all
18 applicable laws and the rights of such individuals. The Monitor shall give
19 full consideration to an individual's clinical condition before interviewing
20 a resident or patient. Nothing in this paragraph shall require Defendants to
21 breach or fail to perform any of its duties to its patients, residents, and
22 Covered Persons under state and federal laws and regulations.

23 c. *Defendants' Obligations.* Defendants shall:

24 (1) Ensure the Monitor's immediate access to the facilities, individuals, and
25 documents, and assist in obtaining full cooperation by its current
26 employees, contractors and agents;

27 ///

28 ///

- 1 (2) Provide the Monitor a report monthly, or sooner if requested by the
2 Monitor, regarding each of the following occurrences:
3 (A) Deaths or injuries related to use of restraints;
4 (B) Deaths or injuries related to use of psychotropic medications;
5 (C) Suicides;
6 (D) Deaths or injuries related to abuse or neglect (as defined in the
7 applicable Federal guidelines);
8 (E) Fires, storm damage, flooding, or major equipment failures at any
9 facility;
10 (F) Strikes or other work actions;
11 (G) Manmade disasters that pose a threat to residents (e.g., toxic waste
12 spills); and
13 (H) Any other incident that involves or causes actual harm to a resident
14 when such incident prompts a full internal investigation.

15 Each such report shall contain the full name, social security number, and
16 date of birth of the resident(s) involved, the date of death or incident, and a
17 brief description of the events surrounding the death or incident.

- 18 (3) Assist in locating and, if requested, obtaining cooperation from past
19 employees, contractors, agents, and residents, patients, and their families;
20 (4) Provide access to current residents and patients, and contact information
21 for their families and guardians, and not impede their cooperation with the
22 Monitor;
23 (5) Provide to its Quality Assurance Compliance Committee or its Board of
24 Director's Quality Assurance Monitoring Committee copies of all
25 documents and reports provided to the Monitor;
26 (6) Provide the last known contact information for former residents, patients,
27 their families, or guardians consistent with the rights of such individuals
28 under state or Federal law, and not impede their cooperation;

- (7) Address any written recommendation made by the Monitor either by substantially implementing the Monitor's recommendations or by explaining in writing why it has elected not to do so;
- (8) Pay the Monitor's bills within 30 days of receipt. While Defendants must pay all the Monitor's bills within 30 days, Defendants may bring any disputed Monitor's Costs or bills to OIG's attention; and
- (9) Not sue or otherwise bring any action against the Monitor related to any findings made by the Monitor or related to any exclusion or other sanction of Defendants under the CIA and/or PIFJ. It is provided, however, that this clause shall not apply to any suit or other action based solely on the dishonest or illegal acts of the Monitor, whether acting alone or in collusion with others.

d. *The Monitor's Obligations.* The Monitor shall:

- (1) Abide by all state and federal laws and regulations concerning the privacy, dignity, and employee rights of all Covered Persons, residents, and patients;
- (2) Where independently required to do so by applicable law or professional licensing standards, report any finding to an appropriate regulatory or law enforcement authority, and simultaneously submit copies of such reports to the OIG and to Defendants;
- (3) At all times act reasonably in connection with its duties under the CIA including when requesting information from Defendants;
- (4) Simultaneously provide quarterly reports to Defendants, the BMFEA, and OIG concerning the findings made to date;
- (5) Submit bills to Defendants on a consolidated basis no more than once per month, and submit an annual summary representing an accounting of its costs throughout the year to Defendants, the BMFEA, and to OIG;

///

- 1 (6) Not be bound by any other private or governmental agency's findings or
2 conclusions, including, but not limited to, JCAHO, CMS, or the state
3 survey agency. Likewise, such private and governmental agencies shall
4 not be bound by the Monitor's findings or conclusions;
- 5 (7) Abide by the legal requirements of Defendants to maintain the
6 confidentiality of each resident's personal and clinical records. Nothing in
7 this subsection, however, shall limit or affect the Monitor's obligation to
8 provide information, including information from patient and resident
9 clinical records, to the BMFEA, and the OIG, and, when legally or
10 professionally required, reporting to other agencies;
- 11 (8) Abide by the provisions of the Health Insurance Portability and
12 Accountability Act (“HIPAA”) of 1996 to the extent required by law
13 including, without limitation, entering into a business associate agreement
14 with Covered Entity facilities;
- 15 (9) Except to the extent required by law, maintain the confidentiality of any
16 proprietary financial and operational information, processes, procedures
17 and forms obtained in connection with its duties under the CIA and not
18 comment publicly concerning its findings except to the extent authorized
19 by the OIG;
- 20 (10) Visit each Covered Facility as often as the Monitor believes it necessary to
21 perform its functions; and
- 22 (11) If the Monitor has concerns about corrective action plans that are not
23 being enforced or systemic problems that could affect Defendants’ ability
24 to render quality care to its patients and residents, then the Monitor shall:
25 a) report such concerns in writing to an interagency consortium consisting
26 of representatives of OIG, CMS, the Department of Justice, and the state
27 survey agency; b) simultaneously provide notice and a copy of the report
28 to Defendants’ Board of Directors Quality Assurance Monitoring

1 Committee referred to *supra*; and c) report such concerns in writing to the
2 BMFEA.

3 56. The provisions of paragraphs 57 and 58 shall only become operative in the event that the
4 Monitor is no longer required pursuant to the federal CIA and the PIFJ continues in effect after
5 the CIA is no longer operative.

6 57. Accurate color photographs shall be promptly taken of Stage III and Stage IV pressure
7 ulcers preexisting on newly admitted residents, of any new Stage III and Stage IV pressure ulcers
8 that develop after a resident's admission, and of any significant changes (such as a change in the
9 stage) concerning any Stage III and Stage IV pressure ulcer regardless of whether the pressure
10 ulcer developed before or after the resident's admission to the facility. In addition, accurate
11 color photographs shall be taken of all Stage III and Stage IV pressure ulcers no less often than
12 once per week, even if there are no changes concerning the pressure ulcers. The color
13 photographs shall be placed in the patient charts, with the date, time, and photographer noted for
14 each photograph. Photographs taken pursuant to this paragraph shall be non-digital. Defendants
15 shall have a protocol for taking the required non-digital photographs consistent with accepted
16 standards. The protocol shall include explicit criteria that standardize the equipment, aperture
17 settings, distance from the wound and field of view, as well as a means for patient
18 identification/ulcer location, date and time marking, and a sample measure in the frame of the
19 photograph. Implementation of this protocol shall include in-service training with demonstrated
20 competencies and periodic studies of consistency. Notwithstanding the requirements of this
21 section, photographs will not be required if the resident or the resident's family member or legal
22 representative independently objects and refuses to have such photographs taken, and such
23 objection and refusal, and by whom, are noted in the resident's chart.

24 58. The color photography required in paragraph 57 shall not in any way take the
25 place of written documentation of the pressure ulcer according to professional standards. An
26 evaluation of the pressure ulcer shall be documented with each dressing change or at least
27 weekly and more often when indicated by wound complications or changes in wound
28 characteristics. At a minimum, documentation shall include:

- 1 a. The date observed;
- 2 (1) Location;
- 3 (2) Stage;
- 4 (3) Size (perpendicular measurements of the greatest extent of length and
- 5 width of the ulceration);
- 6 (4) Depth;
- 7 (5) The presence, location and extent of any undermining or tunneling/sinus
- 8 tract;
- 9 (6) Exudate, if present, including type (such as purulent/serous), color, odor,
- 10 and approximate amount;
- 11 (7) Pain, if present, including nature and frequency (e.g., whether episodic or
- 12 continuous);
- 13 (8) Wound bed, including color and type of tissue/character including
- 14 evidence of healing (e.g., granulation tissue), or necrosis (slough or
- 15 eschar); and
- 16 (9) Description of wound edges and surrounding tissue (e.g., rolled edges,
- 17 redness, hardness/induration, maceration) as appropriate.

18 **C. Written Standards**

19 **1) Code of Conduct**

20 59. Within one hundred twenty (120) days after the Effective Date, Defendants shall

21 establish a Code of Conduct and distribute it to all Covered Persons. Defendants shall make

22 adherence to the Code of Conduct an element in evaluating the performance of Covered Persons.

23 The Code of Conduct shall, at a minimum, set forth:

24 a. Defendants' commitment to full compliance with all statutes, regulations,

25 directives, and guidelines applicable to Federal health care programs, including its commitment

26 to prepare and submit accurate billings consistent with Federal health care program regulations

27 and procedures or instructions otherwise communicated by the centers for Medicare and

28 ///

1 Medicaid Services (CMS) (or other appropriate regulator agencies) and/or fiscal intermediaries
2 or carriers;

3 b. Defendants' requirement that all of its Covered Persons shall be expected to
4 comply with all statutes, regulations, directives, and guidelines applicable to Federal health care
5 programs and with Defendants' own policies and procedures (including the requirements of this
6 PIFJ);

7 c. The requirement that all of Defendants' Covered Persons shall be expected to
8 report, within thirty (30) days, suspected violations of any statute, regulation, directive, or
9 guideline applicable to Federal health care programs or of Defendants' own policies and
10 procedures; if there are credible allegations of patient harm, such report shall be made
11 immediately and shall be complete, full, and honest;

12 d. The possible consequences to both Defendants and any Covered Person of failure
13 to comply with all statutes, regulations, directives, and guidelines applicable to Federal health
14 care programs and with Defendants' own policies and procedures or of failure to report such
15 non-compliance; and

16 e. The right of all Covered Persons to use the confidential disclosure program, as
17 well as Defendants' commitment to confidentiality and non-retaliation with respect to
18 disclosures.

19 60. Within one hundred twenty (120) days after the Effective Date, to the extent not already
20 accomplished, each Covered Person shall certify, in writing, that he or she has received, read,
21 understood, and will abide by Defendants' Code of Conduct. New Covered Persons shall receive
22 the Code of Conduct and shall complete the required certification within twenty (20) days after
23 the commencement of their appointment, employment, or contract or within one hundred twenty
24 (120) days after the Effective Date, whichever is later.

25 61. Defendants shall annually review the Code of Conduct and shall make any necessary
26 revisions; these revisions shall be distributed within thirty (30) days of initiating such a change.
27 Covered Persons shall certify on an annual basis that they have received, read, understood and
28 will abide by the Code of Conduct.

1 **2) Policies and Procedures**

2 62. Defendants shall assess and update as necessary at least annually on a rotational basis,
3 and more frequently if appropriate, their written policies and procedures confirming their
4 commitment to promoting full compliance with state and federal regulations and statutes
5 applicable to California skilled nursing facilities which directly or indirectly affect the quality of
6 care being provided to the residents of such facilities. The policies and procedures shall be
7 available to the BMFEA upon request. Within ninety (90) days after the Effective Date,
8 Defendants shall develop and implement written policies and procedures regarding the operation
9 of Defendant’s compliance program and its compliance with all federal and state health care
10 statutes, regulations, directives, and guidelines, including the requirements of the Federal health
11 care programs. Defendants shall ensure that the relevant portions of its policies and procedures
12 are available to the appropriate Covered Persons within thirty (30) days of being implemented.
13 Defendants shall ensure that, at a minimum, they have adequate policies and procedures that
14 specifically address:

15 a. Measures designed to ensure that Defendants comply with Cal. Code Regs. tit. 22,
16 Titles XVIII and XIX of the Social Security Act, 42 U.S.C. sections 1395-1395ggg and 1396-
17 1396v, and all regulations promulgated pursuant to these statutes, including but not limited to 42
18 C.F.R. parts 424, 482, and 483, and any other state or local statutes or regulations that address
19 quality of care in skilled nursing facilities;

20 b. Measures designed to promote at least minimally, sufficient staffing as required
21 by applicable statutes, regulations, and this PIFJ;

22 c. Measures designed to ensure that staffing needs are decided first and foremost
23 upon achieving the level of care for facility residents required by state and federal regulations
24 and statutes applicable to skilled nursing facilities, including, but not limited to, Cal. Code Regs.,
25 tit. 22 and 42 C.F.R. section 483.30 (skilled nursing facilities);

26 d. Measures designed to inform Covered Persons of the staffing requirements of
27 state and federal regulations and statutes that directly or indirectly affect the quality of care being
28 provided to the residents of such skilled nursing facilities;

1 e. Measures that specify that if the Director of Nursing (or other person who is
2 making staffing decisions at the facilities) disagrees with a staffing determination that is not in
3 compliance with state or federal regulations or the PIFJ and that significantly affects patient care
4 made by the administrator or other individuals at the district, region, or corporate level, and is
5 unable to resolve the issue through the normal chain of responsibility, then that person must
6 immediately call the hotline and the Monitor. Nothing in this subsection prohibits or prevents
7 such person from contacting the hotline or the Monitor without first going through the normal
8 chain of responsibility;

9 f. Measures to inform Covered Persons during orientation and during other training
10 required by this PIFJ that staffing levels are a critical aspect of patient and resident care, and that
11 if any person has a concern about the level of staffing there are many avenues available to report
12 such concerns, including, but not limited to, the administrator, the hotline, individuals at the
13 district, regional, or corporate level, or directly to the Compliance Officer or Monitor;

14 g. Measures designed to minimize the number of individuals working at any of
15 Defendants' facilities who are on temporary assignment or not employed by Defendants (not
16 including those persons who are included in the definition of Covered Persons) and measures
17 designed to create and maintain a standardized system to track the number of individuals at each
18 facility who fall within this category so that the number/proportion of or changing trends in such
19 staff can be adequately identified by Defendants.

20 h. Measures designed to effectively collect and analyze staffing data, including staff
21 -to-resident ratio, staff turnover, and staffing during the periods which falls occurred;

22 i. Measures designed to ensure compliance with the completion of accurate clinical
23 assessments as required by applicable federal law, which shall include: (1) that all patient and
24 resident care information be recorded in ink or permanent print; (2) that corrections shall only be
25 made in accordance with accepted health information management standards; (3) that erasures
26 shall not be allowable; and (4) that clinical records may not be rewritten or destroyed to hide or
27 otherwise make a prior entry unreadable or inaccessible;

28 ///

1 j. Measures designed to promote adherence to the compliance and quality of care
2 standards set forth in applicable statutes, regulations and this PIFJ;

3 k. Measures designed to ensure that compliance issues are identified internally (e.g.
4 through reports of abuse or neglect, reports to supervisors, complaints, quality reviews, CHSRSA
5 quality indicators, staff turnover data, or internal surveys) or externally (e.g., consultants) and are
6 promptly and appropriately investigated and, if the investigation substantiates compliance issues,
7 that Defendants implement effective and timely corrective action plans and monitor compliance
8 with such plans;

9 l. Non-retaliation policies and procedures for employees or other Covered Persons
10 to make disclosures or otherwise report on compliance issues;

11 m. Measures designed to ensure cooperation by Defendant and its Covered Persons
12 with the Monitor in the performance of his or her duties as forth *infra*; and

13 n. Measures designed to ensure cooperation with the BMFEA, which shall have
14 access to Defendants' skilled nursing facilities, and any and all business records, business
15 material, and patient records that pertain to quality of care in accordance with this PIFJ.

16 **D. Residents' Rights, Dignity, and Privacy**

17 63. All notifications and consultations required by 42 C.F.R. section 483.10(b)(11) shall be
18 promptly and accurately charted in the residents' medical records.

19 64. A Licensed Nurse shall monitor significant resident changes to ensure that proper
20 notification is given and residents' rights respected pursuant to 42 C.F.R. section 483.10(b)(11).

21 65. Personal care and medical treatment shall be provided in a private space.

22 66. New residents shall be informed at the time of their admission of their right to privacy,
23 the location(s) available for private meetings with family or friends, and the location(s) of
24 telephones where privacy and quiet can be maintained.

25 67. The Administrator and the Director of Nursing shall monitor resident care along with the
26 QAA Committee, to ensure that the residents are receiving care in a manner and environment
27 which will help to maintain or enhance each resident's dignity, privacy, and respect in full
28 recognition of their individuality.

1 68. Grooming and personal hygiene shall include care of the skin, shampooing and grooming
2 of hair, oral hygiene, shaving or beard trimming, and cleaning and cutting of fingernails and
3 toenails, and each resident shall be free of offensive odors.

4 69. Residents shall be showered or bathed a minimum of twice a week, unless against
5 medical advice or a resident refuses to be showered or bathed.

6 70. Any refusals to shower or bathe shall be reported to the supervisory nurse, and the
7 shower or bath shall be offered later and/or rescheduled in case the resident changes his or her
8 mind about wanting a shower or bath, or would prefer a shower or bath at a different time. The
9 medical advice and/or the refusal and/or reschedule shall be charted.

10 71. The maintenance staff shall make at least monthly rounds to ensure that Communication
11 Systems are functional.

12 72. The Administrator shall monitor the Communication System to ensure that it is
13 functional. A temporary malfunction of the Communication System shall not constitute a
14 violation of this PIFJ if Defendants did not have reason to know the Communication System had
15 been malfunctioning, and once the Defendants knew or should have known the Communication
16 System was mal-functional the Defendants acted promptly and reasonably to make the
17 Communication System functional again as soon as possible.

18 73. The Administrator or temporary designee shall monitor grievances by residents or their
19 families to ensure proper and timely care is being given to the residents, and to ensure that
20 appropriate resolutions of such grievances are being achieved.

21 **E. Restraints**

22 74. Each skilled nursing facility shall have policies and procedures regarding the use of
23 physical and chemical restraints, which promote compliance with 42 C.F.R. section 483.13(a).

24 75. Each skilled nursing facility's interdisciplinary team shall assess a perceived need for
25 restraints for all residents other than those who are admitted to any skilled nursing facility with a
26 prior restraint order. Other approaches such as appropriate lighting, reduced clutter, safety
27 reminders, staff supervision, and the manner of staff interaction with the resident and others shall
28 be considered before physical restraints are used.

1 76. The use of restraints, or a change in the use of restraints, shall be allowed only by an
2 appropriate order of a physician indicating the reason and duration, and by approval of the
3 resident, the resident's legal representative, or an interested family member after risks and
4 benefits are explained.

5 77. Use of restraints shall be time limited in accordance with applicable law. Use of
6 restraints shall be regularly reviewed and evaluated by the skilled nursing facility's
7 interdisciplinary team at least quarterly, including consideration of the proper use, reduction, or
8 elimination of restraints, and the least restrictive alternatives.

9 78. Physical and chemical restraints shall be used only pursuant to accepted professional
10 standards and in accordance with applicable state and federal statutes and regulations, and they
11 shall never be used as punishment or for the convenience of staff. Defendants shall assess,
12 document, and ensure that any restraints used, whether chemical or physical, are the least
13 restrictive restraints appropriate for the resident and the situation consistent with the orders of the
14 resident's physician. Before a resident may be restrained, the facility shall determine the
15 presence of a specific medical symptom that would require the use of restraints and how the
16 restraints would treat the medical symptom. Medical symptoms that warrant the use of restraints
17 must be documented in the resident's care plan medical record, and in ongoing assessments.

18 79. Residents shall be released from any physical restraints in accordance with care plan, and
19 residents shall continue to be assessed periodically as to whether they need to remain in
20 restraints. All residents who are restrained shall be appropriately repositioned and provided with
21 adequate supervision, hydration, and bowel and bladder elimination while in restraints in
22 accordance with care plan.

23 80. The Director of Nursing or his/her licensed designee shall monitor resident restraint
24 methods, orders, and consents to ensure proper utilization and to protect the residents' right to be
25 free from physical restraints not required to treat the residents' medical symptoms.

26 **F. Prevention of Resident Abuse and Neglect**

27 81. Each skilled nursing facility shall have policies and procedures regarding investigation,
28 reporting, and protection of residents from verbal abuse, sexual abuse, physical abuse and

1 neglect, mental abuse and neglect, corporal punishment, and involuntary seclusion, which
2 promote compliance with 42 C.F.R. section 483.13(b) and Cal. Code Regs., tit. 22, sections
3 72527(a)(9) and 72315(b).

4 82. Any staff person at a skilled nursing facility who is reasonably suspected by the
5 Administrator or Director of Nursing of the facility of abuse or neglect shall be placed on
6 administrative leave during the investigative period to ensure the protection of residents (unless
7 such person is terminated by the skilled nursing facility).

8 83. Abuse of a resident by another resident shall be investigated by the Administrator,
9 Director of Nursing, and/or their licensed designee, and shall be reviewed by the
10 interdisciplinary team to determine if care plan changes, interventions, and in-service training are
11 needed to ensure the safety of all residents.

12 84. All known, observed, or reasonably suspected abuse and neglect shall be promptly
13 investigated by the Administrator, and/or Director of Nursing, and/or their licensed designee, and
14 shall be reported as required by law to the local ombudsman or the local law enforcement agency
15 by telephone immediately or as soon as practically possible, but not to exceed twenty-four (24)
16 hours, and by written report within two (2) working days.

17 85. The Director of Nursing or his/her licensed designee in conjunction with the
18 interdisciplinary team shall monitor residents with histories of exhibiting behaviors that cause
19 injury to themselves or others, and shall take precautions which are reasonable under the
20 circumstances to help prevent any such injuries from occurring. Residents shall be protected to
21 the extent reasonably possible from being victimized by other aggressive residents.

22 86. The Administrator or his/her licensed designee shall monitor all incidents of alleged
23 abuse or neglect, and shall ensure that notification to authorities is made as required by law and
24 appropriate investigative measures are taken.

25 87. All residents shall be properly assessed to ensure that appropriate intervention strategies
26 are implemented to help prevent occurrences of resident-to-resident abuse.

27 ///

28 ///

1 **G. Resident Care**

2 88. All residents shall be screened by appropriate Covered Persons to determine if therapy,
3 treatment, or adaptive equipment is needed by a resident to maintain his or her ability to bathe,
4 dress, groom, transfer, ambulate, toilet, or eat, or to use speech, language, or other functional
5 communication systems.

6 89. Each skilled nursing facility shall ensure that residents requiring assistance with
7 ambulation are provided with such assistance as needed, in an effort to maintain the resident's
8 ability to ambulate to the extent medically and reasonably possible.

9 **H. Medically-Related Social Services**

10 90. The Social Services Designee shall participate in the interdisciplinary care plan meetings
11 for the purpose of annual and quarterly assessments and initiation and updating of care plans.
12 The Social Services Designee shall participate in such meetings to the extent that the assessments
13 or care plans require social services implications.

14 **I. Housekeeping and Maintenance**

15 91. The Administrator shall conduct rounds at least quarterly to ensure that housekeeping and
16 maintenance services are providing a sanitary, orderly, and comfortable interior.

17 **J. Assessments of Residents**

18 92. The designated registered nurse (MDS Coordinator) shall monitor resident assessments to
19 ensure their appropriateness and timely review.

20 93. The interdisciplinary team shall conduct reviews of each resident's assessment at least
21 quarterly to ensure the resident's care plan reflects the resident's needs.

22 94. A licensed nurse shall assess each resident promptly after a significant change in the
23 resident's physical or mental condition.

24 95. The interdisciplinary team shall promptly participate in a revised MDS assessment of a
25 resident upon a significant change in the resident's physical or mental condition, as defined in
26 the Resident Assessment Instrument Manual.

27 96. Each significant change in a resident's physical or mental condition shall be charted,
28 promptly reported to a family member or legal representative, and promptly reported to a

1 physician and the next shift's patient care staff, and ongoing assessment shall be done as
2 necessary.

3 97. The interdisciplinary team shall participate in the initial (no later than fourteen (14) days
4 after admission) and annual MDS assessments of each resident's functional capacity.

5 98. Each skilled nursing facility shall ensure that there is a timely, complete, and accurate
6 MDS and a current, complete, and accurate interdisciplinary care plan in the chart of each
7 resident. Each skilled nursing facility shall conduct, at the time of each resident's admission and
8 periodically thereafter (at least annually and promptly after a significant change in the resident's
9 physical or mental condition), a comprehensive, accurate, and standardized assessment of each
10 resident's functional capacity with input by all relevant disciplines.

11 99. The designated registered nurse (MDS Coordinator) conducting the assessment shall sign
12 the assessment document as being properly completed. Other individual team members of the
13 interdisciplinary team who complete a portion of the assessment shall sign and certify the
14 accuracy of that portion of the assessment they completed.

15 **K. Care Planning**

16 100. A comprehensive care plan must be prepared by an interdisciplinary team at each
17 California skilled nursing facility that includes the attending physician, a licensed registered
18 nurse, a licensed vocational nurse with responsibility for the resident, the Social Services
19 Designee, the staff member in charge of resident's activities, and other appropriate staff in
20 disciplines as determined by the resident's needs, and, to the extent practicable, the participation
21 of the resident, the resident's family, or the resident's legal representative.

22 101. Each skilled nursing facility shall ensure that staff members provide all residents with
23 appropriate basic care services that meet the residents' individual needs. Among other things,
24 each skilled nursing facility shall ensure that all residents are turned and positioned properly,
25 receive proper oral care, receive restorative care, and are bathed as scheduled. Each skilled
26 nursing facility shall care for the residents in a manner and in an environment that promotes
27 maintenance or enhancement of each resident's quality of life.

28 ///

1 102. Each skilled nursing facility shall ensure that within seven (7) days after the completion
2 of the comprehensive assessment, Defendants' interdisciplinary teams develop a comprehensive
3 care plan for each resident that includes measurable objectives and timetables to meet a resident's
4 medical, nursing, mental, and psychological needs that are identified in the comprehensive
5 assessment. The care plan shall describe the services that are to be furnished to attain or
6 maintain the resident's highest practicable physical, mental and psycho-social well-being and
7 must meet professional standards of quality. Each skilled nursing facility shall ensure that each
8 resident's comprehensive care plan is implemented in a timely manner by appropriate and
9 adequately trained staff.

10 **L. Professional Standards**

11 103. All residents shall receive adequate and appropriate nursing care, and licensed nurses
12 shall perform their responsibilities in keeping with accepted professional standards of care by
13 adequately identifying health care problems, notifying physicians of health care problems,
14 monitoring and intervening to ameliorate such problems, and keeping appropriate records of
15 resident's health care status.

16 104. Patient care staff shall routinely perform ongoing monitoring of serious medical
17 conditions of resident, including such basic procedures as taking vital signs (including pain
18 assessment when appropriate), measuring weights, and monitoring intake and output of fluids; all
19 of these functions are to occur at appropriate intervals based upon the resident's clinical
20 condition.

21 105. Patient care staff shall follow physicians' orders or document fully why a physician's
22 order was not expressly followed.

23 **M. Pressure Ulcers and Skin Conditions**

24 106. Defendants shall conduct an in-service training program for all of their currently
25 employed certified nursing assistants regarding providing preventative care in relation to
26 pressure ulcers (a.k.a. decubitus ulcers or pressure sores) including: (a) observation and
27 monitoring of skin for conditions such as rashes, skin tears, bruises, reddened areas, blisters, and
28 breaks in the skin; (b) timely and accurately reporting such observations; (c) promptly reporting

1 such observations to the supervisory nurse; (d) appropriate turning and positioning of residents in
2 accordance with their care plan; (e) turning and positioning of residents at least every two (2)
3 hours according to the care plan; (f) following a prescribed and supervised turning schedule; and
4 (g) utilizing proper pressure-relieving devices. This training will be part of the facility
5 orientation training for newly hired certified nursing assistants.

6 107. Defendants shall conduct an in-service training program for all of their currently
7 employed licensed nurses regarding providing treatment and preventative care in relation to
8 pressure ulcers (a.k.a. decubitus ulcers or pressure sores) including: (a) identification of risk,
9 cause, and breakdowns; (b) treatment alternatives; (c) observation, assessment, and monitoring
10 of skin for conditions such as rashes, skin tears, bruises, reddened areas, blisters, and breaks in
11 the skin; (d) timely and accurately charting such observations and assessments; (e) promptly
12 reporting such observations to the charge nurse; (f) appropriate turning and positioning of
13 residents in accordance with their care plan; (g) turning and positioning of residents at least
14 every two (2) hours according to the care plan; (h) following a prescribed and supervised turning
15 schedule; and (i) utilizing proper pressure-relieving devices. This training will be part of the
16 facility orientation training for newly hired licensed nurses.

17 108. Each skilled nursing facility shall ensure that each resident is provided with adequate skin
18 care, nutrition, hydration, turning, positioning, application of pressure reduction or relief devices,
19 and clean and dry bed linens, to decrease the likelihood of skin breakdown.

20 109. Each non-ambulatory resident who has pressure ulcers, or whose medical or other
21 condition(s) makes such resident potentially at risk for developing pressure ulcers, shall be
22 turned and positioned at least every two (2) hours, or more often if medically indicated; however,
23 such a resident need not be turned and positioned if against medical advice and is so documented
24 in the patient's chart.

25 110. Each skilled nursing facility shall have available and utilize proper pressure-relieving
26 devices, including, but not limited to, pressure pads, specialized mattresses, pillows, heel
27 protectors, and foot cradles. For purposes of this paragraph, such devices need not be used if
28 they require a physician's order for their use unless such order has been obtained.

1 111. The skilled nursing facility's QAA Committee shall evaluate monthly the causes of
2 occurrences of skin tears, bruises, and pressure ulcers, including identifying trends in causation,
3 and shall develop a plan for the reduction of such occurrences, to the extent such occurrences can
4 be reasonably reduced. This information will be reported to and reviewed by the regional QAA
5 Committee.

6 112. A licensed registered nurse shall determine the number of residents needing assistance
7 with turning and positioning and the degree of assistance needed. The Director of Nursing shall
8 determine the number of nursing assistants needed to accomplish the turning and positioning
9 schedules. The Administrator shall ensure adequate staff is available on each shift to accomplish
10 the turning and positioning schedules.

11 113. Each resident shall be assessed upon admission to the skilled nursing facility for existing
12 pressure ulcers or for being at risk for developing pressure ulcers. The care plan for each
13 resident who has pressure ulcers or who is at risk for developing pressure ulcers shall include a
14 risk and causation assessment to develop preventive measures so as to avoid bruises, skin tears,
15 and pressure ulcers.

16 114. Each pressure ulcer, bruise and skin tear shall be investigated. Each pressure ulcer,
17 bruise, or skin tear shall be assessed and documented by a licensed registered nurse to determine
18 risk and causal factors, and to develop a care plan to help prevent any further deterioration of
19 bruises, skin tears, or pressure ulcers from occurring.

20 115. Each skin tear, bruise, and pressure ulcer shall be promptly reported to the resident's
21 legal representative or family member, and to the resident's doctor in accordance with applicable
22 law.

23 116. Each skin tear, bruise, and pressure ulcer shall be treated as ordered to promote healing
24 and to prevent infection, and appropriate precautions shall be taken to prevent new occurrences
25 of such conditions.

26 117. Progress in the healing of skin tears and pressure ulcers shall be monitored, and the lack
27 of improvement or worsening over a reasonable period of time shall be promptly reported to the
28 resident's physician and to the resident's family member or legal representative.

1 118. The Administrator and the Director of Nursing shall review care being given by the
2 patient care staff to residents with skin tears or pressure ulcers. In so doing, if the Administrator
3 and/or the Director of Nursing believe that counseling of and/or disciplinary action against the
4 patient care staff is necessary in order to foster improvement of such care and eliminate resident
5 care problems, the Administrator and/or Director of Nursing shall ensure that such counseling or
6 disciplinary action is timely given.

7 **N. Accident Prevention**

8 119. Patient care staff, administrative staff, and maintenance staff shall monitor the skilled
9 nursing facility to ensure that the environment is as clutter-free and hazard-free as is possible.

10 120. Resident shall be assessed for fall risk and an appropriate plan of care shall be developed.

11 121. Assistance devices shall be used as appropriate and shall be part of the care plan.

12 122. After a resident has fallen, a licensed nurse shall assess the resident post-fall and shall
13 report such fall to the licensed nurses of the next shift(s) and chart the circumstances and
14 condition of the resident.

15 123. A family member or a legal representative and the resident's physician shall be promptly
16 notified of a resident's fall, and treatment shall be promptly provided as ordered by the
17 physician.

18 124. There shall be ongoing assessment of the resident's physical status, and also of the
19 resident's cognitive status if the head was involved in the fall or accident, during each shift for at
20 least seventy-two (72) hours after a fall or accident, with appropriate charting.

21 125. Each fall or accident shall be investigated and the plan of care altered as needed to ensure
22 the resident's safety.

23 126. Unusual occurrences that threaten the welfare, safety, or health of patients shall be
24 reported by the skilled nursing facility in accordance with applicable law to the Department of
25 Health Services.

26 127. The skilled nursing facility shall investigate accidents to identify trends and develop a
27 plan for continuous improvement. All incidents, accidents, and unusual occurrences shall be

28 ///

1 reviewed at each QAA Committee meeting to be held at least monthly. The QAA Committee
2 shall review trends and recommended further training or corrective action as needed.

3 128. Each skilled nursing facility shall monitor incident reports to ensure that intervention
4 measures identified by the resident's plan of care are being used and are adequate.

5 **O. Nutrition and Dietary Concerns**

6 129. Each skilled nursing facility shall ensure that each resident's nutritional intake is
7 adequate and monitored, such that weights and intake are routinely and accurately recorded; that
8 residents receive appropriate diets and adequate amounts of food; that residents are provided
9 with proper mealtime assistance and supervision and with appropriate eating assistive devices
10 and adaptive requirement where necessary; that residents with unplanned, more than 5% weight
11 gains or losses in one month have their conditions promptly reported by licensed nurses to the
12 residents' physicians, family member or legal representative, and are provided with reasonable
13 follow-up until the situation is appropriately addressed and remedied to the extent reasonably
14 and medically possible; that each resident receives food prepared by methods that conserve
15 nutritive value, flavor, and appearance; that food is palatable, attractive, and at the proper
16 temperature, and prepared in a form designed to meet individual needs; and that substitutes of
17 similar nutritive value are available to residents who refuse food served; that the dietary services
18 manager or a registered dietician shall review resident dietary status and make recommendations
19 for changes to the resident's plan of care.

20 130. Each skilled nursing facility shall ensure that residents have adequate fluid intake needed
21 to maintain proper hydration and health, and shall identify risk factors for dehydration. When a
22 resident is dehydrated, the skilled nursing facility shall take steps to immediately address the
23 dehydration.

24 131. Each skilled nursing facility, by means of qualified professional staff, shall on a regular
25 and consistent basis accurately calculate each resident's appropriate body weight range, compare
26 the current body weight to the resident's appropriate body weight range in order to determine the
27 appropriate healthy weight range for the resident, and will clearly document such findings in the
28 resident's chart.

1 132. The Dietary Services Manager or a Registered Dietician shall assess each resident for
2 food preferences and special needs and develop a plan in conjunction with the physician to
3 ensure that appropriate body weight and protein levels are maintained.

4 133. All refusals to eat shall be reported to the supervisory nurse. The supervisory nurse shall
5 assess the amount eaten in the weekly summary charting.

6 134. Each skilled nursing facility shall provide a sufficient number of qualified, trained staff to
7 ensure that each resident in need of assistance or supervision in eating receives this service at all
8 meals and snacks.

9 135. Each skilled nursing facility shall identify and timely provide appropriate clinical
10 responses to all “nutritionally at risk” and “nutritionally compromised” residents at the earliest
11 possible time.

12 136. Each skilled nursing facility shall utilize an interdisciplinary approach to properly assess
13 and appropriately treat residents with swallowing problems and residents who are unable to eat
14 orally in accordance with accepted professional procedures; to this end Defendants shall provide
15 adequate care for those residents at risk of aspiration, take any appropriate steps to ameliorate the
16 individual’s aspiration risk, and develop and implement an individualized feeding and
17 positioning plan for each resident identified as at risk of aspiration, and shall train staff in how to
18 properly implement the feeding and positioning plans, and to regularly monitor residents who are
19 at risk of aspirating to ensure that the staff is continually taking whatever assessment, diagnostic,
20 supervision, and treatment steps are necessary to ameliorate the resident’s risk.

21 137. The Dietary Services Manager or a Registered Dietician shall interview each resident
22 initially and at least quarterly to determine the needs and preferences. Training or adaptive
23 equipment shall be provided in accordance with identified needs, based upon patient assessment,
24 to encourage independence in eating.

25 138. All residents, unless against medical advice and is so documented in the patient’s chart,
26 shall be appropriately hydrated. Fluids shall be offered at frequent intervals and water shall be
27 fresh, clean, with appropriate drinking devices, and within reach as appropriate. Intake of fluids
28 shall be monitored as needed by patient care staff.

1 **P. Medication Administration**

2 139. The Director of Nursing shall determine training or in-service needs of the patient care
3 staff, and/or to take other actions as needed, with respect to medication administration. The
4 skilled nursing facility shall provide such training within a reasonable amount of time after
5 having identified the need for such training in addition to any other training otherwise required.
6 The skilled nursing facility shall take such other actions within a reasonable amount of time after
7 having identified the need for such other actions.

8 140. The consulting pharmacist, at least monthly, shall review medications for unnecessary
9 drugs and in collaboration with the resident's physician ensure that:

- 10 a. Drugs shall not be used in excessive doses (including duplicate drug therapy);
- 11 b. Drugs shall not be used for excessive duration;
- 12 c. Drugs shall not be used without adequate monitoring;
- 13 d. Drugs shall not be used without adequate indications for their use;
- 14 e. Drugs shall not be used in the presence of adverse consequences that indicate the
15 dose should be reduced or discontinued; and
- 16 f. Drug orders shall indicate dosage, frequency, and duration; and indications for
17 use.

18 141. Licensed nurses shall monitor residents receiving medications for side effects and
19 promptly notify the resident's physician and the resident's family member or legal representative
20 of material adverse consequences and material side effects, and chart their assessments.

21 142. Each skilled nursing facility shall monitor and alter resident behavioral problems and
22 monitor the resident drug regimen to eliminate unnecessary drugs.

23 143. The Director of Nursing shall monitor the administration of medications to ensure a
24 medication error rate of less than 5%, and to ensure that residents are free of any significant
25 medication errors.

26 144. The pharmacy consultant shall conduct reviews at least once a month to ensure that drugs
27 used in the skilled nursing facility are labeled in accordance with currently accepted professional

28 ///

1 principles, include the appropriate accessory and cautionary instructions, and include the
2 expiration date when applicable.

3 145. The storage of drugs and locking of drug storage compartments, and access to keys
4 required by 42 C.F.R. section 483.60(e) shall be arranged by the Administrator and the Director
5 of Nursing, monitored by the Director of Nursing, and supervised by the Administrator.

6 146. Medications shall be administered in a timely manner consistent with accepted nursing
7 practice, and the necessary supervision and training shall be provided to minimize medication
8 errors; and if a medication error occurs, each skilled nursing facility shall promptly investigate
9 the error, properly document it, and take appropriate corrective action.

10 **Q. Sanitation and Infection Control**

11 147. The Dietary Services Manager or the Food Services Supervisor shall monitor the food
12 storage, preparation, distribution, and service areas to ensure they are kept in a sanitary
13 condition.

14 148. The Dietary Services Manager shall cooperate with the administrator in developing
15 standards, measurable objectives, and timetables for improvement if necessary in the delivery of
16 food under sanitary conditions. This study shall be reviewed at the monthly QAA Committee
17 meetings.

18 149. All food items in the facility's refrigerator shall be labeled and dated.

19 150. All items washed in an open sink shall be sanitized in accordance with Title 22 of the
20 California Administrative Code.

21 151. A licensed nurse shall maintain the infection control program, report findings to the
22 Director of Nursing at least monthly and more often as needed, and to the QAA Committee
23 quarterly. The Administrator shall be informed of any significant findings.

24 152. The nurse with infection control duties shall participate in the QAA Committee process
25 as necessary, which shall include measurable goals and defined timetables to ensure reduction of
26 incidents of infection.

27 ///

28 ///

1 153. Infectious outbreaks, communicable diseases, parasitic diseases, or epidemics in any
2 California skilled nursing facility shall be reported to the Department of Health Services
3 consistent with Title 22 of the California Administrative Code.

4 154. Universal precautions for infection control, such as protective gloves being made
5 available to staff to wear as appropriate while providing hands-on care to residents, shall be
6 employed by each skilled nursing facility.

7 155. Written policies and procedures governing an infection control program shall be
8 developed and maintained. These policies and procedures shall be reviewed by the QAA
9 Committee to ensure they are kept properly updated.

10 156. The Director of Nursing or his/her licensed designees shall monitor the infection control
11 program to ensure proper infection control is maintained.

12 157. The supervisory nurses shall monitor the handling, storage, and transport of linens so as
13 to ensure that such handling, storage, and transport is being done in a manner to prevent the
14 spread of infection.

15 158. Each skilled nursing facility shall require staff to wash their hands after each direct
16 resident contact for which hand washing is indicated by accepted professional practice.

17 159. Each skilled nursing facility shall require staff to follow standard infection control
18 procedures, and to maintain techniques and conditions at treatment sites on residents as indicated
19 by accepted professional practice.

20 160. The maintenance staff or other staff responsible for the dumpster(s)/garbage can(s) area
21 shall check such area for overflow and correction, and to ensure that the lids are being kept down
22 on the outside dumpster(s) and/or garbage can(s).

23 161. The maintenance staff shall inspect the garbage and refuse area to ensure proper disposal
24 is being done.

25 **R. Clinical Records**

26 162. Defendants shall conduct an in-service training program for all of their currently
27 employed licensed nurses regarding clinical documentation standards applicable to licensed
28 nurses, including, but not limited to, the following:

1 a. Proper wound documentation including, but not limited to, timely and accurately
2 recording the length, width, depth, stage, color, drainage, and odor;

3 b. Prompt and accurate charting in residents' records;

4 c. The prohibition against charting measurements or other notations in residents'
5 records or elsewhere prior to the time that the measurements or observations in question are
6 actually taken or made; and

7 d. Prohibition against miscoding or describing pressure ulcers as something other
8 than a pressure ulcer.

9 163. Medical records maintained for each resident shall comport with accepted professional
10 standards, and include current information with respect to the individual's care, medical
11 treatment, and activities. Each skilled nursing facility shall maintain clinical records on each
12 resident in accordance with accepted professional standards and practices that are complete,
13 accurately documented, readily accessible, and systematically organized.

14 164. Patient care staff shall accurately code and describe pressure ulcers, and shall refrain
15 from miscoding or describing pressure ulcers as something other than pressure ulcers.

16 165. Professional staff employed by the skilled nursing facility, including physicians,
17 psychiatrists (if any), therapists, and nurses, as well as all other patient care staff, shall make
18 timely and appropriate notes in the residents' records detailing the residents' progress, status,
19 condition, and detailing the steps needed to fully meet the residents' needs. All patient care staff
20 shall utilize such records in making care, medical treatment, and training decisions, in
21 accordance with accepted medical standards.

22 166. The Medical Records Designee, or other staff member designated by the Administrator,
23 shall monitor to ensure that a clinical record is kept for each resident that is complete and
24 accurate.

25 167. Various types of measurements, observations, and calculations recorded from time to
26 time in various residents' medical charts or elsewhere, which may include, but are not limited to,
27 heart rate, blood pressure, temperature, body weight, food consumption, fluid intake, fluid
28 output, and caloric intake, shall not be recorded in the residents' medical charts or elsewhere

1 prior to the time that such measurements, observations, or calculations are actually taken or
2 made.

3 **S. Diabetes**

4 168. Licensed nurses shall provide adequate and acceptable health care to residents with
5 diabetes, including, but not limited to:

- 6 a. Properly evaluating blood sugars;
- 7 b. Providing appropriate treatment to diabetic residents when necessary;
- 8 c. Promptly notifying a supervising registered nurse and/or physician when
9 necessary to meet a diabetic resident's needs;
- 10 d. Following physicians' express orders with respect to the care and treatment of
11 diabetic residents (including promptly informing the physician of any significant changes in a
12 resident's blood sugar level); and
- 13 e. Promptly and accurately recording in residents' charts any measurements taken
14 with respect to the residents' blood sugar levels.

15 **T. Elimination and Incontinence (Bowel and Bladder)**

16 169. Residents requiring assistance shall be assisted to the bathroom and allowed and
17 encouraged to participate in bowel and bladder training programs to maintain normal
18 functioning, to the greatest degree possible consistent with the residents' interests, assessments,
19 and plans of care.

20 170. Each skilled nursing facility shall provide incontinent residents with appropriate
21 incontinence care, including appropriate perineal care provided with each incontinence episode,
22 in accordance with all applicable state and federal statutes and regulations.

23 171. All incontinent residents shall be assessed for participation in a bowel and bladder
24 retraining program.

25 172. Residents shall not be catheterized unless the resident's clinical condition demonstrates
26 that catheterization is necessary based on an observation by a licensed nurse and pursuant to a
27 physician's order. The skilled nursing facility shall make a comprehensive assessment of each
28 resident's needs based on an MDS in a timely and complete manner.

1 **U. Mental Health Needs**

2 173. Any clinically significant mood or mental status changes shall be reported to the
3 supervisory nurse, physician, and Social Service Designee and promptly charted.

4 **V. Cardiopulmonary Resuscitation (CPR)**

5 174. Defendants shall insure that all of their employed licensed nurses recognize the need for
6 CPR and understand the procedure for doing CPR.

7 **W. Gastrostomy Tubes (aka G-Tubes)**

8 175. G-tube insertion or re-insertion shall be done only by qualified and competent licensed
9 registered nurses with demonstrated competency to perform such procedure.

10 **X. Wanderers**

11 176. Each skilled nursing facility's Administrator and Director of Nursing must receive
12 specific training on the issue of the prevention of accidents and injuries to patients who are
13 known to be habitual wanderers or exit seekers. Upon the completion of this training, the skilled
14 nursing facility's Administrator and Director of Nursing must together inspect their facility for
15 any entrances or exits that pose a reasonably foreseeable danger to exit seekers or wanderers.
16 The Administrator and Director of Nursing will then be responsible for having in place sufficient
17 means to reasonably guard against exit seekers and wanderers leaving the facility without the
18 knowledge of the facility's staff and receiving great bodily injury or death as a direct result.

19 **Y. Staffing**

20 177. Each skilled nursing facility shall be in full compliance at all times with all state and
21 federal regulatory and statutory requirements regarding the minimum number of nursing staff
22 and other patient care staff required to be present at each skilled nursing facility, including, but
23 not limited to, 42 C.F.R. section 483.30 and California Health and Safety Code section 1276.5.
24 Maintaining only the minimum level of nursing staff or other patient care staff as required by
25 applicable state or federal regulations or statutes shall not necessarily constitute compliance with
26 this PIFJ, if it would be reasonable to maintain a higher ratio of such staff to resident due to the
27 care needs of the residents or other factors which would reasonably support the necessity of such
28 additional staff.

1 178. If any skilled nursing facilities are licensed for one hundred (100) or more beds, each
2 such skilled nursing facility shall have at least one (1) Registered Nurse present twenty-four (24)
3 hours a day, seven (7) days a week, awake and on duty, in the facility at all times, in addition to
4 the Director of Nursing. The Director of Nursing and the Registered Nurse required to be on
5 duty shall not be the same person performing both functions at the same time.

6 179. If any skilled nursing facilities are licensed for sixty (60) to ninety-nine (99) beds, each
7 such skilled nursing facility shall have at least one (1) Registered Nurse or Licensed Vocational
8 Nurse present twenty-four (24) hours a day, seven (7) days a week, awake and on duty, in the
9 facility at all times, in addition to the Director of Nursing. The Director of Nursing and the
10 Registered Nurse required to be on duty shall not be the same person performing both functions
11 at the same time.

12 180. If any skilled nursing facilities are licensed for fifty-nine (59) or fewer beds, each such
13 skilled nursing facility shall have at least one (1) Registered Nurse or Licensed Vocational Nurse
14 present twenty-four (24) hours a day, seven (7) days a week, awake and on duty, in the facility at
15 all times.

16 181. Stipulated Future Restitution:

17 a. Except for Special Treatment Program behavioral units (herein “STPs”), or
18 Intermediate Care Facilities (herein “ICFs”), each of Defendants’ California skilled nursing
19 facilities, shall each year employ sufficient nursing staff to provide at least a minimum daily
20 average of three point two (3.2) hours of “direct nursing care” per patient day (herein “3.2
21 NHPPD”).

22 b. Starting with the year 2006 data, and each year thereafter, the BMFEA will
23 calculate the yearly daily average of direct nursing care hours for each of Defendants’ facilities,
24 by (1) utilizing the reports entitled “Long-term Care Facility Integrated Disclosure and Medi-Cal
25 Cost Report Facsimile” (herein OSHPD reports) submitted by Defendant under penalty of
26 perjury to the Office of Statewide Health Planning and Development (OSHPD), and by (2)
27 utilizing “specified information” conveyed by or obtained from the Defendant. Such “specified
28 information” shall consist of a) “hours” and “salaries and wages” for MDS coordinators, and b)

1 “hours” and “salaries and wages” for directors of nursing (DONS) in facilities with fewer than
2 sixty (60) beds if such information is not readily available from OSHPD reports. Defendants
3 must also convey the data upon which these figures are based. Defendants shall calculate these
4 figures using the same method it uses to calculate the “productive hours” and “salaries and
5 wages” columns of the “routine services” section on page SIDR 3 of 3 of their OSHPD reports.
6 Defendants shall convey the “specified information” for each facility, and underlying data,
7 within thirty (30) days of Defendants submitting their OSHPD report under penalty of perjury for
8 that facility.

9 c. In any given year, if the yearly daily average for direct nursing care hours for a
10 facility, except for STPs or ICFs, is below 3.2 NHPPD, Defendants shall pay a stipulated
11 restitution amount to the Medi-Cal program for each facility that did not at least meet the 3.2
12 NHPPD average.

13 d. To determine whether Defendants have complied with this requirement, the
14 BMFEA will utilize the “specified information” described above and the direct nursing care
15 information reported by Defendants under penalty of perjury in their OSHPD reports, on the
16 “Geriatric Nurse Practitioners,” “Registered Nurses,” “Licensed Vocational Nurses,” “Nurse
17 Assistants (aides and orderlies),” and “Temporary (registry) Nursing Services” lines on SIDR
18 page 3 of 3 of the OSHPD reports. (Information on the “Other Salaries and Wages,”
19 “Technicians and Specialists,” and “Supervisors and Management” lines will not be used.) This
20 determination will be conveyed to Defendant Pleasant Care Corporation by the BMFEA.

21 e. For each facility not in compliance with the 3.2 NHPPD requirement, Defendant Pleasant
22 Care Corporation shall pay a stipulated restitution amount. The formula for calculating the
23 stipulated restitution amount is attached as Exhibit A. The BMFEA will notify Defendant
24 Pleasant Care Corporation of the stipulated restitution amount for each facility and the total
25 amount of stipulated restitution for each year. Defendants shall deliver a single restitution check
26 each year in accordance with paragraph 225 of this PIFJ.

27 ///

28 ///

1 f. This stipulated restitution paragraph utilizing 3.2 NHPPD is based upon the
2 statutory and regulatory language, and upon the California Department of Health Services'
3 policy and procedure manual on calculating the minimum NHPPD, existing as of the Effective
4 Date of this PIFJ. If, during the term of this PIFJ, such statutes or regulations are changed so as
5 to increase the minimum NHPPD above 3.2, or such policy and procedure manual is changed on
6 how the NHPPD may be calculated, any such changes in the statutes, regulations, or policy and
7 procedure manual shall govern this paragraph, and the formula used to calculate the stipulated
8 restitution shall automatically be revised so as to be in accord with any such changes.

9 g. Notwithstanding stipulated restitution in this paragraph, Defendants may also be
10 subject to civil penalties for failing to provide at least a minimum of 3.2 NHPPD at each of their
11 facilities, except for STPs.

12 182. Except at Special Treatment Program behavioral units and Intermediate Care Facilities,
13 Defendants shall each year employ sufficient registered nurses for direct patient care so that the
14 averages of Defendants' California skilled nursing facilities according to bed count size will at
15 least equal the BMFEA 2002 state profile group averages according to bed count size for direct
16 care registered nurses (herein "State RN Averages"). The BMFEA 2002 State Profile Group bed
17 count sizes are as follows: between 1 and 59; between 60 and 99; and 100 and greater. The
18 State RN Averages are based upon the 2002 OSHPD data collected from Medicaid certified,
19 free-standing skilled nursing facilities, excluding STPs. The State RN Averages are as follows:
20 0.284 for bed count between 1 and 59; 0.282 for bed count between 60 and 99; 0.340 for bed
21 count of 100 and greater. To determine whether Defendants have complied with the requirement
22 of this paragraph, starting with the year 2006 data, and each year thereafter, the yearly registered
23 nurse hour averages of Defendants' facilities will be calculated by the BMFEA from Defendants'
24 OSHPD cost reports that are submitted under penalty of perjury. These calculations will be
25 made using only the information provided on the "Registered Nurses" line on SIDR page 3 of 3
26 of the OSHPD reports. (Information on the "Other Salaries and Wages," "Technicians and
27 Specialists," and "Supervisors and Management" lines will not be used.) This determination will
28 be conveyed to Defendant Pleasant Care Corporation by the BMFEA. In any given year, if

1 Defendants do not comply with the “State RN Averages,” Defendant Pleasant Care Corporation
2 shall pay a stipulated civil penalty for that year. The formula for calculating the stipulated civil
3 penalty amount is attached as Exhibit B. The BMFEA will notify Defendant Pleasant Care
4 Corporation of the stipulated civil penalty amount for each bed count size group and the total
5 amount of stipulated civil penalties for each year for violation of this paragraph. The civil
6 penalty shall be paid in accordance with paragraph 224 of this PIFJ.

7 **Z. Training**

8 183. Defendants shall conduct in-service training for all patient care staff at a facility that
9 receives any citation from DHS relating to quality of care.

10 184. Each person providing any in-service training or other training required by this PIFJ must
11 be knowledgeable about the subject area covered by such training, so as to be able to
12 communicate the information necessary to be taught and learned during such training.

13 185. Defendants shall make all information and documentation regarding required training
14 sessions conducted at California skilled nursing facilities available to the BMFEA upon request.

15 186. Defendants shall notify the BMFEA, upon request by the BMFEA, of the date, time,
16 location, subject matter, and instructor(s) of any upcoming required training sessions.

17 187. The BMFEA’s employees, agents, or representatives shall be allowed to attend any
18 required training sessions conducted by any skilled nursing facility in order to monitor
19 compliance with this PIFJ.

20 188. Clinical demonstrations concerning the subject matter being taught during any training
21 sessions required by this PIFJ shall be conducted whenever reasonably possible.

22 189. All persons trained pursuant to the requirements of this PIFJ shall be evaluated through
23 means such as testing, monitoring, demonstrating competency, or supervision to confirm that
24 each person trained understands the topic taught, and is properly implementing the practices,
25 policies, procedures, or techniques that were taught. If it becomes evident to the instructor or
26 supervisor that the person trained does not understand the topic taught, and/or is not properly
27 implementing the practices, policies, or techniques that were taught, then further training shall be
28 conducted for such person, including one-on-one training, if necessary, until such time that the

1 person being trained does in fact understand the topic taught, and is implementing the practices,
2 policies, procedures, or techniques that were taught. Any person who is not able to demonstrate
3 that he or she understands the topic taught, or who is not able to demonstrate that he or she is
4 properly implementing the practices, policies, procedures, or techniques that were taught, shall
5 not be allowed to engage in direct patient care involving any of such practices, policies,
6 procedures, or techniques without the direct supervision by a competent supervisor. Such
7 practices, policies, procedures, or techniques shall not be performed even with the direct
8 supervision by a competent supervisor if the attempted implementation of such practices,
9 policies, procedures, or techniques by the person being trained creates a reasonable possibility of
10 injury or harm to the resident being cared for if such implementation is not done properly.

11 190. General training. Within ninety (90) days after the Effective Date, Defendants shall
12 provide at least two (2) hours of general training to each Covered Person.¹ This general training
13 shall explain Defendants’:

- 14 a. PIFJ requirements;
- 15 b. Compliance program (including the policies and procedures as they pertain to
16 general compliance issues); and
- 17 c. Code of Conduct.

18 191. New Covered Persons shall receive the general training described above within thirty
19 (30) days of the beginning of their employment or contract, or within ninety (90) days after the
20 Effective Date, whichever is later. Every Covered Person shall receive such general training on
21 an annual basis.

22
23
24
25
26
27 ¹ Any non-employee who is hired on a temporary basis (regardless of whether he or she is considered a “Covered
28 Person,” is required to follow the policies and procedures of the facility, Defendants, and this PIFJ. Defendants
shall ensure that there is sufficient supervision to ensure that a temporary non-employee is acting within the
parameters of such policies and procedures. Any temporary non-employee who works in Defendants’ facilities for
more than a thirty (30) day period, regardless of how many days during that period the person is actually present in
the facility, must complete the training requirements set forth herein.

1 192. Specific training. Within ninety (90) days after the Effective Date Defendants shall
2 initiate the following: each Covered Person who is involved directly or indirectly in the delivery
3 of patient or resident care (including individuals who are responsible for quality assurance,
4 setting policies or procedures, or making staffing decisions) shall receive at least eight (8) hours
5 of training in addition to the general training required above. This training shall include the PIFJ
6 pressure ulcer and clinical records training required and a discussion of the policies and
7 procedures set forth in section V.C., including, but not limited to:

8 a. Policies, procedures, and other requirements applicable to the documentation of
9 medical records; and

10 b. The coordinated interdisciplinary approach to providing care to residents,
11 including, but not limited to, resident assessment and care planning; nutrition; diabetes care;
12 wound care; infection control; abuse and neglect policies and reporting procedures; appropriate
13 drug therapies; appropriate mental health services; provision of basic care needs; incontinence
14 care; resident rights and restraint use; ADL care; therapy services; quality of life, including
15 accommodation of needs and activities; and assessment of the resident's competence to make
16 treatment decisions.

17 193. Affected new Covered Persons shall receive begin receiving this training within ten (10)
18 days of the beginning of their employment or contract or within ninety (90) days after the
19 Effective Date of this PIFJ, whichever is later. If a new Covered Person has any responsibility
20 for the delivery of patient or resident care, then prior to completing this specific training, a
21 Defendant Covered Person who has completed the substantive training shall review all of the
22 untrained person's work.

23 194. Every Covered Person shall complete such specific training within one (1) year after the
24 effective date of the PIFJ and at least annually thereafter.

25 195. Each Covered Person shall certify, in writing, that he or she has attended the required
26 training. The certification shall specify the type of training received and the date received. The
27 Compliance Officer shall retain the certifications, along with specific course materials.

28 ///

1 196. Each facility shall conduct periodic training on an “as needed” basis (but at least semi-
2 annually) on those quality of care issues identified by the Board of Directors and the Compliance
3 Committee. In determining what training should be performed, these committees shall review
4 the complaints received, DHS surveys, staff turnover data, any other state or federal surveys,
5 including those performed by JCAHO or other such private agencies, any internal surveys, and
6 the CMS quality indicators. Such training shall be provided to all Covered Persons at the facility
7 who are responsible for patient or resident care.

8 **AA. Medical Directors**

9 197. Each skilled nursing facility in California shall encourage its Medical Director(s) to
10 regularly attend continuing medical education programs that address geriatrics, including, but not
11 limited to, medical therapies utilized in wound care, nutrition, and diabetic care for long-term
12 care residents.

13 198. Defendants shall employ all practicable means available to have their Medical Directors
14 in California be members in good standing with the American Medical Directors Association
15 (AMDA) and to abide by the AMDA Code of Ethics relevant to skilled nursing facilities.
16 Defendants shall be solely responsible for paying any reasonable costs, fee, or expenses
17 associated with their skilled nursing facility Medical Directors in California meeting the
18 requirements of the paragraph.

19 199. The Medical Director for each skilled nursing facility in California shall be provided with
20 copies of this PIFJ and the Code of Conduct within thirty (30) days after each becomes available,
21 and the Medical Director shall sign a receipt stating he or she has received such items. If for
22 some reason a Medical Director refuses to sign such a receipt, then the staff person providing the
23 items to such Medical Director shall sign the receipt with a note stating that the Medical Director
24 refused to sign, and that the items were in fact provided to the Medical Director. The same
25 procedures shall apply to any material revisions of such items.

26 200. Each skilled nursing facility shall have a written contract with its Medical Director that
27 clearly defines his or her duties and responsibilities, including requiring his or her review of
28 relevant policies and attendance at quarterly QAA meetings.

1 **BB. New Business Units or Locations**

2 201. In the event that any of the Defendants become licensed to operate any additional skilled
3 nursing facility within the State of California after the Effective Date, such Defendant shall
4 notify the BMFEA of this fact within thirty (30) days after becoming licensed. This notification
5 shall include the type of facility, location of the new facility, phone number, fax number, federal
6 health care program provider number(s) (if any), and the corresponding payor(s) (contractor
7 specific) that has issued each provider number. All Covered Persons at such locations shall be
8 subject to the requirements in this PIFJ that apply to new Covered Persons (e.g., completing
9 certifications and undergoing training). In the case of additional skilled nursing facilities in
10 California, the obligations of this PIFJ shall apply only to services or activities occurring after
11 the Effective Date of the acquisition or establishment of the additional skilled nursing facility.
12 Defendants shall use their best efforts to implement the requirements of this PIFJ in any
13 additional skilled nursing facilities as soon as practicable, although the use of any such “best
14 efforts” shall not necessarily be a defense to violations of this PIFJ which arise in such additional
15 skilled nursing facilities in California.

16 **CC. Notifications and Submission of Reports**

17 202. Implementation report. Within one hundred and twenty (120) days after the Effective
18 Date, Defendants shall submit a written report to BMFEA summarizing the status of its
19 implementation of the requirements of this PIFJ. This implementation report shall include:

- 20 a. The name, address, phone number and position description of all individuals in
21 positions described in section V.A;
- 22 b. The charter for the Board of Directors’ committee required in section V.A.4;
- 23 c. The program for internal audits and reviews required in section V.A.5;
- 24 d. A copy of Defendants’ Code of Conduct required by section V.C.1;
- 25 e. The summary of the policies and procedures required by section V.C.2;
- 26 f. A description of the training programs required by section V.Z, including a
27 description of the targeted audiences and a schedule of when the training sessions were held;
- 28 g. A certification by the Compliance Officer that:

1 (1) The policies and procedures required by section V.C.2 have been
2 developed, are being implemented, and have been made available to all
3 pertinent Covered Persons;

4 (2) All Covered Persons have completed the Code of Conduct certification
5 required by section V.C.1; and

6 (3) All Covered Persons have completed the training and executed the
7 certification required by section V.Z.

8 h. A description of the disclosure program required by section V.A.6;

9 i. A summary of personnel actions taken pursuant to sections V.A.7 and V.A.8; and

10 j. A list of all of Defendants' locations (including mailing addresses), the

11 corresponding name under which each location is doing business, the corresponding telephone
12 numbers and facsimile numbers, each location's Federal health care program Defendants
13 identification numbers(s), and the name, address, and telephone number of the payor (specific
14 contractor) that issued each Defendants identification number.

15 203. Annual Reports. Defendants shall submit to BMFEA an annual report with respect to the
16 status and findings of Defendants' compliance activities over the one year period covered by the
17 Annual Report. Each Annual Report shall include:

18 a. Any change in the identity or position description of individuals in positions
19 described in section V.A., a change in any of the committees' structure or charter, or any change
20 in the internal audit and review program;

21 b. A certification by the Compliance Officer that:

22 (1) All Covered Persons have completed the annual Code of Conduct
23 certification required by section V.C.1;

24 (2) All Covered Persons have completed the training and executed the
25 certification required by section V.Z; and

26 (3) Defendants have effectively implemented all plans of correction related to
27 problems identified under this PIFJ, Defendants' compliance program, or
28 internal audits.

1 c. Notification of any changes or amendments to the policies and procedures
2 required by section V.C.2 and the reasons for such changes (e.g., change in contractor policy);

3 d. A summary of the facilities audited or reviewed, a summary of the findings of
4 such audit or review, and a summary of the corrective action taken under the program for
5 internal audits and reviews;

6 e. Defendants' response/corrective action plan to any issues raised by the Monitor;

7 f. A copy of the confidential disclosure log required by section V.A.6 (excluding
8 any calls that relate solely to human resources issues);

9 g. A description of any personnel action (other than hiring) taken by Defendants as a
10 result of the obligations in sections V.A.7 and V.A.8, and the name, title, and responsibilities of
11 any person that falls within the ambit of sections V.A.7 and V.A.8, and the actions taken in
12 response to the obligations set forth in that section;

13 h. A summary describing any ongoing investigation or legal proceeding conducted
14 or brought by a governmental entity involving an allegation that Defendants have committed a
15 crime or have engaged in fraudulent activities, which have been reported pursuant to section
16 V.C.1. The statement shall include a description of the allegation, the identity of the
17 investigating or prosecuting agency, and the status of such investigation, legal proceeding or
18 requests for information; and

19 i. A description of all changes to the most recently provided list (as updated) of
20 Defendants' locations (including mailing addresses), the corresponding name under which each
21 location is doing business, the corresponding telephone numbers and facsimile numbers, each
22 location's Federal health care program Defendants identification numbers(s), and the name,
23 address, and telephone number of the payor (specific contractor) that issued each Defendants
24 identification number.

25 The first Annual Report shall be received by the BMFEA no later than one year and
26 ninety (90) days after the Effective Date. Subsequent Annual Reports shall be submitted no later
27 than the anniversary date of the due date of the first Annual Report.

28 ///

1 j. Certifications. The implementation report and annual reports shall include a
2 certification by Defendants' President and Chief Executive Officer, under penalty of perjury,
3 that: 1) Defendants are in compliance with all of the requirements of this PIFJ, to the best of his
4 or her knowledge; and 2) the President and Chief Executive Officer have reviewed the report and
5 have made reasonable inquiry regarding its content and believe that, upon such inquiry, the
6 information is accurate and truthful. Each report shall also include a resolution (or its
7 equivalent) from Defendants' Board of Directors certifying that they have reviewed the Annual
8 Report and agree with the statements made therein.

9 204. The first Annual Report shall be provided to the BMFEA no later than one (1) year and
10 one hundred twenty (120) days after the Effective Date. Subsequent Annual Reports shall be
11 provided to the BMFEA no later than the anniversary date of the due date of the first Annual
12 Report.

13 205. Defendants shall notify the BMFEA within forty-eight (48) hours of any resident death in
14 any of Defendants' California skilled nursing facilities, which is reportable to DHS; any
15 substantiated allegation of staff abuse or neglect (as defined in the applicable state or federal
16 regulations or statutes) of a resident occurring at any of Defendants' California skilled nursing
17 facilities; and any resident transfer and admission to a hospital as a result of injury or accident,
18 which is reportable to DHS, at any of Defendants' California skilled nursing facilities.

19 Defendants shall specify for each such death or incident:

- 20 a. The full name and social security number of the resident;
- 21 b. The date of death or incident;
- 22 c. The names, positions, addresses, and telephone numbers of as many witnesses as
23 are diligently discernible; and
- 24 d. To the extent that such information is available to Defendants, a brief description
25 of the events surrounding the death or incident.

26 206. Within thirty (30) days of discovery, Defendants shall notify the BMFEA in writing of
27 any ongoing investigation or legal proceeding conducted or brought by a governmental entity or
28 its agents involving an allegation that any Covered Person has committed a crime or has engaged

1 in fraudulent activities related to the provision of care to residents at any of Defendants'
2 California skilled nursing facilities. This notification shall include a description of the
3 allegation, the identity of the investigating or prosecuting agency, and the status of such
4 investigation or legal proceeding. Defendants shall also provide written notice to the BMFEA
5 within thirty (30) days of the resolution of the matter, and shall provide the BMFEA with a
6 description of the findings and/or results of the proceedings, if any.

7 207. If DHS provides notice to any of the Defendants that a facility has been found to have
8 provided substandard quality of care, or if DHS notifies any of the Defendants that there is an
9 immediate and serious threat (immediate jeopardy) to patient health and safety at a facility,
10 Defendants shall immediately notify the BMFEA. The notification to the BMFEA shall include:

11 a. Within forty eight (48) hours, a description of the relevant facts and persons
12 involved; and

13 b. Within thirty (30) days, Defendants' current actions and future plans of action for
14 correction.

15 208. Defendants shall furnish BMFEA, on a monthly basis, copies of all citations issued to its
16 California facilities. Defendants shall also furnish BMFEA with copies of any additional DHS
17 reports on any of its California facilities upon request of BMFEA. The material in this paragraph
18 may be sent via standard mail.

19 209. Unless otherwise stated in writing subsequent to the Effective Date, all notifications and
20 reports required under this PIFJ shall be submitted to the persons listed below by either personal
21 service, certified mail, next-day courier, or fax:

22 BMFEA:

23 Alan B. Robison
24 Supervising Deputy Attorney General
25 Bureau of Medi-Cal Fraud and Elder Abuse
26 1425 River Park Drive, Suite 300
27 Sacramento, CA 95815
28 Telephone: (916) 263-0401
Facsimile: (916) 274-2929

1 Defendants:

2 Dahlia Jimenez
3 2258 Foothill Boulevard
4 La Canada, CA 91001
5 Telephone: *818) 248-9808 ext. 258

6 210. Defendants shall provide the BMFEA with any changes to the above information within
7 fifteen (15) days of any such change.

8 **DD. Inspection and Review**

9 211. All of the BMFEA's pre-existing inspection and review rights pursuant to California and
10 federal statutes and regulations shall be immediately complied with by Defendants at all times.
11 BMFEA shall have at least the same rights of access as DHS for the purpose of BMFEA carrying
12 out its official duties. In addition to any other rights the BMFEA may have by statute,
13 regulation, or contract, the BMFEA, including its employees and its duly authorized agents and
14 representatives, shall have the right to request, inspect, review, examine, and copy Defendants'
15 books, records, manuals, personnel records, residents' charges, and other document and
16 supporting materials related to patient care operations at any California skilled nursing facility,
17 and/or conduct a comprehensive on-site review of any of Defendants' California skilled nursing
18 facilities, for the purpose of verifying and evaluating: (a) Defendants' compliance with the terms
19 of this PIFJ; and (b) Defendants' compliance with the requirements of state and federal
20 regulations and statutes applicable to California skilled nursing facilities that directly or
21 indirectly affect the quality of care being provided to the residents of such facilities. The
22 documentation described above shall be made available by Defendants to the BMFEA, including
23 its employees and its duly authorized agents or representatives, at all reasonable times for
24 inspection, audit, or reproduction. Furthermore, for purposes of this provision, the BMFEA,
25 including its employees and its duly authorized agents or representatives, may interview any of
26 Defendants' employees or contractors who consent to be interviewed at the individual's place of
27 business during normal business hours or at such other place and time as may be mutually agreed
28 upon between the individual and the BMFEA. Defendants agree to assist the BMFEA in

1 contacting and arranging interviews with such individuals upon the BMFEA's request.
2 Defendants' employees and contractors may elect to be interviewed with or without a
3 representative of Defendants and/or an attorney present.

4 212. Defendants shall maintain for inspection each document and record directly relating to
5 compliance with this PIFJ for five (5) years from date of creation of each document or record (or
6 longer if otherwise required by law).

7 **VI.**

8 **NOTIFICATION AND OPPORTUNITY TO CURE**

9 213. If the BMFEA obtains knowledge or a report of an alleged violation of this PIFJ, then
10 prior to seeking relief from the Court for a violation of this PIFJ (if the BMFEA believes that the
11 nature of the violation and the surrounding circumstances justify seeking relief from the Court),
12 the BMFEA shall serve a letter of notification on Defendants through Defendants' agents for
13 service as designated herein, advising Defendants of the following:

- 14 a. The provision of this PIFJ believed to have been violated;
- 15 b. The general nature of the alleged violation;
- 16 c. At the sole discretion of the BMFEA, facts and circumstances of the alleged
17 violation; where Defendants have prior knowledge of the basic facts; or, where Defendants have
18 no prior knowledge of the basic facts, a general description of the alleged violation with facts
19 and circumstances which would permit Defendants to investigate and cure the alleged violation,
20 though such notice does not require BMFEA to investigate or specify every known or suspected
21 fact before proceeding under this section; and
- 22 d. Any suggested cure of such alleged violation, including the time frame in which
23 such cure is expected to be implemented.

24 214. The Defendants shall have fourteen (14) days after receipt of the letter of notification in
25 which to serve a letter in response on the BMFEA regarding the issues raised in the BMFEA's
26 letter of notification. The letter in response shall address each issue raised in the letter of
27 notification, and shall include one or more of the following:

28 ///

- 1 a. A plan of correction with respect to each alleged violation, including an
- 2 anticipated date of completion;
- 3 b. An explanation of the circumstances;
- 4 c. Any affirmative defenses; and
- 5 d. Any other information the Defendants believe to be relevant to the issues raised in
- 6 the letter of notification.

7 215. If the BMFEA believes that the letter in response does not adequately resolve the alleged
8 violations or any other issues raised in the letter of notification, the BMFEA shall “meet and
9 confer” with the Defendants prior to seeking relief in this Court. “Meet and confer,” for this
10 purpose, shall mean either meeting in person with opposing counsel, or speaking on the
11 telephone with opposing counsel. Pursuant to applicable law, including but not limited to section
12 1152 of the California Evidence Code, none of the communication between the parties during the
13 meet and confer shall be admissible against any party to this PIFJ in any subsequent judicial or
14 administrative proceeding.

15 216. Any resolution proposed by the Defendants in their letter in response, or any actions
16 taken by the Defendants with respect to the issues raised in the letter of notification, shall not
17 operate to prohibit in any way the BMFEA’s right to seek full relief from the Court after an
18 attempt to meet and confer on the issues involved or Defendants’ right to fully contest any such
19 effort by the BMFEA. Any resolution proposed by the Defendants in their letter in response, or
20 any actions taken by the Defendants with respect to the issues raised in the letter of notification,
21 shall not provide a basis for any findings of, or remedies to be ordered by, the Court and shall not
22 deprive Defendants of their rights to defend such action(s) on all available grounds.

23 217. The service of the letter of notification as required herein shall operate to toll any and all
24 applicable statutes of limitations, with respect to actions between the parties hereto, as well as
25 the application of the affirmative defense of laches, in any proceeding or action brought by the
26 BMFEA regarding such alleged violations of this PIFJ. Such tolling shall commence on the date
27 of such service, and shall remain in effect until the meet and confer process has been completed.
28 For the purposes of this provision, any party to this PIFJ may “complete” the meet and confer

1 process in its sole discretion by serving notice to the other party. The date of service for the
2 purpose of this provision shall be as set forth in the following schedule, according to the method
3 of service:

4 a. By personal service: the date of personal service;

5 b. By first class mail, with certified, return receipt: the date of the letter is deposited
6 for collection by the United States Postal Service;

7 c. By next day courier: the date the letter is deposited for collection by the next day
8 courier; and

9 d. By facsimile: the date of the facsimile transmission, as evidenced by a facsimile
10 confirmation report printed by the facsimile machine or by telephone confirmation obtained from
11 the receiving party.

12 218. The letter of notification shall be deemed to have been received by the Defendants on the
13 dates set forth in the following schedule, according to the method of service:

14 a. By personal service: the date of personal service;

15 b. By first class mail, with certified, return receipt: the date the receipt is signed;

16 c. By next-day courier: the next business day after the date of collection by the
17 next-day courier, excluding weekends and holidays; and

18 d. By facsimile: the date of the facsimile transmission, as evidenced by a facsimile
19 confirmation report printed by the facsimile machine or by telephone confirmation obtained from
20 the receiving party.

21 219. Notwithstanding any of the provisions of this section (Notification and Opportunity to
22 Cure), if the BMFEA has good cause to believe that there are repeated, systemic or flagrant
23 violations of an applicable statute or regulation, and that injury or harm to any of the residents in
24 any of the Defendants' California skilled nursing facilities has occurred or is imminent, the
25 BMFEA may seek relief in this Court, or take whatever other action otherwise authorized by law
26 the BMFEA deems necessary to ensure the health and safety of residents at any California
27 skilled nursing facility, without first complying with the other provisions of this Section.

28 Whether such good cause exists shall be within the sole discretion of the BMFEA and there shall

1 be a non-rebuttable presumption that any such decision by the BMFEA to ignore the Notification
2 and Opportunity to Cure provisions set forth above and to proceed directly to the Court was
3 based on good cause; provided that such presumption shall not provide a basis for any findings
4 of, or remedies to be ordered by, the Court and shall not deprive Defendants of their rights to
5 defend such action(s) on all appropriate grounds.

6 **VII.**

7 **DISCLOSURES AND PRIVILEGES**

8 220. Subject to California's Public Records Act (CPRA), Government Code section 6250 *et*
9 *seq.* provisions, Plaintiff shall make a reasonable effort to notify Defendants prior to any release
10 by Plaintiff of information submitted by Defendants pursuant to its obligations under this PIFJ
11 and identified at any time after submission by Defendants as trade secrets, commercial or
12 financial information and privileged and confidential under the CPRA rules. With respect to the
13 disclosure of such information, Defendants shall have all rights set forth in the CPRA.
14 Defendants shall refrain from identifying any information as trade secrets, commercial or
15 financial information and privileged and confidential that does not meet the criteria for
16 exemption from disclosure under the CPRA. Nothing in this PIFJ, or any communication or
17 report made pursuant to this PIFJ, shall constitute or be construed as any waiver by Defendants
18 of Defendants' attorney-client or work product privileges. Notwithstanding that fact, the
19 existence of any such privilege does not affect Defendants' obligation to comply with the
20 provisions of this PIFJ.

21 **VIII.**

22 **MODIFICATION OF INJUNCTIVE RELIEF**

23 221. Defendants will not, unless agreed to by Plaintiff, seek modification of this PIFJ for at
24 least five (5) years after the Effective Date of this PIFJ. Modifications as used in this PIFJ
25 include termination of this PIFJ.

26 ///

27 ///

28 ///

1 **IX.**

2 **COSTS**

3 222. Defendant Pleasant Care Corporation shall pay Plaintiff its costs of investigation and
4 attorneys' fees in the sum of three hundred and fifty thousand dollars (\$350,000) for its
5 investigation beginning July 14, 2003. The amount shall be paid in eight quarterly payments of
6 \$43,750.00, beginning April 1, 2006, by certified or cashier's checks payable to the Department
7 of Justice, and shall be delivered to Supervising Deputy Attorney General Alan B. Robison.

8 **X.**

9 **PENALTIES**

10 223. Pursuant to California Business and Professions Code section 17206, Defendant Pleasant
11 Care Corporation shall pay the sum of one million dollars (\$1,000,000.00) to Plaintiff as civil
12 monetary penalties. Of this figure, one-half shall be paid in eight quarterly payments of
13 \$62,500.00, beginning April 1, 2006, by certified or cashier's checks, payable to the California
14 General Fund, and shall be delivered to Supervising Deputy Attorney General Alan B. Robison;
15 and one-half shall be paid in eight quarterly payments of \$62,500.00, beginning April 1, 2006, by
16 certified or cashier's checks, payable to the Treasurer of the County of Los Angeles, and shall be
17 delivered to Supervising Deputy Attorney General Alan B. Robison.

18 224. Pursuant to California Business and Professions Code section 17207, for any future
19 stipulated civil penalties pursuant to paragraph 182 of this PIFJ, payment shall be made to the
20 same entities as specified in paragraph 223 of this PIFJ, and the checks shall be delivered within
21 thirty (30) days of notification of the amounts by the BMFEA. If a court action is necessary to
22 enforce the terms of paragraph 182, payment of the stipulated civil penalty shall be one-half to
23 the California State Treasurer and one-half to the treasurer of the county where such action is
24 filed.

25 **XI.**

26 **RESTITUTION**

27 225. Pursuant to Business and Professions Code section 17203, for any future stipulated
28 restitution pursuant to paragraph 181 of this PIFJ, Defendant Pleasant Care Corporation shall

1 make payment by certified or cashier's check to the Health Care Deposit Fund, and shall deliver
2 the check to Supervising Deputy Attorney General Alan B. Robison. Defendants shall deliver
3 the check within thirty (30) days of notification of the amount by the BMFEA.

4 **XII.**

5 **MISCELLANEOUS ORDERS**

6 226. Defendants and their partners, officers, directors, representatives, assigns, successors,
7 subsidiaries, transferees, agents, employees, contractors, and subcontractors shall not intimidate
8 or take any retaliatory action against any individual who cooperated with the investigation of this
9 matter, and/or who cooperates with the BMFEA throughout the pendency of this PIFJ.

10 227. In the event Plaintiff takes action to enforce compliance with any provision of this PIFJ,
11 including collection of any sums due under this judgment, and if Plaintiff shall prevail in such
12 action, Plaintiff shall be entitled to collect from the Defendants against whom such action is
13 taken expenses incurred in taking such action, including attorneys' fees and costs of
14 investigation. Defendants shall not be entitled to collect expenses, costs or attorneys' fees from
15 Plaintiff if Plaintiff does not prevail. California Civil Code section 1717 is not applicable to this
16 provision.

17 228. The parties acknowledge that they engaged in arms' length negotiations which resulted in
18 the final language of the Stipulation for Entry of the Permanent Injunction and Final Judgment
19 and the Permanent Injunction and Final Judgment, and for the purposes of construing the terms
20 of these documents there is no presumption the documents should be interpreted against any
21 party. The presumption set forth in California Civil Code section 1654 is not applicable.

22 229. Nothing in this PIFJ shall affect the right of CMS or any other federal agency to enforce
23 any statutory or regulatory authorities with respect to Defendants' compliance with applicable
24 state and federal health care program requirements.

25 230. This PIFJ shall take effect immediately upon the entry thereof.

26 231. The clerk shall enter this PIFJ forthwith.

27 ///

28 ///

1 **XIII.**

2 **EFFECTIVE AND BINDING AGREEMENT**

3 232. This PIFJ shall be binding on the successors, assigns, and transferees of Defendants,
4 including restructuring resulting from corporate mergers or acquisitions;

5 233. Any modifications to this PIFJ shall be made with the prior written consent of the parties
6 to this PIFJ; and

7 234. The signed Defendants' signatories represent and warrant that they are authorized to
8 execute this PIFJ. The signed BMFEA signatory represents that he is signing this PIFJ in his
9 official capacity and that he is authorized to execute this PIFJ.

10 GOOD CAUSE APPEARING THEREFOR, THE FOREGOING PROVISIONS SHALL
11 BE THE ORDER OF THIS COURT.

12
13 IT IS SO ORDERED.

14 Dated: _____

15 JUDGE OF THE SUPERIOR COURT