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FILED
Superior Court of California
County of San Francisco

JUL 02 2024

CLERK OF THE SUPERIOR COURT
By Victor Par Tonklo
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF CALIFORNIA, EX REL. ROB BONTA, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,

Plaintiff,

\ \

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Defendant.

Good cause appearing, IT IS ORDERED that:

Case No. CGC-24-615801

[PROPOSED] ORDER GRANTING JOINT EX PARTE APPLICATION FOR COURT APPROVAL OF ASSURANCE OF VOLUNTARY COMPLIANCE

- 1. The Joint *Ex Parte* Application for Court Approval of Assurance of Voluntary Compliance is granted, and this Court hereby approves the Assurance of Voluntary Compliance lodged by the Parties, pursuant to Government Code section 12533, and attached hereto as Exhibit 1.
- 2. This Court shall retain jurisdiction to enforce the Assurance of Voluntary Compliance pursuant to Government Code section 12533.

Dated: 7/2/2

Us

The Honorable Richard B. Ulmer Judge of the Superior Court

[Proposed] Order Approving Assurance of Voluntary Compliance (Case No. CGC-24-615801)

EXHIBIT 1 TO PROPOSED ORDER

1	ROB BONTA	[EXEMPT FROM FILING FEES
2	Attorney General of California KATHLEEN BOERGERS	PURSUANT TO GOVERNMENT CODE SECTION 6103]
3	Acting Senior Assistant Attorney General EMILIO VARANINI (SBN 163952)	
4	NELI PALMA (SBN 203374) Supervising Deputy Attorneys General	
5	HEIDI L. LEHRMAN (SBN 210062) MALINDA LEE (SBN 263806)	
6	RYAN J. MCEWAN (SBN 285595) SOPHIA T. TONNU (SBN 330189)	
7	RAYMOND K. WRIGHT (SBN 331950) MATHEW SIMKOVITS (SBN 351416)	
8	Deputy Attorneys General 455 Golden Gate Avenue, Suite 11000	
9	San Francisco, CA 94102-7004	
İ	Telephone: (415) 510-3529 E-mail: Sophia.TonNu@doj.ca.gov	
10	Attorneys for the People of the State of Californi	1
11	· ·	E STATE OF CALIFORNIA
12	COUNTY OF SA	AN FRANCISCO
13		
14	THE PEOPLE OF THE STATE OF	Case No. CGC-24-615801
15	CALIFORNIA, EX REL. ROB BONTA, ATTORNEY GENERAL OF THE STATE	ASSURANCE OF VOLUNTARY
16	OF CALIFORNIA,	COMPLIANCE RE NONPROFIT HOSPITAL TRANSACTION
17	Plaintiff,	,
18	v.	
19	THE REGENTS OF THE UNIVERSITY	,
20	OF CALIFORNIA,	
21	Defendants.	
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23	111	
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25	/// _.	, ·
26	///	
27	111.	
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ASSURANCE OF VOLUNTARY COMPLIANCE RE NONPROFIT HOSPITAL TRANSACTION

Pursuant to the authority granted by Government Code section 12533, and subject to approval by the Superior Court of the State of California, the People of the State of California, acting by and through Attorney General Rob Bonta (the "People"), enter into the following Assurance of Voluntary Compliance ("Assurance") from The Regents of the University of California ("The Regents/UCSF Health") (collectively the "Parties") in connection with a nonprofit hospital transaction. In consideration of resolving a disputed matter, and without admitting any facts, wrongdoing or violations of law, The Regents/UCSF Health agree to enter into this Assurance. The Attorney General agrees that it serves the public interest and the interest of the People of the State of California to resolve the issues as set forth herein.

FACTS

- 1. CommonSpirit Health, Dignity Health, Saint Francis Memorial Hospital, Dignity Community Care, and Dignity Health Medical Foundation (collectively "Dignity") seek to transfer control of St. Mary's Medical Center ("SMMC") and Saint Francis Memorial Hospital ("SFMH"), two general acute care hospitals located in the City and County of San Francisco, as well as associated clinics and other assets to The Regents/UCSF Health (the "Proposed Transaction").
- 2. Pursuant to Corporations Code section 5920 et seq., the Attorney General has primary responsibility to review transactions and agreements by non-profit corporations concerning the sale or changes in control of general acute care hospitals and other health facilities. The Attorney General may independently review a transaction under the Clayton Act.
- 3. The Attorney General is concerned the Proposed Transaction could decrease competition in the commercial and Medi-Cal markets for inpatient general acute care hospital services in San Francisco, as well as other markets, and could result in restricted access to, or terminations of, services currently provided at SMMC and SFMH, in contravention of Corporations Code section 5923, subdivisions (g)-(j); Code of Regulations, title 11, section 999.5, subdivisions (f)(5)(a); (f)(7)-(9), (f)(12)-(14); and Section 7 of the Clayton Act, 15 U.S.C. section 18.

ORDER

Good cause appearing, IT IS ORDERED that, under the authority of Government Code section 12533, the Assurance of Voluntary Compliance entered into in this matter by the People of the State of California, acting by and through Attorney General Rob Bonta, and The Regents of the University of California/UCSF Health, is approved and this Court shall retain jurisdiction to enforce the Assurance of Voluntary Compliance.

Dated: 7/2/24

Judge of the Superior Court of California

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1 APPENDIX A ATTORNEY GENERAL'S CONDITIONS 2 TO PROPOSED TRANSACTION 3 Attorney General's Conditions to Proposed Assumption of Control of Saint Francis Memorial Hospital and Saint Mary's Memorial Hospital, as well as associated clinics and 4 other assets (the Hospitals) by The Regents of the University of California ("The Regents/UCSF Health"). 5 In connection with this Assurance of Voluntary Compliance (AVC): 6 (i) The Attorney General and the Regents/UCSF Health acknowledge they have entered into a Stipulation in connection with the assumption of control of the Hospitals. 7 8 (ii) Pursuant to the Stipulation, these conditions shall become effective upon the Court's entry of the Proposed Order accompanying the Stipulation; 9 (iii) The Regents/UCSF Health have entered into an Affiliation Agreement with Dignity 10 Health, Dignity Community Care, Dignity Medical Foundation, Saint Francis Memorial Hospital Corporation, and CommonSpirit Health, attached hereto as Exhibit 1; 11 (iv) These conditions are contingent on the parties in section (iii) consummating the 12 transactions contemplated by the Affiliation Agreement; and (v) These conditions are also contingent on The Regents/UCSF Health using Commercially 13 Reasonable Efforts to secure all required licensing and regulatory approvals in California, including those of the California Department of Public Health. 14 15 T. 16 These enumerated conditions of the AVC (Conditions) shall be legally binding under California Government Code Section 12533 on the following entities: (a) The Regents/UCSF Health; and (b) any affiliate, successor, or assignee acquiring ownership or control of the operating assets of SFMH¹ and/or SMMC,² including Saint Francis Memorial Hospital, a California nonprofit public 17 benefit corporation that is the current owner of SFMH, ("Saint Francis Memorial Hospital 18 Corporation") and which will control the assets of SFMH and SMMC following the completion of 19 the transaction contemplated in the Affiliation Agreement (collectively, the "Bound Parties"). 20 Unless otherwise specified, as used in this AVC, "Commercially Reasonable" shall mean reasonable, diligent, good-faith efforts to comply with the Conditions, as would be exercised by 21 similarly situated operators of general acute care hospitals and medical clinics in similar markets 22 ¹ Throughout this AVC, the term "Saint Francis Memorial Hospital" and "SFMH" shall mean the general acute care hospital located at 900 Hyde Street, San Francisco, California, 94109, 23 and any other clinics, laboratories, units, services, or beds included on the license issued to SFMH by the California Department of Public Health (CDPH), effective as of the Closing Date of the 24 Affiliation Agreement, and fully operational as of that date, unless otherwise indicated. Nothing herein shall preclude UCSF Health from renaming SFMH or from operating it under a fictitious name consistent with applicable law.

Francis Memorial Hospital Corporation by CDPH, as of the Closing Date of the Affiliation

Agreement, and fully operational as of that date, unless otherwise indicated.

the general acute care hospital located at 450 Stanyan Street, San Francisco, California 94117 and any other clinics, laboratories, units, services, or beds included on the license issued to Saint

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² Throughout this AVC, the term "St. Mary's Medical Center" and "SMMC" shall mean

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1	in California, with comparable resources, payor mix, and payor rates servicing similar community needs. Except where specifically provided otherwise in these Conditions or as otherwise required
3	by law, the Commercially Reasonable standard shall apply to all obligations under these Conditions.
4	The Regents/UCSF Health acknowledge and agree that compliance with applicable state and federal laws, regulations, and rules, including those governing the operation of general acute care
5	hospitals is mandatory. The requirements of this AVC are in addition to, and not in lieu of, any other requirements of federal, state, or local law. Nothing in this AVC shall be construed as relieving The Regents/UCSF Health of the obligation to comply with all federal, state, and local
6	laws, regulations, or rules, nor shall any of the Conditions be deemed as permission for The Regents/UCSF Health to engage in any acts or practices prohibited by such laws, regulations, or rules.
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9	For ten (10) years from the Closing Date of the Affiliation Agreement, ³ the Bound Parties shall be required to provide written notice to the Attorney General sixty (60) days prior to entering into any agreement or transaction to do any of the following:
11	a. Sell, transfer, lease, exchange, option, convey, or otherwise dispose of SFMH or SMMC or both; or
12 13	b. Transfer control, responsibility, management, or governance of substantially all of SFMH or SMMC or both.
14	III.
15	Future Operation of SFMH. For five (5) years from the Closing Date of the Affiliation
16	Agreement, The Regents/UCSF Health or a Bound Party shall operate and maintain SFMH as a licensed general acute care hospital (as defined in California Health and Safety Code section 1250,
17	subdivision (a)) with the same types and levels of services, and associated staffing as offered as of the Closing Date, and which provides the community served with equal or greater access to those services, including:
18	a. 24-hour emergency services;
19	b. emergency treatment stations;
20	c. certification as a Primary Stroke Center; d. acute psychiatric services;
21	e. intensive care services;
22	f. orthopedic and sports medicine services; g. a burn unit;
23	h. gender-affirming care, including surgical services;
24	i. nuclear medicine, imaging, and radiology services;j. coronary care services, and cardiac and neurologic diagnostics;
25	k. cancer care; andl. advanced gynecology and other minimally invasive surgery.
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28	³ As used herein, "Closing Date" has the same meaning as "Effective Time," as defined in
~0	Section 2.1 of the Affiliation Agreement.

services, including, for example, providing transportation by shuttle, parking passes, transit passes,

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or any other mitigative assistance.

1	d. intensive care services;
2	e. certification as a Primary Stroke Center, and stroke and neurology services;
2	f. cardiovascular services, including cardiac catheterization laboratory services and
3	outpatient clinic;
,	g. nuclear medicine, imaging and radiology; h. laboratory and diagnostic services;
4	i. oncology services, including inpatient medical and surgical oncology services and
5	outpatient services;
6	j. orthopedic services including surgery and total joint replacement;
١	k. social services;
7	l. surgical services; and
8	m. women's health services, including women's reproductive services.
0	L.
9	VI.
10	Maintenance of SMMC Services after Five Years. For years six (6) through ten (10) from the
	Closing Date of the Affiliation Agreement, The Regents/UCSF Health shall use Commercially
11	Reasonable efforts to ensure that the following services currently offered at SMMC shall be maintained at either the physical space currently used by SMMC or at a location within the City
12	and County of San Francisco with the same capacity and associated staffing as offered as of the
	Closing Date, and which provides the community served with equal or greater access to those
13	services, including:
14	a. 24-hour emergency services;
1.	b. emergency treatment stations;
15	c. intensive care services;
16	d. acute psychiatric services, including adolescent inpatient psychiatric services;
	e. acute rehabilitation services; f. certification as a Primary Stroke Center, and stroke and neurology services;
17	f. certification as a Primary Stroke Center, and stroke and neurology services; g. orthopedic and sports medicine services;
18	h. nuclear medicine, imaging, and radiology services;
10	i. coronary care services, and cardiac and neurologic diagnostics;
19	j. oncology services, including inpatient medical and surgical oncology services and
20	outpatient services;
21	k. surgical services;l. orthopedic services including surgery and total joint replacement; and
Z I	m. women's health services, including women's reproductive services.
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23	If The Regents/UCSF Health or a Bound Party decides to discontinue, consolidate, materially
	decrease, relocate, or otherwise make material changes that adversely affect community access to the services in this condition, The Regents/UCSF Health shall give 60-day advance written
24	notification to the Attorney General, and shall reasonably cooperate with any resulting
25	information requests, subject to any demonstrated legally recognized privilege and appropriate confidentiality protections; provided, however, that temporary service reductions of six months or
	less, that are necessary to complete physical improvements or seismic renovations at the
26	Hospitals, shall not require prior written notice to the Attorney General.
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Maintenance of Services Provided through Contract or Lease. For ten (10) years The Regents/UCSF Health shall use Commercially Reasonable efforts to ensure that the following services and/or programs currently offered at SMMC (or associated clinic location(s)) shall be maintained at either their current physical space or at a location within the City and County of San Francisco with the same capacity and associated staffing as offered as of the Closing Date:

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a. Counseling Enriched Education Program (CEEP);

b. mental health rehabilitation services;

- c. long-term acute care hospital services;
- e. SFO airport clinic.

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27 28 d. Sister Mary Philippa Health Center; and

If The Regents/UCSF Health or a Bound Party decides to discontinue, consolidate, materially decrease, relocate, or otherwise make material changes that adversely affect community access to the services covered in this condition, The Regents/UCSF Health shall give 60-day advance written

notification to the Attorney General, and shall cooperate with any resulting information requests, subject to any demonstrated legally recognized privilege and appropriate confidentiality protections; provided, however, that temporary service reductions of six months or less, that are necessary to complete physical improvements or seismic renovations at the Hospitals shall not require prior written notice to the Attorney General.

To the extent that any reduction in service described in this Condition VII results from a third party electing to discontinue, terminate or refusing to extend the contract or lease that permits the provision of such services, The Regents/UCSF Health shall be required to notify the Attorney General within 30-days of the change in service.

VIII.

Participation in Medicare and Medi-Cal. For ten (10) years from the Closing Date of the Affiliation Agreement, The Regents/UCSF Health or a Bound Party shall ensure that SFMH and SMMC continue to:

a. Be certified to participate in the Medi-Cal program at the Hospitals;

- b. Maintain Medi-Cal Managed Care and county contracts in effect as of the Closing Date, and provide the same types and levels of emergency and non-emergency services at the Hospitals to Medi-Cal beneficiaries (both county and Medi-Cal Managed Care) provided as of the Closing Date, on the same terms and conditions as other similarly situated Hospitals offering substantially the same services, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless: (i) the contract is terminated by either party for cause,⁵ (ii) the terms and conditions, including compensation, are not Commercially Reasonable, or (iii) not extended or renewed by a Medi-Cal Managed Care Plan or county on its own initiative without cause; and
- c. Be certified to participate in the Medicare program by maintaining a Medicare Provider Number to provide the same or greater types and levels of emergency and

⁵ For-cause termination refers to the lawful dissolution of a contract pursuant to grounds stipulated therein and encompassing infractions such as breaches of contract, regulatory nonadherence, or deficiency in meeting prescribed standards of quality.

non-emergency services at the Hospitals to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care) as provided as of the Closing Date. 2 If The Regents/UCSF Health or a Bound Party determines that any contract covered in this condition satisfies subsection b.ii, The Regents/UCSF Health shall give written notification to the Attorney General within thirty (30) days of its determination, and shall reasonably cooperate with 4 any resulting information requests, subject to any demonstrated legally recognized privilege and appropriate confidentiality protections. 5 IX. 6 Charity Care Commitments. For ten (10) years from the Closing Date of the Affiliation 7 Agreement, The Regents/UCSF Health or a Bound Party shall provide an annual amount of charity care (as defined below) at SFMH equal to or greater than \$6,554,788 million and at SMMC equal to or greater than \$3,569,524 million (the Minimum Charity Care Amounts required) with an annual increase of 2.4%,6 9 For purposes hereof, the definition and methodology for calculating "charity care" and the 10 methodology for calculating "costs" shall be the same as that used by HCAI for annual hospital reporting purposes. The Hospitals shall use and maintain a charity care policy that is no less 11 favorable than the Financial Assistance Policy currently in effect at each hospital and in compliance with California and Federal law. 12 If the actual amount of charity care provided at SFMH for any year is less than the Minimum 13 Charity Care Amount required for such year, The Regents/UCSF Health shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide direct healthcare services to 14 residents in the SFMH service area, including 94102, 94103, 94105, 94107, 94108, 94109, 94110, 94111, 94112, 94114, 94115, 94116, 94117, 94118, 94121, 94122, 94123, 94124, 94127, 94130, 15 94131, 94132, 94133, 94134, 94158, and 94965 ZIP codes. 16 If the actual amount of charity care provided at SMMC for any year is less than the Minimum Charity Care Amount required for such year, The Regents/UCSF Health shall pay an amount equal 17 to the deficiency to one or more tax-exempt entities that provide direct healthcare services to residents in the SMMC service area, including 94102, 94103, 94105, 94107, 94108, 94109, 94110, 18 94111, 94112, 94114, 94115, 94116, 94117, 94118, 94121, 94122, 94123, 94124, 94127, 94129, 94131, 94132, 94133, 94134, and 94158 ZIP codes. Such payment(s) shall be made within six (6) 19 months following the end of such year. 20 X. 21 Availability and Administration of Financial Assistance Policy. Within ninety (90) days from 22 the Closing Date of the Affiliation Agreement and for ten (10) years from the Closing Date of the Affiliation Agreement, The Regents/UCSF Health or a Bound Party, as applicable, shall ensure that 23 the Hospitals take the following steps to ensure that patients at each hospital are informed about the respective facility's Financial Assistance Policy: 24 a. A copy of the respective Financial Assistance Policy and the plain language 25 summary of the Financial Assistance Policy shall be posted in a prominent location in the admissions area and any other location in the Hospitals as appropriate, and 26 27 ⁶ 2.4% is the average annual increase in the San Francisco Bay, California Medical Care Consumer Price Index (CPI) from 2020-2023. 28

1 Breast Cancer Second Opinion Panel (SMMC); and k. Breast Cancer Support Group (SMMC). 2 For the second year and each subsequent year, the Minimum Community Benefit Amount shall 3 increase yearly by 2.4 percent.8 4 If the actual amount of community benefit services provided at SFMH or SMMC for any year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above 5 annual percentage increase) required for such year, The Regents/UCSF Health shall pay an amount equal to the deficiency to one or more tax exempt entities that provide community benefit services 6 for residents in the SFMH or SMMC service areas. Such payment(s) shall be made within six (6) months following the end of such year. 7 XII. 8 Community Advisory Board. For ten (10) years from the Closing Date, The Regents/UCSF 9 Health or a Bound Party shall maintain a Community Advisory Board (including physicians. medical and other staff, and community representatives for both SMMC and SFMH) at the 10 Hospitals (Community Advisory Board). The Regents/UCSF Health and the Hospitals shall consult with the Community Advisory Board at least sixty (60) days prior to making any material non-11 emergency reductions to the types, levels, or locations of services and the Hospitals shall consult with the Community Advisory Board at least sixty (60) days prior to making any material non-12 emergency reductions in services or community benefit programs at the Hospitals. The Community Advisory Board may comment on all reports submitted to the Attorney General regarding 13 compliance with the Conditions. 14 XIII. 15 Capital Commitments. The Regents/UCSF Health or the Saint Francis Memorial Hospital 16 Corporation shall invest at least \$430 million capital to the Hospitals and/or services and programs described in these Conditions over a ten (10) year period following the Closing Date (Capital 17 Expenditures). The Capital Expenditures shall include at least \$80 million in funding for electronic medical record systems and related technology investments at the Hospitals and at least \$350 18 million in deferred maintenance and physical infrastructure improvements to support the provision of the services and programs described in these Conditions (including, for example, those 19 improvements necessary to maintain compliance with Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, as amended). The Regents/UCSF Health or the Saint Francis Memorial 20 Hospital Corporation shall present the annual capital budget for the Hospitals in advance to the Community Advisory Board for discussion and solicitation of input. 21 XIV. 22 Seismic Safety Planning and Reporting. The Regents/UCSF Health or the Saint Francis 23 Memorial Hospital Corporation will provide the Attorney General with courtesy copies of HCAI filings required by the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, as amended 24 by the California Hospital Facilities Seismic Safety Act and future statutes, including a Seismic Improvement Plan with a budget and timeline for completion. 25 26 27 ⁸ See footnote 6. 28

Maintenance of City and County Contracts. For seven (7) years from the Closing Date of the Affiliation Agreement, The Regents/UCSF Health or a Bound Party shall not engage in convenience termination of the following contracts with the City and County of San Francisco, or

its subdivisions, departments, or agencies, for services at SFMH and SMMC unless: (i) the contract

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is terminated by either party for cause, (ii) the terms and conditions, including compensation, are not Commercially Reasonable, or (iii) the contract is not extended, renewed or otherwise terminated by the local government or the State, as applicable.

For SFMH, those contracts include:

- a. Memorandum of Understanding 340 B Program;
- b. Agreement for Supervised Therapeutic Visitation Services (Rally Family Visitation Services); and
- c. Residency Affiliation Agreement.

For SMMC, those contracts include:

- a. Orthopedic Residency Affiliation Agreement;
- b. General Services Agreement;
- c. Mental Health and Substance Abuse Services;
- d. Community Behavioral Health Services;
- e. SMMC Transportation Service;
- f. Uncompensated Specialized Testing;
- g. Community Grants Program;
- h. San Francisco Health Improvement Partnership;
- i. Graduate Medical Education;
- j. Breast Cancer Second Opinion Panel; and
- k. Breast Cancer Support Group.

If The Regents/UCSF Health or a Bound Party determines that any contract covered in this Condition satisfies subsection b.ii, UCSF Health shall give written notification to the Attorney General within thirty (30) days of its determination, and shall reasonably cooperate with any resulting information requests, subject to any demonstrated legally recognized privilege and appropriate confidentiality protections.

XVI.

Hospital Medical Staff Governance. For seven (7) years from the Closing Date, the governing body of the Hospitals shall not act unilaterally to approve amendments to the Medical Staff Bylaws of the Hospitals that would result in a modification to the composition of the Medical Staff of the Hospitals as of the Closing Date. Nothing in this condition shall preclude the Medical Staff Bylaws of the Hospitals from being amended from time to time at the initiative of the medical staff at large or duly elected medical staff leaders, or from being amended to comply with changes to applicable law, Regents' policies, or accreditation standards. Further, nothing in this condition shall restrict or limit the Hospitals' or the medical staff's ability to conduct credentialing activities, peer review and investigatory oversite activities in a manner consistent with the Medical Staff Bylaws, applicable law, and applicable accreditation standards.

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Open Medical Staff and Physician Affiliations. For ten (10) years from the Closing Date, the Hospitals will not otherwise expressly or implicitly condition medical staff privileges, on the employment, contracting, affiliation, or appointment status of a physician with The Regents/UCSF Health or any affiliate other than the Hospitals.

XVIII.

<u>Medical Staff Contracting.</u> For seven (7) years from the Closing Date, neither The Regents/UCSF Health nor the governing body of the Hospitals shall impose any requirement upon any member of the Hospitals' medical staff, as a condition of their medical staff membership or privileges that expressly or implicitly:

- a. restricts, or imposes implicit or express exclusivity on, those physicians' or providers' ability to contract with payors;
- b. restricts, or imposes implicit or express exclusivity on, those physicians' or providers' ability to refer patients to health facilities, physicians, or other healthcare providers that are not affiliated with, employed by, or otherwise contracted with UCSF Health or any of its affiliates; and
- c. imposes any noncompetition, non-solicitation, nondisclosure, noninterference, non-disparagement, or other restrictive covenant obligation.

For the avoidance of doubt, the Hospitals and The Regents/UCSF Health may adopt, amend, investigate, and enforce policies and procedures that prohibit unlawful kickbacks, referrals, and inducements. The Hospitals shall ensure equal access to healthcare without discrimination, and without respect to their payor or their source of referral. Nothing in this Condition shall preclude The Regents/UCSF Health or the Hospitals from requiring that practicing physicians participate in the specific payor plans offered at the Hospitals or prohibit The Regents/UCSF Health or the Hospitals from maintaining exclusive contracts for hospital-based physician arrangements; provided, however, that neither The Regents/UCSF Health nor the Hospitals will require a medical group, as a condition of bidding on or entering such an arrangement with the Hospitals, or any of their physicians, to have or maintain a faculty appointment or any affiliation with The Regents/UCSF Health.

XIX.

<u>Discrimination</u>. From the Closing Date of the Affiliation Agreement, the Hospitals shall prohibit discrimination on the basis of any protected personal characteristic in accordance with state and federal civil rights laws, including section 51 of the California Civil Code and title 42, section 18116 of the United States Code. Categories of protected personal characteristics include, as of the date of this Agreement:

- a. Gender, including sex, gender, gender identity, and gender expression;
- b. Intimate relationships, including sexual orientation and marital status;
- c. Ethnicity, including race, color, ancestry, national origin, citizenship, primary language, and immigration status;
- d. Religion;
- e. Age; and

⁹ Hospital-based physician arrangements include emergency department coverage, hospitalist coverage, pathology services, radiology/imaging services and anesthesiology services.

1 2	breach of any confidentiality or non-disclosure agreement with respect to such information by UCSF Health or any of its affiliates; (ii) information that becomes known to UCSF Health from a third party that UCSF Health reasonably believes has disclosed that information legitimately; (iii)
3	information that is required by law to be publicly disclosed; (iv) information of a payor that applies to all providers or to all providers within a category (e.g., provide type or geography)
4	unrelated to provider prices, rates, or price-related terms; or (v) aggregate information to concerning the financial condition of the Hospitals. This paragraph shall not be construed to
5	require the Hospitals to have a separate and independent electronic system of any kind for storing and accessing clinical information from UCSF Health. Nor shall it be construed to require UCSF
6	Health to maintain separate teams to manage billing, reimbursement, collections, and related activities ("Contract Administration"); provided, however, that UCSF Health prohibits the
7 8	sharing of any Payor Contracting Information applicable to UCSF Health and any of its affiliates with the Community Hospitals Negotiating Team and prohibits the sharing of any Payor Contracting Information applicable to the Community Hospitals with the UCSF Negotiating Team.
9	Payor Contracting Information with respect to the Hospitals shall not, directly or indirectly, be
10	transmitted to or received by the UCSF Negotiating Team or by UCSF Health and any of its affiliates, and Payor Contracting Information with respect to UCSF Health or any of its affiliates shall not, directly or indirectly, be transmitted to or received by the Community Hospitals'
11	Negotiating Team, except as provided in this Condition.
12	No later than ninety (90) days after this AVC becomes effective, UCSF Health shall implement
13	procedures and protections ¹¹ to ensure that Payor Contracting Information for UCSF Health or any of its affiliates, on the one hand, and the Hospitals, on the other, is maintained separately and
14	confidentially, including but not limited to:
15	1. Establishing an information firewall (Firewall) that prevents the UCSF Negotiating Team, UCSF Health or any of its affiliates from requesting, receiving, sharing, or otherwise
16	obtaining any Payor Contracting Information with respect to the Hospitals, and prevents the Community Hospitals Negotiating Team from requesting, receiving, sharing, or
17 18	otherwise obtaining any Payor Contracting Information with respect to UCSF Health or any of its affiliates.
19	The Firewall shall include reasonable confidentiality protections, internal practices,
20	training, segregation of personnel, communication restrictions, data storage restrictions, protocols, and other system and network controls and restrictions, all as reasonably
21	necessary to make the Firewall effective.
22	The Firewall shall also include measures by which the Monitor, as appointed pursuant to condition XXVI, the Hospitals, and UCSF Health shall (1) investigate any suspected
23	material violation of any established policies and procedures; (2) develop and implement
24	appropriate remedial training and/or disciplinary action for any substantiated violation; (3) adopt disclosure mitigation measures in the event of a breach; and (4) document and
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26	¹⁰ "Aggregate information" shall mean information that is aggregated across services and across payors.
27	11 After this AVC becomes effective and before the procedures and protections are implemented, UCSF Health and any of its affiliates shall use Commercially Reasonable Efforts to
28	ensure that Payor Contracting Information for UCSF Health or any of its affiliates, on the one hand, and the Hospitals, on the other, is maintained separately and confidentially.

1 will, at the request of the Bound Parties and to the extent provided by law, keep confidential any information so produced except in so far as is necessary for the enforcement of these Conditions in 2 a judicial proceeding, subject to a protective order the Monitor may investigate and issue a report and recommendation on any Condition where compliance, partial noncompliance, or 3 noncompliance by the Hospitals is involved, and the text of the Condition provides that review is in the scope of the Monitor's engagement. To the extent that either a complaint is received by the Attorney General or by the Monitor involving compliance, noncompliance, or partial compliance with these Conditions by UCSF Health or its affiliates, only the Attorney General shall have the 5 power to investigate such compliance, partial compliance, or noncompliance with these Conditions. The Attorney General is entitled to request the cooperation of UCSF Health and its affiliates with any such investigation and such cooperation shall not be unreasonably withheld. XXIV. 8 The Bound Parties shall reimburse the Attorney General for reasonable, documented investigative costs incurred in connection with any investigative follow-up by the Attorney General, up to a maximum of \$500,000 during the ten (10) year term of this AVC. 10 XXV. 11 The Attorney General reserves the right to enforce against the Bound Parties each and every provision set forth herein to the fullest extent provided by law under California Government Code 12 section 12533 and shall be entitled to all of the remedies against the Bound Parties provided for by California Government Code section 12533. Any action by the Attorney General to enforce these Conditions may be brought in the Superior Court of San Francisco, and any applicable appellate 13 court therefrom. Before bringing any such action, the Attorney General's Office and UCSF Health 14 shall meet in good faith to discuss and try to reasonably resolve any such dispute without litigation and shall discuss in good faith resorting to mediation, with a mutually acceptable mediator and 15 costs for the mediation to be split in half between the Attorney General's Office and UCSF Health. 16 17 The Attorney General shall have the power to appoint and will promptly appoint an independent monitor (Monitor) to monitor and evaluate compliance with the Conditions herein as applicable to 18 the Hospitals only, for seven (7) years from the Closing Date of the Affiliation Agreement. 12 19 To be qualified to serve as the Monitor, a candidate must disclose to the Attorney General any potential conflict of interest, be experienced with hospital operations and managed care contracting 20 in general, if not also knowledgeable as to hospital operations and managed care contracting in California. The Bound Parties will disclose candidates they propose to serve as the Monitor to the 21 Attorney General and the Attorney General will disclose candidates it proposes to serve as the Monitor to the Bound Parties. 22 23 The Attorney General and the Bound Parties shall consider diversity, equity, and inclusion in proposing candidates to serve as the Monitor. The Attorney General will give due consideration to 24 any candidates proposed by the Bound Parties and the Bound Parties will give due consideration to any candidates proposed by the Attorney General. 25

¹² The Attorney General will monitor and evaluate compliance with these Conditions in

Any interviews of any candidates will be jointly conducted by the Bound Parties and the Attorney

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General.

every other respect.

XXVII.

Retaliation or threats of retaliation based on any payor, entity, or individual having provided information in conjunction with the Conditions herein to the Attorney General, the Monitor, or to a court is prohibited.

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