

**PALOMAR POMERADO HEALTH  
CONSOLIDATED DISBURSEMENTS  
FOR THE MONTH OF  
JULY, 2005**

07/01/05	TO	07/31/05	ACCOUNTS PAYABLE INVOICES	\$22,084,249.00
07/01/05	TO	07/29/05	NET PAYROLL	<u>\$11,585,320.00</u>
				\$33,669,569.00

I hereby state that this is an accurate and total listing of all accounts payable, patient refund and payroll fund disbursements by date and type since the last approval.



\_\_\_\_\_  
CHIEF FINANCIAL OFFICER

*APPROVAL OF REVOLVING, PATIENT REFUND AND PAYROLL FUND DISBURSEMENTS:*

Treasurer, Board of Directors PPH \_\_\_\_\_

Secretary, Board of Directors PPH \_\_\_\_\_

This approved document is to be attached to the last revolving fund disbursement page of the applicable financial month for future audit review.

cc: M. Covert, G. Bracht, R. Hemker, J. Flinn

## July 2005 & YTD 2006 Financial Report

**TO:** Board of Directors

**FROM:** Board Finance Committee  
Tuesday, August 30, 2005

**MEETING DATE:** Monday, September 12, 2005

**BY:** Robert Hemker, CFO

**Background:** The Board Financial Reports (unaudited) for July 2005 and YTD 2006 were submitted for Finance Committee approval.

**Budget Impact:** N/A

**Staff Recommendation:** Staff recommends approval.

**Committee Questions:**

**COMMITTEE RECOMMENDATION:** The Finance Committee recommends approval of the Board Financial Reports (unaudited) for July 2005 and YTD 2006 as submitted.

**Motion:** X

**Individual Action:**

**Information:**

**Required Time:**

**PALOMAR POMERADO HEALTH**

*A California Health Care District*

**BOARD FINANCIAL REPORT**

**JULY, 2005**

(UNAUDITED)

**PREPARED BY THE FINANCE DEPARTMENT  
15255 INNOVATION DRIVE, SUITE 202  
SAN DIEGO, CA 92128  
(858) 675-5223**

**PALOMAR POMERADO HEALTH**  
*A California Health Care District*

**BOARD FINANCIAL REPORT**

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**PALOMAR POMERADO HEALTH**  
**JULY 2005 and YTD FY 2006 FINANCIAL RESULTS**  
**EXECUTIVE SUMMARY and HIGHLIGHTS**

**Statistics:**

Acute patient days increased (2.2%) to 9,372 in July, compared to June. This was 1.3% higher than budget (9,250). The acute Average Daily Census (ADC) was 302 in July compared to 306 in June. Acute admissions for July were 2,455 compared to budget of 2,352 (4.4% higher than budget). SNF patient days for the June were 6,514 compared to budget of 6,421 (1.4% variance).

**Balance Sheet:**

**Current Cash & Cash Equivalents** decreased \$10 million to \$99 million in July from \$109 million in June. The decrease can be attributed to: 1) lower than expected patient account collections, 2) reduction in amounts owed to vendors and, 3) a reduction in amounts owed for employees. Total Cash and Investments are \$120 million, compared to \$131 million at June 30, 2005. Days cash on hand are 137 compared to 148 at June 30, 2005. Reimbursement from bond proceeds for project costs advanced from working capital was still pending at July 31, 2005.

**Net Accounts Receivable** increased \$5.5 million in July at \$76.5 million compared to June (\$71M). Gross A/R days increased to 71.1 in July. June 2005 and 2004 gross A/R days were 70 and 40, respectively. July patient account collections were \$18.6 million, compared to budget of \$26 million. Currently, an A/R stabilization project is underway, utilizing the services of Gustafson & Associates. It is expected that significant progress and outcomes will be achieved by the end of the first quarter.

**Other Assets** increased by \$11 million due to the setup of the property tax receivable for fiscal year 2006. Also see **Other Current Liabilities** for the offsetting entry to deferred property tax revenue. These deferred revenues are recognized monthly throughout the year.

**Restricted Assets** increased by \$83 million due to the receipt (by Trustee) of the newly issued general obligation (GO) bond funds.

**Board Designated Assets** decreased by \$1.4 million due to the transfer of funds to operating cash to cover capital asset purchases.

**Construction in Progress** increased by \$1.4 million, which is mainly due to payments for: 1) refurbishment of Palomar's behavioral medicine unit, 2) refurbishment of Pomerado's cardiac angio suite and, 3) Palomar's trailer addition in support of hospitalist services.

**Deferred Financing Costs** increased by \$1.7 million due to the recording of the GO bond issuance costs (to be amortized over the life of the bonds).

**Accounts Payable** decreased \$3.2 million in July due to the timing of vendor in payments.

**Accrued Payroll** decreased by \$2.8 million due to the timing of the last pay period in July compared to June.

**Other Current Liabilities** increased \$10 million mainly due to the setup of deferred property tax revenue for fiscal year 2006.

**Long Term Liabilities** increased by \$84 million, primarily the result of the issuance of GO bonds July 7, 2005.

**Income Statement:**

**Gross Patient Revenue** for July reflects a favorable budget variance of \$57 thousand. This favorable variance is composed of a \$1.8 million favorable volume variance and \$1.8 million unfavorable rate variance.

Routine revenue (inpatient room and board) reflects an unfavorable \$46 thousand budget variance. PPH North reflects a favorable variance of \$31 thousand, whereas PPH South reflects an unfavorable variance of \$77 thousand. Palomar's acute patient days are 1.3% higher than budget; however, PMC encountered a lower volume of trauma cases than what was budgeted (approx 14% less cases). Pomerado's acute patient days are 13% higher than budget (Pomerado reflected fewer ICU & IMC patient days than what were budgeted).

Inpatient Ancillary gross revenue represents a \$421 thousand unfavorable budget variance in July. PPH North reflects a favorable variance of \$661 thousand, and PPH South reflects a \$1 million unfavorable variance. The main contributor to Palomar's favorable variance was reflected in the emergency room and cat scanner departments totaling \$1.2 million higher than budget (offset by other unfavorable variance departments). The main contributors to Pomerado's unfavorable variance are surgery, patient chargeable supplies, and pharmacy (totaling \$1.1 million unfavorable variance from budget).

Outpatient revenue reflects a favorable budget variance of \$524 thousand. The majority of this favorable variance is reflected at PPH North (\$880 thousand – almost all from the Emergency department), offset by other unfavorable variances in the Outreach areas (Gateway & Parkway radiology variance was \$249 thousand and Home Health variance was \$82 thousand).

**Deductions from Revenue** reflects an unfavorable variance of \$1.7 million mainly due to an influx of uninsured patients at Palomar in July. Total Deductions from Revenue is 68.9% of gross revenue compared to a budget of 67%.

Deductions from Revenue (excluding Capitation revenue and Bad Debt/Charity/Undocumented expenses), was 64% of Gross Revenue for June YTD compared to budget of 63%.

The Capitation monies retained by PPH are reflecting an \$88 thousand unfavorable variance as of July.

Bad debt, charity & undocumented care write-offs reflected an unfavorable \$902 thousand budget variance. Bad debt, charity and undocumented write-offs as a percent of gross revenue were 5.7% compared to the budget of 4.7%. Three accounts totaling approximately \$850 thousand were the significant contributor to enhanced bad debt expense and operating income shortfall.

**Other Operating Revenue** reflects an unfavorable budget variance of \$172 thousand. This revenue is budgeted evenly throughout the year; however, most of this revenue is recognized when received, thus causing timing differences.

**Salaries, Wages & Contract Labor** reflects a favorable variance of \$328 thousand. This favorable variance is composed of: 1) Salaries and Wages – \$641 thousand (actual \$12.6 million) and, 2) Contract Labor – (\$313 thousand) (actual \$1.1 million).

**Supplies Expense** is reflecting a favorable budget variance of \$281 thousand. This favorable variance was split between PPH North (\$132 thousand) and PPH South (\$118 thousand).

**Prof Fees & Purch Services** reflected a favorable budget variance of \$580 thousand. These expenses are budgeted evenly throughout the year; however, many of the actual expenses have not yet occurred.

**Other Expense** is reflecting a \$111 thousand favorable budget variance. This variance is spread among the various entities and departments.

**Non-Operating Income** reflects an unfavorable variance of \$395 thousand in July. Investment Income accounts for nearly all of this variance due to a reduction in the market value due to increased interest rates in the market. The actual investment income yield was a loss of 1.4%, compared to a budget of 2%. Currently, reinvested maturing instruments are in excess of a 3% interest rate. It is expected that the annualized portfolio yield will meet or exceed budget.

### Ratios

All required bond covenant ratios were achieved in July 2005.

Palomar Pomerado Health  
Balanced Scorecard  
Financial Indicators  
July 31, 2005

	April		May		June		July		YTD 2005		% to Actual to Budget	
	Actual		Actual		Actual		Budget		Actual	Budget		Variance
<b>PPH Indicators:</b>												
OEBITDA Margin w/Prop Tax	11.6%	10.3%	12.6%	9.9%	9.0%	9.9%	9.9%	9.0%	9.0%	9.9%	-0.9%	90.9%
Expenses/Wtd Day	\$ 2,273.43	\$ 2,324.35	\$ 2,226.74	\$ 2,432.16	\$ 2,270.91	\$ 2,432.16	\$ 2,432.16	\$ 2,270.91	\$ 2,270.91	\$ 2,432.16	\$ 161.25	
SWB/Wtd Day	\$ 1,375.66	\$ 1,344.71	\$ 1,260.14	\$ 1,416.75	\$ 1,353.93	\$ 1,416.75	\$ 1,416.75	\$ 1,353.93	\$ 1,353.93	\$ 1,416.75	\$ 62.82	
Prod FTE's/Adj Occupied Bed	5.99	5.92	5.80	6.17	5.94	6.17	6.17	5.93	5.93	6.17	0.24	
<b>PPH North Indicators:</b>												
OEBITDA Margin w/Prop Tax	11.6%	15.8%	-1.0%	11.9%	7.1%	11.9%	11.9%	7.1%	7.1%	11.9%	-4.8%	
Expenses/Wtd Day	\$ 2,160.33	\$ 2,195.81	\$ 2,242.37	\$ 2,305.66	\$ 2,158.90	\$ 2,305.66	\$ 2,305.66	\$ 2,158.90	\$ 2,158.90	\$ 2,305.66	\$ 146.76	
SWB/Wtd Day	\$ 1,124.38	\$ 1,116.60	\$ 1,068.29	\$ 1,180.75	\$ 1,139.16	\$ 1,180.75	\$ 1,180.75	\$ 1,139.16	\$ 1,139.16	\$ 1,180.75	\$ 41.59	
Prod FTE's/Adj Occupied Bed	4.98	4.95	4.90	5.10	4.97	5.10	5.10	4.97	4.97	5.1	0.13	
<b>PPH South Indicators:</b>												
OEBITDA Margin w/Prop Tax	9.9%	-17.0%	12.2%	1.4%	10.1%	1.4%	1.4%	10.1%	10.1%	1.4%	8.7%	
Expenses/Wtd Day	\$ 1,948.69	\$ 2,408.15	\$ 2,280.87	\$ 2,443.48	\$ 2,255.63	\$ 2,443.48	\$ 2,443.48	\$ 2,255.63	\$ 2,255.63	\$ 2,443.48	\$ 187.85	
SWB/Wtd Day	\$ 1,064.08	\$ 1,223.51	\$ 1,086.74	\$ 1,261.88	\$ 1,182.09	\$ 1,261.88	\$ 1,261.88	\$ 1,182.09	\$ 1,182.09	\$ 1,261.88	\$ 79.79	
Prod FTE's/Adj Occupied Bed	5.95	5.76	5.64	5.88	5.52	5.88	5.88	5.52	5.52	5.88	0.36	

Palomar Pomerado Health  
Consolidated Balance Sheet  
As of July 31, 2005

	Current Month	Prior Month	Prior Fiscal Year End
<b>Assets</b>			
<b>Current Assets</b>			
Cash on Hand	\$1,383,846	\$12,666,668	\$12,666,668
Cash Marketable Securities	97,605,874	96,380,135	96,380,135
<b>Total Cash &amp; Cash Equivalents</b>	<b>98,989,720</b>	<b>109,046,803</b>	<b>109,046,803</b>
<b>Patient Accounts Receivable</b>	<b>197,610,655</b>	<b>190,388,774</b>	<b>190,388,774</b>
Allowance on Accounts	-121,024,146	-119,259,402	-119,259,402
<b>Net Accounts Receivable</b>	<b>76,586,509</b>	<b>71,129,372</b>	<b>71,129,372</b>
Inventories	6,274,353	6,320,951	6,320,951
Prepaid Expenses	2,275,941	2,059,484	2,059,484
Other	11,950,573	840,755	840,755
<b>Total Current Assets</b>	<b>196,077,096</b>	<b>189,397,365</b>	<b>189,397,365</b>
<b>Non-Current Assets</b>			
Restricted Assets	95,242,040	12,026,055	12,026,055
Restricted by Donor	281,693	281,473	281,473
Board Designated	20,957,079	22,388,648	22,388,648
<b>Total Restricted Assets</b>	<b>116,480,812</b>	<b>34,696,176</b>	<b>34,696,176</b>
Property Plant & Equipment	337,840,372	337,484,770	337,484,770
Accumulated Depreciation	-219,909,659	-218,491,576	-218,491,576
Construction in Process	28,111,562	26,744,075	26,744,075
<b>Net Property Plant &amp; Equipment</b>	<b>146,042,275</b>	<b>145,737,269</b>	<b>145,737,269</b>
Investment in Related Companies	5,773,077	5,700,502	5,700,502
Deferred Financing Costs	3,373,906	1,618,773	1,618,773
Other Non-Current Assets	1,260,458	1,274,318	1,274,318
<b>Total Non-Current Assets</b>	<b>272,930,528</b>	<b>189,027,038</b>	<b>189,027,038</b>
<b>Total Assets</b>	<b>\$469,007,624</b>	<b>\$378,424,403</b>	<b>\$378,424,403</b>
<b>Liabilities</b>			
<b>Current Liabilities</b>			
Accounts Payable	\$15,833,163	\$15,833,163	\$15,833,163
Accrued Payroll	17,980,084	20,763,473	20,763,473
Accrued PTO	9,945,791	10,212,195	10,212,195
Accrued Interest Payable	1,403,995	708,785	708,785
Current Portion of Bonds	6,125,000	6,125,000	6,125,000
Est Third Party Settlements	-4,274,233	-4,522,051	-4,522,051
Other Current Liabilities	16,659,454	6,228,408	6,228,408
<b>Total Current Liabilities</b>	<b>60,487,234</b>	<b>55,348,973</b>	<b>55,348,973</b>
<b>Long Term Liabilities</b>	<b>163,816,502</b>	<b>79,819,688</b>	<b>79,819,688</b>
<b>Bonds &amp; Contracts Payable</b>			
Unrestricted	223,465,115	220,585,622	220,585,622
Restricted for Other Purpose	281,693	281,473	281,473
Board Designated	20,957,079	22,388,648	22,388,648
<b>Total Fund Balance</b>	<b>244,703,887</b>	<b>243,255,743</b>	<b>243,255,743</b>
<b>Total Liabilities / Fund Balance</b>	<b>\$469,007,624</b>	<b>\$378,424,403</b>	<b>\$378,424,403</b>

**PALOMAR POMERADO HEALTH  
CONSOLIDATED  
MTD 2005  
July 2005**

	Month Activity		Variance	Variance		\$/Wtg Pt Day		
	Actual	Budget		Volume	Rate/Eff	Actual	Budget	Variance
<b>Statistics:</b>								
Admissions - Acute	2,455	2,352	103					
Admissions - SNF	95	115	(20)					
Patient Days - Acute	9,372	9,250	122					
Patient Days - SNF	6,514	6,421	93					
LOS - Acute	3.97	4.00	(0.03)					
LOS - SNF	40.42	37.95	2.47					
Weighted Pt Days	12,568	12,315	253					
<b>Revenue:</b>								
Gross Revenue	\$ 89,796,156	\$ 89,738,729	\$ 57,427 F	\$ 1,843,597	\$ (1,786,170)	\$ 7,144.82	\$ 7,286.95	\$(142.12)
Deductions from Rev	(61,907,281)	(60,196,380)	(1,710,901) U	(1,236,678)	(474,223)	(4,925.79)	(4,888.05)	(37.73)
Net Patient Revenue	27,888,875	29,542,349	(1,653,474) U	606,920	(2,260,394)	2,219.04	2,398.89	(179.85)
Other Oper Revenue	676,323	848,479	(172,156) U	17,431	(189,587)	53.81	68.90	(15.08)
<b>Total Net Revenue</b>	<b>28,565,198</b>	<b>30,390,828</b>	<b>(1,825,630) U</b>	<b>624,351</b>	<b>(2,449,981)</b>	<b>2,272.85</b>	<b>2,467.79</b>	<b>(194.94)</b>
<b>Expenses:</b>								
Salaries, Wages & Contr Labor	13,665,176	13,992,843	327,667 F	(287,470)	615,137	1,087.30	1,136.24	48.94
Benefits	3,350,961	3,454,472	103,511 F	(70,969)	174,480	266.63	280.51	13.88
Supplies	4,735,608	5,016,992	281,384 F	(103,069)	384,453	376.80	407.39	30.59
Prof Fees & Purch Svc	3,370,184	3,950,029	579,845 F	(81,150)	660,995	268.16	320.75	52.59
Depreciation	1,418,083	1,428,876	10,793 F	(29,355)	40,148	112.83	116.03	3.19
Interest	417,286	414,574	(2,712) U	(8,517)	5,805	33.20	33.66	0.46
Other	1,583,528	1,694,297	110,769 F	(34,808)	145,577	126.00	137.58	11.58
PPH Allocation	-	-	-	-	-	-	-	-
<b>Total Expenses</b>	<b>28,540,826</b>	<b>29,952,083</b>	<b>1,411,257 F</b>	<b>(615,337)</b>	<b>2,026,594</b>	<b>2,270.91</b>	<b>2,432.16</b>	<b>161.25</b>
<b>Net Inc Before Non-Oper Income</b>	<b>24,372</b>	<b>438,745</b>	<b>(414,373) U</b>	<b>9,014</b>	<b>(423,387)</b>	<b>1.94</b>	<b>35.63</b>	<b>(33.69)</b>
Property Tax Revenue	908,333	908,333	-	18,661	(18,661)	72.27	73.76	(1.48)
Non-Operating Income	(148,358)	246,267	(394,625) U	5,059	(399,684)	(11.80)	20.00	(31.80)
<b>Net Income (Loss)</b>	<b>\$ 784,347</b>	<b>\$ 1,593,345</b>	<b>\$(808,998) U</b>	<b>\$ 32,734</b>	<b>\$ (841,732)</b>	<b>\$ 62.41</b>	<b>\$ 129.38</b>	<b>\$(66.97)</b>
Net Income Margin	4.7%	4.9%	-0.2%					
OEBITDA Margin w/o Prop Tax	6.0%	7.0%	-1.0%					
OEBITDA Margin with Prop Tax	11.1%	9.9%	1.2%					

F= Favorable variance  
U= Unfavorable variance

**Palomar Pomerado Health**  
**STATEMENTS OF CASH FLOWS**  
**Fiscal Year 2006**

	<u>July</u>	<u>YTD</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Income (Loss from operations)	\$ 441,658	\$ 441,658
Adjustments to reconcile change in net assets to net cash provided by operating activities		
Depreciation Expense	1,418,083	1,418,083
Provision for bad debts	3,002,302	3,002,302
Patient accounts receivable	(8,459,439)	(8,459,439)
Other receivables	(10,476,020)	(10,476,020)
Inventories	46,598	46,598
Prepaid expenses and other current assets	(216,457)	(216,457)
Accounts payable	(3,186,020)	(3,186,020)
Accrued comp	(3,049,793)	(3,049,793)
Estimated settlement amounts due third-party payors	247,818	247,818
Other current liabilities	11,339,379	11,339,379
Net cash provided by operating activities	<u>(8,891,891)</u>	<u>(8,891,891)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Net Purchases on investments	(824,769)	(824,769)
Interest (Loss) received on investments	(205,830)	(205,830)
Investment in affiliates	72,575	72,575
Net cash used in investing activities	<u>(958,024)</u>	<u>(958,024)</u>
<b>CASH FLOWS FROM NON CAPITAL FINANCING ACTIVITIES:</b>		
Other	4,072	4,072
Receipt of district taxes	204,065	204,065
Net cash used in activities	<u>208,137</u>	<u>208,137</u>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES:</b>		
Acquisition of property plant and equipment	(2,474,876)	(2,474,876)
Interest paid	0	0
Proceeds from issuance of debt	833,832	833,832
Payments of L.T Debt	0	0
Net cash used in activities	<u>(1,641,044)</u>	<u>(1,641,044)</u>
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<u>(11,282,822)</u>	<u>(11,282,822)</u>
<b>CASH AND CASH EQUIVALENTS - Beginning of year</b>	<u>12,666,668</u>	<u>12,666,668</u>
<b>CASH AND CASH EQUIVALENTS - End of year</b>	<u>\$ 1,383,846</u>	<u>\$ 1,383,846</u>

07 05 cash flow- indirect.xls,2006 Indirect

# PALOMAR POMERADO HEALTH BOND COVENANT RATIOS

<b>CUSHION RATIO</b>	<b>Jun-04</b>	<b>Jun-05</b>	<b>Jul-05</b>
Cash and Cash Equivalents	140,057,417	109,046,803	98,989,720
Board Designated Reserves	27,374,261	22,388,648	20,957,079
Trustee-held Funds	11,853,970	12,026,055	12,914,280
<b>Total</b>	<b>179,285,648</b>	<b>143,461,506</b>	<b>132,861,079</b>
Divided by:			
Max Annual Debt Service (Bond Year 2012)	10,697,594	10,697,594	10,697,594
<b>CUSHION RATIO</b>	<b>16.8</b>	<b>13.4</b>	<b>12.4</b>
<b>REQUIREMENT</b>	<b>1.5</b>	<b>1.5</b>	<b>1.5</b>
	<b>Achieved</b>	<b>Achieved</b>	<b>Achieved</b>

<b>DAYS CASH ON HAND</b>	<b>Jun-04</b>	<b>Jun-05</b>	<b>Jul-05</b>
Cash and Cash Equivalents	140,057,417	109,046,803	98,989,720
Board Designated Reserves	27,374,261	22,388,648	20,957,079
<b>Total</b>	<b>167,431,678</b>	<b>131,435,451</b>	<b>119,946,799</b>
Divide Total by Average Adjusted Expenses per Day			
Total Expenses	311,614,910	341,614,078	28,540,826
Less: Depreciation	14,546,550	16,394,985	1,418,083
<b>Adjusted Expenses</b>	<b>297,068,360</b>	<b>325,219,093</b>	<b>27,122,743</b>
Number of days in period	366	365	31
<b>Average Adjusted Expenses per Day</b>	<b>811,662</b>	<b>891,011</b>	<b>874,927</b>
<b>DAYS CASH ON HAND</b>	<b>206</b>	<b>148</b>	<b>137</b>
<b>REQUIREMENT</b>	<b>90</b>	<b>90</b>	<b>90</b>
	<b>Achieved</b>	<b>Achieved</b>	<b>Achieved</b>

<b>Net Income Available for Debt Service</b>	<b>Jun-04</b>	<b>Jun-05</b>	<b>Jul-05</b>
Excess of revenue over expenses Cur Mo.	2,905,196	1,480,728	784,347
Excess of revenues over expenses YTD (General Funds)	16,053,177	17,042,445	784,347
ADD:			
Depreciation and Amortization	14,546,550	16,394,985	1,418,083
Interest Expense	5,581,454	5,272,031	417,286
<b>Net Income Available for Debt Service</b>	<b>36,181,181</b>	<b>38,709,461</b>	<b>2,619,716</b>

## Aggregate Debt Service

1993 Insured Refunding Revenue Bonds	6,017,132	6,020,301	501,845
1999 Insured Refunding Revenue Bonds	4,357,728	4,356,844	362,964
<b>Aggregate Debt Service</b>	<b>10,374,860</b>	<b>10,377,145</b>	<b>864,809</b>

<b>Net Income Available for Debt Service</b>	<b>3.49</b>	<b>3.73</b>	<b>3.03</b>
<b>Required Coverage</b>	<b>1.15</b>	<b>1.15</b>	<b>1.15</b>
	<b>Achieved</b>	<b>Achieved</b>	<b>Achieved</b>

## Group Purchasing Organization Affiliation

**TO:** Board of Directors

**FROM:** Board Finance Committee  
Tuesday, August 30, 2005

**MEETING DATE:** Monday, September 12, 2005

**BY:** Michael Covert, CEO  
Bob Hemker, CFO

**Background:** Currently, PPH is an owner/member of Premier, a group purchasing organization ("GPO"). GPOs afford organizations enhanced buying power for supplies and equipment from that which they could achieve on their own. In addition, many GPOs offer additional services and access to member comparative benchmarks and databases.

Management has been evaluating the value afforded by its current owner/member relationship with Premier versus that offered by other GPOs, including: supply cost savings, access to comparative benchmarking tools, and opportunities for influencing cooperative strategies such as Regional purchasing cooperatives.

Under consideration as an alternative to Premier is the establishment of a GPO relationship with VHA. Such a relationship could be in the form of a non-owner "partner" or an owner "shareholder". Additional information was presented at the Finance Committee meeting regarding VHA and the alternative choices between Premier and VHA. A summary profile of VHA is attached.

**Budget Impact:** Possible savings depending upon level of purchasing commitment

**Staff Recommendation:** Following review and Committee discussion, Management recommended establishing a relationship with VHA as PPH's GPO, with the best structure—partner or shareholder—to be determined.

### Committee Questions:

**COMMITTEE RECOMMENDATION:** The Finance Committee recommends that Management establish a GPO relationship with VHA and terminate the existing relationship with Premier according to the terms and timelines determined by Management.

**Motion:** X

**Individual Action:**

**Information:**

**Required Time:**





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# Palomar Pomerado Health / VHA Inc.

*A new partnership for success*

# VHA Overview

Legal Structure: Cooperative

Ownership: Members (of the cooperative)

Core Purpose: To support the success of not-for-profit, community-based health care

Mission: To improve members' clinical and economic performance

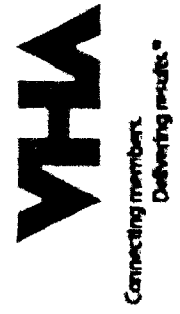
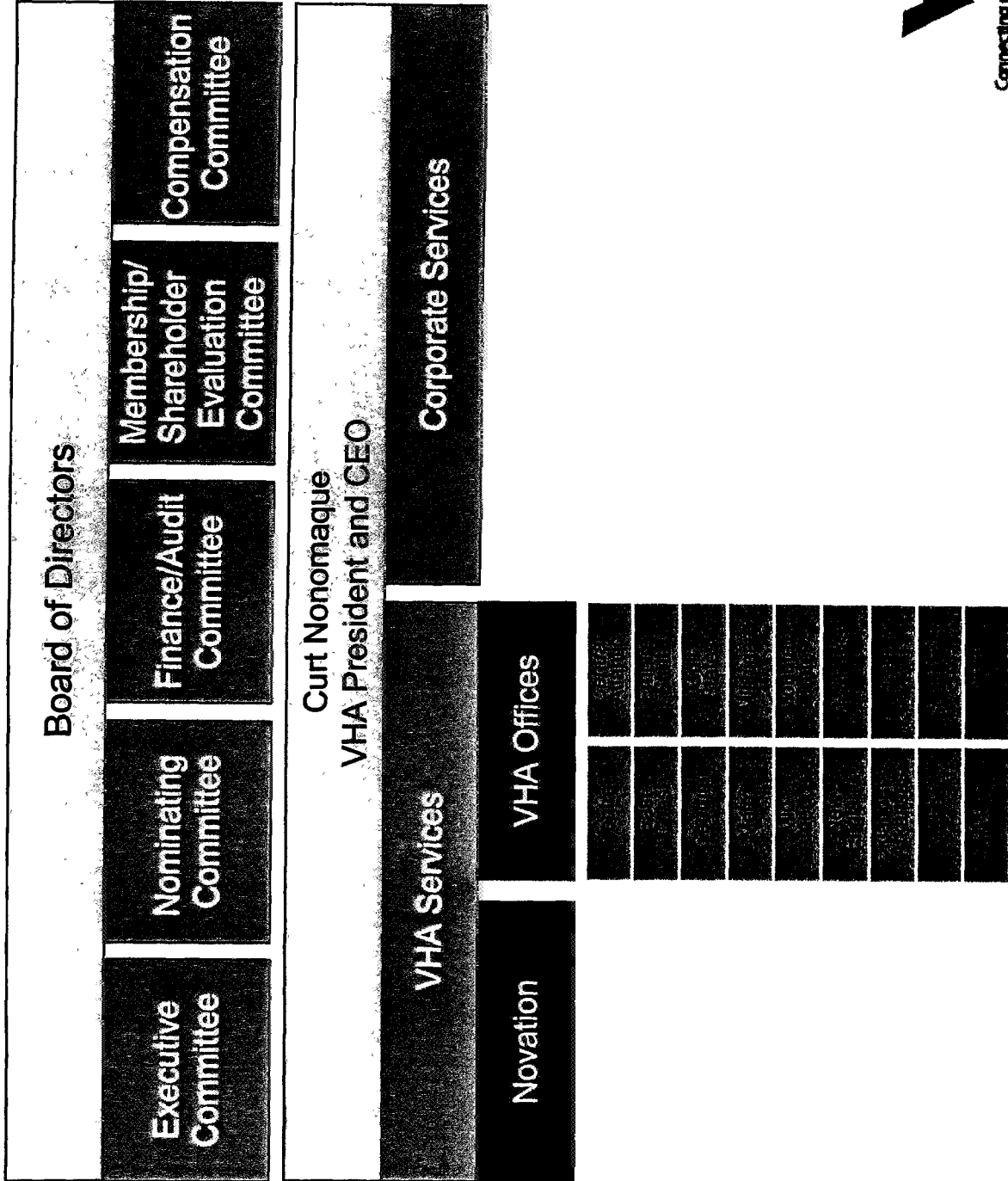
Strategic Role: Healthcare provider alliance that delivers industry-leading supply chain services and enables member networks to drive sustainable results

Core Organizational Values: Collaborative, adaptive, resourceful



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# Corporate Governance

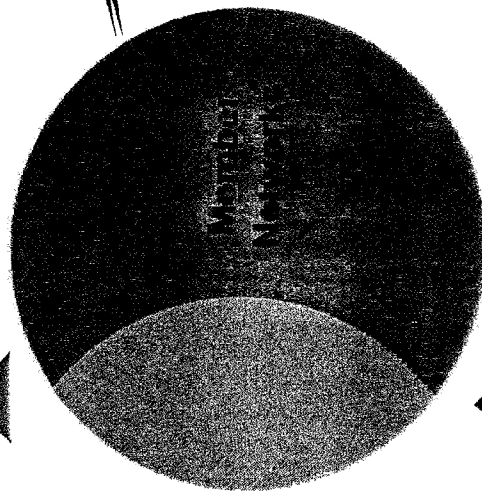


# Two Core Services

*Supporting the success of not-for-profit, community-based health care*

Members' Clinical and  
Economic Performance

High-value solutions for  
key clinical and  
operational challenges



Supply Chain  
Management

Industry-leading GPO  
& supply chain  
management services

Power of  
Alliance



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## Supply Chain Confidence

- Best pricing and flexible contracting – specific to Palomar Pomarado Health's needs
- A clinical focus, expertise, and engagement – designed to facilitate hospital-physician alignment
- Information for decisive action – tools and technology to drive informed supply chain decisions
- Local and national integrated support – regionally based customized support services with access to national expertise



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## **Member Networks to Drive Sustainable Performance Improvement**

- **VHA program and services focus**
  - Clinical and operational improvement
  - Revenue cycle management
  - Supply chain management / capital / technology
  - Hospital / physician alignment



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## VHA West Coast Members

<ul style="list-style-type: none"> <li>▪ Antelope Valley Health Sys</li> </ul>	<ul style="list-style-type: none"> <li>▪ Grays Harbor Community Hospital</li> </ul>	<ul style="list-style-type: none"> <li>▪ Providence Health System</li> </ul>
<ul style="list-style-type: none"> <li>▪ Cedars-Sinai Health Sys</li> </ul>	<ul style="list-style-type: none"> <li>▪ Hoag Memorial Hospital</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Queen's Medical Ctr</li> </ul>
<ul style="list-style-type: none"> <li>▪ Central Washington Hospital</li> </ul>	<ul style="list-style-type: none"> <li>▪ Huntington Memorial Hospital</li> </ul>	<ul style="list-style-type: none"> <li>▪ Scripps Health</li> </ul>
<ul style="list-style-type: none"> <li>▪ Citrus Valley Health Partners</li> </ul>	<ul style="list-style-type: none"> <li>▪ John Muir-Mt Diablo Health System</li> </ul>	<ul style="list-style-type: none"> <li>▪ Sutter Health</li> </ul>
<ul style="list-style-type: none"> <li>▪ Com Memorial Hospital of San Buenaventura</li> </ul>	<ul style="list-style-type: none"> <li>▪ Mayo Clinic - Scottsdale</li> </ul>	<ul style="list-style-type: none"> <li>▪ TMC Healthcare</li> </ul>
<ul style="list-style-type: none"> <li>▪ Community Medical Centers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Memorial Health System</li> </ul>	<ul style="list-style-type: none"> <li>▪ Torrance Memorial MC</li> </ul>
<ul style="list-style-type: none"> <li>▪ Cottage Health System</li> </ul>	<ul style="list-style-type: none"> <li>▪ Methodist Hospital</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tuality Healthcare</li> </ul>
<ul style="list-style-type: none"> <li>▪ Community Hospital of Monterey Peninsula</li> </ul>	<ul style="list-style-type: none"> <li>▪ MultiCare Health System</li> </ul>	<ul style="list-style-type: none"> <li>▪ ValleyCare Health Sys</li> </ul>
<ul style="list-style-type: none"> <li>▪ Centro Regional MC</li> </ul>	<ul style="list-style-type: none"> <li>▪ Pomona Valley Hospital MC</li> </ul>	<ul style="list-style-type: none"> <li>▪ Valley Presbyterian Hosp</li> </ul>
<ul style="list-style-type: none"> <li>▪ [unclear] Medical Center</li> </ul>	<ul style="list-style-type: none"> <li>▪ Presbyterian Intercommunity Hospital</li> </ul>	<ul style="list-style-type: none"> <li>▪ Willamette Falls</li> </ul>



Connecting members  
Delivering results

# VHA Value Projections for Palomar Pomerado Health 100% Fee Return

**Start Date:** 9/1/05  
**End Date:** 12/31/07  
**Annual Spend:** Up to \$40 Million  
**Administrative Fees:** Up to \$880,000 (100%)  
**Core Services:** Portfolio, Benchmarking, Marketplace™ and Regional and National Resources and Support

	2005	2006	2007
Administrative Fee Return (100%)	\$110,000	\$550,000	\$880,000
Standardization Program Payments	\$0	\$75,000	\$120,000
Manufacturer Incentives	\$30,000	\$150,000	\$240,000
Transition Incentive	\$0	\$83,000	\$0
Core Supply Chain Charge	(\$50,000)	(\$408,000)	(\$521,000)
Core National Network Charge	(\$0)	(\$20,000)	(\$20,000)
Core Regional Network Charge	(\$0)	(\$82,000)	(\$110,000)
<b>Net Value</b>	<b>\$90,000</b>	<b>\$348,000</b>	<b>\$589,000</b>

**Total Cumulative Value: \$1,027,000**





## **Our Plan Moving Forward**

- Inform Board of decision to transition to VHA
- Target October 1, 2005 transition date
- Develop and implement contract transition plan
- Identify potential savings opportunities
  - New contracts
  - Regional standardization
  - Cardiology and Orthopedic assessments
- Initiate VHA orientation to engage management team in regional programs and services

**Physician Recruitment Agreement  
Josue Leon, M.D. and Escondido OB/GYN**

**TO:** Board of Directors

**FROM:** Board Finance Committee  
Tuesday, August 30, 2005

**MEETING DATE:** Monday, September 12, 2005

**BY:** Marcia Jackson, Chief Planning Officer

**Background:** The PPH community lacks an adequate number of OB/GYN physicians as verified by AmeriMed, a national consulting firm that specializes in physician manpower studies. PPH has an established physician recruitment program and had allocated resources to attract additional OB/GYN physicians to relocate to Inland North San Diego County. Josue Leon, M.D., and Escondido OB/GYN have signed the PPH Physician Recruitment Agreement in order for Dr. Leon to begin practicing in Escondido, CA. Dr. Leon intends to begin practicing in September 2005.

**Budget Impact:** None

**Staff Recommendation:** Approval of the Physician Recruitment Agreement with Dr. Leon and Escondido OB/GYN and recommend approval by the full Board of Directors.

**Committee Questions:**

**COMMITTEE RECOMMENDATION:** The Finance Committee recommends approval of the Physician Recruitment Agreement with Dr. Leon and Escondido OB/GYN.

**Motion:** X

**Individual Action:**

**Information:**

**Required Time:**

**PALOMAR POMERADO HEALTH - AGREEMENT ABSTRACT**

<b>Section Reference</b>	<b>Term/Condition</b>	<b>Term/Condition Criteria</b>
	<b>TITLE</b>	Physician Recruitment Agreement—OB/GYN
	<b>AGREEMENT DATE</b>	
	<b>PARTIES</b>	1) PPH 2) Josue Leon, M.D. 3) Escondido OB/GYN
Recitals; Article I.1	<b>PURPOSE</b>	Provide recruitment assistance to enable Dr. Leon to join Escondido OB/GYN in Escondido
Article I	<b>SCOPE OF SERVICES</b>	Dr. Leon will provide OB/GYN care on a full-time basis.
2.2(a); Exhibit 3.1(a).2	<b>TERM</b>	1 year of income assistance; two-year repayment/forgiveness period.
Recruitment procedure D.2	<b>RENEWAL</b>	None available
Article VI	<b>TERMINATION</b>	Contract stipulates conditions for termination by hospital, termination by physician and termination in event of governmental action
Article II; 2.2, 2.3, 2.4	<b>COMPENSATION METHODOLOGY</b>	For monthly income guarantee physician will submit monthly report of expenses and collections. Only incremental costs for Dr. Leon's practice can be covered by PPH. For relocation and start-up cost assistance physician will submit receipts.
	<b>BUDGETED</b>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO – IMPACT: None
5.5	<b>EXCLUSIVITY</b>	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES – EXPLAIN: Government prohibits hospitals from requiring physician to exclusively have privileges or make referrals only to their hospital
	<b>PHYSICIAN MANPOWER STUDY</b>	The Physician Manpower Study conducted by AmeriMed, a national consulting firm, confirmed there is a justifiable community need for this recruitment
	<b>EXTERNAL FINANCIAL VERIFICATION</b>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <b>Methodology:</b> Medical Development Specialists (MDS) developed a <i>pro forma</i> for the practice to establish the contract value to cover income guarantee and cash flow needs. MDS also provided the market comparison to establish an appropriate income guarantee.
	<b>LEGAL COUNSEL REVIEW</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> NO No exceptions to the standard agreement. Legal supports that agreement complies with Federal Regulations
	<b>APPROVALS REQUIRED</b>	<input checked="" type="checkbox"/> CPO <input checked="" type="checkbox"/> CFO <input checked="" type="checkbox"/> CEO <input checked="" type="checkbox"/> BOD Finance Committee on August 30, 2005 <input checked="" type="checkbox"/> BOD

**PHYSICIAN RECRUITMENT AGREEMENT**

**by and among**

**PALOMAR POMERADO HEALTH (“Hospital”)**

**and**

**JOSUE LEON, M.D. (“Physician”)**

**and**

**ESCONDIDO OB/GYN (“Group”)**

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## PHYSICIAN RECRUITMENT AGREEMENT

THIS PHYSICIAN RECRUITMENT AGREEMENT (this "Agreement") is entered into and effective as of \_\_\_\_\_, 20\_\_ (the "Execution Date"), by and among PALOMAR POMERADO HEALTH, a California district hospital ("Hospital), Josue Leon, M.D., an individual ("Physician"), and ESCONDIDO OB/GYN, a professional corporation ("Group"). Hospital, Physician, and Group are sometimes referred to in this Agreement, individually, as a "Party" or, collectively, as the "Parties."

### RECITALS

A. Hospital owns and operates two acute care hospital facilities located in Inland North San Diego County, which serve the communities of Escondido, San Marcos, Valley Center, Pala, Pauma Valley, Ramona, Julian, Poway, Rancho Bernardo, and Rancho Peñasquitos.

B. Physician is duly licensed to practice medicine in the State of California (the "State") and is board eligible for the practice of medicine in the specialty of OB/GYN (the "Specialty").

C. At the time of the recruitment discussions, Physician was a resident in training.

D. Hospital has determined that there is a community need for the services of Physician based upon the fact that:

1. The population-to-physician ratio in the community is deficient in the Specialty.
2. There is demand in the community for medical services in the Specialty and a documented lack of availability of or long waiting periods for medical services in the Specialty.
3. Physicians are reluctant to relocate to the community due to Hospital's high cost of living, relatively high housing costs, and traditionally low level of reimbursement for medical services.
4. The number of physicians in the Specialty will be reduced due to the retirement or departure of physicians presently in the community within the next three-to-five year period.
5. There is a documented lack of physicians serving indigent or Medicaid patients in the community.

E. Physician has expressed to Hospital that Physician will not relocate to the Service Area without the financial assistance provided by Hospital pursuant to this Agreement.

F. Physician has further expressed to Hospital that Physician desires to establish a medical practice in the Service Area as an employee of Group, rather than establish Physician's own private medical practice.

## AGREEMENT

**THE PARTIES AGREE AS FOLLOWS:**

### **ARTICLE I. PHYSICIAN'S OBLIGATIONS**

#### **1.1 Provision of Professional Services.**

(a) Physician shall commence providing professional services in the Service Area no later than September 6, 2005 (the "Start Date"), and shall thereafter operate a medical practice in the Specialty (the "Practice"), as an employee of Group, at one or more offices (the "Offices") located within the geographic area identified by the U.S. Postal Service Zip Codes listed in Exhibit 1.1(a) (the "Service Area"). The Offices are hereby approved by Hospital, and Physician shall not relocate the Offices without the prior written consent of Hospital.

(b) Physician acknowledges and agrees that Hospital has no obligation or role with respect to any aspects of the relationship between Physician and Group, and that Physician is solely responsible for establishing all necessary legal relationships with Group, including any employment or independent contractor agreement, tax filings, insurance, and ensuring that Group takes all steps necessary for Physician to meet Physician's obligations under this Agreement.

**1.2 Full-Time Commitment.** Physician shall, from and after the Start Date, personally devote Physician's full-time professional efforts to the Practice. Physician shall devote an average of at least Forty(40) hours per week to the Practice.

**1.3 Participation in Governmental Programs.** Physician shall, from and after the Start Date, be a participating provider in the Federal health care programs, as defined at 42 U.S.C. Section 1320(a)-7b(f) ("**Federal Health Care Programs**"), which programs include, but are not limited to, Medicare and Medicaid; accept and perform professional services for Federal Health Care Program patients at a level that is commensurate with the community need in the Service Area as determined by Hospital; and participate in any Medicare and/or Medicaid managed care efforts and programs of Hospital, as reasonably requested by Hospital from time to time.

**1.4 Uncompensated Care.** Physician shall, from and after the Start Date, provide uncompensated care as reasonably requested by Hospital from time to time. Hospital and Physician shall cooperate in designating the recipients of uncompensated care.

**1.5 Medical Staff Membership.** Physician shall, from and after the Start Date, be a member in good standing in the "active staff" category of Hospital's medical staff (the "**Medical Staff**"), and maintain all clinical privileges necessary to practice medicine in the Specialty at Hospital; provided, however, that if Physician, as of the Start Date, is not a member in good standing in the "active staff" category of the Medical Staff, or has not obtained all clinical

privileges necessary to practice medicine in the Specialty at Hospital, Physician shall have a reasonable amount of time to obtain such membership and/or clinical privileges, provided that Physician diligently pursues such membership and/or clinical privileges in accordance with the normal procedures set forth in the bylaws, rules, regulations, guidelines and policies of Hospital and Medical Staff (collectively, the "Hospital Rules"). Physician shall, from and after the Start Date, actively participate in the Medical Staff department or section encompassing the Specialty and on all Medical Staff committees to which Physician may be appointed by the Medical Staff from time to time. Physician may obtain and maintain medical staff membership and clinical privileges at any other hospital or health care facility.

**1.6 Professional Qualifications.** Physician shall, from and after the Start Date, be duly licensed to practice medicine in California, and shall be board eligible in the Specialty and actively seeking board certification. Physician shall exclusively practice medicine in the Specialty.

**1.7 Professional Standards.** Physician shall, from and after the Start Date, comply with all Hospital Rules, and participate in continuing education as necessary to maintain licensure, professional competence and skills commensurate with the standards of the medical community and as otherwise required by the medical profession.

**1.8 Participation on Emergency Department Call Panels.** Physician shall, from and after the Start Date, participate on any on-call panels of physicians practicing in the Specialty maintained by Hospital's emergency department, in a manner consistent with the coverage schedule and call requirements established by Hospital and the Medical Staff for such services.

**1.9 Participation in Managed Care.** Physician shall, from and after the Start Date, participate in all managed care programs, and shall accept and perform professional services for managed care patients, as reasonably requested by Hospital from time to time. Physician shall join and maintain a provider agreement with such independent physician associations or other organizations as reasonably requested by Hospital from time to time.

**1.10 Community Benefit Activities.** Physician shall, from and after the Start Date, participate in health fairs and other community health activities sponsored by Hospital in the Service Area, as reasonably requested by Hospital from time to time.

**1.11 Notification of Certain Events.** Physician shall notify Hospital in writing within forty-eight (48) hours after becoming aware of the occurrence of any of the following events:

(a) Physician becomes the subject of, or materially involved in, any investigation, proceeding, hearing or other disciplinary action by any federal, state or local governmental agency or program, including the Federal Health Care Programs;

(b) Physician's medical staff membership or any clinical privilege at any health care facility (including Hospital) is denied, suspended, terminated, restricted, revoked or voluntarily relinquished for any reason, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

HLH



(c) Physician becomes the subject of any suit, action or other legal proceeding arising out of Physician's professional services;

(d) Physician is required to pay damages or any other amount in any malpractice action by way of judgment or settlement;

(e) Physician becomes the subject of any disciplinary proceeding or action by any hospital, any state's medical board or any similar agency responsible for professional licensing, or professional standards or behavior;

(f) Physician is charged with a felony or with a misdemeanor involving fraud, dishonesty, or moral turpitude;

(g) Physician violates, or causes any other person or entity to violate, the Code of Conduct (as defined in Section 6.3);

(h) any act of nature or any other event occurs which substantially interrupts all or a portion of the Practice or which has a material adverse effect on Physician's ability to perform Physician's obligations under this Agreement;

(i) any material adverse change in the condition of the Practice;

(j) Physician changes Physician's Specialty or the location of the Offices;

(k) Physician's license to practice medicine in the State or any other jurisdiction, or Physician's Drug Enforcement Agency ("DEA") registration, is denied, suspended, terminated, restricted, revoked or relinquished for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto; or

(l) the occurrence of any Event of Default (as defined in Section 7.2).

## **ARTICLE II. GROUP'S OBLIGATIONS**

**2.1 Association with Physician.** On or before the Start Date, Group shall engage Physician as an employee of Group. Except as otherwise required by or set forth in this Agreement, Hospital shall have no right to dictate the terms upon which Group engages Physician, which terms shall be as agreed upon by Physician and Group. Group shall notify Hospital in writing within forty-eight (48) hours after becoming aware of the termination or pending termination of Physician's employment Group.

**2.2 Physician Base Compensation.** Group shall pay to Physician, each month during the Assistance Period (as defined in Section 3.2(a)), as base compensation, no less than an amount equal to the Guaranteed Monthly Income (as defined in Section 3.2(a)), before income and employment taxes, and less (a) the actual cost and expense incurred by Group for Physician's benefits and (b) the applicable monthly Income Guarantee Advance (as defined in Section 3.2(c)).

**2.3 Physician Bonus Compensation.** Group may, in addition to Physician's base compensation, pay to Physician such bonus compensation as determined by Group from time to time in its sole and absolute discretion, or, if set forth in an agreement between Group and Physician, as determined pursuant to such agreement; provided that, in either case, the aggregate compensation payable to Physician is fair market value not taking into account the value or volume of referrals to or other business generated for Hospital or any Affiliate (as defined in Section 7.4(d)).

**2.4 Full-Time Practice.** Group shall, from and after the Start Date, use its best efforts to ensure that Physician has a patient load sufficient to enable Physician to provide professional medical services on a full-time basis in the Service Area.

**2.5 Books and Records.** Group shall, from and after the Start Date, establish and maintain an accurate bookkeeping system for all practice expenses, payments, and patient billings and receipts of Group and Physician. Group shall retain all such books and records for a period of five (5) years following the expiration or termination for any reason of this Agreement. Group shall, from and after the Start Date, allow Hospital to audit Group's books and records during regular business hours for purposes of monitoring Group's compliance with the terms and conditions of this Agreement. This Section shall survive the expiration or termination for any reason of this Agreement.

**2.6 Accounts Receivable.** Group shall, from and after the Start Date, take all necessary and reasonable steps to ensure that: (a) bills and claims are submitted to patients and payors as soon as reasonably possible after services are furnished, but not more than fifteen (15) days after Physician's provision of services for a patient; (b) bills and claims are collected in a timely and commercially reasonable manner; reasonable and affirmative collection actions are taken with respect to bills and claims which are outstanding for more than ninety (90) days; and (c) all collections from patients and payors are immediately recorded so the Parties may calculate the amount of any Income Guarantee Advances (as defined in Section 3.2(c)) due to Physician.

**2.7 Attribution of Collections and Expenses.** Group shall, for purposes of determining the amount of the Income Guarantee Advances, attribute to Physician any and all amounts received by Group or Physician with respect to services furnished by Physician in connection with the Practice, including amounts received with respect to professional medical services, medical director services, on-call coverage services or administrative services provided or to be provided by Physician, and shall attribute to Physician only those additional incremental operating expenses (including the amount of any additional incremental capital costs and expenses depreciable in accordance with generally accepted accounting principles) that are actually and reasonably incurred by Group and/or Physician and directly related to the operation of the Practice.

**2.8 Monthly Reports.** Group shall provide the following information to Hospital, as soon as reasonably possible, but not more than thirty (30) days following the last day of each month of the Assistance Period (as defined in Section 3.2(a)), as an attachment to each Physician Financial Report (as defined in Section 3.2(b)): (a) an accounting of the salary and benefits paid to Physician during the month; (b) an accounting of the total practice expenses and Incremental Practice Expenses (as defined in Section 3.2(c)) incurred by Group during the month; (c) an

accounts receivable report detailing Group's outstanding accounts receivable attributable to the professional services provided by Physician during the month and an aging report on all of Group's outstanding accounts receivable (including, without limitation, any reserves for contractual allowances and bad debts) related to Physician; and (d) a collections report detailing the Practice Receipts (as defined in Section 3.2(c)) for the month.

**2.9 Quarterly Reports.** Group shall provide the following information to Hospital not more than thirty (30) days after the last day of each fiscal quarter during Group's fiscal year: (a) a detailed quarterly financial statement of Group's professional medical practice, including a balance sheet, statement of income and operations, and a statement of cash flow; (b) a statement detailing the amounts, classes, aging and other relevant information regarding Group's outstanding accounts receivable attributable to Physician; and (c) such additional information regarding the financial condition or the professional medical practice of Group or the collateral under the Group Guarantee (as defined in Section 4.2) as Hospital may reasonably request from time to time.

**2.10 Employment Taxes and Benefits.** Group shall, from and after the Start Date, be responsible for paying, withholding or providing all employment taxes, benefits and expenses (including federal and state income and employment taxes) related to Physician.

**2.11 No Limitations or Restrictions on Physician's Practice.** During the term of this Agreement, Group shall not impose or enforce, or attempt to impose or enforce, any limitations or restrictions on Physician's practice of medicine, other than limitations or restrictions directly related to quality of care. Without limiting the generality of the foregoing, during the term of this Agreement, Group shall not impose or enforce, or attempt to impose or enforce, any restrictions or limitations on Physician's ability to compete with Group or any other limitations or restrictions that impair or impede, or could reasonably be expected to impair or impede, Physician's ability to establish and operate a medical practice separate and apart from Group.

### **ARTICLE III.** **RECRUITMENT INCENTIVES**

**3.1 Recruitment Incentives.** Hospital shall make available to Physician a loan consisting of the advances described in this Article III (the "**Recruitment Loan**"). Physician shall repay the Recruitment Loan pursuant to the terms and conditions of the Recruitment Note (as defined in Section 4.1(a)); provided, however, that amounts due to Hospital under the Recruitment Note may be forgiven, in whole or in part, as applicable, if certain conditions, outlined below and set forth in the Recruitment Note, are satisfied by Physician. Notwithstanding any other provision of this Agreement, the aggregate amount of the Recruitment Loan shall not exceed [REDACTED]

**3.2 Income Guarantee Advances.**

(a) **Guaranteed Monthly Income.** Hospital shall advance to Physician such amounts, calculated in accordance with Section 3.2(c), as may be necessary for Physician to receive a minimum monthly income, before income and employment taxes, of [REDACTED]

████████████████████ per month (the “Guaranteed Monthly Income”) for Twelve (12) successive months (the “Assistance Period”), commencing on the Start Date. The Parties acknowledge and agree that the Guaranteed Monthly Income shall be deemed to cover the cost and expense of Physician’s benefits, if any, for each such month.

(b) **Physician Financial Report.** Within ten (10) days after the last day of each month during the Assistance Period and each of the three (3) months after the Assistance Period, Physician shall submit (or cause Group to submit) to Hospital an accurate and complete report of Practice Receipts and Incremental Practice Expenses (each as defined in Section 3.2(c)) on the form attached as Exhibit 3.2(b) (the “Physician Financial Report”). Group and Physician shall acknowledge their approval and certify the accuracy of the contents of each Physician Financial Report by signing the Physician Financial Report prior to submission to Hospital.

(c) **Timing and Calculation of Advances.** Not more than thirty (30) days following receipt of the Physician Financial Report for each month during the Assistance Period, Hospital shall advance to Physician an amount equal to: (i) the Guaranteed Monthly Income, plus (ii) the additional incremental operating costs and expenses: (A) actually and reasonably incurred by Physician or Group, (B) directly attributable to the provision of professional medical services by Physician during such month, and (C) identified in and subject to the limits specified in the Physician Financial Report (“Incremental Practice Expenses”); minus: (iii) the amount collected, on a cash basis, in such month from all sources by Group and Physician and attributable to services furnished by Physician in connection with the Practice, including, without limitation, amounts received with respect to professional medical services, medical director services, on-call coverage services or administrative services provided or to be provided by Physician (“Practice Receipts”). The sums advanced to Physician pursuant to this Section shall be referred to as the “Income Guarantee Advances.”

(d) **Prorated Advances.** If the Start Date is other than the first (1<sup>st</sup>) day of a month, or if the last date of the Assistance Period is other than the last day of a month, the amounts of Guaranteed Monthly Income, Practice Receipts, and Incremental Practice Expenses shall be prorated based upon the actual number of days in the Assistance Period elapsed during such month and the aggregate number of days in that month.

(e) **Excess Receipts.** If Practice Receipts exceed the sum of Guaranteed Monthly Income and Practice Expenses in any month during the Assistance Period, Physician shall remit (or cause Group to remit) to Hospital such excess (the “Excess Receipts”), but only up to the amount of the then-outstanding principal balance of, and accrued interest owing on, the Income Guarantee Advances. Physician shall remit (or cause Group to remit) such Excess Receipts to Hospital on the same day that the Physician Financial Report is submitted to Hospital. All Excess Receipts shall be applied by Hospital against the then-outstanding balance of the Recruitment Loan, in accordance with the terms of the Recruitment Note (as defined in Section 4.1(a)).

(f) **Aggregate Amount.** Notwithstanding any other provision of this Agreement, the aggregate amount of the Income Guarantee Advances shall not exceed ██████████  
████████████████████

(g) **Recruitment Note.** Physician shall repay the Income Guarantee Advances pursuant to the terms and conditions of the Recruitment Note (as defined in Section 4.1(a)).

(h) **Contingencies to Payment of Income Guarantee Advances.** Notwithstanding any other provision of this Agreement, Hospital's obligation to advance any Income Guarantee Advances to Physician pursuant to this Section 3.2 shall be contingent upon Physician's and Group's compliance with the terms and conditions of this Agreement, the Recruitment Note (as defined in Section 4.1(a)), the Physician Security Agreement (as defined in Section 4.1(b)), and the Group Guarantee (as defined in Section 4.2), including, without limitation, the timely submission to Hospital of accurate and complete monthly Physician Financial Reports in accordance with Section 3.2(b).

(i) **Payment Instructions.** Physician hereby directs Hospital to deliver directly to Group checks drawn in Physician's name representing Income Guarantee Advances to which Physician may be entitled under this Section 3.2 (the "Payment Instructions"). The Parties acknowledge and agree that the Payment Instructions shall terminate upon the termination of Physician's employment with Group, without penalty or loss to Physician of benefits under this Section 3.2. From and after the date of cancellation of the Payment Instructions, Hospital shall deliver directly to Physician any and all Income Guarantee Advances to which Physician may be entitled under this Section 3.2.

(j) **No Transfer to Group.** Physician shall not transfer or assign to Group, and Group shall not demand or accept from Physician, any Income Guarantee Advance advanced to Physician by Hospital pursuant to this Section, except to the extent that such amounts actually incurred by Group represent reimbursement for Incremental Practice Expenses.

(k) **Waiver of Income Guarantee Advances Amounts.** Physician, in Physician's sole discretion, and notwithstanding the Payment Instructions, may waive the right to receive Income Guarantee Advances amounts with respect to any month during the Assistance Period by giving written notice to Hospital at the time the Physician Financial Report is submitted for such month to Hospital.

### 3.3 **Moving Expense Reimbursement.**

(a) **Moving Expense Reimbursement.** Hospital shall, within Thirty (30) days after submission by Physician to Hospital of receipts in accordance with Section 3.3(d), advance to Physician an amount necessary to reimburse Physician for the Moving Expenses (as defined in Section 3.3(b)) actually and reasonably incurred by Physician in connection with Physician's relocation to the Service Area; provided, however, that such amount shall not exceed [REDACTED]. The amount advanced to Physician pursuant to this Section shall be referred to as the "Moving Expense Reimbursement."

(b) **Moving Expenses.** For the purposes of this Agreement, "Moving Expenses" shall mean and be limited to the actual and reasonable cost of: (i) one or more moving vans for personal and practice-related possessions; (ii) packing of personal and practice-related possessions (including packing materials); (iii) loading and unloading of personal and

practice-related possessions; and (iv) relocation travel expenses for airfare, or mileage and lodging if traveling by automobile, for Physician and Physician's immediate family.

(c) **No Transfer to Group.** Physician shall not transfer or assign to Group, and Group shall not demand or accept from Physician, any Moving Expense Reimbursement amounts advanced to Physician by Hospital pursuant to this Section, unless and only to the extent that such amounts were actually incurred by Group for Moving Expenses and Group has furnished receipts evidencing such Moving Expenses to Hospital.

(d) **Contingencies to Reimbursement of Moving Expenses.** Hospital's obligation to advance the Moving Expense Reimbursement to Physician shall be contingent upon Physician's submission, within sixty (60) days after the Start Date, of accurate receipts to Hospital evidencing the Moving Expenses, in form and substance acceptable to Hospital, and Physician's compliance with the terms of this Agreement, the Recruitment Note (as defined in Section 4.1(a)) and the Physician Security Agreement (as defined in Section 4.1(b)). If Physician does not submit receipts to Hospital within sixty (60) days after the Start Date, Hospital shall not be obligated to advance any further amounts under the Moving Expense Reimbursement, and Physician shall immediately return to Hospital any amounts previously advanced to Physician under the Moving Expense Reimbursement.

(e) **Recruitment Note.** Physician shall repay the Moving Expense Reimbursement pursuant to the terms and conditions of the Recruitment Note (as defined in Section 4.1(a)).

### 3.4 **Assistance Advance.**

(a) **Assistance Advance.** Hospital shall, on or before October 1, 2005, advance to Physician an amount equal to [REDACTED]. The amounts advanced to Physician pursuant to this Section shall be referred to as the "Assistance Advance."

(b) **Use of Funds.** Physician shall use the Assistance Advance for the following purposes only: start up expenses including consulting, minor medical and office equipment (less than \$2,000 each), furnishings, office lease deposit, and initial medical and office supplies inventory (the "Permitted Purposes").

(c) **Contingencies to Payment of Assistance Advance.** Hospital's obligation to advance the Assistance Advance to Physician shall be contingent upon Physician's submission, within ninety (90) days after the Start Date, of documentation of the use of such funds for the Permitted Purposes above to Hospital, in form and substance acceptable to Hospital. If Physician does not submit such documentation to Hospital within ninety (90) days after the Start Date, Hospital shall not be obligated to advance any further amounts to Physician under the Assistance Advance and Physician shall immediately remit to Hospital any amounts previously advanced to Physician under the Assistance Advance.

(d) **No Transfer to Group.** Physician shall not transfer or assign to Group, and Group shall not demand or accept from Physician, any Assistance Advance advanced to Physician by Hospital pursuant to this Section, except to the extent that such amounts actually incurred by Group represent reimbursement for Incremental Practice Expenses.

(e) **Recruitment Note.** Physician shall repay the Assistance Advance pursuant to the terms and conditions of the Recruitment Note (as defined in Section 4.1(a)).

**3.5 Final Statement.** Within thirty (30) days after submission of the last Physician Financial Report, Hospital shall prepare and deliver to Physician and Group a written statement of all amounts advanced by Hospital to Physician pursuant to this Agreement and all Excess Receipts paid by Physician to Hospital pursuant to this Agreement (the "**Final Statement**"). Physician must provide written notification to Hospital of any objections to the amounts reported by Hospital within thirty (30) days of Hospital's delivery of the Final Statement. If Physician does not provide a written notice of objection within thirty (30) days of Hospital's delivery of the Final Statement, the amount reported by Hospital on the Final Statement shall be the total principal balance owed by Physician to Hospital under the Recruitment Note. If Physician does object, the Parties may either agree to binding arbitration or either Party may file a legal action to determine the amount of the total principal balance owed by Physician to Hospital under the Recruitment Note.

#### ARTICLE IV.

#### **PROMISSORY NOTE; SECURITY AGREEMENT; GROUP GUARANTEE**

**4.1 Physician's Deliverables.** Concurrently with the execution of this Agreement, Physician shall execute and deliver to Hospital:

(a) the secured promissory note in the form attached as **Exhibit 4.1(a)** (the "**Recruitment Note**");

(b) the security agreement in the form attached as **Exhibit 4.1(b)** (the "**Physician Security Agreement**"); and

(c) a completed IRS Form W-9 identifying Physician's taxpayer identification number.

**4.2 Group's Deliverables.** Concurrently with the execution of this Agreement, Group shall execute and deliver to Hospital a guarantee and security agreement in the form attached as **Exhibit 4.2** (the "**Group Guarantee**").

**4.3 Further Cooperation.** Physician and Group shall perform, or ensure the performance of, all actions and execute, or ensure the execution of, all documents necessary to perfect the security interests granted in the Physician Security Agreement and the Group Guarantee, as reasonably requested by Hospital from time to time.

#### ARTICLE V.

#### **INSURANCE AND INDEMNITY**

**5.1 Malpractice Liability Insurance.** Physician shall obtain and continuously maintain, or cause Group to obtain and continuously maintain, professional malpractice liability insurance coverage, issued by an insurance company licensed or otherwise qualified to issue professional liability insurance policies or coverage in the State, and acceptable to Hospital, in the amount of at least One Million Dollars (\$1,000,000) per occurrence or claim and Three

Million Dollars (\$3,000,000) in the annual aggregate for the acts and omissions of Physician. Such coverage shall provide for a date of placement preceding or coinciding with the Start Date of this Agreement.

**5.2 Certificate of Insurance.** On or before the Start Date, Physician shall provide to Hospital, or cause Group to provide to Hospital, an original certificate evidencing professional malpractice liability insurance coverage, and shall provide to Hospital, or cause Group to provide to Hospital, proof of continued professional malpractice liability insurance coverage on an annual basis (or as periodically requested by Hospital). Physician shall provide to Hospital, or cause Group to provide to Hospital, at least thirty (30) days' prior written notice of cancellation or any material change in such professional malpractice liability insurance coverage.

**5.3 Tail Coverage.** If Physician's professional malpractice liability insurance is provided on a claims-made basis, upon the expiration or termination for any reason of this Agreement, Physician shall continuously maintain, or cause Group to continuously maintain, such insurance or purchase, or cause to be purchased, from an insurance company licensed or otherwise qualified to issue professional liability insurance policies or coverage in the State, and acceptable to Hospital, extended reporting period (*i.e.*, "tail") coverage for the longest extended reporting period then available to ensure that insurance coverage in the amount set forth in Section 5.1 of this Agreement is maintained for claims which arise from professional services provided by Physician during the term of this Agreement.

**5.4 Indemnification.**

(a) **Indemnification by Physician.** Physician shall indemnify and hold harmless Hospital from and against: (i) any and all liability arising out of Physician's failure to comply with the terms of this Agreement, and any injury, loss, claims, or damages arising from the negligent operations, acts, or omissions of Physician or Physician's employees or agents relating to or arising out of their professional services or this Agreement; and (ii) any and all costs and expenses, including reasonable legal expenses, incurred by or on behalf of Hospital in connection with the defense of such claims.

(b) **Indemnification by Group.** Group shall indemnify and hold harmless Hospital from and against: (i) any and all liability arising out of Group's failure to comply with the terms of this Agreement, and any injury, loss, claims, or damages arising from the negligent operations, acts, or omissions of Group or Group's employees or agents relating to or arising out of their professional services or this Agreement; and (ii) any and all costs and expenses, including reasonable legal expenses, incurred by or on behalf of Hospital in connection with the defense of such claims.

(c) **Indemnification by Hospital.** Hospital shall indemnify and hold harmless Physician and Group from and against: (i) any and all liability arising out of Hospital's failure to comply with the terms of this Agreement, and any injury, loss, claims, or damages arising from the negligent operations, acts, or omissions of Hospital or its employees or agents relating to or arising out of this Agreement; and (ii) any and all costs and expenses, including reasonable legal expenses, incurred by or on behalf of Physician or Group in connection with the defense of such claims.



**5.5 Cooperation among the Parties.**

(a) The Parties recognize that, during the term of this Agreement and for a period thereafter, certain risk management issues, legal issues, claims or actions may arise that involve or could potentially involve the Parties and their respective employees and agents. The Parties further recognize the importance of cooperating with each other in good faith when such issues, claims or actions arise, to the extent such cooperation does not violate any applicable laws, cause the breach of any duties created by any policies of insurance or programs of self-insurance, or otherwise compromise the confidentiality of communications or information regarding the issues, claims or actions. As such, the Parties hereby agree to cooperate in good faith, using their best efforts, to address such risk management and claims handling issues in a manner that strongly encourages full cooperation among the Parties.

(b) The Parties further agree that if a controversy, dispute, claim, action or lawsuit (each, an "Action") arises with a third party wherein two or more of the Parties are included as defendants, each such Party shall promptly disclose to the other Party in writing the existence and continuing status of the Action and any negotiations relating thereto. Each such Party shall make every reasonable attempt to include the other such Party in any settlement offer or negotiations. In the event the other such Party is not included in the settlement, the settling Party shall, unless prohibited by the settlement agreement, immediately disclose to the other such Party in writing the acceptance of any settlement and terms relating thereto.

**5.6 Survival of Insurance and Indemnity Obligations.** The provisions of this Article V shall expressly survive the expiration or earlier termination of this Agreement.

**ARTICLE VI.  
RELATIONSHIPS AMONG THE PARTIES**

**6.1 Independent Contractor.** Physician and Group are and shall at all times be independent contractors with respect to Hospital in meeting their respective responsibilities under this Agreement. Nothing in this Agreement is intended nor shall be construed to create a partnership, employer-employee or joint venture relationship between Hospital and either Physician or Group.

**6.2 No Tax/No Benefit Contributions.** Hospital shall not be liable under this Agreement for withholding or compensating, paying or providing for taxes (including, but not limited to, federal and state income and employment taxes), or providing employee benefits of any kind (including contributions to government mandated, employment-related insurance and similar programs) to, or on behalf of, Physician or any other person employed or retained by Physician. If Hospital is required to compensate, pay or provide for taxes, or provide employee benefits of any kind (including contributions to government mandated, employment-related insurance and similar programs) to, or on behalf of, Physician or any person employed, retained by or associated with Physician, Physician shall reimburse Hospital the amount of any such expenditure within ten (10) days after being notified of such expenditure.

**6.3 Code of Conduct.** Each of Physician and Group hereby acknowledges receipt of Hospital's Code of Conduct, attached to this Agreement as **Exhibit 6.3** (the "Code of

**Conduct”**), and agrees that he, she, or it has been given ample opportunity to read, review and understand the Code of Conduct. Neither Physician nor Group shall act in any manner which conflicts with or violates the Code of Conduct, or cause another person to act in any manner which conflicts with or violates the Code of Conduct. Physician and Group shall comply with the Code of Conduct as it relates to their respective business relationships with Hospital, any Affiliate (as defined in Section 7.4(d)), or Hospital’s or any Affiliate’s employees, agents, servants, officers, directors, contractors and suppliers of any kind.

**6.4 Referrals.** Nothing in this Agreement or in any other written or oral agreement between Hospital and either Physician or Group, nor any consideration offered or paid in connection with this Agreement, contemplates or requires the admission or referral of any patients or business to Hospital or any Affiliate (as defined in Section 7.4(d)) by Physician or any Group Physician (as defined in Section 6.5). This Agreement is not intended to influence Physician’s or any other Group Physician’s judgment in choosing the hospital or other health care facility or provider deemed by Physician or any other Group Physician to be best qualified to deliver goods or services to any particular patient. The rights of Physician and Group under this Agreement shall not be dependent in any way on the referral of patients or business to Hospital or any Affiliate by Physician or any other Group Physician. Notwithstanding the foregoing, Physician and Group shall not refer any Hospital patient to any provider of health care services that Physician or any other Group Physician knows or should know is excluded or suspended from participation in, or sanctioned by, any Federal Health Care Program.

**6.5 Practice of Medicine; Limitation on Control.** Hospital is neither authorized nor qualified to engage in any activity which may be construed or deemed to constitute the practice of medicine. Hospital shall neither have nor exercise any control or direction over the professional medical judgment of Physician or Group or any other physician employed by or contracting with Group (each, a “**Group Physician**”), or the methods by which any of them performs professional medical services; provided, however, that Physician, Group and the Group Physicians shall be subject to and shall at all times comply with the Hospital Rules, and the terms and conditions of this Agreement.

**6.6 Termination of Physician’s Relationship with Group.**

(a) If and on the date that Physician ceases to perform professional medical services in association with Group for any reason during the term of this Agreement, Group’s obligations under Article II of this Agreement (other than Group’s obligation to maintain books and records in accordance with Section 2.5) shall be automatically transferred and assigned to Physician, and Physician shall be deemed to have accepted and assumed, and thereafter be solely and exclusively responsible for, the obligations of Group under Article II of this Agreement.

(b) If Physician subsequently establishes a practice with another professional corporation, professional partnership or medical services organization (the “**Alternative Group**”), Physician shall cause the Alternative Group to execute and deliver to Hospital, not more than thirty (30) days following the commencement of Physician’s association therewith: (i) an agreement to accept and assume the obligations of Group under this Agreement and to abide by the terms and conditions of this Agreement, in such form as reasonably requested by

Hospital; and (ii) a guarantee and security agreement substantially in the form of the Group Guarantee attached as Exhibit 4.2.

**ARTICLE VII.**  
**TERM AND TERMINATION**

**7.1 Term.** This Agreement shall have a term commencing on the Execution Date and continuing until all sums owing on the Recruitment Note are either forgiven or paid in full in accordance with the terms of this Agreement and the Recruitment Note.

**7.2 Termination by Hospital.** Hospital shall have the right to terminate this Agreement immediately upon the occurrence of any one or more of the following events (each an “Event of Default”):

- (a) breach of this Agreement by Physician where the breach is not cured within thirty (30) days after Hospital gives written notice of the breach to Physician;
- (b) breach of this Agreement by Group where the breach is not cured within thirty (30) days after Hospital gives written notice of the breach to Group;
- (c) any representation or warranty made by Physician or Group in or pursuant to this Agreement, the Physician Security Agreement or the Group Guarantee shall prove to be untrue or incorrect in any respect when made or deemed made;
- (d) Physician’s voluntary retirement from the practice of medicine;
- (e) Physician’s medical staff membership, or any clinical privilege at any health care facility (including Hospital) is denied, suspended, terminated, restricted, revoked or relinquished for any reason, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;
- (f) Physician’s license to practice medicine in the State, or any other jurisdiction, is denied, suspended, terminated, restricted, revoked or relinquished for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;
- (g) Physician fails to maintain current and valid DEA registration;
- (h) Physician is charged with or convicted of a felony or with a misdemeanor involving fraud, dishonesty, or moral turpitude;
- (i) Physician’s performance of this Agreement, in the sole determination of Hospital, jeopardizes the mental or physical health or well-being of any patient of Hospital;
- (j) Physician, Group or any Group Physician is debarred, suspended, excluded or otherwise ineligible to participate in any Federal Health Care Program;

(k) Physician or Group acts, or Physician or Group causes another person to act, in a manner which conflicts with or violates the Code of Conduct or Hospital Rules;

(l) breach by Physician or Group of any HIPAA Obligation;

(m) Physician makes an assignment for the benefit of creditors, admits in writing Physician's inability to pay Physician's debts as they mature, applies to any court for the appointment of a trustee or receiver of any of the Collateral (as defined in Section 1 of the Physician Security Agreement) or any substantial part of Physician's properties, or commences any voluntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation or other similar law of any jurisdiction;

(n) any application or any proceedings described in Section 7.2(m) is filed or commenced against Physician, and Physician indicates Physician's approval, consent or acquiescence thereto, or an order is entered adjudicating Physician bankrupt or insolvent and such order remains in effect for thirty (30) days;

(o) Physician or Group breaches, defaults or fails to fully perform or observe, when and as required, any covenant, condition or agreement contained in any other agreements, promissory notes, instruments or documents with Hospital or any Affiliate (as defined in Section 7.4(d)), including, without limitation, the Recruitment Note, the Physician Security Agreement and the Group Guarantee, subject to any applicable cure periods expressly provided for in such agreements, promissory notes, instruments or documents;

(p) Physician defaults with respect to the payment of indebtedness or under any agreement, covenant, provision or condition with respect to such indebtedness, whether such indebtedness is owing to either Hospital or to any other creditor;

(q) any execution, levy or attachment is placed on any assets of Physician;

(r) Physician transfers all or substantially all of Physician's assets; or

(s) Physician is rendered unable to comply with the terms of this Agreement for any reason.

**7.3 Termination by Physician.** Physician shall have the right to terminate this Agreement upon the breach of this Agreement by Hospital where the breach is not cured within thirty (30) days after Physician gives written notice of the breach to Hospital.

**7.4 Termination or Modification in the Event of Government Action.**

(a) In the event of any Government Action, the Parties shall, within ten (10) days after one Party gives written notification of the Government Action to the other Parties, meet and confer to negotiate in good faith to attempt to amend this Agreement in order to comply with the Government Action.

(b) If the Parties, after good faith negotiations that shall not exceed thirty (30) days, are unable to make the amendments necessary to comply with the Government Action, or,

alternatively, if Hospital determines in good faith that compliance with the Government Action is impossible or infeasible, Hospital may terminate this Agreement effective ten (10) days after the date that Hospital gives a written notice of termination under this Section to the other Parties.

(c) For the purposes of this Section, “Government Action” shall mean any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body or any private agency, or any notice of a decision, finding, interpretation or action by any governmental or private agency, court or other third party which, in the opinion of counsel to Hospital, as a result or consequence, in whole or in part, of the arrangement among the Parties set forth in this Agreement, the Recruitment Note, the Physician Security Agreement or the Group Guarantee, if or when implemented, could reasonably be expected to result in or present a material risk of any one or more of the following:

- (i) revocation or threat of revocation of the status of any health facility license granted to Hospital or any Affiliate (as defined in Section 7.4(d));
- (ii) revocation or threat of revocation of the federal, state or local tax-exempt status of Hospital or any Affiliate, or their respective tax-exempt financial obligations;
- (iii) constitute a violation of 42 U.S.C. Section 1395nn (commonly referred to as the Stark law) or any state law governing patient referrals if Physician or any Group Physician referred patients to Hospital or any Affiliate;
- (iv) prohibit Hospital or any Affiliate from submitting claims or materially reducing the reimbursement received by Hospital or any Affiliate for services provided to patients referred by Physician or any Group Physician; or
- (v) subject Hospital, Physician, Group, any Affiliate, or any of their respective employees or agents, to civil or criminal prosecution or the imposition of any sanction (including any excise benefit tax penalty under Internal Revenue Code Section 4958) on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement.

(d) For the purposes of this Agreement, “Affiliate” shall mean any entity which, directly or indirectly, controls, is controlled by or is under common control with Hospital.

#### **7.5 Automatic Termination upon Death or Permanent Disability.**

(a) This Agreement shall automatically terminate upon the death or the inability of Physician to practice medicine in the Specialty for the foreseeable future (as evidenced by the opinion of an independent physician acceptable to Hospital) after such disability has existed for a continuous period exceeding one (1) year due to Physician’s physical or mental condition but excluding any such condition resulting, in whole or in part, from

substance abuse, alcohol abuse, or criminal or fraudulent conduct by Physician (“**Permanent Disability**”).

(b) Notwithstanding any other provision of this Agreement, Hospital shall forgive the entire then-outstanding balance of principal and all accrued unpaid interest owing on the Recruitment Note, together with all other applicable fees, costs and charges, if any, in the event of Physician’s death or Permanent Disability. If Physician’s disability is determined not to be a Permanent Disability in the opinion of an independent physician acceptable to Hospital, all rights and duties under this Agreement shall be suspended until such short-term disability is deemed to no longer exist as determined by an independent physician acceptable to Hospital. Upon the termination of Physician’s short-term disability, the rights and duties of this Agreement shall recommence as if it was the day upon which Physician left the Practice due to the disability.

#### **7.6 Qualifying Leave of Absence.**

(a) If any Qualifying Leave of Absence (as defined below) occurs during the Assistance Period, Physician’s obligations under Sections 1.1 and 1.2 of this Agreement, and Hospital’s obligations under Article III of this Agreement, shall be suspended, and such Qualifying Leave of Absence shall not constitute an Event of Default under this Agreement, the Recruitment Note, or the Physician Security Agreement. In such event, Physician’s obligations under Sections 1.1 and 1.2 of this Agreement, and Hospital’s obligations under Article III of this Agreement, shall recommence as of the end of such Qualifying Leave of Absence, and the Assistance Period shall be extended for a period equal to the length of such Qualifying Leave of Absence.

(b) If a Qualifying Leave of Absence (as defined below) occurs after the end of the Assistance Period, Physician’s obligations under Sections 1.1 and 1.2 of this Agreement shall be suspended, any repayment and/or forgiveness under the Recruitment Note shall be suspended, and such Qualifying Leave of Absence shall not constitute an Event of Default under this Agreement, the Recruitment Note, or the Physician Security Agreement. In such event, Physician’s obligations under Sections 1.1 and 1.2 of this Agreement shall recommence as of the end of such Qualifying Leave of Absence, and the Repayment Period under the Recruitment Note shall be extended for a period equal to the length of such Qualifying Leave of Absence.

(c) Physician shall provide to Hospital at least thirty (30) days’ advance notice of any Qualifying Leave of Absence is to begin if the need for the Qualifying Leave of Absence is foreseeable, otherwise, as soon as practicable.

(d) Physician acknowledges and agrees that any leave of absence that does not constitute a Qualifying Leave of Absence, and any Qualifying Leave of Absence that exceeds a period of three (3) months, shall constitute an Event of Default for purposes of this Agreement.

(e) For purposes of this Agreement, “**Qualifying Leave of Absence**” shall mean a leave of absence for a period not to exceed three (3) months that is taken by Physician for one of the following reasons: (i) to take medical leave for Physician’s own Serious Health Condition; (ii) to care for an immediate family member (child, parent or spouse) with a Serious Health Condition; (c) for the birth and care of a newborn child of Physician; or (d) for placement

with Physician of a son or daughter for adoption or foster care. For purposes of this Agreement, "Serious Health Condition" shall have the same meaning as set forth in the federal Family and Medical Leave Act, 29 U.S.C. Section 2601 *et seq.*

**7.7 Rights upon Expiration or Termination.**

(a) **Generally.** Upon any termination or expiration of this Agreement, all rights and obligations of the Parties shall cease except those rights and obligations that have accrued or expressly survive such termination or expiration.

(b) **Immediate Repayment of Outstanding Indebtedness.** Upon the termination or expiration of this Agreement for any reason, except termination of this Agreement pursuant to Sections 7.3, 7.4 or 7.5, Hospital may, at its option, declare any outstanding indebtedness evidenced by the Recruitment Note to be immediately due and payable to Hospital.

(c) **Repayment upon Termination by Physician or Government Action.** If this Agreement is terminated by Physician pursuant to Section 7.3 or as a result of Government Action pursuant to Section 7.4, the entire outstanding balance of principal and accrued interest together with any applicable fees, costs and charges owing on the Recruitment Note as of the effective date of such termination shall be payable by Physician to Hospital in thirty-six (36) equal monthly installments of principal and interest commencing as of the date that is one (1) month following the effective date of the termination of this Agreement; provided, however, if such repayment terms violate any federal, state or local law, rule or regulation, or Government Action, Physician shall pay to Hospital, on the effective date of the termination of this Agreement, the entire outstanding balance of principal and accrued interest together with any applicable fees, costs and charges owing on the Recruitment Note as of the effective date of such termination. Physician shall not have any right to offset the amount owing to Hospital under this Section upon termination by any amounts that then or thereafter may be owing by Hospital to Physician whether as a result of the termination or otherwise.

**ARTICLE VIII.  
GENERAL PROVISIONS**

**8.1 Amendment.** This Agreement may be modified or amended only by mutual written agreement of the Parties. Any such modification or amendment must be in writing, dated, signed by the Parties and explicitly indicate that such writing modifies or amends this Agreement.

**8.2 Assignment.** Except for assignment by Hospital to an entity owned, controlled by, or under common control with Hospital, or as otherwise contemplated by Section 6.6(a), no Party may assign any right, interest, duty, or obligation under this Agreement without each other Party's prior written consent. Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective heirs, successors, assigns and representatives.

**8.3 Attorneys' Fees.** If any Party brings an action or proceeding, arising out of or relating to this Agreement, the Recruitment Note, the Physician Security Agreement or the Group Guarantee, the non-prevailing Party shall pay to the prevailing Party reasonable attorneys'

fees and costs incurred in bringing such action, including, without limitation, fees incurred in post judgment motions, contempt proceedings, garnishment, levy, debtor and third party examinations, discovery, bankruptcy litigation, arbitration, trial, and any appeal or review, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered shall contain a provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. The prevailing Party shall be the Party who is identified in any judgment or order entered as the Party entitled to recover its costs of suit, whether or not the action or proceeding proceeds to final judgment or award.

**8.4 Choice of Law.** This Agreement shall be construed in accordance with and governed by the laws of California, without giving effect to any choice of law or conflict of law rules or provisions that would cause the application of the laws of any jurisdiction other than California.

**8.5 Compliance with Laws.** Physician and Group shall comply with all applicable laws, ordinances, codes and regulations of federal, state and local governments, and any Government Action, including, without limitation, policies, standards, requirements, guidelines, and recommendations of the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO"), all as in effect and amended from time to time.

**8.6 Compliance with Medicare Rules.** To the extent required by law or regulation, Physician and Group shall make available, or shall cause to be made available upon written request from Hospital, the Secretary of Health and Human Services, the Comptroller General of the United States, or any other duly authorized agent or representative, this Agreement and Physician's and Group's books, documents and records pertaining to this Agreement. Physician and Group shall preserve or cause to be preserved such books, documents and records for a period of ten (10) years after the end of the term of this Agreement. If Physician or Group is requested to disclose books, documents or records pursuant to this Section for any purpose, Physician or Group, as the case may be, shall notify Hospital of the nature and scope of such request, and shall make available to Hospital, upon written request of Hospital, all such books, documents or records. This Section shall survive the expiration or termination for any reason of this Agreement.

**8.7 Confidentiality.** No Party shall disclose any of the provisions of this Agreement to any person or entity, other than the Parties' respective attorneys or accountants, without the prior written consent of each other Party, unless and only to the extent such disclosure is required by law, subpoena or legal process. Any Party may disclose the provisions of this Agreement to any person or entity without the prior written consent of the other Parties to the extent such disclosure is requested or required by (a) the Party's respective contracts existing as of the date of this Agreement; or (b) fiscal intermediaries, public agencies or commissions with governmental powers and duties related to disclosure of information which have the right to compel disclosure of such information. Hospital may also disclose the provisions of this Agreement to any person or entity without the prior written consent of Physician or Group to the extent such disclosure is requested or required by (a) Hospital's representatives or others in connection with any tax-exempt bond or other financing transactions of Hospital or any Affiliates; or (b) Hospital's corporate integrity program.



**8.8 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**8.9 Dispute Resolution.** All disputes, controversies, claims, questions, or disagreements arising out of or relating to this Agreement, shall be litigated in any state or federal court having appropriate jurisdiction and located within California, County of San Diego. The Parties, by the execution of this Agreement, expressly consent to the jurisdiction of any such court, to venue therein and to the service of process in any such action or proceedings, as required by applicable law.

**8.10 Entire Agreement.** This Agreement is the entire understanding and agreement of the Parties regarding its subject matter, and supersedes any prior oral or written agreements, representations, understandings or discussions among the Parties with respect to such subject matter. No other understanding among the Parties shall be binding on them unless set forth in writing, signed and attached to this Agreement.

**8.11 Exhibits and Attachments.** The attached exhibits and attachments, together with all documents incorporated by reference in the exhibits and attachments, form an integral part of this Agreement and are incorporated by reference into this Agreement.

**8.12 Force Majeure.** No Party shall be liable for nonperformance or defective performance or late performance of any of his, her or its obligations under this Agreement to the extent and for such periods of time as such nonperformance, defective performance or late performance is due to reasons outside such Party's control, including acts of God, war (declared or undeclared), terrorism, action of any governmental authority, riots, revolutions, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, or strikes (or similar nonperformance or defective performance or late performance of employees, suppliers or subcontractors).

**8.13 Governing Documents.** In the event of any inconsistency or conflict between the terms and conditions set forth in this Agreement and the terms and conditions set forth in the exhibits or attachments to this Agreement, this Agreement shall govern.

**8.14 Headings.** The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

**8.15 Compliance with HIPAA.** Physician and Group shall comply with the HIPAA Obligations as defined and set forth in Exhibit 8.15. The HIPAA Obligations shall survive the expiration or termination for any reason of this Agreement.

**8.16 Income Tax Ramifications.** The Parties acknowledge that Group and Physician may incur federal and state income tax liabilities from certain of the transactions contemplated by this Agreement, and that Hospital is or may be required to report items of income under relevant income tax laws and regulations. The Parties acknowledge and agree that Hospital has not made any representation to either Group or Physician with respect to the tax implications of the transactions contemplated by this Agreement, and that statements made by Hospital or its

agents, employees, representatives or attorneys shall not be relied upon by Group or Physician, and shall not be interpreted or construed as tax advice to either Group or Physician.

**8.17 Litigation Consultation.** Physician shall not accept consulting assignments or otherwise contract, agree, or enter into any arrangement to provide expert testimony or evaluation on behalf of a plaintiff in connection with any claim against Hospital or any Affiliate named, or expected to be named, as a defendant. Neither Physician nor any Group Physician shall accept similar consulting assignments if (a) the defendant(s) or anticipated defendant(s) include a member of the medical staff of Hospital or any Affiliate, and (b) the matter relates to events that occurred at Hospital or any Affiliate; provided, however, the provisions of this Section shall not apply to situations in which Physician or such Group Physician served as a treating physician.

**8.18 Meaning of Certain Words.** Wherever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns shall include the plural and vice versa. Unless otherwise specified, “days” shall be considered “calendar days” and “months” shall be considered “calendar months” in this Agreement and its exhibits and attachments.

**8.19 No Conflicting Obligations.** Physician and Group represent and warrant that the execution and delivery of this Agreement and the performance of their respective obligations under this Agreement do not and will not: (a) present a conflict of interest or materially interfere with the performance of their respective duties under any other agreement or arrangement; or (b) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice and/or lapse of time, would constitute a default) under, terminate, accelerate the performance required by, or result in a right of termination or acceleration under any of the terms, conditions or provisions of any other agreement, indebtedness, note, bond, indenture, security or pledge agreement, license, franchise, permit, or other instrument or obligation. Physician and Group shall immediately inform Hospital of any other agreements that may present a conflict of interest or materially interfere with performance of their respective duties under this Agreement.

**8.20 Non-Discrimination.** Neither Group nor Physician shall differentiate or discriminate in the provision of medical services on the basis of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, age, medical condition, medical history, genetics, evidence of insurability, or claims history, in violation of any applicable state, federal or local law or regulation, or Hospital Rules, including, without limitation, the Age Discrimination Act of 1975, the Americans with Disabilities Act and all regulations issued pursuant thereto and as may be amended from time to time. Group, Physician, and Hospital shall be in full compliance with Section 504 of the Rehabilitation Act of 1973, Titles VI and VII of the 1964 Civil Rights Act, and all regulations issued pursuant thereto and as may be amended from time to time.

**8.21 No Other Relocation Assistance Being Received.** Physician represents and warrants that Physician is not bound by any agreement with any other person or entity pursuant to which Physician receives or will receive financial assistance or compensation during the Assistance Period, except as previously disclosed in writing to Hospital.

**8.22 No Third Party Beneficiary Rights.** This Agreement shall not confer or be construed to confer any rights or benefits to any person or entity other than the Parties.

**8.23 Notices.** All notices or communications required or permitted under this Agreement shall be given in writing and shall be delivered to the Party or Parties to whom notice is to be given either: (a) by personal delivery (in which case such notice shall be deemed given on the date of delivery); (b) by next business day courier service (e.g., Federal Express, UPS or other similar service) (in which case such notice shall be deemed given on the business day following date of deposit with the courier service); or (c) by United States mail, first class, postage prepaid, registered or certified, return receipt requested (in which case such notice shall be deemed given on the third (3<sup>rd</sup>) day following the date of deposit with the United States Postal Service). In each case, notice shall be delivered or sent to the address indicated on the signature page, or such other address as provided by a Party, from time to time, pursuant to this Section.

**8.24 Participation in Governmental Programs.**

(a) Physician represents that Physician, is not, and has never been, debarred, suspended, excluded or otherwise ineligible to participate in any Federal Health Care Program.

(b) Group represents that neither Group nor any Group Physician is, or ever has been, debarred, suspended, excluded, or otherwise ineligible to participate in any Federal Health Care Program.

**8.25 Representations.** Each Party represents with respect to itself that: (a) no representation or promise not expressly contained in this Agreement has been made by the other Party or by the other Party's agents, employees, representatives or attorneys; (b) this Agreement is not being entered into on the basis of, or in reliance on, any promise or representation, expressed or implied, other than such as are set forth expressly in this Agreement; and (c) such Party has been represented by legal counsel of such Party's own choice or has elected not to be represented by legal counsel in this matter.

**8.26 Severability.** Subject to Section 7.4, if any provision of this Agreement, in whole or in part, or the application of any provision, in whole or in part, is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction and such provision can be severed without substantially changing the bargain reached by the Parties, such provision or part of such provision shall be severed from this Agreement, and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of this Agreement, including the remainder of such provision not determined to be illegal, invalid or unenforceable. If Section 7.4 is applicable, this Section shall not be enforced.

**8.27 Waiver.** No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a Party must be in writing, and shall apply solely to the specific instance expressly stated.

**8.28 Waiver of Injunctive or Similar Relief.** Upon any breach or termination of this Agreement by Hospital that is determined to be improper by a court or by an arbitrator, Physician shall accept monetary damages, if any, as full and complete relief, to the exclusion of any specific performance or injunctive or similar equitable relief.

*[signature page follows]*

The Parties have executed this Agreement on the Execution Date.

**HOSPITAL**

Palomar Pomerado Health,  
a California district hospital

\_\_\_\_\_  
By: Michael H. Covert, F.A.C.H.E.  
Its: President/CEO

Hospital's address:

15255 Innovation Drive  
San Diego, CA 92128  
\_\_\_\_\_

**PHYSICIAN**

Josue Leon, M.D.,  
an individual

\_\_\_\_\_  
Josue Leon, M.D.  
SSN Number: \_\_\_\_\_

Physician's principal place of business:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**GROUP**

ESCONDIDO OB/GYN,  
a professional corporation

\_\_\_\_\_  
By:  
Its:

Group's address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Exhibit 1.1(a)**

**SERVICE AREA**

92025 Escondido  
92026 Escondido  
92027 Escondido  
92029 Escondido  
92036 Cuyamaca/Julian  
92059 Pala  
92060 Palomar Mountain  
92061 Pauma Valley  
92064 Poway  
92065 Ramona  
92069 San Marcos  
92070 Santa Ysabel  
92082 Valley Center  
92127 Rancho Bernardo  
92128 Rancho Bernardo  
92129 Rancho Peñasquitos

1.1(a)-1  
Service Area

Exhibit 3.2(b)

**PHYSICIAN FINANCIAL REPORT FORM**

Month: \_\_\_\_\_, 20\_\_

Group and Physician represent and warrant to Hospital that this Physician Financial Report (a) is consistent with the books and records of Group; (b) is true, accurate and complete in all respects; (c) does not contain any untrue information or statement of fact; and (d) does not omit to state any information or fact reasonably necessary to make the information or facts contained herein not misleading.

\_\_\_\_\_  
Signature of Physician

\_\_\_\_\_  
Signature of Group's Authorized Representative

Patient Volume (Visits this month) \_\_\_\_\_

**PRACTICE RECEIPTS**

**INCREMENTAL PRACTICE EXPENSES**

Maximum Allowable Expenses

Actual Expenses Incurred

INCREMENTAL PRACTICE EXPENSES	<u>Maximum Allowable Expenses</u>	<u>Actual Expenses Incurred</u>
Additional Rent (Office)	_____	_____
Additional Phone & Answering Service	_____	_____
Additional Utilities	_____	_____
Malpractice Insurance	_____	_____
Additional Insurance Costs (Office)	_____	_____
Salaries (Additional Office Staff FTE(s))	_____	_____
Fringe Benefits (Additional Office Staff FTE(s))	_____	_____
Medical Supplies & Professional Services	_____	_____
Additional Office Supplies	_____	_____
Licenses	_____	_____
Postage	_____	_____
Payroll Taxes (Additional Office Staff FTE(s))	_____	_____
Additional Leased Equipment and Equipment Fees	_____	_____
Depreciated Additional Capital Equipment*	_____	_____
Depreciated Additional Capital Improvements*	_____	_____
Maintenance (Additional Equipment)	_____	_____
Transcription Expenses	_____	_____
Dues and Subscriptions & CME	_____	_____

3.2(b)-1

Physician Financial Report

Marketing/Advertising  
 Misc. Expenses  
**TOTAL INCREMENTAL PRACTICE  
 EXPENSES**


\* depreciable in accordance with generally accepted accounting principles

For purposes of calculating the Incremental Practice Expenses, Physician shall apply only those expenses identified above, and the total amount of each such expense in any given month shall not exceed the maximum allowable Incremental Practice Expense for that month, except as otherwise agreed to in writing by Hospital. Physician may only include as Incremental Practice Expenses those additional incremental operating expenses (including the amount of any additional incremental capital costs and expenses depreciable in accordance with generally accepted accounting principles) that are actually incurred by Physician or Group during the month and only to the extent reasonable and customary to conduct the Practice. Incremental Practice Expenses may include federal and state payroll tax obligations of Group related to Physician; however, payroll tax obligations of Physician shall not be treated as an Incremental Practice Expense.

**NET PAYMENT CALCULATION**

***FOR ACCOUNTING USE ONLY***

<b>Guaranteed Monthly Income</b>	
<i>Add:</i> <b>Incremental Practice Expenses</b>	
<i>Less:</i> <b>Practice Receipts</b>	
<i>Equals:</i> <b>Income Guarantee Advance (Excess Receipts)</b>	
 <b>Total Income Guarantee Advances To Date</b>	



**Exhibit 4.1(a)**

**SECURED PROMISSORY NOTE**

Not to Exceed [REDACTED]

\_\_\_\_\_, 20\_\_\_\_

**FOR VALUE RECEIVED**, the undersigned borrower Josue Leon, M.D., ("**Physician**") promises to pay to the order of PALOMAR POMERADO HEALTH, a California district hospital ("**Hospital**"), as noteholder, the principal sum equal to the aggregate amount of advances paid to Physician pursuant to the Physician Recruitment Agreement by and among Physician, Hospital and Escondido OB/GYN, a professional corporation ("**Group**"), dated as of even date herewith (the "**Recruitment Agreement**"). Unless otherwise defined in this Secured Promissory Note (the "**Recruitment Note**"), each capitalized term shall have the meaning given in the Recruitment Agreement. The aggregate principal amount of the loans provided to Physician pursuant to the Recruitment Agreement (the "**Principal**") shall not exceed [REDACTED]

**1. Advances of Principal; Interest.**

(a) Physician hereby promises to pay to the order of Hospital, at such place as Hospital may from time to time designate in writing, in lawful money of the United States of America, the Principal and accrued interest thereon.

(b) Interest shall accrue on the Principal outstanding at a rate equal to the Prime Rate (as defined below), adjusted annually on each anniversary date of this Recruitment Note, plus two percent (2%), computed on the basis of a 365/366-day year and the number of days elapsed, commencing as of the first date that Principal is advanced to Physician under this Recruitment Note and continuing thereafter until the Principal is either repaid or forgiven in full; provided, however, that interest shall never accrue at an annual rate greater than the maximum rate permitted to be charged under applicable law on commercial loans between unrelated persons. "**Prime Rate**" shall mean the annual interest rate published from time to time by the Wall Street Journal as the prime or base rate of interest on corporate loans. Physician acknowledges that the Prime Rate is \_\_\_ percent (\_\_\_%) as of the date of this Recruitment Note.

**2. Repayment and Forgiveness.** Notwithstanding any other provisions of this Recruitment Note, Principal, accrued interest, and other applicable fees, costs and charges ("**Costs**"), if any, owing on this Recruitment Note shall be payable or forgiven as follows:

(a) **Repayment.** Principal and accrued interest thereon shall be payable "mortgage-style" in Twenty-four (24) equal monthly installments sufficient to fully amortize the unpaid balance of this Recruitment Note. Principal and accrued interest thereon shall be payable on the first (1<sup>st</sup>) day of each month during the Repayment Period (as defined below).

(b) **Repayment Period.** "**Repayment Period**" shall mean the period beginning on the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) calendar month immediately following the end of

the Assistance Period and continuing until the earlier of (i) the date on which the Principal and all accrued interest thereon, and all Costs, if any, are either paid or forgiven in full, or (ii) the Maturity Date (as defined below). In all events, and subject to the remaining provisions of this Section 2, the entire then-outstanding balance of Principal and all accrued, unpaid interest thereon, and all Costs, if any, shall be due and payable by Physician to Hospital no later than the Maturity Date. The “**Maturity Date**” shall mean the date that is Twenty-four (24) months from the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) calendar month immediately following the end of the Assistance Period.

(c) **Forgiveness.** If Physician has continuously complied throughout the term of the Recruitment Agreement with all terms and conditions of the Recruitment Agreement, this Recruitment Note and the Physician Security Agreement, and no Event of Default (as defined in Section 3 below) has occurred (i) Hospital shall forgive, on the last day of each month during the Repayment Period, an amount equal to the monthly amount (including Principal and accrued interest) otherwise due to Hospital for such month pursuant to Section 2(a) of this Recruitment Note; and (ii) Hospital shall forgive, on the last day of the Repayment Period, all Costs, if any, owing by Physician.

(d) **Repayment with Excess Receipts.** If Practice Receipts exceed the sum of Guaranteed Monthly Income and Practice Expenses in any month during the Assistance Period, Physician shall pay to Hospital such excess (the “**Excess Receipts**”) within ten (10) days after the end of such month. All payments of Excess Receipts made pursuant to this Section 2(d) shall be applied as follows: first, to Costs, if any; second, to due and unpaid interest; and third, to the outstanding Principal, in inverse order of maturity.

(e) **Forgiveness upon Death or Permanent Disability.** Notwithstanding any other provision of this Recruitment Note to the contrary, Hospital shall forgive the entire then-outstanding balance of Principal and all accrued, unpaid interest owing on the Recruitment Note, together with all other Costs, if any, in the event of Physician’s death or Permanent Disability.

(f) **Prepayment.** Physician shall have the right to prepay the Principal outstanding in whole or in part without penalty. Any partial prepayment shall be applied against the Principal outstanding and shall not postpone the due date of any subsequent monthly installment.

(g) **Application of Payments.** Unless otherwise agreed in writing in advance by Hospital, each payment or forgiveness with respect to this Recruitment Note shall be credited as follows: first, against Costs, if any; second, against accrued and unpaid interest then due and owing; and third, against the Principal outstanding.

3. **Events of Default.** The termination for any reason of the Recruitment Agreement, other than any automatic termination upon the death or Permanent Disability of Physician, or the occurrence of any Event of Default under the Recruitment Agreement shall constitute an event of default (“**Event of Default**”) under this Recruitment Note.

4. **Acceleration.** Upon the expiration or termination of the Recruitment Agreement for any reason, except termination pursuant to Sections 7.3, 7.4 or 7.5 of the Recruitment

Agreement, Hospital may, at its option, declare the entire Principal outstanding, together with interest accrued thereon and all other Costs, if any, immediately due and payable to Hospital and Hospital may proceed to exercise any rights or remedies that it may have under this Recruitment Note, at law, equity or otherwise. In the event of such acceleration, Physician may discharge Physician's obligations to Hospital by paying the entire Principal outstanding, plus accrued interest and any other Costs, if any, as set forth in this Recruitment Note.

**5. Termination by Physician or in the Event of Government Action.** If the Recruitment Agreement is terminated by Physician pursuant to Section 7.3 of the Recruitment Agreement or as a result of Government Action pursuant to Section 7.4 of the Recruitment Agreement, the entire outstanding balance of Principal and accrued interest together with the Costs owing on this Recruitment Note as of the effective date of such termination shall be payable by Physician to Hospital in thirty-six (36) equal monthly installments of Principal and interest commencing as of the date that is one (1) month following the effective date of the termination of the Recruitment Agreement; provided, however, if such repayment terms violate any federal, state or local law, rule, regulation, or Government Action, Physician shall pay to Hospital, on the effective date of the termination of the Recruitment Agreement, the Principal and accrued interest together with the Costs owing on this Recruitment Note as of the effective date of such termination. Physician shall not have any right to offset the amount owing to Hospital under this Section upon termination by any amounts that then or thereafter may be owing by Hospital to Physician whether as a result of the termination or otherwise.

**6. Costs of Collection.** If Hospital exercises its acceleration rights pursuant to this Recruitment Note, in addition to the Principal outstanding and accrued interest thereon, Hospital shall be entitled to collect all costs of collection, including reasonable attorneys' fees incurred in connection with the protection or realization of collateral and Hospital's reasonable collection efforts, whether or not suit on this Recruitment Note or any foreclosure proceeding is filed. Any and all such costs and expenses shall be payable on demand and secured by the Physician Security Agreement.

**7. Continuing Liability.** Following the occurrence of an Event of Default, Physician's liability under this Recruitment Note shall not be affected by Hospital's pursuit or non-pursuit of any one or more of its rights, powers or remedies (including, without limitation, its option to accelerate the payment of this Recruitment Note), regardless of the order in which or the extent to which Hospital may pursue any of such rights, powers or remedies, it being understood that the liability of Physician shall cease only upon satisfaction in full of all of Physician's obligations arising under this Recruitment Note and the Recruitment Agreement.

**8. No Waiver.** No failure on the part of Hospital to exercise any right or remedy under this Recruitment Note, whether before or after a default, shall constitute a waiver of such right or remedy, and no waiver of any past default shall constitute waiver of any future default. No acceptance of a past due installment or other indulgence granted from time to time shall constitute a waiver of the right to insist upon prompt payment, be deemed to be a novation of this Recruitment Note or as a reinstatement of the debt evidenced by this Recruitment Note, or be construed to preclude the exercise of any right which Hospital may have under law, by agreement or otherwise. Physician and each endorser or guarantor hereby expressly waive the benefit of any statute or rule of law or equity which would produce a result contrary to or in

conflict with the foregoing. Physician expressly waives the four (4) year statutory period for civil actions upon written contracts set forth in California Code of Civil Procedure Section 337, and agrees that the statutory period for any actions upon this Recruitment Note shall run for eight (8) years as permitted by California Code of Civil Procedure Section 360.5.

9. **Waiver of Notice.** Physician and each endorser or guarantor of this Recruitment Note hereby (i) waives presentment, demand, protest and notice of presentment, notice of protest and notice of dishonor of this debt and any other notice respecting this Recruitment Note, and (ii) agrees that Hospital, at any time without notice to such party or such party's consent, may grant extensions of time, without limit as to the number or the aggregate period of such extensions, for the payment of any Principal of or interest accrued thereon.

10. **Amendments.** This Recruitment Note may be modified or amended only by mutual written agreement of the Parties. Any such modification or amendment must be in writing, dated, signed by the Parties and attached to this Recruitment Note.

11. **Assignment.** Physician shall not assign, sell, transfer or delegate any of Physician's rights or duties under this Recruitment Note without the prior written consent of Hospital. Hospital may assign its rights and delegate its duties under this Recruitment Note upon written notice to Physician.

12. **Business Purposes.** Physician represents and warrants that the loan evidenced by this Recruitment Note is being made for business purposes.

13. **Choice of Law.** This Recruitment Note shall be construed in accordance with and governed by the laws of the State, without giving effect to any choice of law or conflict of law rules or provisions that would cause the application of the laws of any jurisdiction other than the State. Physician and each endorser or guarantor hereby submit to jurisdiction in said State for the enforcement of Physician's obligations under this Recruitment Note and under the Physician Security Agreement (as defined in Section 17 below), and waive any and all rights under the laws of any other state to object to jurisdiction within such State.

14. **Interest Limitations.** Notwithstanding anything to the contrary contained in this Recruitment Note, the total liability for payments in the nature of interest shall not exceed the limits imposed by applicable interest rate laws. If any payments in the nature of interest are held to be in excess of the limits imposed by applicable interest rate laws, any such amount held to be in excess shall be considered payment of Principal and the Principal outstanding shall be reduced accordingly.

15. **Notices.** Any notice required or permitted to be given in this Recruitment Note shall be given in accordance with the notices provision of the Recruitment Agreement.

16. **Referrals.** Hospital and Physician acknowledge that the amounts loaned to Physician and Physician's rights and duties under this Recruitment Note in no way require, and in no way are contingent upon the admission, recommendation, referral or any other arrangement for the provision of any item or service offered by Hospital or any Affiliate, to any patients of Physician or Group, Physician's practice, or any contractors, partners, employees or agents of either Physician or any entity Physician associates with to provide professional medical services.

17. **Security.** This Recruitment Note is secured by a first priority security interest granted by Physician to Hospital in the collateral described in that certain Physician Security Agreement of even date herewith (the "**Physician Security Agreement**") by and between Physician and Hospital. This Recruitment Note also is guaranteed by Group pursuant to that certain Group Guarantee and Security Agreement of even date herewith by and between Group and Hospital (the "**Group Guarantee**"). All of the provisions contained in the Physician Security Agreement and the Group Guarantee are hereby made a part of this Recruitment Note to the same extent and with the same effect as if they were fully set forth in this Recruitment Note.

18. **Severability.** If any provision of this Recruitment Note, in whole or in part, or the application of any provision, in whole or in part, is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, such provision or part of such provision shall be severed from this Recruitment Note, and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of this Recruitment Note, including the remainder of such provision not determined to be illegal, invalid or unenforceable.

19. **Successors and Assigns.** The provisions of this Recruitment Note shall inure to the benefit of and shall be binding upon the heirs, assigns, successors and representatives of Physician and Hospital, respectively. The term "**Physician**" shall mean Physician and each heir, successor, assign, and representative of Physician as obligor of this Recruitment Note. The term "**Hospital**" shall mean Hospital and each successor, assign, and representative of Hospital as payee or holder of this Recruitment Note.

20. **Time of the Essence.** Time is of the essence in the performance of Physician's obligations under this Recruitment Note.

This Recruitment Note is executed on the date first above written, at \_\_\_\_\_,  
\_\_\_\_\_.

**PHYSICIAN**

\_\_\_\_\_  
Josue Leon, M.D., an individual

**Exhibit 4.1(b)**

**PHYSICIAN SECURITY AGREEMENT**

THIS PHYSICIAN SECURITY AGREEMENT (this “Physician Security Agreement”) is made and entered into as of \_\_\_\_\_, 20\_\_ (the “Execution Date”), by and between Josue Leon, M.D., an individual, as the debtor (“Physician”), and PALOMAR POMERADO HEALTH, a California district hospital (“Hospital”), as the secured party.

**RECITALS**

A. Physician is obligated to Hospital under that certain Physician Recruitment Agreement by and among Hospital, Physician and Escondido OB/GYN, a professional corporation, dated as of even date herewith (the “Recruitment Agreement”), and that certain Secured Promissory Note, dated as of even date herewith, executed and delivered by Physician to Hospital (the “Recruitment Note”). Unless otherwise defined in this Physician Security Agreement, each capitalized term shall have the meaning given in the Recruitment Agreement.

B. Hospital and Physician wish to enter into this Physician Security Agreement to secure the payment and performance of all indebtedness, liabilities and obligations of Physician due or to become due to Hospital under the Recruitment Note and set forth under the Recruitment Agreement (collectively, the “Obligations”).

**AGREEMENT**

Physician and Hospital agree as follows:

1. **Grant of Security Interest.** Physician hereby grants to Hospital a security interest in the collateral, as described and defined in **Attachment A** to this Physician Security Agreement (the “Collateral”), to secure the payment and performance of all of the Obligations due or to become due, and all modifications, renewals, extensions, rearrangements, substitutions and replacements of such Obligations.

2. **Release of Collateral.** The Collateral shall be released and relieved of the security interest granted herein, and Physician shall be entitled to unencumbered title thereto and possession thereof, upon full and complete payment, performance, satisfaction, forgiveness or observance of all Obligations in accordance with the terms of this Physician Security Agreement, the Recruitment Note and the Recruitment Agreement. Upon the release of the Collateral, Hospital shall execute and deliver, at Physician’s sole cost and without recourse against Hospital, any necessary instruments of title, release, reassignment and delivery as Physician may reasonably request.

3. **Events of Default.** The termination for any reason of the Recruitment Agreement, other than any automatic termination upon the death or Permanent Disability of Physician, or the occurrence of any Event of Default under the Recruitment Agreement shall constitute an event of default (“Event of Default”) under this Physician Security Agreement and shall provide Hospital with the rights and remedies described below.

4. **Rights and Remedies upon Default.** Upon the occurrence and during the continuation of any of the above Events of Default, Hospital may accelerate all of the Obligations and shall have, in addition to all other rights and remedies provided herein or by applicable law, all of the rights and remedies of a secured party under the California Commercial Code (the “Code”).

5. **Indemnity and Expenses.** Physician agrees to indemnify Hospital from and against any and all claims, losses and liabilities arising out of or relating to this Physician Security Agreement (including enforcement of this Physician Security Agreement or any actions taken by Hospital pursuant to this Physician Security Agreement), except claims, losses or liabilities resulting from Hospital’s own gross negligence or willful misconduct. Physician will on demand pay to Hospital the amount of any and all reasonable costs and expenses, including the reasonable fees and disbursements of its legal counsel and of any experts or agents, which Hospital may incur in connection with: (i) the exercise or enforcement by Hospital of any of its rights or remedies under this Physician Security Agreement, or (ii) any failure by Physician to perform any of the Obligations.

6. **Physician Remains Liable.** Notwithstanding any other provision of this Physician Security Agreement, (i) Physician shall remain liable under the contracts and agreements included in the Collateral to perform all of Physician’s duties and obligations thereunder to the same extent as if this Physician Security Agreement had not been executed, (ii) the exercise by Hospital of any of its rights under this Physician Security Agreement shall not release Physician from any of Physician’s duties or obligations under the contracts and agreements included in the Collateral, and (iii) Hospital shall not have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Physician Security Agreement, nor shall Hospital be obligated to perform any of the obligations or duties of Physician or to take any action to collect or enforce any claim for payment.

7. **Waivers; Cumulative Remedies.** Physician waives notice of the acceptance of this Physician Security Agreement and all other notices, demands or protests to which Physician might otherwise be entitled by law in respect to this Physician Security Agreement, the Obligations or the Collateral, and which may be lawfully waived. Hospital shall have no duty as to the collection or protection of the Collateral or any income, or as to the preservation of rights against prior parties, nor as to the preservation of any rights pertaining to the Collateral beyond reasonable care in the custody or preservation thereof. Hospital may exercise its rights and remedies with respect to the Collateral without resorting or regard to other security or sources for payment. All rights and remedies of Hospital shall be cumulative and may be exercised singularly or concurrently.

8. **Authorization to File Financings Statement.** Physician authorizes Hospital to prepare and file all financing statements (Form UCC-1), continuation statements (Form UCC-3),

or other written statements or notices required in order to perfect, secure or maintain as perfected Hospital's security interest in the Collateral, without the signature of Physician where permitted by law. Copies of all financing statements, continuation statements or other written statements or notices shall be promptly delivered to Physician.

9. **Further Assurances.** Each Party shall perform any further acts and execute any further documents, including, without limitation, financing or continuation statements, or amendments thereto, an account control agreement substantially in the form attached hereto as **Attachment B**, and such other instruments, endorsements or notices as may be reasonably necessary or otherwise reasonably requested to perfect, secure or maintain as perfected Hospital's security interest in the Collateral or to carry out the provisions of this Physician Security Agreement.

10. **Amendments.** This Physician Security Agreement may be modified or amended, waived, discharged or terminated only by an instrument in writing signed by the Party against which enforcement of the amendment, waiver, discharge or termination is sought.

11. **Assignment.** If at any time or times by sale, assignment, negotiation, pledge or otherwise, Hospital transfers any of the Obligations, such transfer shall carry with it Hospital's rights and remedies under this Physician Security Agreement with respect to the transferred Obligations, and the transferee shall become vested with such rights and remedies whether or not they are specifically referred to in the transfer. If and to the extent Hospital retains any other Obligations, Hospital shall continue to have those rights and remedies.

12. **Costs and Fees.** Physician agrees to pay reasonable attorneys' fees and all other costs and expenses which may be incurred by Hospital in the enforcement of this Physician Security Agreement, the Obligations, or in any action or proceeding arising out of, or relating to, this Physician Security Agreement.

13. **Counterparts.** This Physician Security Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

14. **Definitions and Incorporation by Reference.** All terms used but not expressly defined in this Physician Security Agreement will have the same meaning as set forth in the Code. All terms, provisions and definitions of any loan agreements, guarantees or other credit arrangements between Physician and Hospital are incorporated in this Physician Security Agreement by reference as though set forth in full.

15. **Dispute Resolution.** All disputes, controversies, claims, questions, or disagreements arising out of or relating to this Physician Security Agreement, shall be litigated in any state or federal court having appropriate jurisdiction and located within the State, County of San Diego. The Parties, by the execution of this Physician Security Agreement, expressly consent to the jurisdiction of any such court, to venue therein and to the service of process in any such action or proceedings, as required by applicable law.

16. **Choice of Law.** This Physician Security Agreement shall be construed in accordance with and governed by the laws of the State, without giving effect to any choice of



law or conflict of law rules or provisions that would cause the application of the laws of any jurisdiction other than the State.

17. **Notices.** Any notice required or permitted to be given in this Physician Security Agreement shall be in writing and shall be given in accordance with the notices provision of the Recruitment Agreement.

18. **Severability.** If any provision, or the application of any provision, of this Physician Security Agreement is determined to be illegal, invalid or unenforceable, that provision shall be severed from this Physician Security Agreement and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of this Physician Security Agreement.

19. **Successors and Assigns.** This Physician Security Agreement shall be binding upon Physician's heirs, successors, assigns, and representatives and shall inure to the benefit of and be enforceable by Hospital and its successors, assigns, and representatives.

*[signature page follows]*

Physician and Hospital have executed this Physician Security Agreement on the Execution Date.

**PHYSICIAN**

Josue Leon, M.D., an individual

\_\_\_\_\_  
Josue Leon, M.D.

Physician's principal place of business:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**HOSPITAL**

Palomar Pomerado Health \_\_\_\_\_,  
a California district hospital

\_\_\_\_\_  
By: Michael H. Covert, F.A.C.H.E.  
Its: President/CEO

Hospital's address:

15255 Innovation Drive \_\_\_\_\_  
San Diego, CA 92128 \_\_\_\_\_  
\_\_\_\_\_

Attachment A

**DESCRIPTION OF COLLATERAL**

Except to the extent the granting of a security interest is limited by application of law with respect to payments from governmental entities, all present and future right, title and interest of JOSUE LEON, M.D., an individual (“**Debtor**”), in and to the following property, whether now owned or later acquired or created: (a) payments and rights to payment from all sources, for goods sold or leased or for services furnished, including, without limitation, all those which are not evidenced by instruments or chattel paper, and whether or not they have been earned by performance (“**Accounts Receivable**”); (b) furniture, fixtures and equipment; (c) rights under contracts with managed care entities; (d) proceeds of letters of credit of which Debtor is named beneficiary; (e) general intangibles; (f) contract rights; (g) chattel paper; (h) instruments; (i) documents; (j) insurance proceeds; (k) all books and records in respect to the foregoing; (l) proceeds of all the foregoing; and (m) all monies from time to time on deposit in Debtor’s business bank account no. \_\_\_\_\_ with \_\_\_\_\_ (collectively, the “**Collateral**”), each to the extent used in Debtor’s medical practice or arising out of or related to the provision of professional medical and other health care services performed by Debtor.

## Attachment B

### ACCOUNT CONTROL AGREEMENT

This Control Agreement (this "**Agreement**"), is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and among PALOMAR POMERADO HEALTH, a California district hospital ("**Secured Party**"), JOSUE LEON, M.D., an individual ("**Debtor**"), and [Name of Bank] ("**Bank**"). Secured Party, Debtor and Bank are sometimes referred to in this Agreement, individually, as a "**Party**" or, collectively, as the "**Parties.**"

### RECITAL

Pursuant to that certain Physician Security Agreement of even date herewith, by and between Secured Party and Debtor, Debtor has granted Secured Party a security interest in a deposit account maintained by Bank for Debtor. The Parties are entering into this Agreement to perfect Secured Party's security interest in that account.

### AGREEMENT

**Section 1. The Account.** Bank maintains a deposit account for Debtor, currently numbered \_\_\_\_\_ and titled \_\_\_\_\_ (as such account may be renumbered or retitled, the "**Account**"). All Parties agree that the Account is a "deposit account" within the meaning of Division 9 of the Uniform Commercial Code of the State of California (the "**UCC**").

**Section 2. Control.** Bank will comply with instructions originated by Secured Party directing disposition of the funds in the Account without further consent by Debtor. Bank may also comply with instructions directing the disposition of funds in the Account originated by Debtor or its authorized representatives until such time as Secured Party delivers a written notice to Bank that Secured Party is thereby exercising exclusive control over the Account. Such notice is referred to herein as the "**Notice of Exclusive Control.**" Upon receiving a Notice of Exclusive Control, Bank will cease complying with instructions concerning the Account or funds on deposit therein originated by Debtor or its representatives. Bank has not and will not agree with any third party to comply with instructions or other directions concerning the Account or the disposition of funds in the Account originated by such third party without the prior written consent of Secured Party and Debtor.

**Section 3. Subordination of Bank's Security Interest.** Bank hereby subordinates all security interests, encumbrances, claims and rights of setoff it may have, now or in the future, against the Account or any funds in the Account other than in connection with the payment of Bank's customary fees and charges pursuant to its agreement with Debtor and for the reversal of provisional credits.

**Section 4. Statements, Confirmations and Notices of Adverse Claims.** Bank will send copies of all statements concerning the Account to each of Debtor and Secured Party at the address set forth on the signature page of this Agreement. Upon receipt of written notice of any lien, encumbrance or adverse claim against the Account or any funds credited thereto, Bank will make reasonable efforts promptly to notify Secured Party and Debtor thereof.

4.1(b)-7

Physician Security Agreement

**Section 5. Bank's Responsibility.** Except for acting on Debtor's instructions in violation of Section 2 above, Bank shall have no responsibility or liability to Secured Party for complying with instructions concerning the Account from Debtor or Debtor's authorized representatives which are received by Bank before Bank receives a Notice of Exclusive Control and has had reasonable opportunity to act on it. Bank shall have no responsibility or liability to Debtor for complying with a Notice of Exclusive Control or complying with instructions concerning the Account originated by Secured Party, and shall have no responsibility to investigate the appropriateness of any such instruction or Notice of Exclusive Control, even if Debtor notifies Bank that Secured Party is not legally entitled to originate any such instruction or Notice of Exclusive Control.

**Section 6. Indemnity.** Debtor and Secured Party hereby agree to indemnify and hold harmless Bank, its directors, officers, agents and employees against any and all claims, causes of action, liabilities, lawsuits, demands and damages, including, without limitation, any and all court costs and reasonable attorneys' fees, in any way related to or arising out of or in connection with this Agreement or any action taken or not taken pursuant hereto, except to the extent caused by Bank's gross negligence or willful misconduct or Bank's breach of any of the provisions hereof.

**Section 7. Customer Agreement.** In the event of a conflict between this Agreement and any other agreement between Bank and Debtor relating to the Account, the terms of this Agreement will prevail; provided, however, that this Agreement shall not alter or affect any mandatory arbitration provision currently in effect between Bank and Debtor pursuant to a separate agreement.

**Section 8. Termination.** Unless earlier terminated by Bank pursuant to this Section, this Agreement shall continue in effect until Secured Party has notified Bank in writing that this Agreement, or its security interest in the Account, is terminated. Upon receipt of such notice the obligations of Bank hereunder with respect to the operation and maintenance of the Account after the receipt of such notice shall terminate, Secured Party shall have no further right to originate instructions concerning the Account and any previous Notice of Exclusive Control delivered by Secured Party shall be deemed to be of no further force and effect. Bank reserves the right, unilaterally, to terminate this Agreement, such termination to be effective thirty (30) days after written notice thereof is given to Debtor and Secured Party.

**Section 9. Complete Agreement; Amendments.** This Agreement and the instructions and notices required or permitted to be executed and delivered hereunder set forth the entire agreement of the Parties with respect to the subject matter hereof, and, subject to Section 7 above supersede any prior agreement and contemporaneous oral agreements of the Parties concerning its subject matter. No amendment, modification or (except as otherwise specified in Section 8 above) termination of this Agreement, nor any assignment of any rights hereunder (except to the extent contemplated under Section 12 below), shall be binding on any Party hereto unless it is in writing and is signed by each of the Parties hereto, and any attempt to so amend, modify, terminate or assign except pursuant to such a writing shall be null and void. No waiver of any rights hereunder shall be binding on any Party hereto unless such waiver is in writing and signed by the Party against whom enforcement is sought.

**Section 10. Governing Law.** This Agreement shall be governed by and construed in accordance with the law of the State of California. The Parties agree that California is the “bank’s jurisdiction” for purposes of the UCC.

**Section 11. Severability.** To the extent a provision of this Agreement is unenforceable, this Agreement will be construed as if the unenforceable provision were omitted.

**Section 12. Successors and Assigns.** The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors or heirs and personal representatives. This Agreement may be assigned by Secured Party to any successor of Secured Party under its Security Agreement with Debtor, provided that written notice thereof is given by Secured Party to Bank.

**Section 13. Notices.** Except as otherwise expressly provided herein, any notice, order, instruction, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means and electronic confirmation of error-free receipt is received or upon receipt of notice sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the Party at the address set below such Party’s name on the signature page of this Agreement. Any Party may change its address for notices in the manner set forth above.

**Section 14. Jury Waiver.** DEBTOR WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS, REMEDIES, OBLIGATIONS, OR DUTIES HEREUNDER, OR THE PERFORMANCE OR ENFORCEMENT HEREOF OR THEREOF.

**Section 15. Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any Party hereto may execute this Agreement by signing and delivering one or more counterparts.

*[signature page follows]*

The Parties have executed this Agreement on the date first written above.

**SECURED PARTY**

PALOMAR POMERADO HEALTH,  
a California district hospital

\_\_\_\_\_  
By: Michael H. Covert, F.A.C.H.E.  
Its: President/CEO

Secured Party's address:

15255 Innovation Drive  
San Diego, CA 92128

**DEBTOR**

JOSUE LEON, M.D.,  
an individual

\_\_\_\_\_  
Josue Leon, M.D.

Debtor's address:

\_\_\_\_\_  
\_\_\_\_\_

**BANK**

\_\_\_\_\_  
a California [type of entity]

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Bank's address:

\_\_\_\_\_  
\_\_\_\_\_

## Exhibit 4.2

### GROUP GUARANTEE AND SECURITY AGREEMENT

THIS GROUP GUARANTEE AND SECURITY AGREEMENT (this “**Group Guarantee**”) is made and entered into as of \_\_\_\_\_, 20\_\_ (“**Execution Date**”), by Escondido OB/GYN, a professional corporation (“**Group**”), in favor of PALOMAR POMERADO HEALTH, a California district hospital (“**Hospital**”).

### RECITALS

A. JOSUE LEON, M.D., an individual (“**Physician**”), is obligated to Hospital under that certain Physician Recruitment Agreement by and among Hospital, Physician and Group, of even date herewith (the “**Recruitment Agreement**”), and the Secured Promissory Note by and between Hospital and Physician, of even date herewith (the “**Recruitment Note**”). Unless otherwise defined in this Group Guarantee, each capitalized term shall have the meaning given in the Recruitment Agreement.

B. Group now desires to enter into this Group Guarantee to secure the payment and performance of all indebtedness, liabilities and obligations of Physician to Hospital due or to become due under the Recruitment Note (collectively, the “**Obligations**”).

### AGREEMENT

Group hereby consents and agrees as follows:

1. **Guarantee.** Group absolutely, unconditionally, and irrevocably promises to pay and perform all of the Obligations due or to become due, and all modifications and renewals, extensions and rearrangements, substitutions, and replacements of such Obligations; provided, however, that Group’s payments under this Group Guarantee shall not exceed the value of Physician’s Accounts Receivable. For purposes of this Group Guarantee, “**Physician’s Accounts Receivable**” shall mean an amount equal to the sum of notes and accounts receivable attributable to professional services furnished by Physician on or before the Default Date, and adjusted to reflect historical collection experience. “**Default Date,**” as the term is used in this Group Guarantee, shall mean the date Physician fails to pay or perform when due any of the Obligations.

2. **Expiration of Group Guarantee.** Group’s guarantee of the Obligations shall expire when the entire Principal amount of the Obligations outstanding, all accrued and unpaid interest thereon, and all other applicable fees, costs and charges, if any, have been satisfied in full.

3. **Grant of Security Interest.** Group hereby grants to Hospital a security interest in the collateral, as defined and described in Attachment A to this Group Guarantee (“**Collateral**”), to secure the Obligations. Notwithstanding any other provision of this Group Guarantee, (i) Group shall remain liable under the contracts and agreements included in the Collateral to perform all of its duties and obligations thereunder to the same extent as if this Group Guarantee had not been executed, (ii) the exercise by Hospital of any of its rights under



this Group Guarantee shall not release Group from any of its duties or obligations under the contracts and agreements included in the Collateral, and (iii) Hospital shall not have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Group Guarantee, nor shall Hospital be obligated to perform any of the obligations or duties of Group or to take any action to collect or enforce any claim for payment.

4. **Release of Collateral.** The Collateral shall be released and relieved of the security interest granted herein, and Group shall be entitled to unencumbered title thereto and possession thereof, upon full and complete payment, performance, satisfaction, forgiveness or observance of all Obligations in accordance with the terms of this Group Guarantee, the Recruitment Note and the Recruitment Agreement. Upon the release of the Collateral, Hospital shall execute and deliver, at Group's sole cost and without recourse against Hospital, any necessary instruments of title, release, reassignment and delivery as Group may reasonably request.

5. **Rights and Remedies upon Default.** In the event Group fails to satisfy its obligations under this Group Guarantee within ten (10) business days of written demand from Hospital, Hospital may accelerate all of the Obligations and shall have, in addition to all other rights and remedies provided herein or by applicable law, all of the rights and remedies of a secured party under the California Commercial Code (the "Code").

6. **Independent Obligations.**

(a) This Group Guarantee is a primary obligation of Group and is an absolute, unconditional, continuing and irrevocable guarantee of payment and not of collectibility or performance and is in no way conditioned on or contingent upon any attempt to enforce in whole or in part Physician's liabilities and obligations to Hospital. From and after the Default Date, Group shall pay to Hospital such Obligations in immediately available funds. Each occurrence when Physician fails to pay or perform when due any of the Obligations shall give rise to a separate cause of action, and separate suits may be brought under this Group Guarantee as each cause of action arises.

(b) Hospital may, at any time and from time to time (whether or not after revocation or termination of this Group Guarantee) without the consent of or notice to Group, except such notice as may be required by the Recruitment Agreement or applicable law which cannot be waived, without incurring responsibility to Group, without impairing or releasing the obligations of Group under this Group Guarantee, upon or without any terms or conditions and in whole or in part:

- (i) change the manner, place and terms of payment or performance or change or extend the time of payment or performance of, renew, or alter any Obligation, or any obligations and liabilities (including any of those under this Group Guarantee) incurred directly or indirectly or in any manner modify, amend or supplement the terms of the Recruitment Agreement, or any documents, instruments or agreements executed in connection with the Recruitment Agreement or pertaining to the Obligations and this Group Guarantee shall apply to the Obligations, as changed,

extended, renewed, modified, amended, supplemented or altered in any manner;

- (ii) exercise or refrain from exercising any rights against Physician or others (including Group) or otherwise act or refrain from acting;
- (iii) add, release, or substitute one or more guarantors from its obligations without affecting or impairing the Obligations of Group under this Group Guarantee;
- (iv) settle, compromise, release, collect or otherwise liquidate the Obligations or any part thereof and/or any other obligations and liabilities incurred directly or indirectly, and may subordinate the payment of all or any part thereof to the payment of any obligations and liabilities which may be due to Hospital or others;
- (v) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner or in any order any property securing the Obligations or any other liabilities or obligations incurred directly or indirectly and/or any offset there against;
- (vi) apply any sums to any obligations and liabilities of Physician to Hospital under the Recruitment Agreement in the manner provided in the Recruitment Agreement, regardless of what obligations and liabilities remain unpaid;
- (vii) consent to or waive any breach of, or any act, omission or default under, the Recruitment Agreement;
- (viii) amend, modify or supplement the Recruitment Agreement or any of such other instruments or agreements; and/or
- (ix) act or fail to act in any manner which may deprive Group of its right to subrogation against Physician to recover full indemnity for any payments made pursuant to this Group Guarantee or of its right of contribution against any other party.

(c) From and after the Execution Date of this Group Guarantee, Group shall use its best efforts to ensure that Physician has a patient load sufficient to enable Physician to provide professional medical services on a full-time basis in the Service Area.

(d) From and after the Execution Date of this Group Guarantee, Group shall use its best efforts to establish and maintain an accurate bookkeeping system for all practice expenses, payments, and patient billings and receipts of Physician, and to allow Hospital to inspect or audit, during regular business hours, such books and records for purposes of monitoring compliance with the terms and conditions of the Recruitment Agreement.

(e) From and after the Execution Date of this Group Guarantee, Group shall provide and arrange for the billing and collection for the professional medical and other health

care services provided by Physician in a manner consistent with legal and contractual requirements.

(f) From and after the Execution Date of this Group Guarantee, Group shall, to the extent it is responsible, take all necessary and reasonable steps to ensure that Physician's accounts receivable are promptly collected from Physician's patients and any payors responsible for such patients, and all such collections are immediately recorded in order to calculate the amount of any loan payments due under the Income Guarantee Advances.

7. **Waivers.** Group hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including, without limitation:

(a) any right to require Hospital to proceed against Physician or any other person or to proceed against or exhaust any security held by Physician at any time or to pursue any other remedy in Physician's power before proceeding against Group;

(b) any defense that may arise by reason of the incapacity, lack of power or authority, death, insolvency or bankruptcy, termination or disability of Physician or any other person or the failure of Hospital to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Physician or any other person;

(c) any demands for performance, presentments, protests, notices of non-performance, notices of acceptance of this Group Guarantee, notices of default, notices of dishonor or nonpayment and all other notices of any kind, including, without limitation, notices of the existence, creation or incurrence of any new or additional indebtedness or obligation or of any action or non-action on the part of Physician, Hospital, any endorser or creditor of Physician or Group or on the part of any other person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Hospital as collateral or in connection with any Obligations;

(d) any defense based upon an election of remedies by Hospital;

(e) any defense based on any offset against any amounts which may be owed by any person to Group for any reason whatsoever;

(f) any defense based on any act, failure to act, delay or omission whatsoever on the part of Physician or Physician's failure to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by Physician under the Recruitment Agreement;

(g) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the Principal provided, that, upon payment in full of the Obligations, this Group Guarantee shall no longer be of any force or effect;

(h) any defense, setoff or counterclaim which may at any time be available to or asserted by Physician against Hospital, or any other person under the Recruitment Agreement;

(i) any duty on the part of Hospital to disclose to Group any facts Hospital may now or hereafter know about Physician, regardless of whether Hospital has reason to

believe that any such facts materially increase the risk beyond that which Group intends to assume, or has reason to believe that such facts are unknown to Group, or has a reasonable opportunity to communicate such facts to Group, since Group acknowledges that Group is fully responsible for being and keeping informed of the financial condition of Physician and of all circumstances bearing on the risk of non-payment of any obligations and liabilities guaranteed by this Group Guarantee;

(j) any defense arising because of Hospital's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code; and

(k) any defense based upon any borrowing or grant of a security interest under Section 364 of the Federal Bankruptcy Code.

8. **Continuing Guarantee.** This Group Guarantee shall remain in full force notwithstanding the appointment of a receiver to take possession of all or substantially all of Physician's assets, or an assignment by Physician for the benefit of creditors, or any action taken or suffered by Physician under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief act or statute, whether now existing or later amended or enacted, or the disaffirmance of the Recruitment Agreement in any action or otherwise.

9. **Indemnity and Expenses.** Group agrees to indemnify Hospital from and against any and all claims, losses and liabilities arising out of or relating to the Group Guarantee (including enforcement of this Group Guarantee or any actions taken by Hospital pursuant to this Group Guarantee), except claims, losses or liabilities resulting from Hospital's own gross negligence or willful misconduct. Group will on demand pay to Hospital the amount of any and all reasonable costs and expenses, including the reasonable fees and disbursements of its legal counsel and of any experts or agents, which Hospital may incur in connection with the exercise or enforcement of this Group Guarantee, the Obligations, or in any action or proceeding arising out of, or relating to, this Group Guarantee.

10. **Authorization to File Financings Statement.** Group authorizes Hospital to prepare and file all financing statements (Form UCC-1), continuation statements (Form UCC-3), or other written statements or notices required in order to perfect, secure or maintain as perfected Hospital's security interest in the Collateral, without the signature of Group where permitted by law. Copies of all financing statements, continuation statements or other written statements or notices shall be promptly delivered to Group.

11. **Further Assurances.** Each Party shall perform any further acts and execute any further documents, including, without limitation, financing or continuation statements, or amendments thereto, and such other instruments, endorsements or notices as may be reasonably necessary or otherwise reasonably requested to perfect, secure or maintain as perfected Hospital's security interest in the Collateral or to carry out the provisions of this Group Guarantee.

12. **Amendments.** The terms and provisions of this Group Guarantee may not be waived, altered, modified, or amended except in a writing signed by Hospital and Group.

13. **Assignment.** If at any time or times by sale, assignment, negotiation, pledge or otherwise, Hospital transfers any of the Obligations, such transfer shall carry with it Hospital's rights and remedies under this Group Guarantee with respect to the transferred Obligations, and the transferee shall become vested with such rights and remedies whether or not they are specifically referred to in the transfer. If and to the extent Hospital retains any other Obligations, Hospital shall continue to have those rights and remedies.

14. **Counterparts.** This Group Guarantee may be executed in any number of counterparts, each of which shall be a valid and binding original, but all of which together shall constitute one and the same instrument.

15. **Definitions and Incorporation by Reference.** All terms used but not expressly defined in this Group Guarantee will have the same meaning as set forth in the Code. All terms, provisions and definitions of any loan agreements, guarantees or other credit arrangements between Group and Hospital or Physician and Hospital are incorporated in this Group Guarantee by reference as though set forth in full.

16. **Dispute Resolution.** All disputes, controversies, claims, questions, or disagreements arising out of or relating to this Group Guarantee, shall be litigated in any state or federal court having appropriate jurisdiction and located within the State, County of San Diego. Group, by the execution of this Group Guarantee, expressly consents to the jurisdiction of any such court, to venue therein and to the service of process in any such action or proceedings, as required by applicable law.

17. **Choice of Law.** This Group Guarantee shall be construed in accordance with and governed by the laws of California, without giving effect to any choice of law or conflict of law rules or provisions that would cause the application of the laws of any jurisdiction other than California.

18. **Joint and Several Obligations.** If this Group Guarantee is signed, or if the obligations of Physician are otherwise guaranteed, by more than one party, their obligations shall be joint and several, and the release or limitation of liability of any one or more of the guarantors shall not release or limit the liability of any other guarantors.

19. **Representations.** Group represents and warrants that it is informed of the financial condition of Physician and all other circumstances which a diligent inquiry would reveal and which would bear upon the risk of non-payment or nonperformance of the Obligations. Group further agrees that it shall assume full responsibility for keeping itself informed with respect to Physician's financial condition and any other circumstances which might bear upon the risk of non-payment or non-performance of the Obligations.

20. **Review by Group's Legal Counsel.** GROUP ACKNOWLEDGES THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO CONSULT AN ATTORNEY. GROUP WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS GROUP GUARANTEE WITH ITS LEGAL COUNSEL OR VOLUNTARILY DECIDED NOT TO CONSULT WITH AN ATTORNEY REGARDING ITS RIGHTS UNDER THIS GROUP GUARANTEE AND

THAT IT KNOWINGLY AND VOLUNTARILY CONSENTS TO THE TERMS, CONDITIONS AND WAIVERS OF THIS GROUP GUARANTEE.

21. **Severability.** If any provision, or the application of any provision, of this Group Guarantee is determined to be illegal, invalid or unenforceable, that provision shall be severed from this Group Guarantee and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of this Group Guarantee.

22. **Subrogation.** Until the Obligations have been paid in full: (a) Group shall not have any right of subrogation and waives all rights to enforce any remedy which Hospital may now have or hereafter have against Physician, and waives the benefit of, and all rights to participate in, any security now or hereafter held by Hospital from Physician; and (b) Group waives any claim, right or remedy which Group may now have or hereafter acquire against Physician that arises under this Group Guarantee and/or from Group's performance under this Group Guarantee, including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of Hospital against Physician, or any security which Hospital may now have or hereafter acquire, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

23. **Successors and Assigns.** This Group Guarantee shall be binding upon Group and Group's successors, assigns, and representatives and shall inure to the benefit of Hospital and Hospital's successors, assigns, and representatives.

*[signature page follows]*

Group has executed and delivered this Group Guarantee on the Execution Date.

**GROUP**

Escondido OB/GYN  
a professional corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**Attachment A**

**DESCRIPTION OF COLLATERAL**

Except to the extent the granting of a security interest is limited by application of law with respect to payments from governmental entities, all present and future right, title and interest of Escondido OB/GYN, a professional corporation (“**Debtor**”), in and to the following property, whether now owned or later acquired or created: Physician’s Accounts Receivable comprising the payments and rights to payment from all sources, for services furnished by Physician, including, without limitation, all those which are not evidenced by instruments or chattel paper, and whether or not they have been earned by performance (the “**Collateral**”).



### Exhibit 6.3

#### CODE OF CONDUCT

1. I will perform my duties faithfully and to the best of my ability, and in the interest of PPH.
2. I will not lie, cheat, steal, or violate any law in connection with my employment by PPH.
3. I will not pay or arrange for PPH to pay any person or entity for the referral of patients to PPH, nor will I accept any payment or arrange for PPH to accept any payment for referrals from PPH.
4. I will not participate in any false billing of patients, government entities or any other party, nor will I participate in the preparation of any false cost reports, or other type of report submitted to the government.
5. I will not engage in any conduct or practice that conflicts (or appears to conflict) with interest of PPH, unless I first obtain the express written consent of the Palomar Pomerado Health Board of Directors or designee.
6. I will not use PPH's confidential or proprietary information gathered during my employment with PPH for my own personal benefit, either during or after my employment at PPH.
7. I will not obtain any improper personal benefits by virtue of my employment with PPH.
8. I will notify the compliance officer immediately upon the receipt (at work or home) of an inquiry, subpoena (other than for routine licensing or tax matters) or other agency or government request for information regarding PPH.
9. I will not destroy or alter information or documents in anticipation of or in response to, a request for documents by any applicable government agency or from a court of competent jurisdiction.
10. I will not engage in any business practice intended to unlawfully obtain favorable treatment or business from any government entity, physician, patient, vendor or any other party in a position to provide such treatment or business.
11. I will not solicit or receive from any person or entity, nor offer to give to any person or entity, anything of value if that person or entity is in a position to refer business to PPH or if PPH is in a position to refer business to that person or entity.
12. I will not accept any gift of more than nominal value, (\$50), and hospitality or entertainment which because of its source or value might influence my independent judgment in transactions involving PPH.
13. I will not provide any gifts to any government or public agency representative.
14. I will disclose to the compliance officer any financial interest or ownership interest or any other relationship that I or a member of my immediate family has with PPH customers, and vendors or competitors.
15. I will not disclose confidential medical information pertaining to PPH patients without the express written consent of the patient in accordance with HIPAA, other applicable law and PPH applicable policies or procedures.
16. I will promptly report all violations or suspected violations of this manual by myself or other employees to the compliance officer.
17. I will not conspire with a competitor of PPH to illegally fix prices, labor cost, allocate markets, or engage in group boycotts. Before considering any agreements or entering into discussions with a competitor concerning any of these issues, I should first obtain the advice of the compliance officer concerning antitrust issues.

## Exhibit 8.15

### **OBLIGATIONS UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (“HIPAA”)**

#### **1. Definitions.**

- a. **“Designated Record Set”** shall have the meaning given to such term under the Privacy Rule (as defined below).
- b. **“HIPAA Obligations”** means the obligations of Group and Physician as set forth in this Exhibit.
- c. **“Privacy Rule”** means the HIPAA Regulation that is codified at 45 CFR Parts 160 and 164, or applicable successor provisions, as may be amended from time to time.
- d. **“Protected Health Information”** means any information, whether oral or recorded in any form or medium that: (i) relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, or is defined as such under the Privacy Rule.
- e. **“Protected Information”** means Protected Health Information provided by Hospital to Group or Physician or created or received by Group or Physician on Hospital’s behalf.
- f. **“Required by Law”** shall have the meaning given to such term under the Privacy Rule.

2. **Use of Protected Information.** Neither Group nor Physician shall use Protected Information except as permitted by and for the purpose of performing their respective obligations under this Agreement. Neither Group nor Physician shall use Protected Information in any manner that would constitute a violation of the Privacy Rule if so used by Hospital.

3. **Permitted Disclosures.** Neither Group nor Physician shall disclose Protected Information, except as expressly permitted or required by this Agreement or as Required by Law. Further, neither Group nor Physician shall disclose Protected Information in any manner that would constitute a violation of the Privacy Rule if so used by Hospital.

4. **Appropriate Safeguards.** Group shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this Agreement.

5. **Reporting of Improper Use or Disclosure.** Group shall notify Hospital in writing of any use or disclosure of Protected Information other than as provided for by this Agreement and this Exhibit within two (2) days of becoming aware of such use or disclosure.
6. **Employees and Agents of Group and Physician.** Group and Physician shall ensure that any of their respective employees and agents, including subcontractors, to whom either provides Protected Information, agree in writing to the same restrictions and conditions that apply to Group and Physician with respect to such Protected Information.
7. **Access to Protected Information.** Group and Physician shall make Protected Information maintained by Group, Physician or their respective employees, agents or subcontractors available to Hospital for inspection and copying within ten (10) days of a request by Hospital for any purpose.
8. **Amendment of Protected Health Information.** Within ten (10) days of receipt from Hospital of a request for an amendment of Protected Information or a record maintained by Group, Physician or their respective employees, agents or subcontractors, Group or Physician shall make such Protected Information available to Hospital for amendment and incorporate any such amendment in such record.
9. **Accounting Rights.** Within ten (10) days of notice by Hospital of a request for an accounting of disclosures of Protected Information, Group and Physician and their respective employees, agents or subcontractors shall provide to Hospital an accounting of disclosures sufficient to enable Hospital to fulfill its obligations under the Privacy Rule. As set forth and as limited by the Privacy Rule, neither Group nor Physician shall provide an accounting to Hospital of disclosures: (i) to carry out treatment, payment or health care operations; (ii) to individuals of Protected Information about them; (iii) to persons involved in the individual's care; (iv) for national security or intelligence purposes; or (v) to correctional institutions or law enforcement officials. Group and Physician agree to maintain information on disclosures by Group, Physician and their respective employees, agents or subcontractors for at least six (6) years following the disclosure, but not before the compliance date of the Privacy Rule. At a minimum, such information shall include: (A) the date of disclosure; (B) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (C) a brief description of Protected Information disclosed; and (D) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or copy of the individual's authorization, or a copy of the written request for disclosure.
10. **Access to Records.** Group and Physician shall make their respective internal practices, books and records relating to the use and disclosure of Protected Information available to Hospital for purposes of determining Group's or Physician's compliance with this Agreement or, at the request of Hospital, to the Secretary of the U.S. Department of Health and Human Services, for purposes of determining Hospital's compliance with the Privacy Rule.

11. **Retention of Protected Information.** Except as provided in Sections 12 and 13 of this Exhibit, Group, Physician and their respective employees, agents or subcontractors shall retain all Protected Information throughout the term of this Agreement and shall continue to maintain the information required under Section 9 for a period of six (6) years after expiration or termination of this Agreement.
12. **Term of Obligations.** Group's and Physician's HIPAA Obligations shall commence as of the compliance date of the Privacy Rule, and shall terminate when all of the Protected Information is destroyed or returned to Hospital, or, if it is infeasible to return or destroy Protected Information, protections are extended to such information, in accordance with Section 13 of this Exhibit.
13. **Effect of Termination.** Upon expiration or termination of this Agreement for any reason, Group and Physician shall return or destroy all Protected Information that Group, Physician or their respective employees, agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Hospital, Group and Physician shall continue to extend the protections of this Exhibit to such information, and limit further use of such Protected Health Information to those purposes that make the return or destruction of such Protected Health Information infeasible.
14. **Amendment.** The Parties agree to take such action as is necessary to amend HIPAA Obligations from time to time in order for Hospital to comply with the requirements of the Privacy Rule, HIPAA and other applicable laws relating to the security or confidentiality of Protected Health Information.
15. **Interpretation of Obligations.** The HIPAA Obligations shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The Parties acknowledge and agree that any ambiguity in the HIPAA Obligations shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.

**PALOMAR POMERADO HEALTH  
PATHOLOGY DEPARTMENT  
PROFESSIONAL AND MEDICAL DIRECTOR SERVICES AGREEMENT**

**TO:** Board of Directors  
**FROM:** Board Finance Committee  
Tuesday, August 30, 2005  
**MEETING DATE:** Monday, September 12, 2005  
**BY:** Gerald E. Bracht  
Chief Administrative Officer

**BACKGROUND:** Valley Pathology Medical Associates, Inc. (VPMA) provides exclusive pathology professional and medical director services to Palomar Medical Center and Pomerado Hospital. VPMA has provided reliable pathology professional services to PPH for a number of years and has been responsive to the medical staff and health system in meeting the clinical needs of its patients. The physicians of VPMA are Board certified, bringing expertise to PPH in both clinical and anatomical pathology.

The medical staffs of PMC and POM were invited to provide feedback to the Administration regarding the performance of VPMA in the provision of services. The responses received reflected complete confidence and support for VPMA and recommended renegotiation of an agreement with VPMA to continue providing clinical and anatomical pathology services.

The agreement calls for professional clinical pathology services provided by VPMA to be billed and collected by VPMA, excluding Medicare inpatients, outpatients and emergency patients, as full and complete compensation for all professional and medical director services. Compensation is provided by PPH to VPMA for the provision of professional clinical pathology services provided to Medicare inpatient, outpatient and emergency patients. Anatomical outreach services are provided directly by VPMA and PPH is compensated for the technical portion of the service by VPMA.

The medical director and group physicians have been supportive of operational efforts to maintain staff competency by providing educational in-services, involvement in the operating and capital budgeting process, and improvement of clinical services.

This agreement represents a renewal of the exclusive agreement for a five-year term.

**BUDGET IMPACT:** None

**STAFF RECOMMENDATION:** Approval

**COMMITTEE QUESTIONS:**

**COMMITTEE RECOMMENDATION:** The Finance Committee recommends approval of the Professional and Medical Director Services Agreement for the Pathology Department with Valley Pathology Medical Associates, Inc.

**Motion:** X

**Individual Action:**

**Information:**

**Required Time:**

## PALOMAR POMERADO HEALTH - AGREEMENT ABSTRACT

Section Reference	Term/Condition	Term/Condition Criteria
	<b>TITLE</b>	Pathology Department Services Agreement
1.1	<b>AGREEMENT DATE</b>	September 1, 2005
Intro	<b>PARTIES</b>	Valley Pathology Medical Associates, Inc. and Palomar Pomerado Health
	<b>PURPOSE</b>	Clinical supervision and oversight of laboratory services and professional anatomical pathology services.
Recitals B & C	<b>SCOPE OF SERVICES</b>	Exclusive Clinical and Anatomical Pathology Services
	<b>PROCUREMENT METHOD</b>	<input type="checkbox"/> Request For Proposal <input checked="" type="checkbox"/> Discretionary
1.1	<b>TERM</b>	Five years with 180 days written notice prior to anniversary date to terminate
1.1	<b>RENEWAL</b>	Two automatic one year renewals unless terminated upon 180 days written notice prior to the anniversary date
6.4 6.2	<b>TERMINATION</b>	-Without cause by either Party with 90 days written notice -Immediately upon breach
5.4 b	<b>COMPENSATION METHODOLOGY</b>	-\$██████ annually for provision of provider services to Medicare patients
	<b>BUDGETED</b>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO – IMPACT:
4.12	<b>EXCLUSIVITY</b>	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES – EXPLAIN: Administration recommends single provider for scope of services to assure uninterrupted delivery of quality patient care services.
	<b>JUSTIFICATION</b>	Required to maintain College of American Pathologist (CAP) accreditation and an efficient and effective surgical service
	<b>AGREEMENT NOTICED</b>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <b>Methodology &amp; Response:</b> All medical staff invited in writing to provide comment.
	<b>ALTERNATIVES/IMPACT</b>	No other providers on staff or readily available to step in if desired resulting in a gap in services.
Ex 2.4 #'s 4, 6, 10, 19, 21, 22	<b>Duties</b>	<input checked="" type="checkbox"/> Provision for Staff Education <input checked="" type="checkbox"/> Provision for Medical Staff Education <input checked="" type="checkbox"/> Provision for participation in Quality Improvement <input checked="" type="checkbox"/> Provision for participation in budget process development
	<b>COMMENTS</b>	
	<b>APPROVALS REQUIRED</b>	<input checked="" type="checkbox"/> VP <input checked="" type="checkbox"/> CFO <input checked="" type="checkbox"/> CEO <input checked="" type="checkbox"/> BOD Committee FINANCE <input checked="" type="checkbox"/> BOD

**PATHOLOGY DEPARTMENT SERVICES AGREEMENT**

**by and between**

**PALOMAR POMERADO HEALTH, a local hospital district (“Hospital”)**

**and**

**VALLEY PATHOLOGY MEDICAL ASSOCIATES, INC. (“Group”)**

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### EXHIBITS

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Exhibit 2.4	Director Services.....	Exhibit 2.4
Exhibit 2.6(a)	Group Physicians .....	Exhibit 2.6(a)
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Exhibit 3.8	Code of Conduct.....	Exhibit 3.8
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Exhibit 5.1(b)	Billing Services Terms and Conditions .....	Exhibit 5.1(b)
Exhibit 5.3(a)	Medical Director Invoice/Time Sheet Form.....	Exhibit 5.3(a)
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## PATHOLOGY DEPARTMENT SERVICES AGREEMENT

THIS PATHOLOGY DEPARTMENT SERVICES AGREEMENT ("*Agreement*") is made and entered into by and between Palomar Pomerado Health, a local health care district organized pursuant to Division 23 of California Health and Safety Code ("*Hospital*"), and Valley Pathology Medical Associates, Inc., a California professional corporation ("*Group*"). Hospital and Group are sometimes referred to herein as a "*Party*" or, collectively, as the "*Parties*."

### RECITALS

A. Hospital owns and operates Palomar Medical Center and Pomerado Hospital, two general acute care hospitals, in which it operates pathology departments, which provide anatomical pathology and clinical laboratory services under a general acute care hospital license (collectively, the "*Department*").

B. Hospital desires to retain Group to provide certain professional and administrative services related to the operation of the Department through physicians who are duly licensed and qualified to provide professional medical services in the State of California (the "*State*"), experienced in the specialized field of anatomic and clinical pathology (the "*Specialty*"), members in good standing of Hospital's medical staff (the "*Medical Staff*"), and employed or otherwise engaged by Group from time to time to provide the Services (as defined below) under this Agreement (each, a "*Group Physician*" and, collectively, the "*Group Physicians*").

C. Hospital has determined that contracting with Group on an exclusive basis for the provision of the Professional Services (as defined below) is an appropriate and effective means to:

(i) Facilitate the administration of the Department, the supervision and training of Department personnel, the interrelationship between the Department and the rest of the Hospital, and the efficient operation of other Hospital departments and services;

(ii) Ensure that Professional Services (as defined below) are available seven (7) days per week, twenty-four (24) hours per day to the Department and other departments of Hospital and that coverage of such departments is provided at night and on weekends, thereby reducing unnecessary delays in providing such services to Hospital patients;

(iii) Reduce disruptions in Hospital operations and relations between Hospital administration and the Medical Staff and among members of the Medical Staff;

(iv) Promote participation in Hospital's educational programs;

(v) Reduce inefficiencies resulting from having multiple practitioners and medical groups providing Professional Services (as defined below) in the Department;

(vi) Simplify scheduling problems, thereby improving coverage, economy and availability of services in the Department;

- (vii) Facilitate efficient utilization of Hospital equipment and facilities by giving Hospital greater control over the operation of the Department;
- (viii) Improve the quality of care provided to Hospital patients by promoting standardization of procedures and improving monitoring by requiring active participation in Hospital and Medical Staff quality assurance activities;
- (ix) Enhance Hospital's reputation and competitive position by enabling the Hospital to attract highly qualified physicians to the community;
- (x) Reduce costs through standardization of procedures and centralized administration of the Department; and
- (xi) Improve the quality of care provided by Hospital by better assuring that Department physicians perform a sufficient number of procedures to maintain and improve their proficiency.

## AGREEMENT

### THE PARTIES AGREE AS FOLLOWS:

#### ARTICLE I. TERM OF AGREEMENT

1.1 **Term.** This Agreement shall become effective on September 1, 2005 (the "Effective Date"), and shall continue until August 31, 2010 (the "Expiration Date"), subject to the termination provisions of this Agreement. On the Expiration Date, and on each of the following two (2) annual anniversary dates of this Agreement thereafter, this Agreement shall automatically renew for an additional one (1) year term, unless and until either Party gives the other Party written notice of its intention not to renew this Agreement at least one hundred eighty (180) calendar days prior to the expiration of the immediately preceding one (1) year term.

#### ARTICLE II. GROUP'S OBLIGATIONS

2.1 **Group Service Obligations.** Group shall provide the Professional Services (as described in Section 2.2), the Coverage Services (as described in Section 2.3), the Director Services (as described in Section 2.4), and the Provider Services (as described in Section 2.5) (collectively, the "*Services*"), upon the terms and subject to the conditions set forth in this Agreement.

2.2 **Professional Services.** Group shall provide those professional services as set forth in Exhibit 2.2 (the "*Professional Services*"), upon the following terms and conditions:

(a) Group shall provide a minimum of one (1) Group Physician to be physically present and available to provide Professional Services at Hospital, from 7:30 a.m. to 5:30 p.m., Monday through Friday and Saturday as needed, or as otherwise determined by Hospital, after consultation with Group, to be reasonably necessary and appropriate for the provision of the Professional Services and the operation of the Department. Medical Director,

defined below, (or his designee during vacations and other regularly scheduled absences) shall have on-call administrative responsibility for the Department with respect to Professional Services, on a seven (7) day per week, twenty-four (24) hour per day basis.

(b) Group shall provide staffing of the Department at substantially the same staffing levels and in accordance with substantially the same staffing patterns as provided for the Department as of the Effective Date. Group shall adjust the staffing levels and/or staffing patterns as determined by Hospital, after consultation with Group, to be reasonably necessary and appropriate for the provision of the Professional Services and the operation of the Department.

(c) Group shall, no later than five (5) days prior to the beginning of each month during the term of this Agreement, provide Hospital with the staffing schedule for such month for the Department, which shall include the name, contact information and scheduled hours of staffing for each assigned Group Physician, and such other information as reasonably requested by Hospital from time to time.

(d) Group shall provide one or more qualified Group Physicians to be available at reasonable times for telephonic consultation with individual members of the Medical Staff (and physicians consulting with such Medical Staff members), committees of the Medical Staff, and nursing and administrative employees of Hospital, regarding the Services.

(e) Group shall, at its own expense, provide all *locum tenens* necessary for Group to fulfill its duties and obligations under this Agreement.

**2.3 Coverage Services.** Group shall provide on-call coverage for Hospital (the "**Coverage Services**"), upon the following terms and conditions:

(a) Group shall, in addition to the staffing as set forth above, provide one or more Group Physicians to be available to provide Professional Services at Hospital on an on-call basis, twenty-four (24) hours per day, seven (7) days per week, including all holidays, in the event of an emergency or an unanticipated increase in patient volume, with a maximum on-site response time of thirty (30) minutes and in accordance with the Hospital Rules (as defined below).

(b) Group shall, no later than five (5) days prior to the beginning of each month during the term of this Agreement, provide Hospital with the coverage schedule for such month, which shall include the name, contact information and scheduled hours of coverage for each assigned Group Physician, and such other information as reasonably requested by Hospital from time to time.

(c) Group shall ensure that any Group Physician scheduled to provide Coverage Services for Hospital is not simultaneously on-call to any other hospital or health care facility, except as otherwise approved in writing by Hospital from time to time.

**2.4 Director Services.** Group shall provide and cause Jerry Kolins, M.D., or such replacement as designated from time to time in accordance with this Section (the "**Medical Director**"), to serve as medical director of the Department and to perform those duties set forth in Exhibit 2.4 (the "**Director Services**"), upon the following terms and conditions:

(a) Group shall cause the Medical Director to perform the Director Services in accordance with the Hospital Rules (as defined below), the Medical Staff Bylaws (as defined below) and the terms of this Agreement.

(b) Group shall cause the Medical Director to devote time to the Director Services as necessary and appropriate for the operation of the Department; provided, however, that Group shall cause the Medical Director to provide the Director Services for not less than an average of four (4) hours per week. Group shall cause the Medical Director to allocate time among the Director Services as reasonably requested by Hospital from time to time.

(c) Group shall cause the Medical Director to cooperate with the individual designated by Hospital to have principal responsibility for the administration and operation of the Department, including: supervision, selection, assignment, and evaluation of personnel; maintenance of equipment; development of budgets; and acquisition of materials, supplies, and equipment.

(d) Group shall ensure that the Medical Director is solely responsible for performing the Director Services. If Hospital requests in writing that Group remove the designated Medical Director from such position, or for any reason the designated Medical Director: (i) fails to satisfy any of the professional standards and qualifications set forth in Article III of this Agreement; (ii) resigns, is terminated by Group or otherwise ceases to be a Group Physician for any reason; (iii) is removed from providing the Services at Hospital in accordance with this Agreement; (iv) fails to or is reasonably anticipated to be unable to provide the Director Services for a period of thirty (30) consecutive days for any reason, then Group shall designate a replacement Group Physician to serve as the Medical Director and to provide the Director Services, subject to the prior written approval of Hospital, which approval shall not be unreasonably withheld or delayed.

(e) Group shall ensure that the Medical Director is and remains board certified in the Specialty.

**2.5 Provider Services.** Group shall support the mission, vision and values of Hospital and its strategic plan through its provision of various medical services. Medical services which do not qualify as Professional Services but which are rendered by Group for the general benefit of Hospital inpatients, emergency room patients and outpatients and outreach clinical patients, shall constitute provider services ("Provider Services"). For all purposes under this Agreement and for billing to the Medicare program or Medicare beneficiaries, Group's supervision and administration of clinical pathology services provided Hospital shall be considered Provider Services. Such services shall include the administration of Hospital's clinical laboratory, supervisions and training of laboratory technologists and other personnel, quality control, and all other services provided by Group in connection with the operation of Hospital's clinical laboratory. Medicare program allocation rules between Professional Services and Provider Services shall apply for purposes of this Agreement.

## **2.6 Group Physicians and Other Employees**

(a) Group shall employ, contract with, or otherwise engage Group Physicians to provide the Services under this Agreement. Group has initially engaged those Group Physicians listed on Exhibit 2.6(a) to provide the Services, which Group Physicians are hereby approved and accepted by Hospital.

(b) Group may from time to time engage one or more additional Group Physicians (including *locum tenens* physicians) to provide the Services under this Agreement, subject to Hospital's prior written approval. In the event Hospital withholds approval with respect to any additional Group Physician, such Group Physician shall not be entitled to any "fair hearing" or any other hearing or appellate review under any provision of the Medical Staff Bylaws, unless Hospital determines that the withholding of approval is reportable to any state's medical board or other agency responsible for professional licensing, standards or behavior.

(c) Group shall ensure that, during the term of this Agreement, any and all Group Physicians (including *locum tenens* physicians) providing the Services satisfy the professional standards and qualifications set forth in Article III of this Agreement.

(d) Group shall provide prompt written notice to Hospital in the event any Group Physician resigns, is terminated by Group, or otherwise ceases to provide the Services.

(e) Group shall ensure that the Services are performed only by Group Physicians who have been approved and accepted by Hospital, and have not been removed in accordance with this Agreement.

(f) Group shall cause each new Group Physician providing the Services to comply with all obligations, prohibitions, covenants and conditions imposed on Group pursuant to this Agreement. Group shall cause each new Group Physician to execute and deliver to Hospital a letter of acknowledgment in the form attached as Exhibit 2.6(f) prior to providing any Services under this Agreement. Current Group Physicians (as of the Effective Date) have previously signed a letter of acknowledgement in the form attached as Exhibit 2.6(f) and Hospital accepts such letter in satisfying this requirement.

**2.7 Group Agents.** Group shall cause Group Agents (as defined below), if any, to comply with all obligations, prohibitions, covenants and conditions imposed on Group pursuant to this Agreement as and to the extent the services provided by such Group Agents relate to the operations or activities of Hospital and/or the Department, the provision of the Services or the Group's performance of its obligations under this Agreement. Group shall, as requested by Hospital from time to time, cause Group Agents to execute such documents and to take such other actions as may be reasonably requested by Hospital from time to time. For purposes of this Agreement, "**Group Agents**" shall mean and include any person or entity (other than Group Physicians) employed or otherwise engaged by or under contract with Group to provide management, administrative or other services to or on behalf of Group in connection with the operations or activities of Group and/or the Group's performance of its obligations under this Agreement.

**2.8 Medical Records.** Group shall cause Group Physicians to prepare complete, timely, accurate and legible medical and other records with respect to the services and treatment provided by Group Physicians to any Hospital patient, in accordance with the Hospital Rules (as defined below), Medical Staff Bylaws (as defined below), applicable Laws (as defined below),

and Joint Commission on Accreditation of Healthcare Organization (“*JCAHO*”) standards and recommendations. All such information and records relating to any Hospital patient shall be: (i) prepared on forms developed, provided or approved by Hospital; and (ii) the sole property of Hospital.

**2.8 Physician Compensation Arrangements.** Group represents and warrants to Hospital that the compensation paid or to be paid by Group to any physician is and will at all times be fair market value for services and items actually provided by such physician, not taking into account the value or volume of referrals or other business generated by such physician for Hospital or any Affiliate (as defined below). Group further represents and warrants to Hospital that Group has and will at all times maintain a written agreement with each non-employed physician receiving compensation from Group.

**2.9 Compliance with Laws.** Group shall comply, and shall cause each Group Physician and Group Agent to comply, with any and all federal, state and local laws, rules, and regulations (collectively, “*Laws*”) applicable to Group or such Group Physician or Group Agent, the provision of the Services, or the obligations of Group under this Agreement.

**2.10 Compliance with Hospital Rules and Medical Staff Bylaws.** Group shall comply, and shall cause each Group Physician and Group Agent to comply, with the bylaws, rules, regulations, guidelines and policies and procedures of Hospital (the “*Hospital Rules*”) and the bylaws, rules and regulations of the Medical Staff (the “*Medical Staff Bylaws*”) applicable to Group, Group Physicians or Group Agents, the provision of the Services, or the obligations of Group under this Agreement, including, those Hospital Rules and Medical Staff Bylaws applicable to patient relations, scheduling, billing, records, collections and other administrative matters related to the operation of the Department and/or the Hospital.

**2.11 Cooperation with Hospital Compliance Obligations.** Group shall cause Group Physicians and Group Agents to cooperate with Hospital so that Hospital and the Department may meet all requirements imposed by applicable Laws, JCAHO, and any other governing or advisory body having authority to set standards governing the operation of the Hospital or the Department.

**2.12 New Technology.** Group shall, as reasonably requested by Hospital from time to time, provide advice regarding adoption and implementation of information management systems and other new technology for the operation of the Department and/or Hospital. Group shall cause Group Physicians and Group Agents to adopt and use any information management systems or other new technology as may be made available by Hospital and determined by Hospital to be reasonably necessary and appropriate for the proper operation of the Department and/or the Hospital.

**2.13 Notification of Certain Events.** Group shall notify Hospital in writing as soon as reasonably practicable (but in no event greater than seventy-two (72) hours) after Group or any Group Physician becomes aware of any of the following:

(a) Group or any Group Physician or Group Agent becomes the subject of, or materially involved in, any investigation, proceeding, or disciplinary action by any Federal Health Care Program (as defined below), any state’s medical board, any agency responsible for professional licensing or certification, professional standards or behavior, or any medical staff;

(b) Group or any Group Physician becomes the subject of, or materially involved in, any investigation, proceeding, or disciplinary action regarding his or her certification under CLIA (as defined below);

(c) Group or any Group Physician or Group Agent becomes the subject of any action or proceeding arising out of the provision of the Services or any other professional services;

(d) Any event that materially interrupts or affects Group's or any Group Physician's ability to perform any of the Services;

(e) Any termination, non-renewal, cancellation or reduction in coverage of any insurance policy required under Article IV; or

(f) Any event described in Section 6.2, 6.8 or 6.9 of this Agreement.

### **ARTICLE III. PROFESSIONAL STANDARDS AND QUALIFICATIONS**

**3.1 Licensure.** Group shall ensure that each Group Physician has and maintains an unrestricted license to practice medicine in the State.

**3.2 DEA Registration.** Group shall ensure that each Group Physician has and maintains a valid and unrestricted United States Drug Enforcement Administration ("**DEA**") registration if applicable to that Group Physician's practice.

**3.3 CLIA Certification.** Group shall have and maintain, and shall ensure that each Group Physician has and maintains, valid and unrestricted certification under the Clinical Laboratory Improvement Act of 1988, as amended ("**CLIA**").

**3.4 Board Certification.** Group shall ensure that each Group Physician is and remains board certified in the Specialty by the applicable medical specialty board approved by the American Board of Medical Specialties (the "**Certifying Board**"), except as may otherwise be agreed to in writing by Hospital from time to time; provided, however, that if any Group Physician is not certified in the Specialty by the Certifying Board as of either the Effective Date or the date such Group Physician begins providing any of the Services (whichever is later), such Group Physician shall have a reasonable amount of time to obtain such certification, provided that such Group Physician diligently pursues such certification in accordance with the rules of the Certifying Board.

**3.5 Medical Staff Membership.**

(a) Group shall ensure that each Group Physician is and remains a member in good standing in the "active staff" category (or its equivalent) of the Medical Staff, and has and maintains all clinical privileges necessary for the performance of the Professional Services; provided, however, that if any Group Physician is not a member in good standing in the "active staff" category (or its equivalent) of the Medical Staff as of either the Effective Date or the date such Group Physician begins providing any of the Services (whichever is later), such Group Physician shall have a reasonable amount of time to obtain such membership, provided that such

Group Physician diligently pursues such membership in accordance with the Medical Staff Bylaws.

(b) Group shall ensure that each Group Physician actively participates in the Medical Staff department or section encompassing the Specialty and on all Medical Staff committees to which such Group Physician may be appointed by the Medical Staff from time to time.

**3.6 Participation in Governmental Programs.** Group shall be and remain a participating provider in the Medicare and Medicaid programs, and any other federal health care program, as defined at 42 U.S.C. § 1320a-7b(f) (collectively, the "*Federal Health Care Programs*"), as requested by Hospital from time to time. Group shall ensure that each Group Physician is and remains a participating provider in any and all such Federal Health Care Programs.

**3.7 Compliance with Performance Standards.** Group shall satisfy, and shall ensure that Group Physicians and Group Agents satisfy, the performance standards set forth in Exhibit 3.7 and as adopted or amended by Hospital from time to time (the "*Performance Standards*").

**3.8 Code of Conduct.** Group hereby acknowledges receipt of Hospital's Code of Conduct, attached to this Agreement as Exhibit 3.8 (the "Code"). With respect to their business dealings with Hospital and their performance of duties under this Agreement, Group and the Group Physicians shall not act, or fail to act, in any manner which conflicts with or violates the Code, and shall not cause another person to act, or fail to act, in any manner which conflicts with or violates the Code. Group and the Group Physicians shall comply with the Code as it relates to their business relationships with Hospital or any Affiliates (as defined below), subsidiaries, employees, agents, servants, officers, directors, contractors and suppliers of every kind.

**3.9 Continuing Education.** Group shall ensure that each Group Physician participates in continuing education as necessary to maintain licensure and certification, professional competence and skills commensurate with the standards of the medical community.

**3.10 Quality Assurance and Peer Review.** Group shall, as reasonably requested by Hospital from time to time, assist Hospital in establishing programs, policies, procedures and committees for utilization management, quality assurance, risk management, peer review and credentialing applicable to the provision of services to Hospital patients. Group shall comply and cooperate with, and shall ensure that Group Physicians and Group Agents comply and cooperate with, Hospital's utilization management, quality assurance, risk management, peer review and credentialing programs, policies, procedures and committees, as adopted or amended by Hospital from time to time.

**3.11 Quality Control.** Group shall inform Hospital as soon as reasonably practicable of any deficiency in personnel, supplies, facilities, equipment or working environment that Group believes adversely effects or could adversely effect the provision of Professional Services by Group or Group Physicians or the quality of care rendered to Hospital patients.

**3.12 Coordination with Attending Physicians.** Group shall ensure that each Group Physician performs and handles all patient transfers and reports in accordance with applicable



Laws, and promptly reports the results of all Professional Services to the patient's attending physicians and any other Medical Staff physician engaged in specialty consultation or treatment for such patient.

**3.13 Representation and Warranties by Group.** Group represents and warrants that, except as set forth in Exhibit 3.13: (a) no Group Physician's license to practice medicine in any state has ever been suspended, revoked or restricted; (b) neither Group nor any Group Physician has ever had his or her CLIA certification suspended, revoked or restricted; (c) neither Group nor any Group Physician has ever been reprimanded, sanctioned or disciplined by any licensing board or medical specialty board; (d) neither Group nor any Group Physician or Group Agent has ever been excluded or suspended from participation in, or sanctioned by, any Federal Health Care Program; (e) no Group Physician has ever been denied membership and/or reappointment to the medical staff of any hospital or health care facility; (f) no Group Physician's medical staff membership or clinical privileges at any hospital or health care facility have ever been suspended, limited or revoked for a medical disciplinary cause or reason; and (g) neither Group nor any Group Physician or Group Agent has ever been convicted of a felony, a misdemeanor involving fraud, dishonesty, controlled substances, or moral turpitude, or any crime relevant to the provision of medical services or the practice of medicine.

#### **ARTICLE IV. RELATIONSHIP BETWEEN THE PARTIES**

**4.1 Support Services.** Hospital shall, at its sole cost and expense, furnish such space, equipment, supplies, nursing and other personnel, and other support personnel, as Hospital determines to be necessary and appropriate for the operation of the Department.

**4.2 Administrative Director.** Hospital shall provide an administrative director of the Department ("Administrative Director") who shall be responsible and accountable to Hospital for administrative and technical functions, including supervision, selection, assignment, and evaluation of Hospital personnel; maintenance of equipment; development of annual budget; and acquisition of materials, supplies, and equipment. In the event of any dispute between Medical Director and Administrative Director regarding their respective administrative responsibilities, such dispute shall be submitted to the Chief Administrative Officer, or his or her designee, whose decision shall be final and binding upon the parties hereto.

**4.3 Independent Contractor.**

(a) Group is and shall at all times be an independent contractor with respect to Hospital in the performance of its obligations under this Agreement. Nothing in this Agreement shall be construed to create an employer/employee, joint venture, lease or landlord/tenant relationship between Hospital and Group, any Group Physician, or any Group Agent. Group shall not, and shall ensure that each Group Physician and Group Agent does not, hold itself, himself or herself out as an officer, agent or employee of Hospital or incur any contractual or financial obligation on behalf of Hospital, without Hospital's prior written consent.

(b) Except as otherwise set forth in this Agreement, Group shall be solely responsible for paying all expenses related to Group, including compensation, health and disability insurance, worker's compensation insurance, life insurance, retirement plan contributions, employee benefits, income taxes, FICA, FUTA, SDI and all other payroll,

employment or other taxes and withholdings, with respect to Group Physicians, Group Agents, and any other person employed by or contracting with Group.

#### **4.4 Referrals.**

(a) Nothing in this Agreement or in any other written or oral agreement between Hospital and Group, nor any consideration offered or paid in connection with this Agreement, contemplates or requires the admission or referral of any patients or business to Hospital or any Affiliate. This Agreement is not intended to influence Group's or any Group Physician's judgment in choosing the hospital or other health care facility or provider deemed by Group or such Group Physician to be best qualified to deliver goods or services to any particular patient. The rights of Group under this Agreement shall not be dependent in any way on the referral of patients or business to Hospital or any Affiliate by Group or any Group Physician.

(b) Notwithstanding the foregoing, Group shall not, and shall ensure that Group Physicians do not, refer any Hospital patient to any provider of health care services that Group or any such Group Physician knows or should know is excluded or suspended from participation in, or sanctioned by, any Federal Health Care Program.

#### **4.5 Group Insurance.**

(a) **Coverage Requirements.** Group, at Group's sole cost and expense, shall maintain Continuous Coverage (as defined below) of policies of professional liability and worker's compensation insurance. The professional liability policy shall: (i) provide coverage for negligent acts or omissions of Group and each Group Physician in the performance of professional services; (ii) name Group and each Group Physician as named insured parties and Hospital as an additional insured party (if permitted by the insurance carrier); (iii) be issued by an insurance company or trust licensed or otherwise qualified to issue professional liability insurance policies or coverage in the State; and (iv) provide for minimum coverage limits consistent with the requirements of the Medical Staff Bylaws, but in no event less than One Million Dollars (\$1,000,000) per claim and Three Million Dollars (\$3,000,000) annual aggregate. The worker's compensation insurance policy or policies shall (i) provide coverage for each Group Physician and Group Agent; (ii) be issued by an insurance company or trust licensed or otherwise qualified to issue worker's compensation policies or coverage in the State; and (iii) provide for minimum coverage limits consistent with applicable Laws.

(b) **Continuous Coverage.** For purposes of this Agreement, the term "***Continuous Coverage***" means the maintenance of required insurance from the Effective Date, continuing during the entire term of this Agreement, and, with respect to professional liability and general liability insurance, expiring not less than three (3) years following the expiration or earlier termination of this Agreement (the "***Insurance Period***"). If for any reason any insurance policy maintained by Group pursuant to this Section is terminated, reduced below the minimum coverage requirements set forth in this Section, not renewed or cancelled (whether by action of the insurance company or Group) prior to the expiration of the Insurance Period, Group shall: (i) cause a replacement insurance policy meeting the requirements of this Section to be in effect as of the effective date of the termination, reduction, non-renewal or cancellation of the prior insurance policy; and (ii) purchase either extended reporting coverage (*i.e.*, "tail" coverage) or prior acts coverage (*i.e.*, "nose" coverage) as necessary to meet the requirements of this Section. "Tail" coverage must provide for either an unlimited discovery/reporting period or a

discovery/reporting period that would extend through the end of the Insurance Period, and “nose” coverage must provide for a retroactive discovery/reporting period at least as of the start of the Insurance Period.

(c) **Certificate of Insurance.** Group shall provide Hospital with certificates of insurance or other written evidence of the insurance policies required by this Section in a form satisfactory to Hospital prior to the Effective Date, on each annual renewal of such insurance policies during the Insurance Period and as requested by Hospital.

(d) **Replacement Insurance.** In the event Group fails to procure, maintain or pay for any insurance policy required under this Section, Hospital shall have the right, but not the obligation, to procure, maintain or pay for such insurance policy. In such event, Group shall reimburse Hospital for the cost thereof not more than ten (10) days after Hospital’s written request to Group.

#### **4.6 Indemnification.**

(a) **Indemnification by Group.** Group shall indemnify, defend and hold harmless Hospital against: (i) any and all liability arising out of Group’s or any Group Physician’s failure to comply with the terms of this Agreement, and any injury, loss, claims, or damages arising from the negligent operations, acts, or omissions of Group, any Group Physician or any employee or independent contractor of Group relating to or arising out of the provision of Services or this Agreement; and (ii) any and all costs and expenses, including reasonable legal expenses, incurred by or on behalf of Hospital in connection with the defense of such claims.

(b) **Indemnification by Hospital.** Hospital shall indemnify, defend and hold harmless Group against: (i) any and all liability arising out of Hospital’s failure to comply with the terms of this Agreement, and any injury, loss, claims, or damages arising from the negligent operations, acts, or omissions of Hospital or its employees or agents relating to or arising out of this Agreement; and (ii) any and all costs and expenses, including reasonable legal expenses, incurred by or on behalf of Group in connection with the defense of such claims.

**4.7 Survival of Insurance and Indemnity Obligations.** Sections 4.4 and 4.5 shall survive the expiration or termination of this Agreement.

**4.8 Cooperation Between the Parties.** The Parties recognize that, during the term of this Agreement and for a period thereafter, certain risk management issues, legal issues, claims or causes of action may arise that involve or could potentially involve the Parties and their respective employees and agents. The Parties further recognize the importance of cooperating with each other when such issues, claims or causes of action arise, to the extent such cooperation does not violate any applicable Laws, cause the breach of any duties created by any policies of insurance or programs of self-insurance, or otherwise compromise the confidentiality of communications or information regarding the issues, claims or causes of action. The Parties shall, therefore, use reasonable efforts to address such risk management claims or causes of action in a cooperative manner.

**4.9 Use of Hospital Premises.** Group shall not, and shall ensure that Group Physicians and Group Agents do not, use any part of Hospital’s premises that Hospital designates for the Department for the provision of any services or goods to any person or entity

(other than the provision of the Services in accordance with this Agreement), except in an emergency or with Hospital's prior written consent.

**4.10 Non-Solicitation of Hospital Employees.** During the term of this Agreement and for a period of one (1) year thereafter, Group shall not, and shall ensure that Group Physicians and Group Agents do not, solicit, directly or indirectly, for employment any employee of Hospital, or interfere with any relationship, contractual or otherwise, between Hospital and any of its employees.

**4.11 Restrictions on Competitive Investments and Activities.** During the term of this Agreement, Group shall not, and shall ensure that Group Physicians and Group Agents do not, own any interest in, manage, operate, or provide any professional, administrative or medical director services to or on behalf of, any person or entity (whether as director, officer, employee, partner, shareholder, member, agent, representative, security holder, consultant or otherwise), that furnishes or intends to furnish any services provided by Hospital or any Affiliate (as defined below) within the primary or secondary service area of Hospital, without the prior written consent of Hospital, except as specifically set forth in Exhibit 4.11. Notwithstanding the foregoing, nothing in this Section shall prohibit Group or any Group Physician or Group Agent from owning securities in any publicly traded company that furnishes services provided by Hospital or any Affiliate.

**4.12 Exclusive Services.** During the term of this Agreement, except otherwise set forth in Exhibit 4.12, Group shall have the exclusive right to provide Professional Services in the Department, except to the extent necessary for Hospital to comply with California Welfare and Institutions Code Section 14087.28 (and any successor provisions thereof) or otherwise allow Hospital to be or remain a provider of Medi-Cal services under the Selective Provider Contracting Program established pursuant to Section 4081 et. seq. of the California Welfare & Institutions Code.

**4.13 Failure to Provide Staffing and/or Coverage.** In the event Group fails to or is reasonably anticipated to be unable to provide staffing and/or coverage of the Department in accordance with the terms and conditions of this Agreement, Hospital shall have the right, at its option and notwithstanding any provision of this Agreement to the contrary, to make alternative arrangements for the provision of the Professional Services. Hospital's rights under this Section shall not (i) relieve Group of its obligations under this Agreement, (ii) effect Hospital's right to terminate this Agreement, or (iii) adversely effect Hospital's right to seek indemnity as a result of the breach of this Agreement by Group.

**4.14 Developments.** Group, on behalf of itself and each Group Physician, hereby assigns to Hospital any and all right, title, and interest that Group or any such Group Physician has or may have in and to any and all inventions, original works of authorship, developments, concepts, improvements or trade secrets, whether or not patentable or registrable under copyright or similar laws, related to the operations or activities of Hospital that Group or any such Group Physician with Hospital may jointly conceive, develop or reduce to practice, or cause to be conceived, developed or reduced to practice, in the course of the performance of the Services under this Agreement (collectively referred to as "*Developments*"). If in the course of the performance of Services under this Agreement, Group or any Group Physician incorporates into any Hospital policy, procedure or process any Development owned by Group or such Group Physician or in which Group or such Group Physician has an interest as of the Effective Date

(each, a "**Prior Development**"), Hospital is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license to use and modify such Prior Development in connection with the operations or activities of Hospital.

**4.15 Records Available to Group.** Both during and after the term of this Agreement, Hospital shall permit Group and its agents to inspect and/or duplicate, at Group's sole cost and expense, any medical chart and record to the extent necessary to meet Group's professional responsibilities to patients, to assist in the defense of any malpractice or similar claim to which such chart or record may be pertinent, and/or to fulfill requirements pursuant to provider contracts to provide patient information; provided, however, such inspection or duplication is permitted and conducted in accordance with HIPAA (as defined below), other applicable Laws, and commonly accepted standards of patient confidentiality. Group shall be solely responsible for maintaining patient confidentiality with respect to any information that Group obtains pursuant to this Section.

**4.16 Practice of Medicine.** Group and Hospital acknowledge that Hospital is neither authorized nor qualified to engage in any activity that may be construed or deemed to constitute the practice of medicine. Hospital shall neither have nor exercise any control or direction over any Group Physician's professional medical judgment or the methods by which any Group Physician performs professional medical services; provided, however, that Group shall ensure that Group Physicians comply at all times with the Medical Staff Bylaws, Hospital Rules, and the terms and conditions of this Agreement.

**4.17 Hospital Services.** Hospital shall retain professional and administrative responsibility for the operation of the Department, as and to the extent required by Title 22, California Code of Regulations, Section 70713. Hospital's retention of such responsibility is not intended and shall not be construed to diminish, limit, alter or otherwise modify in any way the obligations of Group under this Agreement, including, without limitation, the obligations under the insurance and indemnification provisions set forth in this Article IV.

## **ARTICLE V. BILLING AND COMPENSATION**

### **5.1 Professional Services Billing and Collection.**

(a) **Professional Services Fee Schedule.** Group shall have discretion in establishing its professional fees for Professional Services provided pursuant to this Agreement; provided, however, that all professional fees shall be competitive with customary local fees for comparable services and shall be billed in accordance with a uniform schedule of Group's fees for Professional Services provided under this Agreement. Such fee schedule, and any amendments thereto, shall be delivered to Hospital and subject to Hospital's review and approval, which approval shall not be unreasonably withheld.

(b) **Group Billing.** Group shall be solely responsible for billing and collecting for Professional Services provided pursuant to this Agreement. Group shall accept assignment with respect to services provided to Federal Health Care Program beneficiaries, to the extent permissible under applicable rules and regulations.

(c) **Billing Compliance.** Group shall comply with all applicable Laws, including those of the Federal Health Care Programs, customary professional practice, and other third-party payor programs, whether public or private, in connection with billing and coding for Professional Services provided pursuant to this Agreement. Group shall adopt and maintain billing and coding compliance policies and procedures to ensure Group's compliance with applicable Laws, including those of the Federal Health Care Programs. Hospital shall have reasonable access to Group's records in order to assure Group's compliance with this Agreement. Group shall promptly correct any billing errors documented by Hospital.

(d) **Patient Information.** Hospital shall take all necessary and reasonable steps to provide Group sufficient patient information in electronic acceptable format when possible to facilitate Group's billing and collecting for Professional Services provided pursuant to this Agreement.

(e) **Separate Billing.** Except as otherwise provided in Section 5.5, below, each Party shall separately bill all patients for its respective fees and charges, and neither Group nor Hospital shall bill for, guarantee the ability to collect, or have any claim or interest in or to the amounts billed or collected by the other Party. Group shall cause Group Physicians to cooperate with Hospital in completing such claim forms for Hospital patients as may be required by insurance carriers, health care service plans, governmental agencies, or other third-party payors.

(f) **Collection Agencies.** Hospital shall have the right to object to Group's use of any collection agency that engages in conduct that results in the unreasonable annoyance or harassment of patients. Group shall either cure this problem or discharge the collection agency within thirty (30) days following written notice of objection by Hospital. If this problem occurs a second time, Group shall discharge the collection agency within thirty (30) days following written notice of objection by Hospital.

## **5.2 Third-party Payor Arrangements.**

(a) Group shall make all reasonable efforts to cooperate as necessary to facilitate Hospital's entry into or maintenance of any third-party payor arrangements.

(b) Third party payor arrangements are defined as arrangements for the provision of services under Medicare, Medi-Cal or other public or private managed care, health, and/or hospital care programs. Group shall, in good faith upon Hospital's request, negotiate with third-party payors for the purpose of entering into an express contractual agreement with said third-party payor, or any intermediate organization including any independent practice association, if required for said enrollment, ("Payor"), at fair market rates for pathology services. Both parties agree that negotiations must be fair and reasonable.

(c) Upon communication to Hospital from any Payor of failed negotiation with Group, if Hospital in good faith determines (i) that the Payor has been negotiating with Group in good faith and (ii) that such negotiations have been active long enough for a reasonable chance of resolution, Hospital shall immediately notify Group. Thereupon, Group agrees to proceed as follows:

(i) Group and Hospital agree to proceed immediately to have a Special Meeting and Payor will be invited to join and participate in the Special Meeting.

(ii) The parties will mutually discuss the failed negotiation in order to reach a mutual resolution including the discussion over the process for resolution that Hospital and Group have agreed to ("The Process") as defined in Section 5.2(d). If Group and Payor agree to enter into The Process then both Group and Payor will enter into an agreement to delineate, (i) the equal sharing of cost associated with The Process and (ii) selection of a mediator ("Mediator") to facilitate The Process. The Mediator selected shall have expertise required to survey and determine prevailing rates for pathology services in Southern California.

(iii) If Payor does not agree to enter into The Process, or a mutually agreed upon modified process, with Group, then Section 5.2(e) shall apply.

**(d) The Process.**

(i) Group and Payor shall each submit its most recent rate schedule proposal made to each other in their negotiation process and the rationale used to substantiate the proposal. The Mediator and all parties shall in the Special Meeting seek in good faith to reach consensus on reimbursement rates and establishment of a contractual agreement with Payor within thirty (30) days of the initial Special Meeting, or such extended time as Group and Hospital agree upon.

(ii) If Group does not reach agreement with Payor within such thirty (30) day or extended period, then Mediator shall determine a rate schedule based on the median prevailing rates for the geographic service area of Hospital which is the northern portion of San Diego County ("Geographic Area"). In determining prevailing rates for the Geographic Area, the Mediator may take into account to the extent Mediator deems relevant prevailing rates for pathology services, of comparable scope and scale, in San Diego County, Orange County, Riverside County, and Los Angeles County. If the rate schedule proposed by the Group in the aggregate is within five percent (5%) of the rate schedule determined by the Mediator, then Group agrees to contract with Payor at the rate schedule proposed. If the rate schedule proposed by Group in the aggregate is not within five percent (5%) of the rate schedule determined by the Mediator, then Group shall adjust its rate schedule proposal to be within five percent (5%) of the rate schedule determined by the Mediator. If Payor does not agree to consummate a contract with Group under such circumstances, then Section 5.2(e) shall apply.

(e) If Group and Payor fail to enter into a contractual agreement based on the method described in Section 5.2(d), then Group shall have no further obligation to enter into a contractual agreement with Payor, and shall be entitled to bill Payor directly at Group's full rate schedule. If Payor defaults in payment of all or a portion of the billing, then Group may balance bill the patient (if not prohibited by law). Provided that, in this case in no event shall the total collection from Payor and patient exceed one hundred percent (100%) of Group's full rate schedule.

(f) Under no circumstance shall Hospital or mediator be allowed to disclose any rates or contract terms of Group with any other third party payor to the third party payor involved in this mediation. Further, it is the understanding of all parties, that any information

brought forth in this mediation, including, but not limited to rates and contract terms of Group with any third party payor is proprietary and confidential information and will not be disclosed to any other party outside of this mediation.

### **5.3 Compensation for Director Services.**

(a) **Time Sheets.** Group shall, not more than ten (10) days following the end of each month of the term of this Agreement, submit to Hospital a written time sheet in the form attached as Exhibit 5.3(a), detailing to Hospital's satisfaction the date, time, number of hours and description of the Director Services performed by the Medical Director during the immediately preceding month.

(b) **No Compensation.** In recognition of the mutual obligations of the Parties hereunder, Hospital and Group acknowledge that there shall be no monetary compensation to Group for the Director Services furnished by Group hereunder.

### **5.4 Compensation for Provider Services.**

(a) **Monthly Report.** Group shall, not more than ten (10) days following the end of each month of the term of this Agreement, submit to Hospital a written monthly report in such form as designated by Hospital from time to time, detailing to Hospital's satisfaction the date, time, number of hours and description of the Provider Services performed during the immediately preceding month.

(b) **Compensation.** For Provider Services to be provided by Medical Group hereunder, Medical Group shall be paid an annual payment of Three Hundred Twenty Six Thousand Seven Hundred Twenty Five Dollars (\$326,725) which shall be paid in monthly installments of Twenty Seven Thousand Two Hundred Twenty Seven Dollars (\$27,227) in arrears on or before the fifteenth (15<sup>th</sup>) day of each calendar month for the preceding calendar month (the "Provider Services Payment"). The parties acknowledge and agree that the Provider Services Payment does not include compensation for the provision of Provider Services to Hospital's non-Medicare inpatients, emergency room patients and outpatients and outreach clinical patients. In accordance with applicable law, charges for the "professional" component of the provision of Provider Services to Hospital's non-Medicare inpatients, emergency room patients and outpatients and outreach clinical patients shall be billed, collected and retained by Medical Group in accordance with its fee schedule.

### **5.5 Outreach Anatomical Laboratory Work.**

(a) Group may accept "outreach" anatomical laboratory referrals from community physicians and other sources outside of Hospital, which shall be performed in the Department. For such outreach anatomical laboratory work, Group shall charge, bill (in a manner consistent with Medicare regulations) and collect fees as set forth in Exhibit 5.5, which fees shall be in general accordance with customary local fees for comparable services. Except for pap smears, Group shall reimburse Hospital an amount equal to ten percent (10%) of the fees set forth in Exhibit 5.5 for the technical component of such outreach anatomical laboratory work. With respect to pap smears, the parties acknowledge and agree that on or about March 1st of each year of this Agreement, they shall meet to discuss a reasonable rate of reimbursement for the technical component of pap smears as identified on Exhibit 5.5. The parties acknowledge



and agree that if such reasonable rate for the technical component of pap smears differs from the rate identified on Exhibit 5.5, the parties shall amend Exhibit 5.5 to reflect such reasonable rate. This reimbursement for the technical component represents Hospital property, collected on behalf of Hospital by Group. Group agrees that it will not increase the fees set forth in Exhibit 5.5 without giving at least thirty (30) days' prior written notice to Hospital, during which time Group will, upon Hospital's request, confer with Hospital concerning the proposed increase. Group may increase outreach anatomical laboratory fees by a percentage equal to any laboratory technical fee increase approved by the Hospital District Board of Directors on an annual basis. Notwithstanding any provision to the contrary, the percentage and other amounts constituting the fees for the technical component of anatomical reference laboratory shall not be adjusted without the consent of Hospital, such consent may not be unreasonably withheld.

(b) On or before the twenty fifth (25<sup>th</sup>) day of each calendar month during the term of this Agreement, commencing with the second (2<sup>nd</sup>) calendar month of the term of this Agreement, Hospital shall submit a written statement to Group identifying the Hospital services attributable to the outreach anatomical laboratory work performed by Group. Group shall pay Hospital for such services pursuant to Section 5.5.(a) and Exhibit 5.5 within twenty (20) business days of receipt of such statement. In the event the fees charged, billed and collected by Group for "outreach" anatomical laboratory referrals are prospectively or retrospectively denied, through the unilateral action of any payor which action shall not have resulted from any negotiation or settlement between the payor and Group, and Group has already reimbursed Hospital for the technical component, Hospital shall not be obligated to repay to Group such amount. In the event the fees charged, billed and collected by Group for "outreach" anatomical laboratory referrals are prospectively or retrospectively reduced, through the unilateral action of any payor which action shall not have resulted from any negotiation or settlement between the payor and Group, and Group has already reimbursed Hospital for the technical component, Hospital shall not be obligated to repay to Group an appropriate proportionate amount equal to the reduction in the fee.

**5.6 Right of Offset.** Hospital may, in its sole discretion, at any time and from time to time, set off and withhold from any amounts otherwise payable to Group pursuant to this Agreement any amount or amounts necessary to satisfy all of any portion of any outstanding obligations or liabilities of Group to Hospital under this Agreement or any other contract, lease or other agreement between Group and Hospital or any of its Affiliates.

**5.7 IRS Form W-9.** Group shall, concurrently with the execution of this Agreement, complete, execute and deliver to Hospital a copy of IRS Form W-9 that identifies Group's taxpayer identification number.

## ARTICLE VI.

### TERM, TERMINATION AND REMOVAL OF GROUP PHYSICIANS

**6.1 Term.** This Agreement shall commence on the Effective Date and shall continue until the Expiration Date, unless earlier terminated pursuant to this Article VI.

**6.2 Termination by Hospital.** Upon the occurrence of any one or more of the following events, Hospital may terminate this Agreement by giving written notice of termination to Group, which termination shall be effective as of the date set forth in the Hospital's written

notice of termination to Group or, if no date is set forth in the notice, the date the notice is delivered to Group:

- (a) Group breaches any representation or warranty in this Agreement;
- (b) Group violates, or causes any other person or entity to violate, the Code of Conduct, Hospital's corporate integrity program, or any corporate integrity agreement applicable to Hospital or Group;
- (c) Group: (i) utilizes a physician who has not been approved by Hospital to furnish Services under this Agreement; or (ii) fails to remove a Group Physician from furnishing Services in accordance with this Agreement;
- (d) The: (i) sale, transfer or other disposition of all or substantially all of the assets or the issued and outstanding voting securities of Group; (ii) merger, consolidation or other reorganization of Group if, immediately following such transaction, either Group or its shareholders or other equity holders (as existing immediately preceding such transaction) do not own a majority of all classes of the issued and outstanding voting securities of the surviving, consolidated or reorganized entity; (iii) issuance of any class of voting securities by Group (or its successor) if, immediately following such transaction, Group's shareholders or other equity holders existing immediately preceding such issuance do not own a majority of all classes of the issued and outstanding voting securities of Group; or (iv) dissolution and/or liquidation of the Group or the cessation of the active conduct of Group's business activities (or those of its successor), in any case, without prior consent of Hospital;
- (e) Group makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they mature, applies to any court for the appointment of a trustee or receiver over its assets, or upon commencement of any voluntary or involuntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation or other similar law of any jurisdiction;
- (f) The insurance required to be maintained by Group hereunder is terminated, reduced below the minimum coverage requirements set forth in this Agreement, not renewed or cancelled (whether by action of the insurance company or Group) for any reason, and Group has not obtained replacement coverage as required by this Agreement prior to the effective date of such termination, reduction, non-renewal or cancellation;
- (g) Group fails to designate a replacement Medical Director as and when required in accordance with this Agreement;
- (h) Group is charged with or convicted of a felony, a misdemeanor involving fraud, dishonesty, controlled substances, or moral turpitude, or any crime relevant to the Services, the provision of professional services, or Group's or any Group Physician's practice of medicine;
- (i) Group or any Group Physician fails to have or maintain certification under CLIA for any reason;
- (j) Group or any Group Physician or Group Agent is excluded or suspended from participation in any Federal Health Care Program; or

(k) Group fails to provide staffing and/or coverage of the Hospital in accordance with this Agreement.

**6.3 Termination Upon Breach.** In the event of a breach of this Agreement, the non-breaching Party shall give notice to the breaching Party setting forth the nature of the breach and specifying the applicable cure period for such breach, which cure period shall not be less than twenty (20) days. If the breaching Party fails to cure the breach to the satisfaction of the non-breaching Party within the applicable cure period, this Agreement shall, without any additional action, terminate upon the last day of the cure period unless the non-breaching Party, in its sole and absolute discretion, extends the cure period by written notice to the breaching Party.

**6.4 Termination Without Cause.** Either Party may terminate this Agreement without cause, expense or penalty, effective ninety (90) days after written notice of termination is given to the other Party.

**6.5 Termination or Modification in the Event of Government Action.**

(a) In the event of any Government Action (as defined below), the Parties shall, within ten (10) days after one Party gives written notification of such Government Action to the other Party, meet and confer and negotiate in good faith to attempt to amend this Agreement in order to comply with the Government Action.

(b) If the Parties, after good faith negotiations that shall not exceed thirty (30) days, are unable to mutually agree upon the amendments necessary to comply with the Government Action, or, alternatively, if either Party determines in good faith that compliance with the Government Action is impossible or infeasible, either Party may terminate this Agreement effective ten (10) days after a written notice of termination is given to the other Party.

(c) For the purposes of this Section, "**Government Action**" shall mean any legislation, statute, law, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body or any private agency, or any decision, finding, interpretation or action by any governmental or private agency, court or other third party which, in the opinion of counsel to either Party, as a result or consequence, in whole or in part, of the arrangement between the Parties set forth in this Agreement, if or when implemented, could reasonably be expected to result in or present a material risk of any one or more of the following:

(i) revocation or threat of revocation of the status of any license, certification or accreditation granted to Hospital or any Affiliate (as defined below);

(ii) revocation or threat of revocation of the federal, state or local tax-exempt status of Hospital, or any Affiliate, or their respective tax-exempt financial obligations;

(iii) prohibit or restrict the ability of Hospital or any Affiliate to issue tax-exempt bonds, certificates of participation or other tax-exempt financial obligations;

(iv) violation of or threat of prosecution under 42 U.S.C. § 1320a-7b(b) (commonly referred to as the Anti-Kickback Law), 42 U.S.C. § 1395nn (commonly referred to as the Stark Law) or any comparable state law governing kickbacks, bribes, rebates or patient referrals if either Group or any Group Physician referred patients to Hospital or any Affiliate;

(v) violation by Hospital of, or threat of prosecution of Hospital under, any law, regulation, rule or procedure applicable to Hospital;

(vi) prohibit Group, Hospital or any Affiliate from submitting claims or materially reducing the reimbursement received by Hospital or any Affiliate for services provided to patients referred by Group or any Group Physician;

(vii) subject Hospital, Group, any Group Physician, any Affiliate, or any of their respective officers, directors, employees or agents, to civil action or criminal prosecution by any governmental authority or other person or entity or the imposition of any sanction (including any excise tax penalty under Internal Revenue Code § 4958), on the basis of their approval of or participation in this Agreement or performing their respective obligations under this Agreement; or

(viii) revocation or loss of Hospital's status as a provider of Medi-Cal services under the Selective Provider Contracting Program established pursuant to Section 14081 et seq. of the California Welfare & Institutions Code as a result in whole or in part, of the exclusive rights granted to Group under this Agreement.

(d) For the purposes of this Agreement, "*Affiliate*" shall mean any entity that, directly or indirectly, controls, is controlled by, or is under common control with Hospital.

**6.6 Effect of Termination or Expiration.** Upon any termination or expiration of this Agreement:

(a) All rights and obligations of the Parties shall cease except: (i) those rights and obligations that have accrued and remain unsatisfied prior to the termination or expiration of this Agreement; (ii) those rights and obligations that expressly survive termination or expiration of this Agreement; and (iii) Group's obligation to continue to provide services to patients under its care in the Department at the time of expiration or termination of this Agreement, until the patient's course of treatment is completed or is transferred to the care of another physician(s);

(b) Upon Hospital's request, Group and the Group Physicians and Group Agents shall immediately vacate the Department premises, removing any and all of their personal property, and Hospital may remove and store, at Group's expense, any personal property that they have not so removed;

(c) Group and the Group Physicians and Group Agents shall immediately return to Hospital all of Hospital's property, including Hospital's equipment, supplies, furniture, furnishings and patient records, in their possession or under their control; and

(d) Group and the Group Physicians and Group Agents shall not do anything or cause any other person to do anything that interferes with Hospital's efforts to engage any other person or entity for the provision of some or all of the Services, or interferes in any way with any relationship between Hospital and any other person or entity who may be engaged to provide some or all of the Services to Hospital, and shall not initiate legal action or take any other action to challenge the right of Hospital to enter into an exclusive professional services agreement with another physician or group.

**6.7 Effect of Termination or Expiration on Medical Staff Status.**

(a) Upon the expiration or termination of this Agreement for any reason, the Medical Staff clinical privileges required of each Group Physician to provide Professional Services in the Department, and the Medical Staff membership of each such Group Physician if such clinical privileges are the only privileges held by such Group Physician, and any other right of Group or Group Physicians to provide Professional Services in the Department, whether under this Agreement or otherwise, shall be immediately relinquished without any action on the part of Hospital and/or the Medical Staff.

(b) Upon the expiration or termination of this Agreement for any reason, neither Group nor any Group Physician shall be entitled to the hearing rights set forth in Article VIII of the Medical Staff Bylaws unless the expiration or termination is for a medical disciplinary cause or reason.

(c) Upon the expiration or termination of this Agreement for any reason, Group shall not, and shall ensure that Group Physicians do not, seek to exercise clinical privileges to provide Professional Services in the Department or initiate any administrative or judicial proceeding to require Hospital to permit them to exercise such clinical privileges if Hospital enters into an agreement with another physician or group of physicians that provides that such other physician or group of physicians have the exclusive right to provide the Professional Services at Hospital.

**6.8 Immediate Removal of Group Physicians.** Group shall immediately remove any Group Physician, including Medical Director, from furnishing any Services under this Agreement who:

(a) Has his or her Medical Staff membership or clinical privileges at Hospital terminated, suspended, revoked or relinquished for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(b) Has his or her license to practice medicine in the State, Board certification or DEA registration, if applicable, denied, suspended, restricted, terminated, revoked or relinquished for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(c) Has his or her certification under CLIA denied, suspended, restricted, terminated, revoked or relinquished for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(d) Is convicted of a felony, a misdemeanor involving fraud, dishonesty, controlled substances, or moral turpitude, or any crime relevant to the provision of professional services or the practice of medicine;

(e) Is excluded or suspended from participation in any Federal Health Care Program; or

(f) Fails to be covered by the professional liability insurance required to be maintained under this Agreement.

**6.9 Removal of Group Physicians Upon Hospital Request.** Upon written request by Hospital, Group shall immediately remove any Group Physician, including Medical Director, from furnishing any Services under this Agreement who:

(a) Has his or her Medical Staff membership or clinical privileges at Hospital restricted for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(b) Has his or her Medical Staff membership or any clinical privileges at any health care facility (other than Hospital) terminated, suspended, restricted, revoked or relinquished for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(c) Violates, or causes any other person or entity to violate, the Code of Conduct, Hospital's corporate integrity program, or any corporate integrity agreement applicable to Hospital or Group;

(d) Engages in conduct that, in Hospital's good faith determination, jeopardizes the mental or physical health, safety or well-being of any person or damages the reputation of Hospital;

(e) Fails to satisfy one or more of the professional standards and qualifications set forth in Article III of this Agreement;

(f) Is charged with a felony, a misdemeanor involving fraud, dishonesty, controlled substances, or moral turpitude, or any crime relevant to the provision of professional services or the practice of medicine;

(g) Fails to comply with any other material terms or conditions of this Agreement after being given written notice of that failure and a reasonable opportunity to comply;

(h) Is unable or reasonably expected to be unable to provide the Professional Services for a period in excess of thirty (30) consecutive days or sixty (60) days in the aggregate over any three (3) month period;

(i) Is the subject of one or more disciplinary actions by the Medical Staff; or

(j) Is the principally named subject of two (2) or more medical malpractice judgments or settlements within any twelve (12) month period.

**6.10 Effect of Removal of a Group Physician.**

(a) Upon the removal of any Group Physician from furnishing services under this Agreement, the right of such Group Physician to provide Professional Services in the

Department shall immediately terminate, without any action on the part of Hospital and/or the Medical Staff, except to the extent necessary for Hospital to comply with California Welfare and Institutions Code Section 14087.28 (and any successor provisions thereof) or otherwise allow Hospital to be or remain a provider of Medi-Cal services under the Selective Provider Contracting Program established pursuant to Section 148081 et seq. of the California Welfare & Institutions Code, if applicable.

(a) Upon the removal of a Group Physician from furnishing services under this Agreement, such Group Physician shall not be entitled to any "fair hearing" or any other similar hearing or appellate review under any provision of the Medical Staff Bylaws.

(b) Upon the removal of a Group Physician from furnishing services under this Agreement, Group shall obtain, at its cost and expense, a substitute for the removed Group Physician or demonstrate to Hospital's satisfaction Group's ability to continuously perform the Services without a substitute. Failure to do so shall constitute a material breach of this Agreement. Nothing herein shall limit Hospital's rights under Section 6.2 or any other provision of this Agreement.

(c) A Group Physician that has been removed from furnishing services under this Agreement may be reinstated as a Group Physician eligible to provide Professional Services in the Department only upon the prior written approval by Hospital, which approval may be given, withheld or conditioned by Hospital in its sole and absolute discretion. In the event Hospital withholds approval with respect to any such Group Physician, such Group Physician shall not be entitled to any "fair hearing" or any other hearing or appellate review under any provision of the Medical Staff Bylaws, unless Hospital determines that the withholding of approval is reportable to any state's medical board or other agency responsible for professional licensing, standards or behavior.

**6.11 Physician Ownership Interests; Eligibility to Provide Services.** Group represents and warrants that all physician-owners of Group are in no way prohibited, restricted or limited from owning any interest in a provider of professional pathology/laboratory medicine services or pathology/laboratory medicine administrative services. Group further represents and warrants that Group and each Group Physician is now and shall remain throughout the entire term of this Agreement, licensed or otherwise permitted to render and be fully reimbursed for professional pathology/laboratory services to, through, or on behalf of a CLIA-certified laboratory, including any CLIA-certified laboratory owned, operated, or associated or affiliated with Hospital. To the extent any Group Physician is excluded, prohibited, suspended, restricted or otherwise materially limited from rendering the Services or is excluded, prohibited, suspended, restricted or otherwise limited by any federal, state or other certifying agency or organization in any manner that limits, restricts or prohibits Hospital from being reimbursed for services rendered by Hospital (each, a "*Restricted Physician*"), Group shall immediately terminate its relationships (including any and all ownership, employment and contractual arrangements) with such Restricted Physician, and shall execute and deliver to Hospital a certificate that represents and certifies that such Restricted Physician no longer has any ownership interest in, control of, or any contractual relationship with Group, in form and substance acceptable to Hospital.

**ARTICLE VII.**  
**GENERAL PROVISIONS**

**7.1 Amendment.** This Agreement may be modified or amended only by mutual written agreement of the Parties. Any such modification or amendment must be in writing, dated and signed by the Parties, and explicitly indicate that such writing modifies or amends this Agreement.

**7.2 Assignment.** This Agreement is entered into by Hospital in reliance on the professional and administrative skills of Group and Group Physicians. Group shall be solely responsible for providing the Services and otherwise fulfilling the terms of this Agreement through the services of the Group Physicians, except as specifically set forth in this Agreement. Group may not assign or subcontract any of its rights, interests, duties, or obligations under this Agreement without Hospital's prior written consent, which consent may be given or withheld in Hospital's sole discretion. Any attempted or purported assignment by Group in violation of this Section shall be void. Hospital may not assign any or all of its rights, interests, duties, or obligations hereunder to any person or entity without the prior written consent of Group. If Group refuses to provide such written consent to an assignment by Hospital, Hospital shall have the option to terminate this Agreement effective as of the date set forth in a written notice of termination to Group, or if no date is set forth in the notice, the date the notice is delivered to Group. Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective heirs, successors, assigns and representatives.

**7.3 Confidential Information.**

(a) "***Confidential Information***" means this Agreement and any information related to the past, current or proposed operations, business or strategic plans, financial statements or reports, technology or services of Hospital or any Affiliate that Hospital discloses or otherwise makes available in any manner to either Group or any Group Physician or Group Agent, or to which Group or any Group Physician or Group Agent may gain access in the performance of the Services under this Agreement, or which either Group or any Group Physician or Group Agent knows or has reason to know is confidential information of Hospital or any Affiliate; whether such information is disclosed orally, visually or in writing, and whether or not bearing any legend or marking indicating that such information is confidential. By way of example, but not limitation, Confidential Information includes any and all know-how, processes, trade secrets, manuals, confidential reports, procedures and methods of Hospital, any Hospital patient's individually identifiable health information (as defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and all rules and regulations promulgated thereunder ("***HIPAA***")), and any information, records and proceedings of Hospital and/or Medical Staff committees, peer review bodies, quality committees and other committees or bodies charged with the evaluation and improvement of the quality of care. Confidential Information also includes proprietary or confidential information of any third party that may be in Hospital's or any Affiliate's possession.

(b) Confidential Information shall be and remain the sole property of Hospital. Group shall not, and shall ensure that Group Physicians and Group Agents do not, use any Confidential Information for any purpose not expressly permitted by this Agreement, or disclose the Confidential Information to any person or entity without the prior written consent of Hospital. Group shall cause each Group Physician and Group Agent to protect the Confidential



Information from unauthorized use, access, or disclosure in the same manner as Group protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

(c) Group and each Group Physician and Group Agent shall return to Hospital all Confidential Information and all copies thereof in Group's or such Group Physician's or Group Agent's possession or control, and permanently erase all electronic copies of such Confidential Information, promptly upon the written request of Hospital, or the termination or expiration of this Agreement. Neither Group nor any Group Physician or Group Agent shall copy, duplicate or reproduce any Confidential Information without the prior written consent of Hospital.

(d) This Section 7.3 shall survive the expiration or termination of this Agreement.

**7.4 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**7.5 Disclosure of Agreement.** The Parties shall not disclose any of the provisions of this Agreement to any person or entity, other than their respective attorneys or accountants, without the prior written consent of the other Party, unless and only to the extent such disclosure is required by law, subpoena or legal process. Hospital or Group may disclose the provisions of this Agreement to any person or entity without the prior written consent of the other Party to the extent such disclosure is requested or required by (a) the Party's respective contracts existing as of the date of this Agreement; or (b) fiscal intermediaries, public agencies or commissions with governmental powers and duties related to disclosure of information that have the right to compel disclosure of such information. Hospital may also disclose the provisions of this Agreement to any person or entity without the prior written consent of the other Party to the extent such disclosure is requested or required by (a) Hospital's representatives or others in connection with any tax-exempt bond or other financing transactions of Hospital or any Affiliates; or (b) Hospital's corporate integrity program.

**7.6 Disclosure of Interests.** Group shall provide to Hospital upon execution of this Agreement (and as requested by Hospital from time to time) information sufficient to disclose any ownership, investment or compensation interest or arrangement of Group or any Group Physician, or any Group Physician's immediate family members, in any entity providing "designated health services" (as such term is defined in the Stark Law (42 U.S.C. § 1395nn) and its regulations) or any other health care services. This Section shall not impose on Hospital any disclosure or reporting requirements or obligations imposed on either Group or any Group Physician under any governmental program or create an assumption of such disclosure obligations by Hospital. Group and each Group Physician shall have the sole responsibility to fulfill any such federal and/or state reporting requirements or obligations.

**7.7 Dispute Resolution.** In the event of any dispute, controversy, claim or disagreement arising out of or related to this Agreement or the acts or omissions of the Parties with respect to this Agreement (each, a "*Dispute*"), the Parties shall resolve such Dispute as follows:

(a) **Meet and Confer.** The Parties shall, as soon as reasonably practicable after one Party gives written notice of a Dispute to the other Party (the "*Dispute Notice*"), meet and confer in good faith regarding such Dispute at such time and place as mutually agreed upon by the Parties (the "*Meet and Confer*"). The obligation to conduct a Meet and Confer pursuant to this Section does not obligate either Party to agree to any compromise or resolution of the Dispute that such Party does not determine, in its sole and absolute discretion, to be a satisfactory resolution of the Dispute. The Meet and Confer shall be considered a settlement negotiation for the purpose of all applicable Laws protecting statements, disclosures or conduct in such context, and any offer in compromise or other statements or conduct made at or in connection with any Meet and Confer shall be protected under such Laws, including California Evidence Code Section 1152.

(b) **Arbitration.** If any Dispute is not resolved to the mutual satisfaction of the Parties within ten (10) business days after delivery of the Dispute Notice (or such other period as may be mutually agreed upon by the Parties in writing), the Parties shall submit such Dispute to mandatory arbitration conducted by Judicial Arbitration and Mediation Services, Inc. ("*JAMS*") in accordance with the following rules and procedures:

(i) Either Party may commence arbitration by giving written notice to the other Party demanding arbitration (the "*Arbitration Notice*"). The Arbitration Notice shall specify the Dispute, the particular claims and/or causes of actions alleged by the Party demanding arbitration, and the factual and legal basis in support of such claims and/or causes of action.

(ii) The arbitration shall be conducted in the County in which the Hospital is located and in accordance with the commercial arbitration rules and procedures of JAMS to the extent such rules and procedures are not inconsistent with the provisions set forth in this Section. In the event of a conflict between any rules and/or procedures of JAMS and the rules and/or procedures set forth in this Section, the rules and/or procedures set forth in this Section shall govern.

(iii) The arbitration shall be conducted before a single impartial retired judge who is a member of the JAMS panel of arbitrators covering the County in which the Hospital is located (the "*JAMS Panel*"). The Parties shall use their good faith effort to agree upon a mutually acceptable arbitrator within thirty (30) days after delivery of the Arbitration Notice. If the Parties are unable to agree upon a mutually acceptable arbitrator within such time period, then each Party shall select one arbitrator from the JAMS Panel, and such arbitrators shall select a single impartial retired judge from the JAMS Panel to serve as arbitrator of the Dispute.

(iv) The Parties shall have the rights of discovery as provided for in Part 4 of the California Code of Civil Procedure (the "*CCP*"), and the provisions of Section 1283.05 of the CCP are incorporated by reference into this Agreement. In the event that Section 1283.05 is amended in a manner that limits or reduces the discovery rights contained in such Section as of the Effective Date, said amendment shall not be deemed to apply to this Agreement unless the

Parties agree in writing that the same shall apply. In the event that Section 1283.05 is repealed, the provisions of Section 1283.05 shall nevertheless continue to apply, and the Parties shall have the discovery rights as provided therein as of the date of this Agreement.

(v) The arbitration hearing shall commence within thirty (30) days after appointment of the arbitrator. The substantive internal law (and not the conflict of laws) of the State shall be applied by the arbitrator to the resolution of the Dispute, and the Evidence Code of the State shall apply to all testimony and documents submitted to the arbitrator. The arbitrator shall have no authority to amend or modify the limitation on the discovery rights of the Parties or any of the other rules and/or procedures set forth in this Section. As soon as reasonably practicable, but not later than thirty (30) days after the arbitration hearing is completed, the arbitrator shall arrive at a final decision, which shall be reduced to writing, signed by the arbitrator and mailed to each of the Parties and their respective legal counsel.

(vi) Any Party may apply to a court of competent jurisdiction for entry and enforcement of judgment based on the arbitration award. The award of the arbitrator shall be final and binding upon the Parties without appeal or review except as permitted by the Arbitration Act of the State.

(vii) The fees and costs of JAMS and the arbitrator, including any costs and expenses incurred by the arbitrator in connection with the arbitration, shall be borne equally by the Parties, unless otherwise agreed to by the Parties.

(viii) Except as set forth in Section 7.7(b)(vii), each Party shall be responsible for the costs and expenses incurred by such Party in connection with the arbitration, including its own attorney's fees and costs; provided, however, that the arbitrator shall require the claiming Party to pay the costs and expenses of the other Party, including attorneys' fees and costs (including the reasonable costs of Hospital's in-house counsel) and the fees and costs of experts and consultants, incurred in connection with the arbitration if the arbitrator determines that the claims and/or causes of action brought by the Party submitting the Arbitration Notice were frivolous and without reasonable foundation.

(c) **Waiver of Injunctive or Similar Relief.** The Parties hereby waive the right to seek specific performance or any other form of injunctive or equitable relief or remedy arising out of any Dispute, except that such remedies may be utilized for purposes of enforcing this Section 7.7 and Sections 4.13 (Developments), 7.3 (Confidential Information), 7.5 (Disclosure of Agreement), 7.12 (Group's Books, Documents and Records) and 7.14 (HIPAA) of this Agreement. Except as expressly provided herein, upon any determination by a court or by an arbitrator that a Party has breached this Agreement or improperly terminated this Agreement, the other Party shall accept monetary damages, if any, as full and complete relief and remedy, to the exclusion of specific performance, or any other form of injunctive or equitable relief or remedy.

(d) **Injunctive or Similar Relief.** Notwithstanding anything to the contrary in this Section 7.7, the Parties reserve the right to seek specific performance or any other form of injunctive relief or remedy in any state or federal court located within the County in which the Hospital is located for purposes of enforcing this Section 7.7 and Sections 4.13 (Developments), 7.3 (Confidential Information), 7.5 (Disclosure of Agreement), 7.12 (Group's Books, Documents and Records) and 7.14 (HIPAA) of this Agreement. Group hereby consents to the jurisdiction of

any such court and to venue therein, waives any and all rights under the Laws of any other state to object to jurisdiction within the State, and consents to the service of process in any such action or proceedings, in addition to any other manner permitted by applicable Law, by compliance with the notices provision of this Agreement. The non-prevailing Party in any such action or proceeding shall pay to the prevailing Party reasonable fees and costs incurred in such proceeding or action, including attorneys' fees and costs (including the reasonable costs of Hospital's in-house counsel) and the fees and costs of experts and consultants. The prevailing Party shall be the Party who is entitled to recover its costs of suit (as determined by the court of competent jurisdiction), whether or not the action or proceeding proceeds to final judgment or award.

(e) **Survival.** This Section 7.7 shall survive the expiration or termination of this Agreement.

**7.8 Entire Agreement.** This Agreement is the entire understanding and agreement of the Parties regarding its subject matter, and supersedes any prior oral or written agreements, representations, understandings or discussions among the Parties with respect to such subject matter.

**7.9 Exhibits.** The attached exhibits, together with all documents incorporated by reference in the exhibits, form an integral part of this Agreement and are incorporated by reference into this Agreement.

**7.10 Force Majeure.** No Party shall be liable for nonperformance, defective performance or late performance of any of its obligations under this Agreement to the extent and for such periods of time as such nonperformance, defective performance or late performance is due to reasons outside such Party's control, including acts of God, war (declared or undeclared), terrorism, action of any governmental authority, civil disturbances, riots, revolutions, vandalism, accidents, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, failure of transportation infrastructure, disruption of public utilities, supply chain interruptions, information systems interruptions or failures, breakdown of machinery or strikes (or similar nonperformance, defective performance or late performance of employees, suppliers or subcontractors); provided, however, that in any such event, each Party shall use its good faith efforts to perform its duties and obligations under this Agreement.

**7.11 Governing Law.** This Agreement shall be interpreted and enforced in accordance with the internal laws, and not the law of conflicts, of the State.

## **7.12 Group's Books, Documents and Records.**

(a) To the extent required by applicable Law, Group shall make available, upon written request from Hospital, the Secretary of Health and Human Services, the Comptroller General of the United States, or any other duly authorized agent or representative, this Agreement, and Group's books, documents and records. Group shall preserve and make available such books, documents and records for a period of four (4) years after the end of the term of this Agreement. If Group is requested to disclose books, documents or records pursuant to this Section for any purpose, Group shall notify Hospital of the nature and scope of such request, and Group shall make available, upon written request of Hospital, all such books, documents or records.

(b) If Group carries out any of the duties of this Agreement through a subcontract with a related organization ("*Subcontractor*"), with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the end of the term of such subcontract, the related organization shall make available, upon written request from the Secretary of Health and Human Services, or upon request by the Hospital, Comptroller General of the United States, or any other duly authorized agent or representatives, the subcontract and Subcontractor's books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

**7.13 Headings.** The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

## **7.14 HIPAA.**

(a) **Covered Entity.** Group acknowledges that it is a separate "*Covered Entity*" as such term is defined under HIPAA. As a Covered Entity separate from Hospital, Group shall implement all necessary policies, procedures, and training to comply with HIPAA and other Laws pertaining to the use, maintenance, and disclosure of patient-related information.

(b) **Organized Health Care Arrangement.** If requested by Hospital during the term of this Agreement, Group shall cause each Group Physician to participate in an Organized Health Care Arrangement ("*OHCA*"), as such term is defined under HIPAA, and to comply with Hospital's OHCA-related policies, procedures, and notice of privacy practices.

**7.15 Litigation Consultation.** Neither Group nor any Group Physician shall accept consulting assignments or otherwise contract, agree, or enter into any arrangement to provide expert testimony or evaluation on behalf of a plaintiff in connection with any claim against Hospital or any Affiliate named, or expected to be named as a defendant. Neither Group nor any Group Physician shall accept similar consulting assignments if (a) the defendants or anticipated defendants include a member of the Medical Staff, and (b) the matter relates to events that occurred at Hospital or any Affiliate; provided, however, the provisions of this Section shall not apply to situations in which any Group Physician or any physician, shareholder, or employee of Group served as a treating physician.

**7.16 Meaning of Certain Words.** Wherever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and

the singular form of nouns shall include the plural and vice versa. Unless otherwise specified, "days" shall be considered "calendar days" and "months" shall be considered "calendar months" in this Agreement and its exhibits and attachments.

**7.17 No Conflicting Obligations.** Group represents and warrants that neither Group nor any Group Physician is a party to any agreement or involved in any business arrangement that will or may materially interfere with the performance of the Services or Group's obligations under this Agreement. Group shall immediately inform Hospital of any agreement or business arrangement that may materially interfere with performance of the Services or Group's obligations under this Agreement.

**7.18 No Third Party Beneficiary Rights.** This Agreement shall not confer or be construed to confer any rights or benefits to any person or entity other than the Parties.

**7.19 Non-Discrimination.** Group shall not, and shall ensure that Group Physicians do not, differentiate or discriminate in the provision of medical services to patients on the basis of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, age, medical condition, medical history, genetics, evidence of insurability, or claims history, in violation of any applicable Law or Hospital Rules, including, without limitation, the Age Discrimination Act of 1975, the Americans with Disabilities Act and all regulations issued pursuant thereto and as may be amended from time to time. Group, each Group Physician, and Hospital shall be in full compliance with Section 504 of the Rehabilitation Act of 1973, Titles VI and VII of the 1964 Civil Rights Act, and all regulations issued pursuant thereto and as may be amended from time to time.

**7.20 Notices.** All notices or communications required or permitted under this Agreement shall be given in writing and shall be delivered to the Party to whom notice is to be given either (a) by personal delivery (in which cases such notice shall be deemed given on the date of delivery), (b) by next business day courier service (e.g., Federal Express, UPS or other similar service) (in which case such notice shall be deemed given on the business day following date of deposit with the courier service), or (c) by United States mail, first class, postage prepaid, registered or certified, return receipt requested (in which case such notice shall be deemed given on the third (3<sup>rd</sup>) day following the date of deposit with the United States Postal Service). Notice shall be delivered to the respective addresses set out below:

If to Hospital: President and Chief Executive Officer

Palomar Pomerado Health

15255 Innovation Drive

San Diego, California 92128-3410

If to Group: Valley Pathology Medical Associates, Inc.

2339 Vallecitos

La Jolla, CA 92307-3144

Attention: Jerry Kolins, M.D.

**7.21 Representations.** Each Party represents with respect to itself that (a) no representation or promise not expressly contained in this Agreement has been made by the other

Party or by the other Party's agents, employees, representatives or attorneys; (b) this Agreement is not being entered into on the basis of, or in reliance on, any promise or representation, expressed or implied, other than such as are set forth expressly in this Agreement; (c) such Party has been represented by legal counsel of Party's own choice or has elected not to be represented by legal counsel in this matter; (d) the execution and delivery of this Agreement has been duly approved by all necessary action on the part of such Party, including approval by such Party's governing body, if necessary; (e) the signatory to this Agreement on behalf of such Party has the power and authority to execute and deliver this Agreement on behalf of such Party; and (f) upon execution and delivery of this Agreement by such Party's signatory, this Agreement will constitute a valid and legally binding obligation of such Party, enforceable against such Party in accordance with its terms.

**7.22 Severability.** Subject to Section 6.5, if any provision of this Agreement, in whole or in part, or the application of any provision, in whole or in part, is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, such provision, or part of such provision, shall be severed from this Agreement. The illegality, invalidity or unenforceability of any provision, or part of any provision, of this Agreement shall have no affect on the remainder of this Agreement, which shall continue in full force and effect. Section 6.5 shall control the effect of the illegality, invalidity or unenforceability of any provision as and to the extent such provision or its application is subject to the terms and conditions thereof.

**7.23 Waiver.** No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of the performance of such provision or any other instance. Any waiver granted by a Party must be in writing, and shall apply solely to the specific instance expressly stated. A waiver of any term or condition of this Agreement shall not be construed as a waiver of any other terms and conditions of this Agreement, nor shall any waiver constitute a continuing waiver.

***SIGNATURE PAGE AND EXHIBITS FOLLOW***

**SIGNATURE PAGE**

**HOSPITAL**

Palomar Pomerado Health,  
a local hospital district organized pursuant to  
Division 23 of California Health and Safety Code

\_\_\_\_\_  
(Signature)

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**GROUP**

Valley Pathology Medical Associates, Inc.,  
a California professional corporation

\_\_\_\_\_  
(Signature)

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Group Tax I.D. Number



**Exhibit 2.2**

**PROFESSIONAL SERVICES**

The Professional Services to be provided by Group pursuant to this Agreement include, but are not limited, the following:

i) services which require examination of body tissue, fluid or cells by pathologists, including histopathology, cytopathology and oral pathology (“Anatomical Pathology Services”);

ii) consultative pathology services if they (1) are requested by the patient’s attending physician; 2) relate to a test result that lies outside the clinically significant normal or expected range in view of the condition of the patient; 3) result in a written narrative report included in the patient’s records; and 4) require the exercise of medical judgment of the consulting pathologist;

(iii) professional interpretations of clinical laboratory test results;

(iv) medically necessary autopsy examinations upon deceased inpatients at the direction of Hospital’s Medical Staff; and

(v) Provider Services, as defined by Section 2.5 above, to the extent that such Provider Services can, under applicable law, be billed to patients and third-party payors, provided, however, that Group acknowledges that Provider Services may in no instances be billed to the Medicare Program or to Medicare beneficiaries.

**Exhibit 2.4**

**DIRECTOR SERVICES**

Medical Director shall:

1. Serve as the director of Hospital's clinical laboratory, maintaining compliance with Title 22 of the California Code of Regulations and all other applicable laws, rules and regulations.
2. Assure compliance with each and every duty, in connection with Medical Director's functions as Medical Director, as required by statute, regulation, the State of California, by the JCAHO, Hospital Bylaws, Medical Staff Bylaws or by the Medical Staff Executive Committee.
3. Submit to the Administrative Director in a timely manner, the assignment schedules (including on-call responsibility) of Physicians for the current month (which assignment schedules shall at all times be subject to the approval of Hospital), and such data, reports, and records as may be required by Hospital, regulatory bodies, and accreditation agencies relative to the Department.
4. Be accountable to Hospital and appropriate Medical Staff committees for the quality of Services performed, advise and assist Hospital and the appropriate Medical Staff committees in the development of comprehensive quality assessment and improvement programs for the Department, and participate in Hospital's and Department's quality assessment and improvement programs.
5. Participate in such Hospital and Medical Staff committees as Hospital or Medical Staff may request.
6. Work with Hospital Administration in the timely planning of activities, including the annual development of Department objectives, operations budget, and a capital equipment budget, and provide Hospital with ongoing appraisals of the strengths, weaknesses, and overall quality of the Department.
7. Fully cooperate with Hospital personnel assigned general administrative responsibilities for operation of the Department.
8. Participate with Hospital in the development of patient satisfaction standards.
9. Advise and assist in the organization and implementation of an effective utilization review program for the Department and Hospital and perform utilization review services.
10. Develop and review on-going training programs of the nursing staff and other support personnel.
11. Keep abreast of Hospital policies and procedures and all state and federal regulations which affect Department operation, as well as regulations and requirements of the voluntary professional and facility accrediting institutions in which Hospital is or becomes a participant, and taking all reasonable steps to conform therewith.

Exhibit 2.4-1

Pathology Department Services Agreement

12. Recommend to appropriate committees of the Medical Staff and/or Hospital Administration new or revised policies as needed.
13. Participate in developing and presenting programs pertinent to the Department for the community and as needed for Hospital/community relations.
14. Assist in the design and development of patient information forms, medical record forms, and consent forms for use within the Department.
15. Cooperate with and assist other Medical Staff members to prepare clinical reports for publication.
16. Be responsible for proper and efficient use of equipment and materials, and make recommendations as to appropriate repair or replacement.
17. Be responsible for keeping abreast of equipment developments and making recommendations with respect to procurement of new equipment.
18. Provide regular and ongoing input to Hospital's administration, including, but not limited to, Department efficiency, suggestions as to improving Services, decreasing costs, and enhancing Department performance.
19. Attend staff and clinicopathologic conferences, furnish nursing in-service instruction relating to pathology services as needed and schedule by Hospital's administration during regular nursing shifts.
20. Perform such other reasonable administrative duties as may be assigned from time to time by the administration of Hospital.
21. Provide meaningful input into the annual budgeting process for the Department.
22. Participate in quality review functions requested by the Medical Staff or Administration of Hospital.

**Exhibit 2.6(a)**

**GROUP PHYSICIANS**

Jerry Kolins, M.D.

William D. Tench, M.D.

James J. Underwood, M.D.

Blesilda Mario-Singh, M.D.

Ann M. Laux, M.D.

Manuel M. Castillo, M.D.

Lachlan Macleay, Jr. M.D.

Pamela Danque, M.D.

**Exhibit 2.6(f)**

**LETTER OF ACKNOWLEDGEMENT**

Hospital President  
[Name of Hospital]  
[Address of Hospital]

Ladies and Gentlemen:

I acknowledge that Palomar Pomerado Health ("Hospital") and Valley Pathology Medical Associates, Inc. ("Group") have entered into a Pathology Department Services Agreement ("Agreement") under which Group shall perform specified Services (as defined in the Agreement), and that I have been engaged by Group to provide Professional Services, [and Director Services] as a "Group Physician" (as defined in the Agreement). In consideration of Hospital's approval of me as a Group Physician eligible to furnish Professional Services [and Director Services], I expressly:

1. Agree to be bound by and comply with all of the requirements of the Agreement applicable to Medical Group's Physicians.
2. Acknowledge that I have no employment, independent contractor or other contractual or other relationship with PPH, that my right to practice in PPH as a Physician is derived solely through my employment or other contractual relationship with Medical Group, and that PPH has approved my acting as a Physician as provided in the Agreement.
3. Acknowledge that PPH has reserved the right to withdraw such approval and to thereby cause Medical Group to remove me as a participating Physician under the Agreement at any time without cause upon written notice to me. PPH may withdraw such approval for any reason, including, but not limited to, the following: my failure to meet patient satisfaction or quality standards established by PPH; my being the subject of a Medical Staff disciplinary action; my failure to ensure that my professional competence and skills remain state-of-the-art; my failure to attend and participate in approved continuing medical education courses; my failure to treat laboratory or other hospital staff with professionalism and respect; my failure to cooperate positively with PPH in the accomplishment of PPH's goals; my failure, as and to the extent that may be requested, to, without compensation, serve on, participate in and cooperate fully with credentialing, quality assurance, peer review and utilization review procedures, programs and committees; or my disassociation with Medical Group.
4. Acknowledge that upon the expiration or termination of the Agreement, my clinical privileges, if any, that are provided on an exclusive basis, shall immediately terminate without the right to a fair hearing or other rights more particularly set forth in the Medical Staff Bylaws within five (5) days of Medical Group's receipt of a written notice from PPH, unless such clinical privileges are otherwise voluntarily relinquished by me within the same five (5) day period.
5. Acknowledge that upon termination of my agreement with Medical Group, my clinical privileges, if any, that are provided on an exclusive basis, shall immediately terminate

without the right to a fair hearing or other rights more particularly set forth in the Medical Staff Bylaws within five (5) days of the effective date of the termination of my agreement with Medical Group, unless such clinical privileges are otherwise voluntarily relinquished by me within that five (5) day period.

6. I expressly waive any right to assert that any termination of my status under the Agreement requires PPH to comply with any procedures whatever under the Medical Staff Bylaws.

**[Add as paragraph 7 if for a Medical Director]**

7. Acknowledge that my status as Medical Director/Assistant Medical Director and as a Physician is subject to automatic termination upon termination or expiration of the Agreement, also without any right on my part to require compliance with any rules or procedures of the Medical Staff Bylaws.

Sincerely,

---

[Name of Group Physician]

### Exhibit 3.7

#### **PERFORMANCE STANDARDS**

In addition to the requirements and standards set forth in the Agreement, Group and Group Physicians shall meet the following minimum standards in performing the Services under this Agreement:

1. Hospital, in consultation with Medical Director, may develop a survey to measure the satisfaction of professional users of the Department (other members of the Medical Staff, etc.) with the quality of professional pathology services provided in the Department. If the overall rating of the services is less than eighty percent (80%) "good," Medical Director shall institute a plan of correction to increase satisfaction of the professional users. A resurvey shall be conducted three (3) months after the initial survey, and if the overall satisfaction rating has not increased to eighty percent (80%) "good" or better, Group shall be deemed in breach of these Performance Standards.
2. There shall be no more than one (1) successful employee grievance per year relating to Group or any Group Physician. A successful employee grievance is an EEOC, DFEH, or labor department complaint that results in a finding of fault of any Group Physician in a judicial or administrative decision, or a settlement involving a payment by any Group Physician in excess of \$10,000.
3. Each Group Physician shall cooperate positively with Hospital in the accomplishment of Hospital's goals, share information with Hospital appropriately and in a timely manner, and not engage in a pattern of repeated lack of cooperation or negative interpersonal relations.
4. As and to the extent requested, each Group Physician shall, without compensation, serve on, participate in and cooperate fully with any and all credentialing, quality assurance, peer review and utilization review procedures, programs and committee applicable to the performance of Professional Services.

## **Exhibit 3.8**

### **CODE OF CONDUCT**

1. I will perform my duties faithfully and to the best of my ability, and in the interest of PPH.
2. I will not lie, cheat, steal, or violate any law in connection with my employment by PPH.
3. I will not pay or arrange for PPH to pay any person or entity for the referral of patients to PPH, nor will I accept any payment or arrange for PPH to accept any payment for referrals from PPH.
4. I will not participate in any false billing of patients, government entities or any other party, nor will I participate in the preparation of any false cost reports, or other type of report submitted to the government.
5. I will not engage in any conduct or practice that conflicts (or appears to conflict) with interest of PPH, unless I first obtain the express written consent of the Palomar Pomerado Health Board of Directors or designee.
6. I will not use PPH's confidential or proprietary information gathered during my employment with PPH for my own personal benefit, either during or after my employment at PPH.
7. I will not obtain any improper personal benefits by virtue of my employment with PPH.
8. I will notify the compliance officer immediately upon the receipt (at work or home) of an inquiry, subpoena (other than for routine licensing or tax matters) or other agency or government request for information regarding PPH.
9. I will not destroy or alter information or documents in anticipation of or in response to, a request for documents by any applicable government agency or from a court of competent jurisdiction.
10. I will not engage in any business practice intended to unlawfully obtain favorable treatment or business from any government entity, physician, patient, vendor or any other party in a position to provide such treatment or business.
11. I will not solicit or receive from any person or entity, nor offer to give to any person or entity, anything of value if that person or entity is in a position to refer business to PPH or if PPH is in a position to refer business to that person or entity.
12. I will not accept any gift of more than nominal value, (\$50), and hospitality or entertainment which because of its source or value might influence my independent judgment in transactions involving PPH.
13. I will not provide any gifts to any government or public agency representative.
14. I will disclose to the compliance officer any financial interest or ownership interest or any other relationship that I or a member of my immediate family has with PPH customers, and vendors or competitors.
15. I will not disclose confidential medical information pertaining to PPH patients without the express written consent of the patient in accordance with HIPAA, other applicable law and PPH applicable policies or procedures.
16. I will promptly report all violations or suspected violations of this manual by myself or other employees to the compliance officer.
17. I will not conspire with a competitor of PPH to illegally fix prices, labor cost, allocate markets, or engage in group boycotts. Before considering any agreements or entering into discussions with a competitor concerning any of these issues, I should first obtain the advice of the compliance officer concerning antitrust issues.

Exhibit 3.12

Pathology Department Services Agreement



**Exhibit 4.11**

**EXCEPTIONS TO RESTRICTIONS ON COMPETITIVE INVESTMENTS AND  
ACTIVITIES**

**Exhibit 4.12**

**EXCEPTIONS TO EXCLUSIVE SERVICES**

Exhibit 4.11

Pathology Department Services Agreement

SD493583.3

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[M.D./D.O.]

FF

SD493583.3  
SD493583.3

Exhibit 5.3(a)

Pathology Department Services Agreement

**Exhibit 5.5**

Pap smear technical component will be \$7.21 per case.

Technical component for all procedures other than pap smears shall be ten percent (10%) of the price appearing on this Exhibit 5.5.

# MEDICAL STAFF SERVICES

August 23, 2005



TO: Board of Directors  
BOARD MEETING DATE: September 12, 2005  
FROM: James S. Otoshi, M.D., Chief of Staff  
PMC Medical Staff Executive Committee  
SUBJECT: Medical Staff Credentialing Recommendations

## PALOMAR MEDICAL CENTER

- I. Provisional Appointment (09/12/2005 – 08/31/2007)  
John C. Gill, M.D., Emergency Medicine  
Yuri Lewicky, M.D., Orthopaedic Surgery
- II. Advancement from Provisional to Active Category  
Rae D. Felthouse, M.D., Hematology/Oncology (09/12/2005 – 07/31/2007)
- III. Additional Privileges  
Gregory A. Langford, M.D., Obstetrics and Gynecology
  - Transobturator Tape Vaginal Sling OperationJustin T. Mao, M.D., Internal Medicine
  - IntubationHossain G. Mohseni, D.P.M., Podiatry
  - Use of FluoroscopyUlrika B. Schumacher, M.D., Gastroenterology
  - Use of FluoroscopyRaymond Y. Sung, M.D., Diagnostic Radiology
  - Interpretation (Imaging) – In Hospital
  - Admission of Patients
  - Diagnostic Angiography
  - Spine Interventional Radiology Bundle
  - Miscellaneous Bundle
  - Surgery Assist for Combined Surgery/Interventional Radiology Procedures
- IV. Voluntary Resignations/Withdrawal of Membership  
Pat O. Daily, M.D., Cardiothoracic Surgery  
Jared D. Nieman, M.D., Anesthesiology (Effective 08/01/2005)  
Jeffrey W. Tamborlane, M.D., Orthopaedic Surgery (Effective 08/01/2005)
- V. Allied Health Professional Appointment (09/12/2005 – 08/31/2007)  
Roya Janmesari, N.P., Nurse Practitioner; Sponsors: Dr. T. Bailey, Dr. C. Varma.
- VI. Allied Health Professional Resignation/Withdrawal  
Wilna Marie Roberts, CNM, Certified Nurse Midwife; Sponsors: Drs. Hannig, Buringrud, Trifunovic, Kohatsu.  
(Effective 08/03/2005)

PALOMAR MEDICAL  
CENTER  
555 East Valley Parkway  
Escondido, CA 92025  
Tel 760.739.3140  
Fax 760.739.2926

POMERADO  
HOSPITAL  
15615 Pomerado Road  
Poway, CA 92064  
Tel 858.613.4664  
Fax 858.613.4217

ESCONDIDO  
SURGERY CENTER  
343 East Second Avenue  
Escondido, CA 92025  
Tel 760.480.6606  
Fax 760.480.1288

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VII. <u>Reappointments Effective 10/01/2005 – 09/30/2007</u>			
Kim Benson, M.D.	Internal Medicine	Dept of Medicine	Active
Richard A. Brower, M.D. (Includes PCCC)	Gastroenterology	Dept of Medicine	Courtesy
Christopher R. Gilbert, M.D.	Cardiology	Dept of Medicine	Active
Mark S. Goldsworthy, M.D.	Anesthesiology	Dept of Anesthesia	Active
David C. Greb, M.D.	Family/General Practice	Dept of Family Practice	Active
Jeffrey D. Howell, D.O. (Includes PCCC)	Geriatric Medicine	Dept of Medicine	Associate
Roy R. Johnson, M.D. (Includes PCCC)	Family/General Practice	Dept of Family Practice	Active
Robert G. Lawson, D.P.M. (Includes PCCC)	Podiatry	Dept of Ortho/Rehab	Courtesy
Pierre R. Lotzof, M.D. (Includes PCCC)	Anesthesiology	Dept of Anesthesia	Active
John J. Martin, M.D.	Urology	Dept of Surgery	Courtesy
Deborah M. Mitchell, M.D.	Anesthesiology	Dept of Anesthesia	Active
Paul V. Polishuk, M.D. (Includes PCCC)	Urology	Dept of Surgery	Active
Alfredo Ratniewski, M.D.	Family/General Practice	Dept of Family Practice	Associate
Keith A. Sato, M.D.	Internal Medicine	Dept of Medicine	Active
Joseph M. Schwarz, M.D.	Gastroenterology	Dept of Medicine	Active
Chandrasekhar P. Varma, M.D. (Includes PCCC)	Endocrinology	Dept of Medicine	Active
Kenneth B. Whitworth, DDS/MD	Oral/Maxillofacial Surg	Dept of Surgery	Associate
Kamen N. Zakov, M.D. (Includes PCCC)	Cardiology	Dept of Medicine	Courtesy

Certification by and Recommendation of Chief of Staff:

As Chief of Staff of Palomar Medical Center, I certify that the procedures described in the Medical Staff Bylaws for appointment, reappointment or alteration of staff membership or the granting of privileges and that the policy of the Palomar Pomerado Health System's Board of Directors regarding such practices have been properly followed. I recommend that the action requested in each case be taken by the Board of Directors.

**PALOMAR POMERADO HEALTH SYSTEM  
PROVISIONAL APPOINTMENT  
September, 2005**

**PERSONAL INFORMATION**

<b>Provider Name &amp; Title</b>	Ravi K. Ajmera, M.D.
<b>PPHS Facilities</b>	Pomerado Hospital

**SPECIALTIES/BOARD CERTIFICATION**

<b>Specialties</b>	Internal Medicine Certified - 2004
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**ORGANIZATIONAL NAME**

<b>Name</b>	Neighborhood Healthcare
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**EDUCATION/AFFILIATION INFORMATION**

<b>Medical Education Information</b>	UCSD School of Medicine FROM: 09/22/1997 TO: 05/25/2001 Doctor of Medicine
<b>Internship Information</b>	University of California, San Diego Internal Medicine From: 06/24/2001 To: 06/27/2002
<b>Residency Information</b>	University of California, San Diego Internal Medicine From: 07/01/2002 To: 06/30/2004
<b>Fellowship Information</b>	N/A
<b>Current Affiliation Information</b>	Palomar Medical Center San Diego Hospice Kaiser Permanente, San Diego



**PALOMAR POMERADO HEALTH SYSTEM  
PROVISIONAL APPOINTMENT  
September, 2005**

**PERSONAL INFORMATION**

<i>Provider Name &amp; Title</i>	Glenn D. Barnes, M.D.
<i>PPHS Facilities</i>	Pomerado Hospital

**SPECIALTIES/BOARD CERTIFICATION**

<i>Specialties</i>	Orthopaedic Surgery Certified - 1984
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**ORGANIZATIONAL NAME**

<i>Name</i>	Kaiser Permanente
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**EDUCATION/AFFILIATION INFORMATION**

<i>Medical Education Information</i>	Jefferson Medical College, Philadelphia, PA FROM: 09/01/1973 TO: 06/10/1977 Doctor of Medicine Degree
<i>Internship Information</i>	Temple University Hospital, Philadelphia, PA General Surgery From: 07/01/1977 To: 06/30/1978
<i>Residency Information</i>	Georgetown University Medical Center, Washington, DC Orthopaedics From: 07/01/1978 To: 06/30/1982
<i>Fellowship Information</i>	N/A
<i>Current Affiliation Information</i>	Kaiser Permanente, San Diego

**PALOMAR POMERADO HEALTH SYSTEM  
PROVISIONAL APPOINTMENT  
September, 2005**

**PERSONAL INFORMATION**

<b>Provider Name &amp; Title</b>	John W. Clifford, M.D.
<b>PPHS Facilities</b>	Pomerado Hospital

**SPECIALTIES/BOARD CERTIFICATION**

<b>Specialties</b>	Orthopaedic Surgery Certified - 1999
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**ORGANIZATIONAL NAME**

<b>Name</b>	Kaiser Permanente
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**EDUCATION/AFFILIATION INFORMATION**

<b>Medical Education Information</b>	University of California, San Francisco FROM: 09/07/1987 TO: 06/16/1991
<b>Internship Information</b>	University of California, Irvine General Surgery From: 06/23/1991 To: 06/22/1992
<b>Residency Information</b>	University of California, Irvine Orthopaedics From: 07/01/1992 To: 06/30/1996 Chief resident 7/95-09/95; 01/96-03/96
<b>Fellowship Information</b>	Allegheny General Hospital, Pittsburgh, PA Orthopaedics, Hand From: 08/01/1996 To: 07/31/1997
<b>Current Affiliation Information</b>	Kaiser Permanente, San Diego

**PALOMAR POMERADO HEALTH SYSTEM  
PROVISIONAL APPOINTMENT  
September, 2005**

**PERSONAL INFORMATION**

<b><i>Provider Name &amp; Title</i></b>	John C. Gill, M.D.
<b><i>PPHS Facilities</i></b>	Palomar Medical Center

**SPECIALTIES/BOARD CERTIFICATION**

<b><i>Specialties</i></b>	Emergency Medicine Certified - 1982/2002
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**ORGANIZATIONAL NAME**

<b><i>Name</i></b>	California Emergency Physician
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**EDUCATION/AFFILIATION INFORMATION**

<b><i>Medical Education Information</i></b>	Northwestern University Medical School, Chicago, IL FROM: 09/01/1974 TO: 06/17/1978 Doctor of Medicine Degree
<b><i>Internship Information</i></b>	Medical University of South Carolina, Charleston General Surgery From: 07/01/1978 To: 06/30/1979
<b><i>Residency Information</i></b>	University of Florida, Gainesville Emergency Medicine From: 07/01/1979 To: 06/30/1981
<b><i>Fellowship Information</i></b>	N/A
<b><i>Current Affiliation Information</i></b>	Pomerado Hospital

**PALOMAR POMERADO HEALTH SYSTEM  
PROVISIONAL APPOINTMENT  
September, 2005**

**PERSONAL INFORMATION**

<b>Provider Name &amp; Title</b>	Gilbert J. Ho, M.D.
<b>PPHS Facilities</b>	Pomerado Hospital

**SPECIALTIES/BOARD CERTIFICATION**

<b>Specialties</b>	Not Board Certified
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**ORGANIZATIONAL NAME**

<b>Name</b>	Southwest Neurology Med Group
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**EDUCATION/AFFILIATION INFORMATION**

<b>Medical Education Information</b>	University of Missouri - Kansas City FROM: 05/01/1987 TO: 08/31/1993 Doctor of Medicine Degree
<b>Internship Information</b>	University of Arizona Health Sciences Center, Tucson Internal Medicine From: 07/01/1994 To: 06/30/1995
<b>Residency Information</b>	University of California, Irvine Neurology From: 07/01/1995 To: 06/30/1998
<b>Fellowship Information</b>	University of California, San Diego Geriatric Neurology/Dementia From: 07/01/1998 To: 06/30/2000
<b>Current Affiliation Information</b>	Palomar Medical Center University of California, San Diego Veterans Administration, San Diego

**PALOMAR POMERADO HEALTH SYSTEM  
PROVISIONAL APPOINTMENT  
September, 2005**

**PERSONAL INFORMATION**

<b><i>Provider Name &amp; Title</i></b>	Brent A. Howard, M.D.
<b><i>PPHS Facilities</i></b>	Pomerado Hospital

**SPECIALTIES/BOARD CERTIFICATION**

<b><i>Specialties</i></b>	Orthopaedic Surgery Certified - 1989/2000
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**ORGANIZATIONAL NAME**

<b><i>Name</i></b>	Kaiser Permanente
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**EDUCATION/AFFILIATION INFORMATION**

<b><i>Medical Education Information</i></b>	Georgetown University School of Medicine, Washington, DC FROM: 09/01/1976 TO: 06/01/1980 Doctor of Medicine Degree
<b><i>Internship Information</i></b>	U.S. Public Health Service Hospital, Baltimore, MD Flexible From: 07/01/1980 To: 06/30/1981
<b><i>Residency Information</i></b>	Washington University, St. Louis Orthopaedics From: 07/01/1982 To: 10/31/1986
<b><i>Fellowship Information</i></b>	N/A
<b><i>Current Affiliation Information</i></b>	Sharp Coronado Hospital Kaiser Permanente, San Diego

**PALOMAR POMERADO HEALTH SYSTEM  
PROVISIONAL APPOINTMENT  
September, 2005**

**PERSONAL INFORMATION**

<b>Provider Name &amp; Title</b>	Yuri M. Lewicky, M.D.
<b>PPHS Facilities</b>	Escondido Surgery Center Pomerado Hospital Palomar Medical Center

**SPECIALTIES/BOARD CERTIFICATION**

<b>Specialties</b>	Not Board Certified
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**ORGANIZATIONAL NAME**

<b>Name</b>	S.D. Arthroscopy & Sports Medicine
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**EDUCATION/AFFILIATION INFORMATION**

<b>Medical Education Information</b>	University of Arizona, Tucson FROM: 07/24/1995 TO: 05/13/2000 Doctor of Medicine Degree
<b>Internship Information</b>	University of Arizona Health Sciences Center, Tucson Orthopaedics From: 07/01/2000 To: 06/30/2001 General Surgery
<b>Residency Information</b>	University of Arizona Health Sciences Center, Tucson Orthopaedics From: 07/01/2001 To: 06/30/2005
<b>Fellowship Information</b>	San Diego Arthroscopy & Sports Medicine Sports Medicine From: 08/01/2005 To: 07/31/2006
<b>Current Affiliation Information</b>	None

**PALOMAR POMERADO HEALTH SYSTEM  
PROVISIONAL APPOINTMENT  
September, 2005**

**PERSONAL INFORMATION**

<b><i>Provider Name &amp; Title</i></b>	John Murphy, M.D.
<b><i>PPHS Facilities</i></b>	Pomerado Hospital

**SPECIALTIES/BOARD CERTIFICATION**

<b><i>Specialties</i></b>	Orthopaedic Surgery Certified - 1983
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**ORGANIZATIONAL NAME**

<b><i>Name</i></b>	Kaiser Permanente
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**EDUCATION/AFFILIATION INFORMATION**

<b><i>Medical Education Information</i></b>	Temple University, Philadelphia, PA FROM: 09/07/1971 TO: 05/29/1975
<b><i>Internship Information</i></b>	Temple University Hospital Internal Medicine From: 07/01/1975 To: 06/30/1976
<b><i>Residency Information</i></b>	Temple University Hospital Orthopaedics From: 07/01/1977 To: 06/30/1981
<b><i>Fellowship Information</i></b>	N/A
<b><i>Current Affiliation Information</i></b>	Sharp Coronado Hospital Kaiser Permanente, San Diego

**PALOMAR POMERADO HEALTH SYSTEM  
PROVISIONAL APPOINTMENT  
September, 2005**

**PERSONAL INFORMATION**

<b><i>Provider Name &amp; Title</i></b>	William M. Ohara, M.D.
<b><i>PPHS Facilities</i></b>	Pomerado Hospital

**SPECIALTIES/BOARD CERTIFICATION**

<b><i>Specialties</i></b>	Orthopaedic Surgery Certified – 1999
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**ORGANIZATIONAL NAME**

<b><i>Name</i></b>	Kaiser Permanente
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**EDUCATION/AFFILIATION INFORMATION**

<b><i>Medical Education Information</i></b>	University of California, Los Angeles FROM: 09/01/1986 TO: 06/30/1990
<b><i>Internship Information</i></b>	University of California, San Diego General Surgery From: 07/01/1990 To: 06/30/1991
<b><i>Residency Information</i></b>	University of California, San Diego Orthopaedics From: 07/01/1991 To: 06/30/1996
<b><i>Fellowship Information</i></b>	Kaiser Permanente, San Diego Sports Medicine From: 08/01/1996 To: 07/31/1997
<b><i>Current Affiliation Information</i></b>	Sharp Coronado Hospital Kaiser Permanente, San Diego



**PALOMAR POMERADO HEALTH SYSTEM  
PROVISIONAL APPOINTMENT  
September, 2005**

**PERSONAL INFORMATION**

<b><i>Provider Name &amp; Title</i></b>	William H. Pfeiffer, M.D.
<b><i>PPHS Facilities</i></b>	Pomerado Hospital

**SPECIALTIES/BOARD CERTIFICATION**

<b><i>Specialties</i></b>	Orthopaedic Surgery Certified - 1994/2005
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**ORGANIZATIONAL NAME**

<b><i>Name</i></b>	Kaiser Permanente
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**EDUCATION/AFFILIATION INFORMATION**

<b><i>Medical Education Information</i></b>	UCSD School of Medicine FROM: 09/01/1982 TO: 06/01/1986 Doctor of Medicine Degree
<b><i>Internship Information</i></b>	University of California, Los Angeles General Surgery From: 06/23/1986 To: 06/30/1987
<b><i>Residency Information</i></b>	University of California, Los Angeles Orthopaedics From: 07/01/1987 To: 06/30/1991
<b><i>Fellowship Information</i></b>	University of California, Los Angeles Orthopaedics, Foot & Ankle From: 08/01/1991 To: 07/31/1992
<b><i>Current Affiliation Information</i></b>	Sharp Coronado Hospital Kaiser Permanente, San Diego

**PALOMAR POMERADO HEALTH SYSTEM  
PROVISIONAL APPOINTMENT  
September, 2005**

**PERSONAL INFORMATION**

<b>Provider Name &amp; Title</b>	Glenn B. Rankin, M.D.
<b>PPHS Facilities</b>	Pomerado Hospital

**SPECIALTIES/BOARD CERTIFICATION**

<b>Specialties</b>	Orthopaedic Surgery Certified – 1997 Surgery, Hand Certified - 2001
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**ORGANIZATIONAL NAME**

<b>Name</b>	Kaiser Permanente
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**EDUCATION/AFFILIATION INFORMATION**

<b>Medical Education Information</b>	George Washington University, Washington, DC FROM: 09/01/1980 TO: 05/25/1984 Doctor of Medicine Degree
<b>Internship Information</b>	LAC/University of Southern Calif. Medical Center Orthopaedics From: 06/24/1984 To: 06/24/1985
<b>Residency Information</b>	LAC/University of Southern Calif. Medical Center Orthopaedics From: 07/01/1985 To: 06/30/1989
<b>Fellowship Information</b>	LAC/University of Southern Calif. Medical Center Orthopaedics, Hand From: 07/01/1989 To: 06/30/1990
<b>Current Affiliation Information</b>	Sharp Coronado Hospital Kaiser Permanente, San Diego

**PALOMAR POMERADO HEALTH SYSTEM  
PROVISIONAL APPOINTMENT  
September, 2005**

**PERSONAL INFORMATION**

<i>Provider Name &amp; Title</i>	Michael G. Ryan, M.D.
<i>PPHS Facilities</i>	Pomerado Hospital

**SPECIALTIES/BOARD CERTIFICATION**

<i>Specialties</i>	Orthopaedic Surgery Certified – 2002
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**ORGANIZATIONAL NAME**

<i>Name</i>	Kaiser Permanente
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**EDUCATION/AFFILIATION INFORMATION**

<i>Medical Education Information</i>	University of Southern California, Los Angeles FROM: 08/01/1990 TO: 05/06/1994 Doctor of Medicine Degree
<i>Internship Information</i>	State University of New York at Stony Brook General Surgery From: 07/01/1994 To: 06/30/1995
<i>Residency Information</i>	State University of New York at Stony Brook Orthopaedics From: 07/01/1995 To: 06/30/1999
<i>Fellowship Information</i>	Hospital for Special Surgery, New York, New York Reconstructive Surgery From: 08/01/1999 To: 07/31/2000 Adult Reconstructive Surgery
<i>Current Affiliation Information</i>	Kaiser Permanente, San Diego

**PALOMAR POMERADO HEALTH SYSTEM  
PROVISIONAL APPOINTMENT  
September, 2005**

**PERSONAL INFORMATION**

<b><i>Provider Name &amp; Title</i></b>	Craig D. Stevenson, M.D.
<b><i>PPHS Facilities</i></b>	Pomerado Hospital

**SPECIALTIES/BOARD CERTIFICATION**

<b><i>Specialties</i></b>	Orthopaedic Surgery Certified - 1984
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**ORGANIZATIONAL NAME**

<b><i>Name</i></b>	Kaiser Permanente
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**EDUCATION/AFFILIATION INFORMATION**

<b><i>Medical Education Information</i></b>	Georgetown University School of Medicine, Washington, DC FROM: 09/08/1971 TO: 05/24/1975 Doctor of Medicine Degree
<b><i>Internship Information</i></b>	LAC/University of Southern California Medical Center Flexible From: 06/24/1975 To: 06/24/1976 Flexible/Rotating Surgical Internship
<b><i>Residency Information</i></b>	Naval Medical Center, San Diego Orthopaedics From: 08/01/1979 To: 06/30/1983
<b><i>Fellowship Information</i></b>	N/A
<b><i>Current Affiliation Information</i></b>	Sharp Coronado Hospital Kaiser Permanente, San Diego

**PALOMAR POMERADO HEALTH SYSTEM  
PROVISIONAL APPOINTMENT  
September, 2005**

**PERSONAL INFORMATION**

<b><i>Provider Name &amp; Title</i></b>	Larry S. Williams, M.D.
<b><i>PPHS Facilities</i></b>	Pomerado Hospital

**SPECIALTIES/BOARD CERTIFICATION**

<b><i>Specialties</i></b>	Orthopaedic Surgery Certified - 1984
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**ORGANIZATIONAL NAME**

<b><i>Name</i></b>	Kaiser Permanente
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**EDUCATION/AFFILIATION INFORMATION**

<b><i>Medical Education Information</i></b>	University of Utah, Salt Lake City FROM: 09/01/1966 TO: 06/07/1975 Doctor of Medicine Degree
<b><i>Internship Information</i></b>	University of California, Davis General Surgery From: 06/25/1975 To: 06/24/1976
<b><i>Residency Information</i></b>	Naval Medical Center, San Diego Orthopaedics From: 07/29/1979 To: 05/31/1983
<b><i>Fellowship Information</i></b>	N/A
<b><i>Current Affiliation Information</i></b>	Sharp Coronado Hospital Kaiser Permanente, San Diego

**PALOMAR POMERADO HEALTH  
ALLIED HEALTH PROFESSIONAL  
APPOINTMENTS  
FOR SEPTEMBER 2005**

**NAME:** John A. Figueroa, P.A.-C.  
**SPECIALTY:** Physician Assistant  
**SERVICES:** Physician Assistant services for Kaiser Orthopaedic Surgeons at Pomerado Hospital  
**TRAINING:** Western University of Health Sciences, Pomona, CA  
 Master of Science – Physician Assistant studies 08/02/00-07/31/02  
 Arrowhead Regional Medical Center, Colton, CA  
 Orthopaedic Physician Assistant Residency Program 02/01/03-02/27/04  
**PRACTICE:** Orthopaedic Physician Assistant, Kaiser Permanente, San Diego, CA 05/10/04-Present  
 Physician Assistant, Sharp-Rees-Stealy Medical Center, San Diego, CA 11/04/02-02/16/03  
**SPONSORS:** Kaiser Orthopaedic Surgeons at Pomerado Hospital  
**CERTIFICATION:** National Commission on Certification of Physician Assistants 2002  
**FACILITY:** Pomerado Hospital

**NAME:** Roya Jannesari, R.N., N.P.  
**SPECIALTY:** Nurse Practitioner  
**SERVICES:** Nurse Practitioner  
**TRAINING:** El Camino College, Torrance, CA  
 A.S. Nursing 09/01/86-06/16/89  
 California State University, Long Beach  
 Bachelor of Science in Nursing 01/22/91-01/21/94  
 California State University, Long Beach  
 Master of Science in Nursing, Family Nurse Practitioner 01/21/94-08/18/95  
**PRACTICE:** Nurse Practitioner, North County Endocrine Medical Group  
 Escondido, CA 08/27/03-Present  
 Nurse Practitioner, Diabetes and Endocrine, San Diego, CA 01/99-08/03  
 Nurse Practitioner, Eclipse Medical Group, Anaheim Hills, CA 01/01/97-12/31/99  
 Nurse Practitioner, Clinca Medica, Anaheim, CA 01/01/96-12/31/98  
 Nurse Practitioner, Institute of Diabetes and Endocrinology, Orange, CA 1995-1997  
**SPONSORS:** Timothy Bailey, M.D., and Chandra Varma, M.D.  
**CERTIFICATION:** None  
**FACILITY:** Palomar Medical Center and Pomerado Hospital

**NAME:** Gary B. Murphy, P.A.-C.  
**SPECIALTY:** Physician Assistant  
**SERVICES:** Physician Assistant services for Kaiser Orthopaedic Surgeons At Pomerado Hospital  
**TRAINING:** Grossmont Community College, La Mesa, CA  
 Associate of Science Degree – Orthopaedic Technology 01/26/87-12/20/93  
 University of Southern California, Los Angeles, CA  
 Bachelor of Science degree – Physician Assistant studies 09/01/95-08/19/97  
**PRACTICE:** Orthopaedic Physician Assistant, Kaiser Permanente, San Diego, CA 09/14/98-Present  
 Physician Assistant, Los Angeles County+USC Medical Center 10/20/97-09/11/98  
 Orthopaedic Technologist, UCSD Medical Center, San Diego, CA 08/24/89-08/01/95  
**SPONSORS:** Kaiser Orthopaedic Surgeons at Pomerado Hospital  
**CERTIFICATION:** National Commission on Certification of Physician Assistants 1998  
**FACILITY:** Pomerado Hospital

# MEDICAL STAFF SERVICES



**DATE:** August 23, 2005  
**MEMO TO:** Palomar Pomerado Health  
Board of Directors  
**FROM:** Marvin Levenson, M.D.  
Medical Director, Escondido Surgery Center  
**RE:** Medical Staff Recommendations

The Executive Committee of the Medical Staff of Palomar Medical Center approved the following credentialing recommendations for Escondido Surgery Center for submission to the Board of Directors:

**Appointment:**

Effective 09/12/2005 – 08/31/2007

- ◆ Yuri Lewicky, M.D., Orthopaedic Surgery

**Additional Privileges:**

- ◆ Hossain G. Mohseni, D.P.M., Podiatry  
- Use of Fluoroscopy

**Resignations:**

- ◆ Jared D. Nieman, M.D., Anesthesiology (Effective 08/01/2005)
- ◆ Jeffrey W. Tamborlane, M.D., Orthopaedic Surgery (Effective 08/01/2005)

**Reappointment:**

Effective 10/01/2005 – 09/30/2007

- ◆ Mark S. Goldsworthy, M.D., Anesthesiology
- ◆ David C. Greb, M.D., Family/General Practice
- ◆ Roy R. Johnson, M.D., Family/General Practice
- ◆ Robert G. Lawson, D.P.M., Podiatry
- ◆ Pierre R. Lotzof, M.D., Anesthesiology
- ◆ John J. Martin, M.D., Urology
- ◆ Deborah M. Mitchell, M.D., Anesthesia
- ◆ Paul V. Polishuk, M.D., Urology
- ◆ Kenneth B. Whitworth, D.D.S./M.D., Oral/Maxillofacial Surgery

Certification by and Recommendation of Escondido Surgery Center Medical Director:

As Medical Director of Escondido Surgery Center, I certify that the procedures described in the Escondido Surgery Center Policies and Procedures for appointment, reappointment or the granting of privileges and that the policy of the Palomar Pomerado Health Board of Directors regarding such practices have been properly followed. I recommend that the action requested in each case be taken by the Board of Directors.

PALOMAR MEDICAL  
CENTER  
555 East Valley Parkway  
Escondido, CA 92025  
Tel 760.739.3140  
Fax 760.739.2926

POMERADO  
HOSPITAL  
15615 Pomerado Road  
Poway, CA 92064  
Tel 858.613.4664  
Fax 858.613.4217

ESCONDIDO  
SURGERY CENTER  
343 East Second Avenue  
Escondido, CA 92025  
Tel 760.480.6606  
Fax 760.480.1288



**Pomerado Hospital Medical Staff Services**

15615 Pomerado Road  
Poway, CA 92064  
Phone – (858) 613-4664  
FAX - (858) 613-4217

DATE: September 1, 2005  
TO: Board of Directors - September 12, 2005 Meeting  
FROM: Paul E. Tornambe, M.D., Chief of Staff, Pomerado Hospital Medical Staff  
SUBJECT: Medical Staff Credentials Recommendations – **August 2005:**

Provisional Appointments: (09/12/2005 – 08/31/2007)

Ravi Ajmera, M.D. – Internal Medicine  
Glenn D. Barnes, M.D. – Orthopedic Surgery  
John Clifford, M.D. – Orthopedic Surgery  
Gilbert J. Ho, M.D. – Neurology  
Brent A. Howard, M.D. – Orthopedic Surgery  
Yuri M. Lewicky, M.D. – Orthopedic Surgery – Assisting only for Dr. Brad Cohen  
John Murphy, M.D. – Orthopedic Surgery  
William M. Ohara, M.D. – Orthopedic Surgery  
William H. Pfeiffer, M.D. – Orthopedic Surgery  
Glenn B. Rankin, M.D. – Orthopedic Surgery  
Michael G. Ryan, M.D. – Orthopedic Surgery  
Craig D. Stevenson, M.D. – Orthopedic Surgery  
Larry S. Williams, M.D. – Orthopedic Surgery

Biennial Reappointments: Effective through 09/30/2007

James M. Bried, M.D. – Active – Surgery  
Jerome P. Brodtkin, M.D. – Active – Medicine – Includes Villa Pomerado  
Edmond L. Chan, M.D. – Active – Surgery – Includes Villa Pomerado  
Christopher R. Gilbert, M.D. – Courtesy – Medicine  
Jeffrey D. Howell, D.O. – Associate – Medicine – Includes Villa Pomerado  
Roy R. Johnson, M.D. – Courtesy – Medicine – Includes Villa Pomerado  
George Y. Kung, M.D. – Active – OB/GYN  
Robert G. Lawson, D.P.M. - Surgery – Active – Includes Villa Pomerado  
John J. Martin, M.D. – Surgery – Active  
Paul V. Polishuk, M.D. – Surgery – Active – Includes Villa Pomerado  
Larry A. Presant, M.D. – Medicine – Active – Includes Villa Pomerado  
James P. Pulaski, M.D. - Surgery - Active  
Ronald G. Salzetti, M.D. – OB/GYN – Active  
Chandrasekhar P. Varma, M.D. – Medicine – Courtesy  
Kamen N. Zakov, M.D. – Medicine - Active

Request for Additional Radiology Privileges: Raymond Sung, M.D.

Request for Change of Category from Active to Affiliate:

Larry T. Konzen, M.D.  
Richard Merino, M.D.  
Monica P. Ormsby, M.D.  
Alan Schoengold, M.D.



Resignations:

Bruce W. Adams, D.D.S. - Dentistry

Pierre S. Hendricks, M.D. – Orthopedic Surgery

Lena K. Hillenburg, M.D. – Internal Medicine

Samuel C. Kim, M.D. - Neurosurgery

Jeffrey Tamborlane, M.D. – Orthopedic Surgery, Assisting only Dr. Brad Cohen

Request for Additional Sponsor

David M. Illich, Audiologist – Ashish Wadwa, M.D.

Allied Health Appointments:

**Roya Jannesari, RN, NP.** – Sponsors – Dr. Timothy Bailey, Dr. Chandra Varma

**John A. Figueroa, P.A.-C** – Sponsors – Kaiser Orthopedic Surgeons

**Gary B. Murphy, P.A.-C** – Sponsors – Kaiser Orthopedic Surgeons

**POMERADO HOSPITAL**

Certification by and Recommendation of Chief of Staff: As Chief of Staff of Pomerado Hospital, I certify that the procedures described in the Medical Staff Bylaws for appointment, reappointment, or alternation of staff membership or the granting of privileges and the policy of the Palomar Pomerado Health System's Board of Directors regarding such practices have been properly followed. I recommend that the Board of Directors take the action requested in each case.

**AMENDING ESTABLISHED DATE OF REGULAR BOARD MEETING  
for CALENDAR YEAR 2005**

**TO:** Board of Directors

**DATE:** September 12, 2005

**FROM:** Christine Meaney, Board Assistant

**SUBJECT:** **RESOLUTION TO AMEND ESTABLISHED DATE OF  
REGULAR BOARD MEETING FOR CALENDAR YEAR  
2005**

**BACKGROUND:** Consistent with legal requirements to establish dates, times and locations of Regular Board Meetings prior to the pertinent calendar year, a resolution was approved at the December 13, 2004 Annual Board Meeting.

An amendment to the regular meeting scheduled on August 8 to August 15, 2005 was made by Resolution No. 01.17.05 (01) - 01 at the Regular Meeting of the Board of Directors held on January 17, 2005.

The Chairman has requested that the following date amendment for 2005 be considered for Board approval under Resolution No. 09.12.05 (01) - 17 attached:

Amending October 10 to October 17

It is understood that PMC Graybill, the regular location for the month of October, will be available October 17.

*For the Board's information, an alternative date of October 11 offered by Chairman Rivera appears difficult due to a conflict with the Board HR Committee late that afternoon at PMC, and the unavailability of PMC Graybill or Pomerado Meeting Room E (third floor meeting room) due to all-day meetings and/or daytime/evening community classes previously advertised.*

**ACTION:** Board approval is sought.

RESOLUTION NO. 09.12.05 (01) - 17

**RESOLUTION OF THE BOARD OF DIRECTORS OF  
PALOMAR POMERADO HEALTH  
AMENDING ESTABLISHED DATE OF REGULAR BOARD MEETING  
FOR CALENDAR YEAR 2005**

*WHEREAS*, Palomar Pomerado Health is required, pursuant to Section 54954 of the California Government Code and Section 5.2.2 of the PPH Bylaws, to pass a resolution adopting the time, place and location of the regular board meetings;

*WHEREAS*, the Board of Directors established the dates of regular board meetings for calendar year 2005 by Resolution No. 12.13.04(03)-17 at the Annual Meeting of the Board of Directors held on December 13, 2004;

*WHEREAS*, the Board of Directors changed the date of the regular meeting scheduled on August 8 to August 15 for calendar year 2005 by Resolution No. 01.17.05 (01) – 01 at the Regular Meeting of the Board of Directors held on January 17, 2005;

*WHEREAS*, the Board of Directors wishes to change the date of the regular meeting currently scheduled on October 10 to October 17;

*NOW, THEREFORE, BE IT RESOLVED* by the Board of Directors of Palomar Pomerado Health that the following amended schedule of regular meetings will apply for the remaining calendar year 2005:

**2005 AMENDED BOARD MEETING SCHEDULE**

<b>January 17</b>	Pomerado	<b>July 11</b>	Pomerado
<b>February 7</b>	PMC	<b>August 15</b>	PMC
<b>March 14</b>	Pomerado	<b>September 12</b>	Pomerado
<b>April 11</b>	PMC	<b>October 17</b>	PMC
<b>May 9</b>	Pomerado	<b>November 14</b>	Pomerado
<b>June 13</b>	PMC	<b>December 12</b>	PMC

Each meeting will begin at **6:30 p.m.** Those meetings held at Palomar will be in Graybill Auditorium; those at Pomerado will be in the third floor meeting room.

*PASSED AND ADOPTED* at a regular meeting of the Board of Directors of Palomar Pomerado Health, held on September 12, 2005, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

DATED: September 12, 2005

***APPROVED:***

\_\_\_\_\_  
Marcelo R. Rivera, M.D., Chairman  
Board of Directors

***ATTESTED:***

\_\_\_\_\_  
Nancy H. Scofield, Secretary  
Board of Directors

**Information Only: Concierge Services**

**TO:** PPH Board of Directors

**MEETING DATE:** September 12, 2005

**FROM:** Human Resources Committee: August 9, 2005

**BACKGROUND:** Concierge services is a new concept in employee benefits. Dennis Murphy of Dock 3 presented an informational overview of proposed concierge services for PPH. The committee requested further study to include: specific costs to PMC and POM, space needed at all sites, estimate of construction costs, in-service method for employees.

**BUDGET IMPACT:**

**STAFF RECOMMENDATION:**

**COMMITTEE QUESTIONS:**

**COMMITTEE RECOMMENDATION:**

**Motion:**

**Individual Action:**

**Information:** X

**Required Time:**

**Information Only: CHRO Candidate**

**TO:** Board of Directors  
**MEETING DATE:** August 8, 2005  
**FROM:** Human Resources Committee: July 12, 2005

**BACKGROUND:**

The CHRO position has been vacant since June 30, 2004. Nationwide searches have been conducted over the past year. PPH management and staff have interviewed several candidates. Mr. Walter George has been selected to fill this position beginning September 12, 2005.

**BUDGET IMPACT:** None

**COMMITTEE RECOMMENDATION:**

**COMMITTEE QUESTIONS:**

**COMMITTEE RECOMMENDATION:**

*Motion:*

*Individual Action:*

*Information:* X

*Required Time:*

**Information Only: Culture Assessment**

**TO:** Board of Directors  
**MEETING DATE:** August 8, 2005  
**FROM:** Human Resources Committee: July 12, 2005

**BACKGROUND:**

The PPH Culture Assessment was completed Spring '05. Initial findings have been shared with the HR Committee. The culture assessment was primarily centered on management, focusing on an assessment of the organization's readiness to move through the upcoming changes. Employee data will be gathered via the Gallup Employee Engagement Survey. Concerns relative to the organization's strengths, horizontal and vertical issues, and the effects of internal organizational silos were briefly discussed.

The next steps include:

1. EMT review and evaluation of which points to focus on and how the organization will move forward with those areas.
2. Compare the Culture Assessment with the Employee Engagement Survey

**BUDGET IMPACT:** None

**COMMITTEE RECOMMENDATION:**

**COMMITTEE QUESTIONS:**

**COMMITTEE RECOMMENDATION:**

*Motion:*

*Individual Action:*

*Information:* X

*Required Time:*

**Information Only: Total Comp Statements**

**TO:** Board of Directors  
**MEETING DATE:** August 8, 2005  
**FROM:** Human Resources Committee: July 12, 2005

**BACKGROUND:** Total compensation statements have recently been prepared and distributed to all benefit-eligible employees. Statements are tailored to each employee's specific benefits and salary with PPH-paid benefits/contributions reflected as a percentage of the base annual salary. For most employees, the PPH benefit contribution equals an additional 35-40% of their salary. Sample statements were shared with the HR Committee.

**BUDGET IMPACT:** None

**COMMITTEE RECOMMENDATION:**

**COMMITTEE QUESTIONS:**

**COMMITTEE RECOMMENDATION:**

*Motion:*

*Individual Action:*

*Information:* X

*Required Time:*



**Information Only: Health Insurance**

**TO:** Board of Directors  
**MEETING DATE:** August 8, 2005  
**FROM:** Human Resources Committee: July 12, 2005

**BACKGROUND:** Kaiser and Health Net have a joint health insurance plan option that is they are currently marketing. The joint plans include an option of three HMOs and four PPO plan designs. No POS plan option is available under this option. The plans are priced as if 100% of all membership are covered under each plan. Once members are signed up, reconciliation is made between HealthNet and Kaiser to assure no adverse selection has occurred favoring one vendor over the other. This plan does not compare to PPH as we currently offer very customized HMO and POS plan options to meet the needs of our employees.

**BUDGET IMPACT:** None

**COMMITTEE RECOMMENDATION:** Not interested at this time.

**COMMITTEE QUESTIONS:**

**COMMITTEE RECOMMENDATION:**

*Motion:*

*Individual Action:*

*Information:* X

*Required Time:*

## All Facilities Update

**TO:** PPH Board of Directors  
**DATE:** September 12, 2005  
**FROM:** Joint BOD/Strategic Planning Committee on August 16, 2005  
**BY:** Marcia Jackson, Chief Planning Officer  
Mike Shanahan, Director Facilities Planning & Development

**BACKGROUND:** Since the July 19 Strategic Planning Committee meeting was also a Joint BOD/Strategic Planning Committee meeting, a partial update on the planning and process status of affected PPH Facilities (PMC East and West, and POM) was provided. Due to time constraints, the rest of the presentation was deferred until the August 16 Full BOD/Strategic Planning Committee meeting.

Steve Yundt and Craig McInroy presented a **Planning for Innovation** segment, summarized as follows:

### Status

- Just completed initial phase of design
- Focus on space planning - approximately 1.3 million SF (square feet)
- Collective effort of Expansion Steering Committee, Champion Teams, and User Groups who have identified several areas where innovation is starting to occur
- Certain aspects of the innovation can be viewed as leading edge – nationally

### Objectives – To Develop

- Safest hospital for patients & staff
  - Fewest errors
  - Lowest infection rates
  - Best outcomes
- Highest patient & staff satisfaction
- Most efficient & cost-effective operations
- Most environmentally sustainable facilities & operations (healing environment, etc.)
- Flexibility to accept the future's technology & practice

The next segment, **Evolving Design Concepts for Palomar West**, included summaries of architectural styles. Dennis McFadden from Anshen + Allen reviewed the history of architectural design, from the classical architecture of the Greeks and Romans, to current architecture in the digital age. Discussion ensued about which design aspects will be implemented, considering that certain trends will have passed by the time the hospital is built. In order to avoid this, we will use all ages and eras in the planning and construction of the new

## All Facilities Update

Palomar West, using different aspects of each. We will also incorporate a quadrant approach, involving one or more central garden axis, with a central court, and a floor court. A central atrium will provide gardens on each floor, with double-height openness.

The last segment, **Pomerado Hospital**, included two main topics: refocusing the campus, and architectural form development. The refocusing of the campus included discussion of the new heart of the campus, with a new patient tower as a focal point, including a healing garden. The architectural form development discussion included key issues and balancing of conflicting needs, such as:

- Innovation vs. comfort of familiarity
- New Image vs. respect for existing campus
- Community Access vs. patient privacy

Other site considerations included massing (how the structure is composed), such as layering facades, and stepping the building back. We also considered the structure's relationship to the campus, and examples of fenestration such as the continuity of window recesses, larger windows, more glass, and exterior wall design. We will consider a new image, with sun protection and iconic forms.

For architectural style options, we are looking at the iconic style, with a new, exciting look that is different from normal; most hospitals do not have this style of building. Included in this option are: a special look such as a tent-like canopy over the Women's Center, a meditation room, sculptural staircases, pockets of air under canopies, and solar design.

Dr. Rivera complimented the architects on a great presentation, and was glad to see everything in its entirety.

**BUDGET IMPACT:**           None

### COMMITTEE RECOMMENDATION:

**Information:**           X

## Information Technology Update

**TO:** PPH Board of Directors

**DATE:** September 12, 2005

**FROM:** Joint BOD/Strategic Planning Committee on August 16, 2005

**BY:** Ben Kanter, MD

**BACKGROUND:** Dr. Kanter presented a clinical information technology update, including where we were, what we did, where we are, where we're going, and where the government is taking us, and a review of the process that got PPH to this point. Highlights of the presentation included detailed information on the Electronic Medical Records (EMR), and also on Computerized Physician Order Entry (CPOE), as follows:

### **Electronic Medical Records Provide/Ensure:**

- Increased timeliness and coordination of care
- Enhanced preventive care & expedite patient care
- Cost control
- Order legibility & minimized transcription errors
- Streamline the order process
- Reduce adverse drug reactions
- Better use of current medical knowledge to enhance appropriateness of care
- Ability to aggregate data for epidemiologic analysis
- Integration with PACS: Digital Imaging (Picture Archival Communications Systems)
- Off-site order-entry

### **What is Computerized Physician Order Entry?**

- CPOE is a clinical software application designed specifically for use by physicians to write patient orders electronically rather than on paper.
- CPOE is one part of an electronic medical record
- Multiple different approaches to solving this issue
- CPOE can reduce the incidence of serious medication errors by nearly 90%
- CPOE reduced prescription costs by 30% at Royal Victoria Hospital (Montreal) - improved efficiency, dosage, intervals, guidelines

There are two phases in the process of establishing a PPH-wide I/T Plan with technology and standards as follows:

**Phase 1 – the foundation (completed items)** include: Lab (GL, AP, Micro, BB); Radiology, Pharmacy, ED & OR, Registration & Scheduling, Nurse Charting, Master Patient

Form A: Information Technology Update Form A to BOD

## Information Technology Update

Index, Patient Accounting, and Medical Records, Clinical Data Repository, Order & Documentation Management, Adverse Drug Event Alerts, Ad-hoc Report Writer, and Electronic Medication Administration Record (EMAR).

**Phase 2 includes:** Computerized Physician Order Entry (CPOE), Intensive Care Management, SurgiNet Materials Management (might be removed from scope); Retail Pharmacy Management, Anesthesia Management, Document Imaging, Medical Transcription (phasing out softmed/ESA and Quickchart); Cardiology Management, and additional interfaces.

**COMMITTEE COMMENTS:** Dr. Kanter noted that Phase 2 of the IT Implementation will require more physician involvement. Dr. Kanter emphasized that telemedicine can put out a record when patient health declines, and monitoring can save lives.

Dr. Larson asked if PPH has spent the budgeted \$22 million for IT yet, and Bob Hemker responded that we have spent roughly \$16 to \$18 million, and we will continue to spend from CIP budgets to hard assets; we are still in the ballpark with equipment and operating costs.

Michael Covert stressed that the CPOE system will change the nature of how medicine is practiced in non-traditional settings. Physicians can access the system from home or from their offices. Michael congratulated Dr. Kanter in his work on PPH Information Technology, and said that Dr. Kanter is the driver of this project, and deserves special recognition; he has certainly made a great difference to PPH.

**BUDGET IMPACT:** Unknown

**STAFF RECOMMENDATION:** For information only.

### COMMITTEE RECOMMENDATION:

**Information:** X

## Update on Plan of Finance and Debt Policy

**TO:** Board of Directors

**FROM:** Board Finance Committee  
Tuesday, August 30, 2005

**MEETING DATE:** September 12, 2005

**BY:** Bob Hemker, CFO

**Background:** In August 2004, the Board approved the Plan of Finance to provide the necessary funding to complete the previously approved Facility Master Plan. The first tranche of General Obligation Bonds was issued on July 7, 2005. The Financing Team continues to develop the next steps of financing for the Master Facility Plan.

At the March 29, 2005, Board Finance Committee, the Plan of Finance update included the introduction of the use of variable rate debt instruments. At that time, the Committee recommended to the Board, which was subsequently approved, that:

“Management be allowed to pursue the development of a variable rate debt policy for PPH, to include identification of a target range of stabilized variable rate exposure, and the establishment of guidelines for use of traditional and non-traditional fixed and variable rate instruments.”

Since that time, Management has been working with the Financing Team to develop and the next steps of financing as well as the components of the requisite debt/swap policy. The update and draft components of the debt policy, as per the attached PowerPoint presentation, were discussed at the Finance Committee meeting.

**Budget Impact:** N/A

**Staff Recommendation:** Review and Discussion; no action anticipated

**Committee Questions:**

### COMMITTEE RECOMMENDATION:

**Motion:**

**Individual Action:**

**Information:** X

**Required Time:**



PALOMAR  
POMERADO  
HEALTH

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## **Discussion Materials**

**August 30, 2005**

**citigroup**

**KaufmanHall**

## **Executive Summary**

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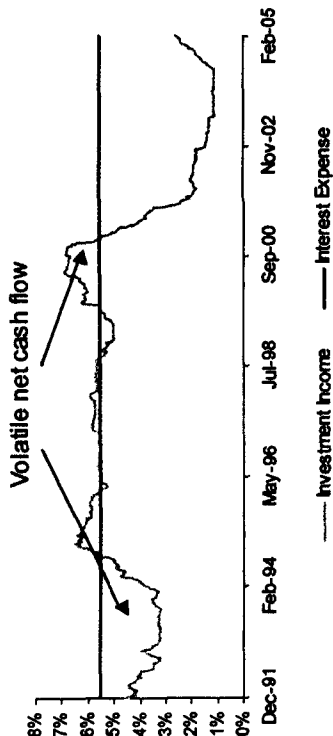
- ◆ The first part of the multi-year financing was completed July 7<sup>th</sup>, 2005 with the issuance of \$80 million of GO Bonds
- ◆ The next phase of the Plan of Finance will be the issuance of Revenue Bonds
  - Approximately \$100 million of new money bonds is currently targeted to be financed in 2006
  - Approximately \$91 million of refunding/defeasing existing revenue bonds for covenant relief and possible savings
- ◆ Citigroup performed an asset/liability (“GALOP”) analysis for PPH
  - It was determined that PPH could benefit from utilizing variable interest rate exposure within a targeted range
- ◆ At this meeting today, we would like to discuss the following:
  - The fixed and variable rate financing strategies that are available to PPH
  - The draft Debt Policy



# Variable Rate Debt Can Improve Cash Flow & Reduce Risk

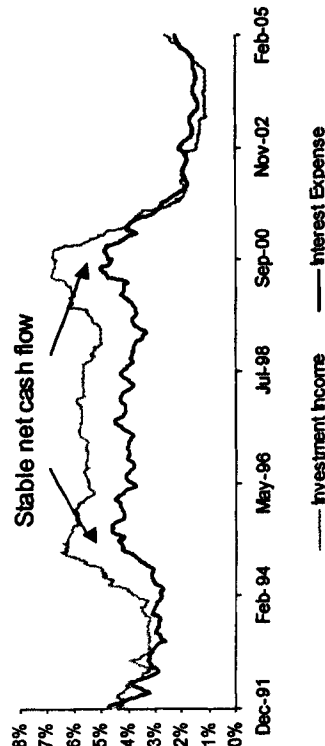
Ironically, investment and debt policies that appear conservative in isolation, are risky when considered from a global perspective. Often, the counter-intuitive result is that additional variable rate risk actually reduces balance sheet risk.

## BEFORE



- Volatile cash flows from financial activities**
- Risk of poor margins impacting service, ability to invest in future capacity / service
  - Difficulty in budgeting and meeting goals
  - Unnecessarily high interest expense, low investment income

## AFTER



- More stable and predictable cash flows**
- Source of stability for the organization
  - Ease of budgeting
  - Source of competitive advantage
  - Helps maintain or improve credit ratings

Investment Income equal to LIBOR. Assumes fixed cost of funds of 5.50%. Variable interest expense equal to BMA + 50 bps. Quarterly moving averages shown.

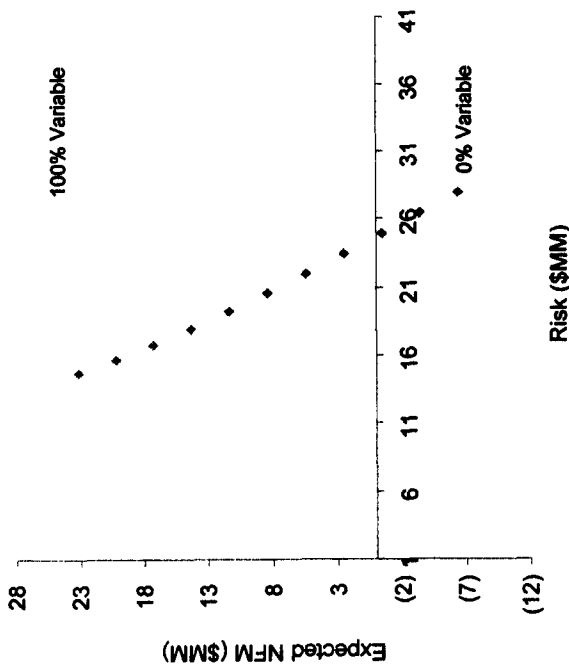
For illustration only; actual results may differ.

# Quantifying the Risk/Reward Trade-Offs

- ◆ The Global Asset and Liability Optimization Program ("GALOP") model calculates the benefits and risks of alternative debt allocations (see graph); points to the north represent greater expected Net Financial Margin ("NFM"); points to the west represent less risk
- ◆ The simulations suggest that PPH minimizes its risk with 100% variable. High variable rate allocations provide significant improvements in Expected NFM<sup>1</sup> as well as reduce Risk<sup>2</sup>
- ◆ GALOP model preliminary conclusion: 90%-100% variable rate debt improves expected NFM and minimizes risk; however, the "correct" variable rate exposure requires consideration of other factors presented on the following pages

In the simulations, greater use of variable rate debt improves expected NFM<sup>1</sup> while reducing Risk<sup>2</sup>

Additional Variable Rate Debt Increases Expected NFM, Decreases Risk



<sup>1</sup> Average of 5,000 scenarios  
<sup>2</sup> Standard deviation of scenarios

Base Case Alternative Case

For illustration only: actual results will depend on future market conditions. Refer to the GALOP analysis completed March 9, 2005 for a full analysis of risks and benefits of balance sheet expense. The GALOP model quantifies PPH's risk/reward trade-offs by generating thousands of historically realistic market factor scenarios and mapping these scenarios to PPH's financial resources and obligations.

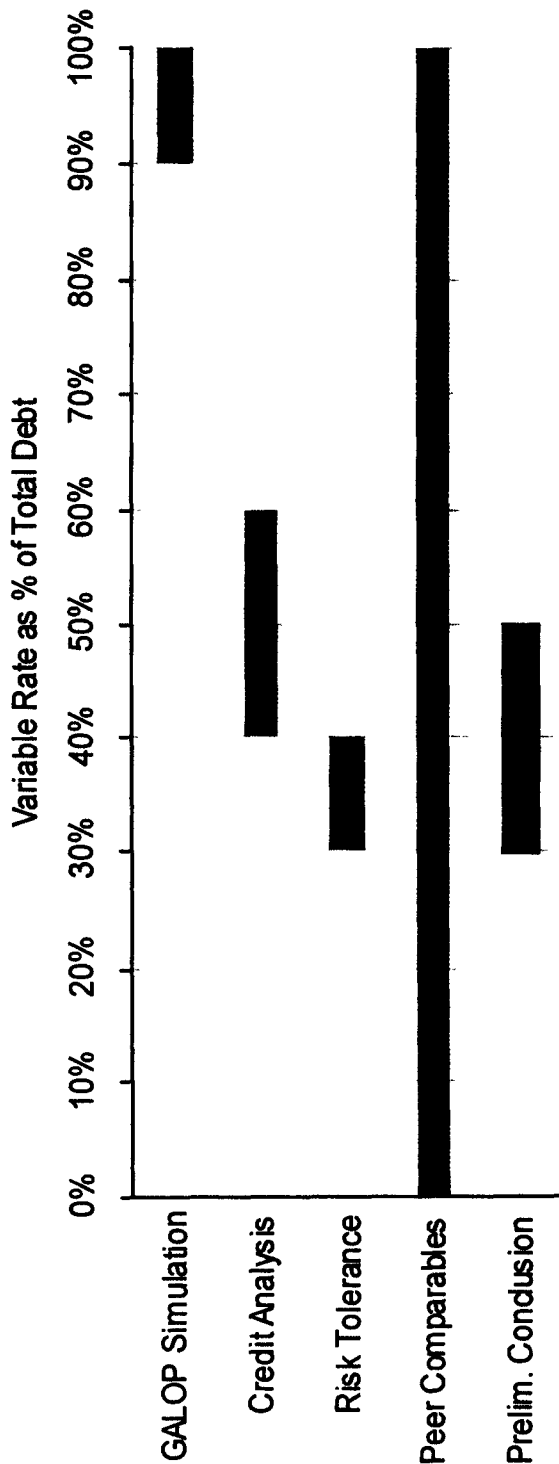
# Preliminary GALOP Conclusion

- ◆ Preliminary GALOP analysis indicates that PPH has capacity for a significant portion of its debt to bear a variable rate
- ◆ PPH's variable rate policy should be informed by feedback from advisors, rating agencies and other internal and external stakeholders, in addition to this analysis

GALOP combines objective and subjective indicators to inform the debt allocation decision

We look forward to working with you to refine this analysis

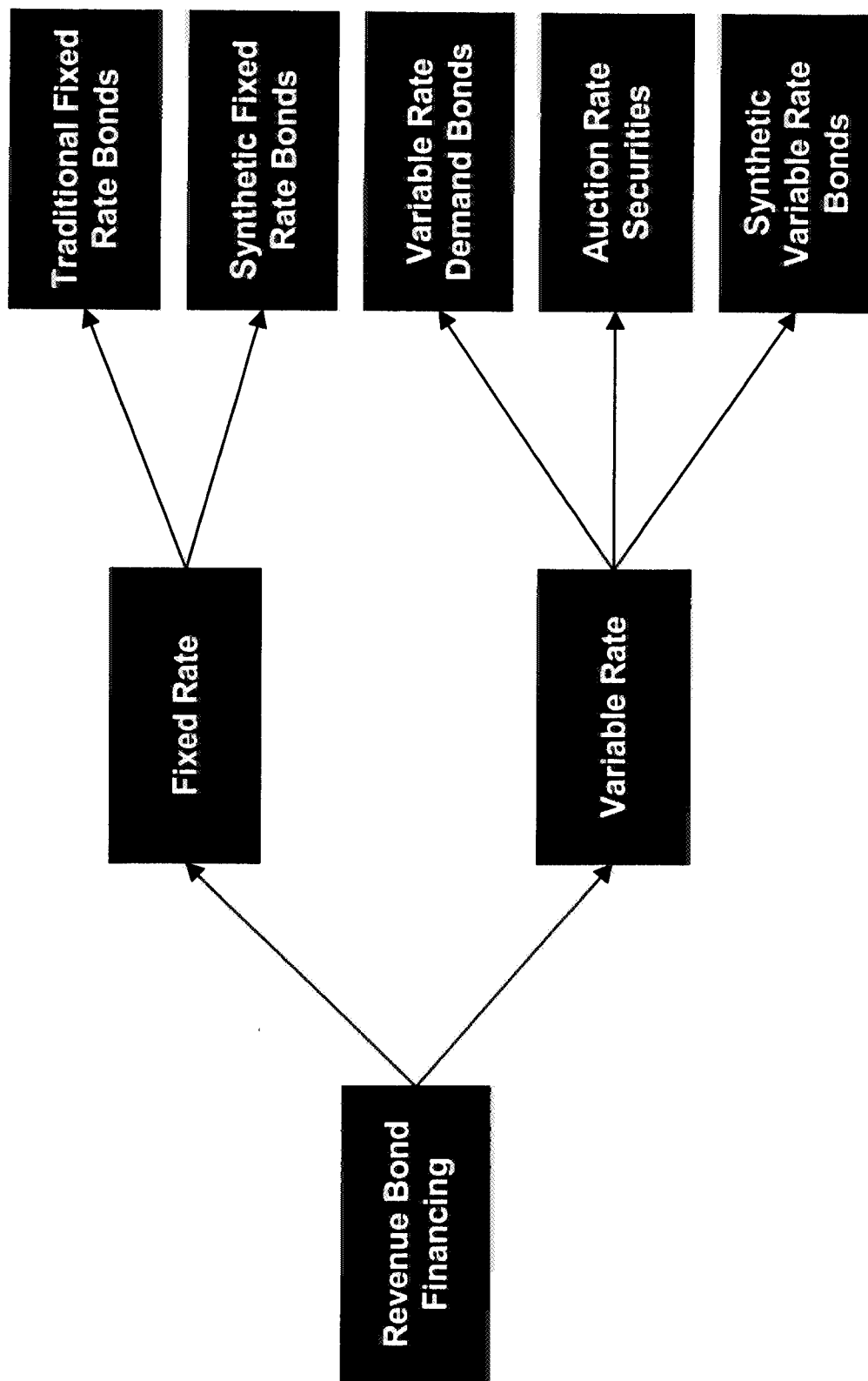
## SUMMARY OF GALOP INDICATORS



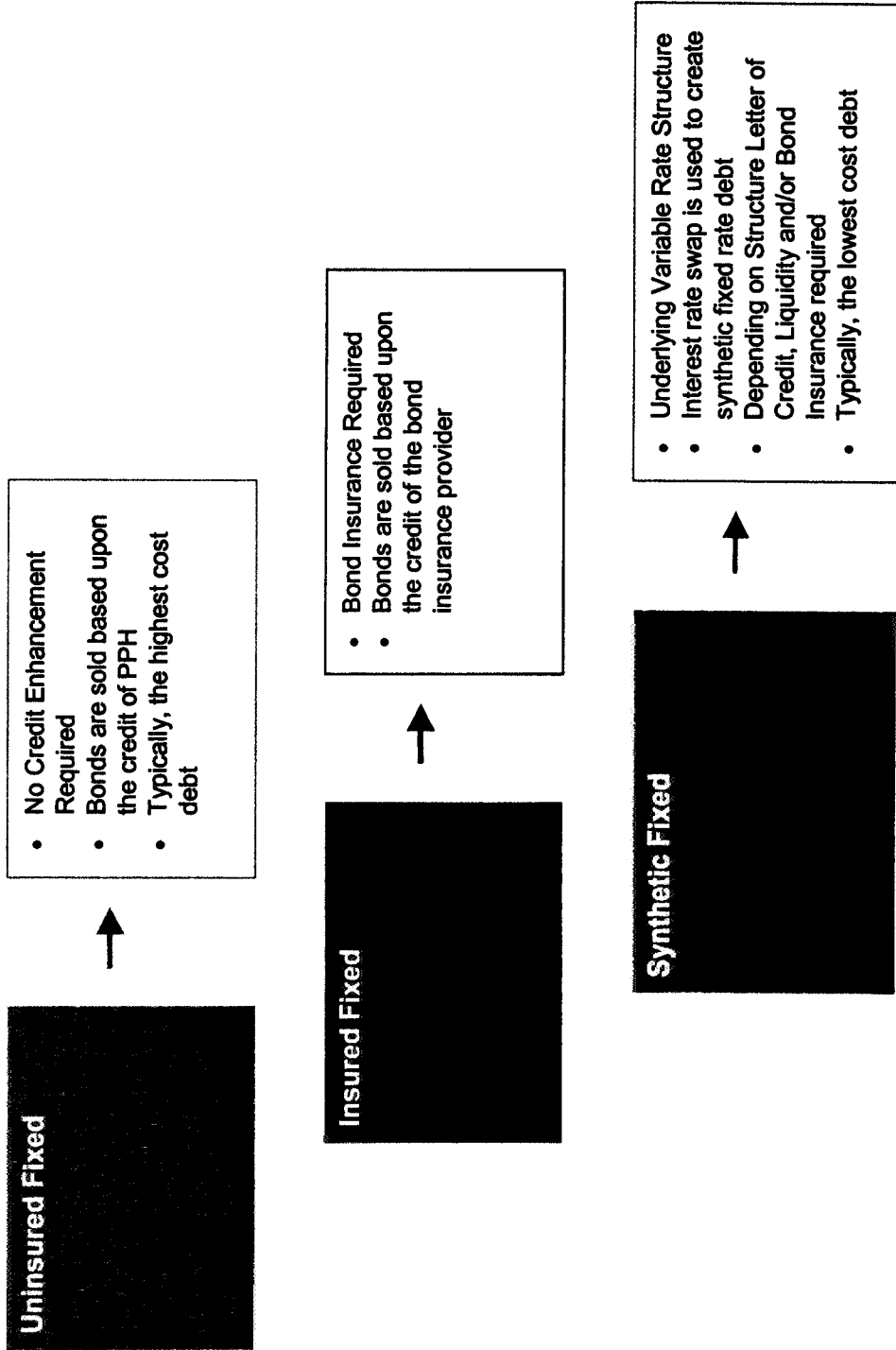
Based on simulated future results: Actual results will depend upon future market conditions. Refer to the GALOP analysis completed March 9, 2005 for a full analysis of risks and benefits of balance sheet expense. The GALOP model quantifies PPH's risk/reward trade-offs by generating thousands of historically realistic market factor scenarios and mapping these scenarios to PPH's financial resources and obligations.

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# Revenue Bond Roadmap



# Overview of Fixed Rate Alternatives



## Traditional Fixed Rate Bonds

- ◆ Traditional fixed rate bonds are what PPH has issued in the past with the Series 1993 and 1999 Revenue Bonds and the Series 2005A GO Bonds
- ◆ Traditional fixed rate bonds can be issued either with insurance or without insurance
  - Bond insurance can be purchased as a 1 time upfront premium payment allowing the bonds to be sold on the credit of the insurer
  - Bond insurance is economical so long that the benefit of the lower interest rates is greater than the premium paid

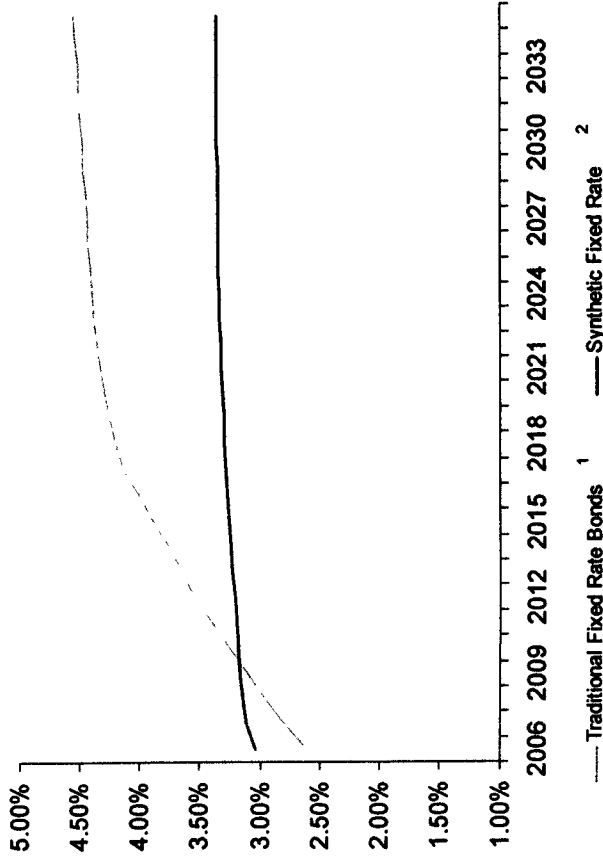
Term	Un-Insured	
	Insured Non Callable Fixed Rate Bonds	Non Callable Fixed Rate Bonds
1	2.60%	3.15%
2	2.80%	3.35%
3	2.95%	3.50%
5	3.25%	3.80%
7	3.54%	4.09%
10	3.88%	4.43%
12	4.14%	4.74%
15	4.29%	4.89%
20	4.41%	5.01%
25	4.48%	5.08%
30	4.55%	5.15%

Note: Rates as of 8/15/05, subject to market conditions, documentation, and credit approval.  
For illustration purposes only; actual results will depend on future market conditions.

# Synthetic Fixed Rate Bonds Can Generate Substantial Savings

◆ Current starting synthetic fixed rate swaps offer lower expected interest cost after 2010

Traditional Fixed Rate vs. Synthetic Fixed Rate



Term	Non Callable Fixed Rate Bonds <sup>1</sup>	Synthetic Fixed Rate <sup>2</sup>	Annual Synthetic Fixed Benefit
1	2.60%	3.04%	NA
2	2.80%	3.11%	NA
3	2.95%	3.14%	NA
5	3.25%	3.18%	0.07%
7	3.54%	3.21%	0.33%
10	3.88%	3.25%	0.63%
12	4.14%	3.28%	0.86%
15	4.29%	3.31%	0.98%
20	4.41%	3.34%	1.07%
25	4.48%	3.35%	1.13%
30	4.55%	3.37%	1.18%

Traditional fixed rate bonds are increasingly inefficient in the longer maturities. This reflects the liquidity, credit and tax event risks borne by investors in long-term tax-exempt bonds. Synthetic fixed rate swaps can only be used for Revenue Bonds.

Note: Rates as of 8/15/05, subject to market conditions, documentation, and credit approval.

<sup>1</sup> Traditional fixed rate scale is for insured non-callable bonds.

<sup>2</sup> Synthetic fixed rates where PPH pays fixed rate and receives 54% of LIBOR + 0.35% include 0.26% for auction agent and broker dealer fees which are estimates and are subject to change over the life of the transaction, which may impact total debt service cost. Assumes floating rate received from Citibank equals floating rate paid on bonds. Actual results may vary.

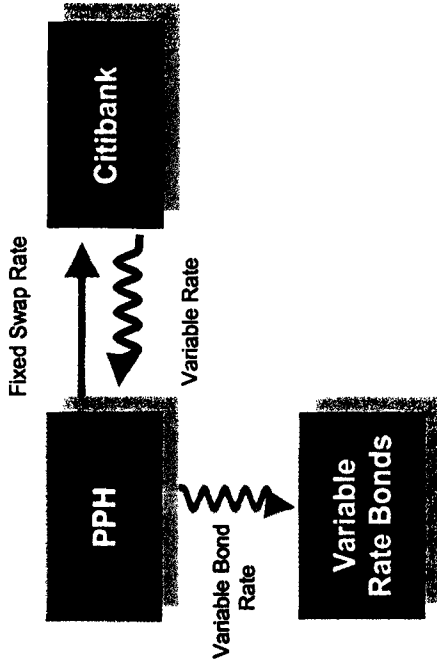
<sup>8</sup> For illustration purposes only; actual results will depend on future market conditions.

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# Synthetic Fixed Rate Overview

## Structure

- ◆ PPH executes a swap agreement with Citibank, presetting the future swap fixed rate
- ◆ Citibank pays PPH a variable rate
- ◆ PPH pays a fixed rate to Citibank



## Benefits

- ◆ Long term fixed rate
- ◆ "Make-whole" call flexibility
- ◆ PPH can manage its swap program to benefit from market volatility

## Considerations

- ◆ Use of LIBOR entails basis and tax risk
- ◆ Swap is economically non-callable
- ◆ Credit risk to Aa1/AA/AA+ rated Citibank, N.A.
- ◆ Potential make-whole payment or receipt upon optional or mandatory early termination
- ◆ Consult auditors regarding accounting treatment

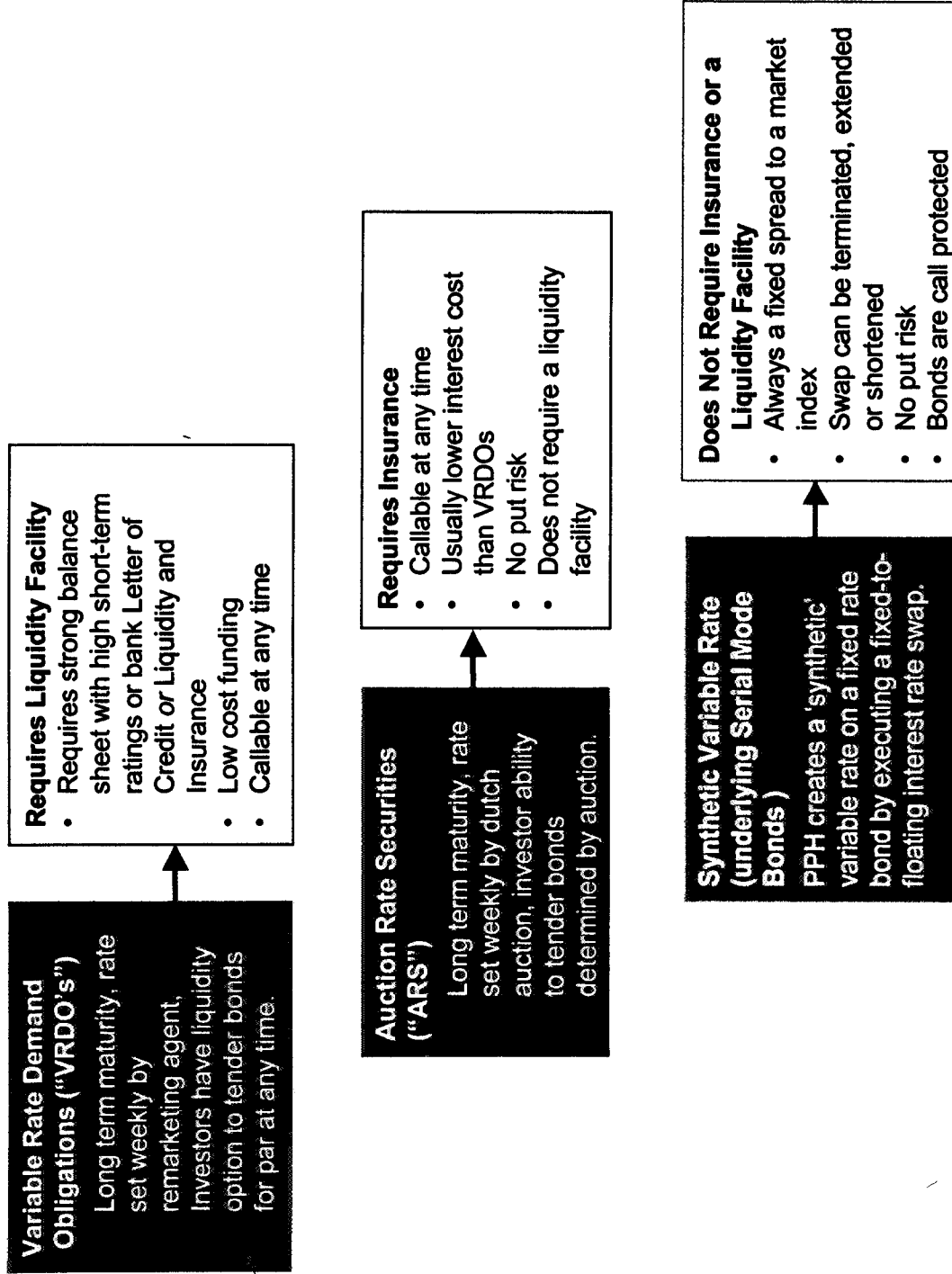
## Pricing<sup>1</sup>

Average Life From Delivery	Forward Period	Forward Premium	Synthetic Fixed Rate
20 years	6-month	0.02%	3.10%

<sup>1</sup>Rate as of 8/15/05, where PPH receives 54% LIBOR + 0.35% and pays fixed rate. Subject to market conditions, documentation, and credit approval. Synthetic fixed rate does not include variable rate bond fees. Assumes floating rate received from Citibank equals floating rate paid on bonds; actual results may vary. For illustration purposes only; actual results will depend on future market conditions. Please see presentation from 8-22-05 for further analysis.



# Overview of Variable Rate Alternatives



## **Variable Rate Demand Obligations**

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- ◆ Variable Rate Demand Obligations (“VRDOs”) are instruments with a long-term nominal maturity which bear interest at variable rates adjusted at predetermined intervals
- ◆ VRDOs incorporate multiple short-term pricing options as well as the ability to establish intermediate and long-term fixed rates
- ◆ The Borrower can shift between pricing modes throughout the term of a VRDO financing
- ◆ The holder of a VRDO has the option to tender securities for purchase or, in some cases, tender for purchase is mandatory such as upon conversion to a new interest rate mode or upon expiration of the credit/liquidity facility
- ◆ Short-term tender features give VRDOs the liquidity and principal preservation characteristics of money market paper, allowing for pricing at the short end of the yield curve

## **Auction Rate Securities**

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- ◆ Auction Rate Securities (“ARS”) are debt instruments with a long-term nominal maturity in which the interest rate is periodically reset through a dutch auction process
- ◆ In a dutch auction, a Broker-Dealer submits bids, on behalf of current and prospective investors, to the Auction Agent; based on these bids, the Auction Agent will set the next interest rate by determining the lowest rate to “clear” the total outstanding amount of ARS
- ◆ ARS holders do not have the right to “put” their securities back to the issuer; as a result no liquidity facility is required, thereby eliminating the annual bank support fees typically associated with other variable rate programs
- ◆ Citigroup’s proprietary financing vehicle that targets retail, the investor segment which is less price sensitive
- ◆ Our “captive audience” of cash invested in Citigroup’s internal California sweep-accounts will serve as a base for our marketing efforts

# Fixed-to-Floating Interest Rate Swaps

## Benefits

- ◆ Interest cost savings under current market conditions versus fixed rate bonds
- ◆ Helps hedge interest income volatility
- ◆ Flexible variable rate exposure without liquidity risk
- ◆ No liquidity facility means no renewal or price inflation risk and no need to negotiate covenants with a bank
- ◆ No risk of failed remarketing or auction
- ◆ The synthetic variable rate is always a fixed spread to a market index
- ◆ Second benefit of lower rates. Any refunding savings is in addition to greater swap income

## Considerations

- ◆ Variable rate risk and tax risk means there is a possibility of swap net payments. Variable rate risk may be partially hedged by interest income
- ◆ Credit risk to Aa1/AA/AA+ rated Citibank N.A.
- ◆ Citibank can terminate the swap early upon PPH default or non-investment grade ratings
- ◆ Potential make-whole payment or receipt upon optional or mandatory early termination

# Diversify Debt to Manage Risk

	VRDO's (w/ Bank Letter of Credit)	VRDO's (w/ Insurance and Bank Line of Credit)	Auction Rate Securities	Synthetic Variable Rate
<b>Risk Profile</b>				
Interest Rate Risk	Yes	Yes	Yes	Yes
Tax Risk	Yes	Yes	Yes	Yes
Industry Risk	Yes	Yes	Yes	No
Renewal Risk	Yes	Yes	No	No
Put Risk	High	High	No	Low
Basis Risk	No	No	No	No
Counterparty Risk	No	No	No	Yes
<b>Estimated Costs <sup>(1)</sup></b>	BMA + 0.38%	BMA + 0.63%	BMA + 0.31%	BMA + 1.31%
<b>Primary Buyers</b>	Money Market	Money Market	Retail/ Corporate	All Muni Buyers

(1) Assumes interest on VRDO's and ARS is reset weekly. Where applicable, annual fees assume 8 bps for remarketing, 26 bps for auction agent/broker dealer fees, 20 bps for a line of credit fees, 75 bps for a letter of credit, 30 bps for the annualized cost of insurance, receiver rate of 3.70%. Fees are estimates and subject to change over the life of the transaction which may impact total debt service cost.

For illustration purposes; actual results may vary.

# Fixed vs. Variable Rate Products Overview

Consideration	Fixed Rate Debt	Variable Rate Debt
Current interest expense	Higher	Lower, variable rates currently average approximately 250-300 basis points below long-term interest rates
Exposure to future increases in interest rates	None	Yes, affected by Federal Reserve policy, inflation, federal tax rates, and other factors
Upfront borrowing costs	Higher, due to higher takedown	Lower
Exposure to changes in tax law	None	Yes, since a change in tax law will affect the value and underlying price of the floating rate security; periodic repricings will account for such changes
Call option	Yes, generally after 10 years @ 101%	Yes, at any time @ 100% in most cases
Flexibility in pricing / conversion to alternate modes	No, bonds are issued at fixed rates through final maturity (however, can be refunded)	Yes, bonds can be converted to various floating rate modes allowing the Borrower to achieve lowest costs of funds
Flexibility in payments	Limited, debt can generally be restructured only after the call date number, or by refunding	Yes, since debt can be redeemed at any time, the terms of the financing program can be changed if circumstances, such as an increase in revenues, warrant
Marketing	1-3 weeks (to allow investors time to review official statement and current financials)	1-2 days (bonds trade on basis of credit/liquidity provider)
Ongoing 15c2-12 disclosure requirements	Yes, requiring municipal issuers and other "obligated persons" to agree in writing to provide continuing disclosure to the marketplace for the life of the related bonds	VRDOs are exempt, ARS are subject to disclosure requirements

## **Debt Policy Overview**

- ◆ A Draft Debt Policy is contained in the Appendix of this presentation
- ◆ The Debt Policy will be tailored to PPH, addressing various financing components including:
  - Allowable variable rate instruments
  - Types of credit enhancement
  - Variable rate exposure targets
  - Rational for using interest rate swaps
  - Permitted interest rate swaps
  - Risk analysis and considerations for interest rate swaps

## **Summary and Next Steps**

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- ◆ To date, we have covered with the Board:
  - The project being financed
  - The appropriate debt mix
  - The fixed and variable rate alternatives
  - The draft Debt Policy
- ◆ Over the next several months we will continue to work with the Board to educate you on:
  - Refunding opportunities
  - The Revenue Bond structure
    - The fixed and variable rate alternatives discussed today
    - Interest rate swaps
- ◆ Based upon the further education and the development/adoption of a Debt Policy, we will be seeking final approvals to move forward with the next phase of the Plan of Finance Roadmap



**Appendix**  
***Draft Debt Policy***

Prior to entering into any transaction contemplated hereby (a "Transaction") you should determine, without reliance upon us or our affiliates, the economic risks and merits (and independently determine that you are able to assume these risks), as well as the legal, tax and accounting characterizations and consequences of any such Transaction. In this regard, by accepting this presentation, you acknowledge that (a) we are not in the business of providing (and you are not relying on us for) legal, tax or accounting advice, (b) there may be legal, tax or accounting risks associated with any Transaction, (c) you should receive (and rely on) separate and qualified legal, tax and accounting advice and (d) you should apprise senior management in your organization as to such legal, tax and accounting advice (and any risks associated with any Transaction) and our disclaimer as to these matters.

Any terms set forth in this presentation are intended for discussion purposes only and are subject to the final expression of the terms as set forth in separate definitive written agreements. Notwithstanding anything herein or in any agreement we may enter into to the contrary, you (and each of your employees, representatives or other agents) may disclose to any and all persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of any Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to you relating to such U.S. tax treatment and U.S. tax structure, other than any information for which nondisclosure is reasonably necessary in order to comply with applicable securities laws.

We maintain a policy of strict compliance with the anti-tying provisions of the Bank Holding Company Act of 1956, as amended, and the regulations issued by the Federal Reserve Board implementing the anti-tying rules (collectively, the "Anti-tying Rules"). Moreover our credit policies provide that credit must be underwritten in a safe and sound manner and be consistent with Section 23B of the Federal Reserve Act and the requirements of federal law. Consistent with these requirements and our policy:

- You will not be required to accept any product or service offered by Citibank or any of its affiliates as a condition to the extension of commercial loans or other products or services to you by Citibank, unless such a condition is permitted under an exception to the Anti-tying Rules. As used in this paragraph and the next three paragraphs, "Citibank" means, collectively, Citibank, N.A. and its subsidiaries.
- Citibank will not vary the price or other terms of any Citibank product or service based on a condition that you purchase any other product or service from Citibank or any of its affiliates, unless Citibank is authorized to do so under an exception to the Anti-tying Rules.
- Citibank will not require you to provide property or services to Citibank or any affiliate of Citibank as a condition to receiving a commercial loan by Citibank, unless such a requirement is reasonably required to protect the safety and soundness of the loan.
- Citibank will not require you to refrain from doing business with a competitor of Citibank or any of its affiliates as a condition to participating in any efforts to solicit investment banking business; accordingly, Smith Barney research analysts may not have any communications with companies for the purpose of soliciting investment banking business. Moreover, Citigroup policy (i) prohibits research analysts from participating in road show meetings and (ii) prohibits investment banking personnel from having any input into company-specific research coverage decisions and from directing research analysts to engage in marketing or selling efforts to investors with respect to an investment banking transaction. So as to reduce the potential for conflicts of interest, as well as to reduce any appearance of conflicts of interest, Citigroup has enacted policies and procedures designed to prohibit all communications between its investment banking and research personnel except in narrowly prescribed circumstances.

Although this material may contain publicly available information about Smith Barney Research, Citigroup policies prohibit analysts from participating in any efforts to solicit investment banking business; accordingly, Smith Barney research analysts may not have any communications with companies for the purpose of soliciting investment banking business. Moreover, Citigroup policy (i) prohibits research analysts from participating in road show meetings and (ii) prohibits investment banking personnel from having any input into company-specific research coverage decisions and from directing research analysts to engage in marketing or selling efforts to investors with respect to an investment banking transaction. So as to reduce the potential for conflicts of interest, as well as to reduce any appearance of conflicts of interest, Citigroup has enacted policies and procedures designed to prohibit all communications between its investment banking and research personnel except in narrowly prescribed circumstances.

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**Finance Committee Date Change  
for Monday, September 26, 2005, Meeting**

**TO:** Board of Directors

**FROM:** Board Finance Committee  
Tuesday, August 30, 2005

**MEETING DATE:** Monday, September 12, 2005

**BY:** Bob Hemker, CFO

**Background:** A request was made to change the date of the Finance Committee meeting scheduled for Monday, September 26, 2005, in Graybill Auditorium at Palomar Medical Center, 555 East Valley Parkway, Escondido, CA. A poll of the Board members on the Finance Committee resulted in a full complement for the new date of **Tuesday, October 4, 2005**, with the meeting to be held in **Meeting Room E, Pomerado Hospital, 15615 Pomerado Road, Poway, CA**. The timing would be 5:30 p.m. for dinner, with a 6:00 p.m. meeting start time. The Finance Committee was requested to approve the changes in date and location.

**Budget Impact:** N/A

**Staff Recommendation:** Approval of the change in the date and location of the Monday, September 26, 2005, Finance Committee meeting to **Tuesday, October 4, 2005, in Meeting Room E, Pomerado Hospital, 15615 Pomerado Road, Poway, CA**. Dinner at 5:30 p.m., meeting to begin at 6:00 p.m.

**Committee Questions:**

**COMMITTEE RECOMMENDATION:** The Finance Committee approved the change in the date and location of the Monday, September 26, 2005, Finance Committee meeting to **Tuesday, October 4, 2005, in Meeting Room E, Pomerado Hospital, 15615 Pomerado Road, Poway, CA**. Dinner at 5:30 p.m. meeting to begin at 6:00 p.m.

**Motion:**

**Information:** X

**Required Time:**