

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

09/01/05	TO	09/30/05	ACCOUNTS PAYABLE INVOICES	\$21,769,246.00
09/09/05	TO	09/23/05	NET PAYROLL	<u>\$8,275,086.00</u>
				\$30,044,332.00

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

## September 2005 & Fiscal YTD 2006 Financial Report

**TO:** Board of Directors

**FROM:** Board Finance Committee  
Tuesday, October 25, 2005

**MEETING DATE:** Monday, November 14, 2005

**FROM:** Robert Hemker, CFO

**Background:** The Board Financial Reports (unaudited) for September 2005 and Fiscal YTD 2006 are submitted for the Board's 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 September 2005 and Fiscal YTD 2006.

**Motion:** X

**Individual Action:**

**Information:**

**Required Time:**

**PALOMAR POMERADO HEALTH**

*A California Health Care District*

**BOARD FINANCIAL REPORT**

**SEPTEMBER, 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**  
**SEPTEMBER 2005 and YTD FY 2006 FINANCIAL RESULTS**  
**EXECUTIVE SUMMARY and HIGHLIGHTS**

**Statistics:**

Acute patient days increased (.07%) to 9,011 in September compared to August. YTD acute patient days were 27,388 compared to a budget of 27,451. The acute Average Daily Census (ADC) was 300 in September compared to 290 in August. Acute admissions for September YTD were 7,194 compared to budget of 6,980 (3% higher than budget). YTD September SNF patient days were 19,232 compared to budget of 19,056 (.9% variance).

**Balance Sheet:**

**Current Cash & Cash Equivalents** increased \$3.7 million to \$90.5 million in September from \$87 million in August. The increase is mainly due to cash received from prior year settlements of \$3 million and the proceeds from the sale of property of \$782 thousand. Total Cash and Investments are \$123 million, compared to \$131 million at June 30, 2005. Days cash on hand are 136 compared to 148 at June 30, 2005, still within "A" rated guidelines.

**Net Accounts Receivable** increased \$1.1 million in September to \$78 million compared to August (\$77M). Gross A/R days decreased to 63 in September. June 2005 and 2004 gross A/R days were 70 and 40, respectively. September patient account collections were \$23.7 million compared to budget of \$26.1 million. YTD patient account collections are \$11 million below budget at \$67 million (budget was \$78 million).

**Construction in Progress** increased by \$1.5 million in September, the increase is mainly due to the additional capitalization of the IT system costs and the building expansion project costs.

**Accounts Payable** decreased \$1.3 million in September due to the timing of vendor in payments.

**Accrued Payroll** increased \$1.8 million in September due to the timing of the pay period ending date.

**Estimated 3<sup>rd</sup> Party Settlement (receivables)** decreased by \$2.8 million due to payments received for third party settlements.

**Income Statement:**

**Gross Patient Revenue** for YTD September reflects a favorable budget variance of \$4.1 million. This favorable variance is composed of a \$3.6 million favorable volume variance and \$536,000 favorable rate variance.

Routine revenue (inpatient room and board) reflects an unfavorable \$1.6 million budget variance. PPH North reflects an unfavorable variance of \$810 thousand, and PPH South reflected an unfavorable variance of \$778 thousand. Palomar's YTD acute patient days were above budget by 1%, however PMC encountered a lower volume of trauma cases than what was budgeted (approx 19% less cases). Pomerado's acute patient days are 4% lower than budget.

Inpatient Ancillary gross revenue represents a YTD \$1.6 million favorable budget variance at September. PPH North reflects a favorable variance of \$5.3 million and PPH South reflected \$3.7 million unfavorable variance. The main contributors to Palomar's favorable variance was reflected in the Emergency Room and Cat Scanner Departments totaling \$3 million higher than budget. The main department contributors to Pomerado's unfavorable variance are surgery, patient chargeable supplies, and pharmacy (totaling \$4 million unfavorable variance from budget).

Outpatient revenue reflects a YTD favorable budget variance of \$4 million. The majority of this favorable variance is reflected at PPH North at \$3.8 million and the majority of this variance is in the Emergency and CT Scanner).

**Deductions from Revenue** reflects an YTD unfavorable variance of \$6.3 million. This variance is mainly due to disproportional usage of IP Ancillary services (which result in additional contractual adjustments approximately \$5.8 million) at Palomar. Total Deductions from Revenue is 68.4% 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 September YTD compared to budget of 63%.

The Capitation monies retained by PPH are reflecting a YTD \$92 thousand unfavorable variance as of September.

Bad debt, charity & undocumented care write-offs reflected a YTD favorable \$348 thousand budget variance. Bad debt, charity and undocumented write-offs as a percent of gross revenue were 4.5% compared to the budget of 4.7%.

**Other Operating Revenue** reflects an unfavorable budget variance of \$340 thousand. Unrealized contributions from the Foundation account for \$183 thousand of this variance and \$150 thousand is related to laboratory services that were budgeted in Other Operating Revenue but are being recognized in OP revenue.

**Salaries, Wages & Contract labor** reflects a YTD unfavorable variance of \$285 thousand. This unfavorable variance is composed of: 1) Salaries and Wages – \$534,000 (actual \$38.7 million) and, 2) Contract Labor – (\$808,000) (actual \$3 million).

**Benefits Expense** is reflecting a YTD unfavorable budget variance of \$396 thousand, of which, \$469 thousand unfavorable was recognized in September. September reflected an increase in Dental claims.

**Supplies Expense** is reflecting a YTD favorable budget variance of \$40 thousand.

**Prof Fees & Purch Services** reflected a favorable budget variance of \$1.1 million. These expenses are budgeted evenly throughout the year, however many of the actual expenses have not occurred yet.

**Non-Operating Income** reflects a YTD favorable variance of \$178 thousand in September. This variance is made up of (\$196,000) investment income and \$382 thousand gain on sale of land (recorded in September). Investment income reflects a 2% investment rate of return compared to budget of 2.5%.

**Ratios**

All required bond covenant ratios were achieved in September 2005.

Palomar Pomerado Health  
Balanced Scorecard  
Financial Indicators  
September 30, 2005

June		July		August		September		YTD 2006		% to Actual to Budget	
Actual		Actual		Actual		Actual	Budget	Budget	Variance		
12.6%		9.0%		8.0%		6.6%	9.8%	7.9%	9.8%	-1.9%	
\$ 2,226.74	\$ 2,270.91	\$ 2,455.48	\$ 2,444.28	\$ 2,460.33	\$ 2,444.28	\$ 2,460.33	\$ 2,436.18	\$ 2,393.91	\$ 2,436.18	\$ 42.27	
5.80	\$ 1,353.93	\$ 1,455.68	\$ 1,417.69	\$ 1,442.06	\$ 1,417.69	\$ 1,442.06	\$ 1,417.10	\$ 1,416.39	\$ 1,417.10	\$ 0.71	
	5.94	6.05	6.18	6.28	6.18	6.28	6.17	6.07	6.17	0.1	
-1.0%		7.1%		7.5%		11.2%	11.7%	8.6%	11.8%	-3.2%	
\$ 2,242.37	\$ 2,158.90	\$ 2,339.31	\$ 2,316.67	\$ 2,319.27	\$ 2,316.67	\$ 2,319.27	\$ 2,309.16	\$ 2,271.55	\$ 2,309.16	\$ 37.61	
4.90	\$ 1,139.16	\$ 1,222.02	\$ 1,181.84	\$ 1,213.62	\$ 1,181.84	\$ 1,213.62	\$ 1,181.06	\$ 1,191.14	\$ 1,181.06	\$ (10.08)	
	4.97	5.07	5.10	5.22	5.10	5.22	5.10	5.07	5.10	0.03	
12.2%		10.1%		5.3%		-7.7%	1.3%	3.2%	1.3%	1.9%	
\$ 2,280.87	\$ 2,255.63	\$ 2,424.39	\$ 2,454.26	\$ 2,513.55	\$ 2,454.26	\$ 2,513.55	\$ 2,447.24	\$ 2,392.82	\$ 2,447.24	\$ 54.42	
5.64	\$ 1,182.09	\$ 1,277.37	\$ 1,262.34	\$ 1,290.97	\$ 1,262.34	\$ 1,290.97	\$ 1,262.16	\$ 1,247.93	\$ 1,262.16	\$ 14.23	
	5.54	5.70	5.88	6.11	5.88	6.11	5.88	5.71	5.88	0.17	

PPH Indicators:

OEBITDA Margin w/Prop Tax  
Expenses/Wtd Day  
SWB/Wtd Day  
Prod FTEs/Adj Occupied Bed

PPH North Indicators:

OEBITDA Margin w/Prop Tax  
Expenses/Wtd Day  
SWB/Wtd Day  
Prod FTEs/Adj Occupied Bed

PPH South Indicators:

OEBITDA Margin w/Prop Tax  
Expenses/Wtd Day  
SWB/Wtd Day  
Prod FTEs/Adj Occupied Bed

Palomar Pomerado Health  
Consolidated Balance Sheet  
As of September 30, 2005

	Current Month	Prior Month	Prior Fiscal Year End
<b>Assets</b>			
<b>Current Assets</b>			
Cash on Hand	\$7,238,563	\$4,427,684	\$12,666,668
Cash Marketable Securities	83,322,539	82,393,663	96,380,135
<b>Total Cash &amp; Cash Equivalents</b>	<b>90,561,102</b>	<b>86,821,547</b>	<b>109,046,803</b>
Patient Accounts Receivable	184,458,328	195,379,116	190,388,774
Allowance on Accounts	-105,029,664	-118,114,747	-119,259,402
<b>Net Accounts Receivable</b>	<b>79,428,665</b>	<b>77,264,369</b>	<b>71,129,372</b>
Inventories	6,292,255	6,176,598	6,320,951
Prepaid Expenses	1,999,078	2,177,489	2,059,484
Other	12,965,582	12,596,627	840,755
<b>Total Current Assets</b>	<b>190,146,663</b>	<b>185,036,631</b>	<b>189,397,365</b>
<b>Non-Current Assets</b>			
Restricted Assets	97,380,303	96,273,949	12,026,055
Restricted by Donor	282,464	281,939	281,473
Board Designated	32,621,121	33,331,059	22,388,648
<b>Total Restricted Assets</b>	<b>130,283,888</b>	<b>129,886,947</b>	<b>34,696,176</b>
Property Plant & Equipment	336,096,608	336,270,715	337,464,770
Accumulated Depreciation	-220,810,207	-221,356,524	-218,491,576
Construction in Process	32,456,763	30,916,778	26,744,075
<b>Net Property Plant &amp; Equipment</b>	<b>147,743,165</b>	<b>147,830,969</b>	<b>145,717,269</b>
Investment in Related Companies	5,482,422	5,810,427	5,700,502
Deferred Financing Costs	3,344,359	3,342,914	1,618,773
Other Non-Current Assets	1,248,219	1,247,367	1,274,318
<b>Total Non-Current Assets</b>	<b>288,102,053</b>	<b>288,118,625</b>	<b>188,027,038</b>
<b>Total Assets</b>	<b>\$478,248,736</b>	<b>\$473,155,256</b>	<b>\$378,424,405</b>
<b>Liabilities</b>			
<b>Current Liabilities</b>			
Accounts Payable	\$13,107,330	\$14,444,450	\$15,833,163
Accrued Payroll	19,661,961	17,829,647	20,763,473
Accrued PTO	9,905,775	9,912,010	10,212,195
Accrued Interest Payable	2,794,414	2,099,204	708,785
Current Portion of Bonds	12,310,000	6,125,000	6,125,000
Est. Third Party Settlements	-1,033,404	-3,823,934	-4,522,051
<b>Other Current Liabilities</b>	<b>15,913,169</b>	<b>16,201,616</b>	<b>6,228,408</b>
<b>Total Current Liabilities</b>	<b>72,659,245</b>	<b>62,787,994</b>	<b>55,348,973</b>
<b>Long Term Liabilities</b>	<b>157,661,664</b>	<b>163,841,583</b>	<b>79,819,688</b>
<b>Bonds &amp; Contracts Payable</b>			
<b>General Fund Balance</b>			
Unrestricted	215,004,006	212,912,446	220,585,622
Restricted for Other Purpose	282,464	281,939	281,473
Board Designated	32,621,121	33,331,059	22,388,648
<b>Total Fund Balance</b>	<b>247,907,591</b>	<b>246,525,444</b>	<b>243,255,743</b>
<b>Total Liabilities / Fund Balance</b>	<b>\$478,248,736</b>	<b>\$473,155,256</b>	<b>\$378,424,405</b>

**PALOMAR POMERADO HEALTH  
CONSOLIDATED  
FYTD 2006  
SEPT 2005**

	Month Activity			Variance			Rate/Eff			Variance			\$Nwtg Pt Day			
	Actual	Budget	Variance	Volume	Rate/Eff	Actual	Volume	Rate/Eff	Actual	Budget	Variance	Volume	Rate/Eff	Actual	Budget	Variance
<b>Statistics:</b>																
Admissions - Acute	7,194	6,980	214													
Admissions - SNF	309	342	(33)													
Patient Days - Acute	27,388	27,451	(63)													
Patient Days - SNF	19,232	19,056	176													
LOS - Acute	3.97	4.00	(0.03)													
LOS - SNF	39.89	37.96	1.93													
Weighted Pt Days	37,038	36,546	492													
<b>Revenue:</b>																
Gross Revenue	\$ 270,463,509	\$ 266,341,375	\$ 4,122,134	F			\$ 3,595,617	\$ 536,517	\$ 7,302.32	\$ 7,287.84	\$ 14.49					
Deductions from Rev	(184,994,264)	(178,660,206)	(6,334,058)	U			(2,405,210)	(3,928,848)	(4,994.72)	(4,888.64)	(106.08)					
Net Patient Revenue	85,469,245	87,681,169	(2,211,924)	U			1,180,406	(3,392,330)	2,307.61	2,399.20	(91.59)					
Other Oper Revenue	2,206,484	2,545,437	(338,953)	U			34,268	(373,221)	59.57	69.65	(10.08)					
<b>Total Net Revenue</b>	<b>87,675,729</b>	<b>90,226,606</b>	<b>(2,550,877)</b>	<b>U</b>			<b>1,214,674</b>	<b>(3,765,551)</b>	<b>2,367.18</b>	<b>2,468.85</b>	<b>(101.67)</b>					
<b>Expenses:</b>																
Salaries, Wages & Contr Labor	41,810,078	41,535,190	(274,888)	U			(559,167)	284,279	1,128.84	1,136.52	7.68					
Benefits	10,650,075	10,254,013	(396,062)	U			(138,045)	(258,017)	287.54	280.58	(6.97)					
Supplies	14,846,207	14,895,918	39,711	F			(200,401)	240,112	400.84	407.32	6.48					
Prof Fees & Purch Svc	10,669,013	11,772,685	1,103,672	F			(158,490)	1,262,162	288.06	322.13	34.08					
Depreciation	4,315,217	4,286,628	(28,589)	U			(57,709)	29,120	116.51	117.29	0.79					
Other	5,122,913	5,054,446	(68,467)	U			(68,045)	(422)	138.32	138.30	(0.01)					
<b>Total Expenses</b>	<b>87,413,502</b>	<b>87,788,880</b>	<b>375,377</b>	<b>F</b>			<b>(1,181,857)</b>	<b>1,557,235</b>	<b>2,360.10</b>	<b>2,402.15</b>	<b>42.04</b>					
<b>Net Inc Before Non-Oper Income</b>	<b>262,227</b>	<b>2,437,726</b>	<b>(2,175,499)</b>	<b>U</b>			<b>32,818</b>	<b>(2,208,317)</b>	<b>7.08</b>	<b>66.70</b>	<b>(59.62)</b>					
Property Tax Revenue	2,724,999	2,724,999	-	-			36,685	(36,685)	73.57	74.56	(0.99)					
Non-Operating Income	(326,773)	(504,921)	178,148	F			(6,797)	184,945	(8.82)	(13.82)	4.99					
<b>Net Income (Loss)</b>	<b>\$ 2,660,453</b>	<b>\$ 4,657,804</b>	<b>\$ (1,997,351)</b>	<b>U</b>			<b>\$ 62,706</b>	<b>\$ (2,060,057)</b>	<b>\$ 71.83</b>	<b>\$ 127.45</b>	<b>\$ (55.62)</b>					
Net Income Margin	2.9%	4.8%	-1.9%													
OEBITDA Margin w/o Prop Tax	4.9%	7.0%	-2.1%													
OEBITDA Margin with Prop Tax	7.9%	9.8%	-1.9%													

F= Favorable variance  
U= Unfavorable variance

**PALOMAR POMERADO HEALTH  
CONSOLIDATED  
MTD 2006  
SEPT 2005**

	Month Activity		Variance	Variance		\$/Wtg Pt Day		
	Actual	Budget		Volume	Rate/Elf	Actual	Budget	Variance
<b>Statistics:</b>								
Admissions - Acute	2,328	2,276	52					
Admissions - SNF	101	112	(11)					
Patient Days - Acute	9,011	8,951	60					
Patient Days - SNF	6,284	6,214	70					
LOS - Acute	3.97	4.00	(0.03)					
LOS - SNF	40.68	37.98	2.70					
Weighted Pt Days	12,099	11,917	182					
<b>Revenue:</b>								
Gross Revenue	\$ 87,768,291	\$ 86,863,917	\$ 904,374 F	\$ 1,326,612	\$ (422,238)	\$ 7,254.18	\$ 7,289.08	\$ (34.90)
Deductions from Rev	(59,585,069)	(58,267,446)	(1,317,623) U	(889,878)	(427,745)	(4,924.79)	(4,889.44)	(35.35)
Net Patient Revenue	28,183,222	28,596,471	(413,249) U	436,734	(849,883)	2,329.38	2,399.64	(70.25)
Other Oper Revenue	750,898	848,479	(97,581) U	12,958	(110,539)	62.06	71.20	(9.14)
Total Net Revenue	28,934,119	29,444,950	(510,830) U	449,692	(960,522)	2,391.45	2,470.84	(79.39)
<b>Expenses:</b>								
Salaries, Wages & Contr Labor	13,633,115	13,549,504	(83,611) U	(206,932)	123,321	1,126.80	1,136.99	10.19
Benefits	3,814,310	3,345,069	(469,241) U	(51,087)	(418,154)	315.26	280.70	(34.56)
Supplies	5,043,180	4,851,934	(191,246) U	(74,100)	(117,146)	416.83	407.14	(9.68)
Prof Fees & Purch Svc	3,622,882	3,872,627	249,745 F	(59,144)	308,889	299.44	324.97	25.53
Depreciation	1,450,271	1,428,876	(21,395) U	(21,822)	427	119.87	119.90	0.04
Other	1,786,337	1,665,852	(120,485) U	(25,441)	(95,044)	147.64	139.79	(7.86)
Total Expenses	29,350,093	28,713,863	(636,232) U	(438,527)	(197,705)	2,425.83	2,409.49	(16.34)
Net Inc Before Non-Oper Income	(415,974)	731,087	(1,147,062) U	11,165	(1,158,227)	(34.38)	61.35	(95.73)
Property Tax Revenue	908,333	908,333	-	13,872	(13,872)	75.08	76.22	(1.15)
Non-Operating Income	225,990	(168,307)	394,297 F	(2,570)	396,867	18.68	(14.12)	32.80
Net Income (Loss)	\$ 718,350	\$ 1,471,113	\$ (752,765) U	\$ 22,467	\$ (775,232)	\$ 59.37	\$ 123.45	\$ (64.07)
Net Income Margin	2.5%	4.7%	-2.2%					
OEBITDA Margin w/o Prop Tax	3.5%	6.9%	-3.4%					
OEBITDA Margin with Prop Tax	6.6%	9.8%	-3.2%					

F= Favorable variance  
U= Unfavorable variance

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

	<u>September</u>	<u>YTD</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Income (Loss from operations)	\$ (415,974)	\$ 262,231
Adjustments to reconcile change in net assets to net cash provided by operating activities		
Depreciation Expense	1,450,270	4,315,218
Provision for bad debts	1,066,848	7,164,269
Changes in operating assets and liabilities		
Patient accounts receivable	(2,231,144)	(14,463,562)
Property Tax and other receivables	394,843	(10,033,433)
Inventories	(115,657)	28,696
Prepaid expenses and Other Non-Current assets	506,416	278,486
Accounts payable	(1,337,120)	(2,725,833)
Accrued comp	1,826,079	(1,407,932)
Estimated settlement amounts due third-party payors	2,790,530	3,488,647
Other current liabilities	619,886	12,409,760
Net cash provided by operating activities	<u>4,554,977</u>	<u>(683,453)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Net Purchases (sales) on investments	(1,325,617)	(82,529,897)
Interest (Loss) received on investments	256,075	546,508
Investment in affiliates	(852)	1,810
Net cash used in investing activities	<u>(1,070,394)</u>	<u>(81,981,579)</u>
<b>CASH FLOWS FROM NON CAPITAL FINANCING ACTIVITIES:</b>		
Other		0
Receipt of district taxes	339,070	627,047
Net cash used in activities	<u>339,070</u>	<u>627,047</u>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES:</b>		
Acquisition of property plant and equipment	(1,530,458)	(6,093,410)
Proceeds from sale of asset	781,634	781,634
Interest paid		0
Proceeds from issuance of debt		82,185,607
Payments of LT Debt		0
Net cash used in activities	<u>(748,824)</u>	<u>76,873,831</u>
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<b>3,074,829</b>	<b>(5,164,153)</b>
<b>CASH AND CASH EQUIVALENTS - Beginning of period</b>	<b>4,427,686</b>	<b>12,666,668</b>
<b>CASH AND CASH EQUIVALENTS - End of period</b>	<b><u>\$ 7,502,515</u></b>	<b><u>\$ 7,502,515</u></b>

PALOMAR POMERADO HEALTH  
A California Health Care District  
Investment Fund Balances  
Quarterly Report

Investment Account:	Interest Payable	Interest Rate	Maturity Date	Sept. 30, 2005	June 30, 2005	IN/(DE)CREASE
Fidelity-Institutional Portfolio Treasury Fund	Monthly	3.37%	Demand	\$ 889,746	\$ 882,504	\$ 7,242
State Treasurer Local Agency Investment Fund	Quarterly	3.18%	Demand	54,489	3,237,821	(3,183,332)
Maxicare Health Plans, Inc.	N/A	N/A	Demand	4	4	0
Salomon Brothers	Various	Various	Various	30,911,418	31,139,694	(228,276)
Pacific Income Advisors, Inc.	Various	Various	Various	29,755,217	29,753,884	1,333
Morgan Stanley & Co.	Various	Various	Various	54,298,926	54,081,594	217,332
<b>TOTAL INVESTMENTS AT CURRENT FAIR MARKET VALUE</b>				<b>\$ 115,909,800</b>	<b>\$ 119,095,501</b>	<b>\$ (3,185,701)</b>
<b>ACCRUED INTEREST INCOME RECEIVABLE</b>				<b>1,206,071</b>	<b>837,260</b>	<b>368,811</b>
Bank of America - Cash in Checking/COR Acct.				<b>5,303,278</b>	<b>10,605,505</b>	<b>(5,302,227)</b>
<b>TOTAL VALUE OF INVESTMENT PORTFOLIO</b>				<b>\$ 122,419,149</b>	<b>\$ 130,538,266</b>	<b>\$ (8,119,117)</b>
<b>INVESTMENTS COMPARATIVE</b>						
09/05 \$115,909,800						
09/04 \$152,031,392						
09/03 \$154,990,312						
09/02 \$122,086,837						
<b>SUMMARY OF INVESTMENT PORTFOLIO BY FUND</b>						
Palomar Pomerado Unrestricted Fund				\$ 122,136,685	\$ 130,256,793	\$ (8,120,108)
Palomar Pomerado Restricted Fund				282,464	281,473	991
				<b>\$ 122,419,149</b>	<b>\$ 130,538,266</b>	<b>\$ (8,119,117)</b>



# PALOMAR POMERADO HEALTH BOND COVENANT RATIOS

<b>CUSHION RATIO</b>	<b>Jun-04</b>	<b>Jun-05</b>	<b>Sep-05</b>
Cash and Cash Equivalents	140,057,417	109,046,803	90,561,102
Board Designated Reserves	27,374,261	22,388,648	32,621,121
Trustee-held Funds	11,853,970	12,026,055	14,705,158
<b>Total</b>	<b>179,285,648</b>	<b>143,461,506</b>	<b>137,887,381</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>12.9</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>Sep-05</b>
Cash and Cash Equivalents	140,057,417	109,046,803	90,561,102
Board Designated Reserves	27,374,261	22,388,648	32,621,121
<b>Total</b>	<b>167,431,678</b>	<b>131,435,451</b>	<b>123,182,223</b>
Divide Total by Average Adjusted Expenses per Day			
Total Expenses	311,614,910	341,614,078	87,413,502
Less: Depreciation	14,546,550	16,394,985	4,315,218
<b>Adjusted Expenses</b>	<b>297,068,360</b>	<b>325,219,093</b>	<b>83,098,284</b>
Number of days in period	366	365	92
Average Adjusted Expenses per Day	811,662	891,011	903,242
<b>DAYS CASH ON HAND</b>	<b>206</b>	<b>148</b>	<b>136</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>Sep-05</b>
Excess of revenue over expenses Cur Mo.	2,905,196	1,480,728	718,350
Excess of revenues over expenses YTD (General Funds)	16,053,177	17,042,445	2,660,453
ADD:			
Depreciation and Amortization	14,546,550	16,394,985	4,315,218
Interest Expense	5,581,454	5,272,031	1,251,992
<b>Net Income Available for Debt Service</b>	<b>36,181,181</b>	<b>38,709,461</b>	<b>8,227,663</b>

## Aggregate Debt Service

1993 Insured Refunding Revenue Bonds	6,017,132	6,020,301	1,505,535
1999 Insured Refunding Revenue Bonds	4,357,728	4,356,844	1,088,892
<b>Aggregate Debt Service</b>	<b>10,374,860</b>	<b>10,377,145</b>	<b>2,594,427</b>
<b>Net Income Available for Debt Service</b>	<b>3.49</b>	<b>3.73</b>	<b>3.17</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>

**Palomar Pomerado Health Foundation  
Management Services Agreement & Line of Credit**

**TO:** Board of Directors

**FROM:** Board Finance Committee  
Tuesday, October 25, 2005

**MEETING DATE:** Monday, November 14, 2005

**FROM:** Bob Hemker, CFO

**Background:** Management is negotiating a Management Services Agreement with the Palomar Pomerado Health Foundation (“the Foundation”), whereby the District will contractually provide employees and other services to the Foundation. In conjunction therewith, a Line of Credit will be extended to the Foundation, in the requested form and documentation as per the attached.

**Budget Impact:** N/A

**Staff Recommendation:** Approval of the Management Services Agreement with—and the included Line of Credit to—Palomar Pomerado Health Foundation, as requested.

**Committee Questions:**

**COMMITTEE RECOMMENDATION:** The Finance Committee recommends approval of the Management Services Agreement with—and the included Line of Credit to—Palomar Pomerado Health Foundation.

**Motion:** X

**Individual Action:**

**Information:**

**Required Time:**

**MANAGEMENT SERVICES AGREEMENT**

**by and between**

**PALOMAR POMERADO HEALTH (“PPH”)**

**and**

**PALOMAR POMERADO HEALTH FOUNDATION (“Foundation”)**

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**MANAGEMENT SERVICES AGREEMENT**

THIS MANAGEMENT SERVICES AGREEMENT (this "Agreement") is dated as of September 1, 2005, (the "Effective Date") by and between PALOMAR POMERADO HEALTH, a local health care district organized under the laws of the State of California ("PPH"), and PALOMAR POMERADO HEALTH FOUNDATION, a California nonprofit public benefit corporation ("Foundation"). PPH and Foundation are each sometimes referred to in this Agreement as a "Party" or, collectively, as the "Parties."

**RECITALS**

- A. PPH, a local health care district organized under the California Local Hospital District Law (California Health and Safety Code § 32000 et seq.) (the "Law"), owns and operates healthcare facilities for the benefit of the communities within its boundaries.
- B. Foundation, a nonprofit philanthropic organization organized and operated to support PPH and its programs, is committed to its mission which is the enhancement of individual and community health through the philanthropic support of PPH.
- C. In connection with its operations, PPH regularly employs and/or contracts with management, clerical, office and administrative and paraprofessional personnel experienced in the healthcare field. PPH has extensive experience in individual and community health issues and understands Foundation and its operations. As a result, Foundation has determined that PPH is the best alternative in attaining its operational and organizational goals.
- D. The Parties believe that it is in the best interests of the public served by PPH to facilitate the proper operation of Foundation so that it may carry out its mission.
- E. The Parties further believe that the efficient and effective operation of Foundation, and the funds it raises for PPH and its collaborative agencies, will be well served by the provision of certain personnel and other operational items, services and funds to Foundation.
- F. Foundation desires to obtain from PPH certain personnel and other operational items, services and funds, and PPH has agreed to provide such personnel and other operational items, services and funds to Foundation to further the public purposes for which PPH and the Foundation operate, in accordance with the California Constitution and according to the terms and conditions set forth herein.
- G. The Parties hereby reference the following additional agreements to which they are both parties:
- (i) License Agreement dated September 1, 2005, and attached hereto as Exhibit 1.4;
  - (ii) Security Agreement dated September 1, 2005, and attached hereto as Exhibit 4.1(b); and

- (iii) Business Associate Agreement dated September 1, 2005, and attached hereto as Exhibit 8.2.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

**ARTICLE I.**  
**PPH'S OBLIGATIONS**

**1.1 Administrative and Management Services.** PPH shall, during the term of this Agreement, provide the administrative and management services set forth in Exhibit 1.1 (the "Management Services"), upon the terms and subject to the conditions set forth in this Agreement.

**1.2 Marketing and Public Relations Services.** Subject to Foundation's prior approval as to both content and cost, PPH shall perform marketing and public relations services on behalf of Foundation, including, without limitation, the employment of marketing and public relations personnel to develop marketing and fundraising programs related to Foundation (the "Marketing Services"). Fundraising services will be performed in accordance with the terms set forth in the Business Associate Agreement, attached hereto as Exhibit 8.2. The Management Services and the Marketing Services are referred to in this Agreement, collectively, as the "Services."

**1.3 Attorney-in-Fact.** Foundation appoints PPH as Foundation's lawful attorney-in-fact for the purposes set forth in the power of attorney attached as Exhibit 1.3 and executed by Foundation.

**1.4 Grant of License for Use of Office Space.** PPH authorizes and grants a license to Foundation to enter upon and occupy certain office property in which to operate (the "Office Space"), subject to the terms and conditions set forth in the License Agreement entered into between PPH and Foundation, attached hereto as Exhibit 1.4 (the "License").

**1.5 Utilities.** PPH shall provide electricity, gas, telephone, water, heat and air conditioning to the Office Space as reasonably required.

**1.6 Supplies.** PPH shall arrange for supplies necessary for properly and efficient operation of Foundation.

**1.7 Furniture, Fixtures and Equipment.** PPH shall provide to Foundation the furniture, fixtures, and equipment described in Exhibit 1.7 (the "FF&E"). Foundation's use of the FF&E shall be subject to the following conditions:

(a) **Legal Title.** Legal title to all FF&E shall be in PPH's name, and shall remain in PPH's name upon any termination or expiration of this Agreement. Without PPH's prior written consent, Foundation shall not cause or agree to any lien, security interest, claim or encumbrance of any kind being placed on, incurred on, levied against, or recorded on the FF&E.



At the request of PPH, Foundation shall execute any UCC-1 Financing Statements or similar documents evidencing PPH's ownership of the FF&E.

(b) Use of FF&E. Foundation shall not remove the FF&E from the Office Space or relocate the FF&E to another place without PPH's prior written consent.

(c) Repairs. PPH shall maintain the FF&E in good working order, including arranging for all necessary repairs, maintenance, and/or replacement, as necessary and in PPH's sole discretion, of the FF&E. Foundation shall use its best efforts to prevent damage, excessive wear, and breakdown of the FF&E. Foundation shall promptly advise PPH in writing of any needed repairs or maintenance of the FF&E.]

**1.8 Information System.** PPH shall develop, supply and continuously maintain in good operating condition a computerized information system that performs the functions set forth in Exhibit 1.8.

**1.9 Ownership of Records.** All financial records, personnel files, written procedures and other such items relating to the business and activities of Foundation shall be the property of Foundation, shall be available for inspection by Foundation and by any member of the Foundation's Board of Directors. Upon termination of this Agreement, PPH shall, at Foundation's request, transmit all Foundation records to Foundation or any other party designated by Foundation. PPH shall have a right to copy all records prior to transmittal, at its expense and to retain such records, subject to applicable law. PPH and Foundation shall comply with all applicable laws concerning the confidentiality of all Foundation records. PPH and its employees shall keep confidential all statistical, financial, and personnel data relating to the business of Foundation, except for any data that becomes publicly available, or any data to which the public has the legal right of access, or that may be rightfully obtained from third parties.

**1.10 Property Taxes.** PPH shall be responsible for the payment of all property taxes, if any, that may be levied in regard to all real and personal property owned or leased by PPH in connection with this Agreement.

**1.11 PPH Authority and Duties.** PPH shall have the exclusive authority to perform all of its duties set forth in this Agreement. PPH agrees to devote such time, effort, skill and expertise to the affairs of Foundation as is necessary to fulfill its obligations under this Agreement. PPH may subcontract with other persons or entities for any of the Services that PPH is required to perform under this Agreement.

## **ARTICLE II.** **COMPENSATION**

**2.1 Compensation to PPH.** The compensation provisions for the services provided by PPH under this Agreement are set forth in Exhibit 2.1 attached hereto and incorporated herein.

**2.2 Additional Compensation.** PPH and Foundation may, from time to time, agree that PPH shall provide to Foundation additional office space, furniture, fixtures, equipment, or

other items or services not described in this Agreement (“Additional Support”). Any agreement to provide Additional Support to Foundation shall be in writing and shall be in the form of an amendment to this Agreement signed by the Parties. If PPH provides Additional Support to Foundation, Foundation shall pay for such Additional Support when invoiced or PPH shall extend further credit to Foundation for such amounts, which shall set forth in any such amendment.

**2.3 Payment of Amounts Due Upon Termination or Expiration of Agreement.**  
Upon any termination or expiration of this Agreement, Foundation shall pay to PPH all amounts earned prior to the effective date of termination or expiration, or otherwise due under this Agreement.

**ARTICLE III.**  
**LINE OF CREDIT**

**3.1 Line of Credit.** PPH shall make available to Foundation, and Foundation agrees to accept from PPH, a line of credit, the aggregate amount of which shall not exceed **Three Million Dollars (\$3,000,000)** or a greater amount solely in PPH’s discretion (“Line of Credit”), subject to the terms set forth in this Article III. The Line of Credit shall expire June 30, 2010 (the “Credit Line Expiration Date”). This expiration date does not affect Foundation’s repayment obligation.

**3.2 Advances.** PPH shall advance to Foundation amounts requested pursuant to Section 3.4 of this Article (each, an “Advance”, and collectively, the “Advances”), from time to time prior to, but not including, the Credit Line Expiration Date. The aggregate amount of all outstanding Advances shall not exceed the Line of Credit. Notwithstanding the foregoing, both PPH’s Chief Executive Officer and Chief Financial Officer and Foundation’s Chair and Treasurer shall approve in writing Advance requests exceeding One Hundred Thousand Dollars (\$100,000).

**3.3 Use of Advances.** Foundation shall use the Advances for the following purposes only:

- (a) For amounts approved by PPH in the capital and operating budgets of Foundation;
- (b) For subsequent repayment to PPH for insurance expense coverage;
- (c) For subsequent repayment to PPH in any given month when Foundation does not have sufficient funds to cover Foundation Expenses in accordance with the provisions of Exhibit 2.1; and
- (d) For normal and routine expenses incurred in the consummation of gift transactions approved by the Joint Gift Acceptance Committee.
- (f) Any individual expenses exceeding One Hundred Thousand Dollars (\$100,000) must be approved by the CEO of PPH.

**3.4 Request and Delivery of Advances.** When Foundation desires to obtain an Advance, it shall deliver to PPH a notice in the form attached hereto as Exhibit 3.4 (the “Notice of Borrowing”) at least three (3) Business Days prior to the date on which the Advance is to be paid (the “Proposed Funding Date”). The Notice of Borrowing shall specify the Proposed Funding Date (which shall be a Business Day), the amount of the requested Advance, and certify as to the satisfaction of each of the conditions set forth in Exhibit 3.4. “Business Day” shall mean any day which is not a Saturday, Sunday or a generally observed holiday for banks in the State of California.

**3.5 Contingencies to PPH’s Payment of Advances.** PPH’s obligation to make any Advances to Foundation under this Agreement shall be contingent upon the following:

(a) Documentation. Foundation’s submission to PPH, in form and substance satisfactory to PPH, this Agreement, the Note (as defined in Section 4.1(a)), the Security Agreement (as defined in Section 4.1(b)), and such other documents and instruments as PPH may reasonably request, all duly executed by Foundation.

(b) Notice of Borrowing. Foundation’s submission to PPH of a Notice of Borrowing in which Foundation certifies that as of the date of the Notice of Borrowing:

- (i) all of Foundation’s representations and warranties contained in this Agreement shall be true, correct and complete in all material respects to the same extent as though made on and as of that date;
- (ii) no Event of Default (as defined in Exhibit 4.1(b)) shall have occurred and shall continue, or shall result from, making the Advance;
- (iii) no law or regulation shall prohibit, and no order, judgment or decree of any court, arbitrator or governmental authority shall purport to enjoin or restrain PPH from making the Advance; and
- (iv) no change having a Material Adverse Effect on Foundation, either individually or in the aggregate, shall have occurred since the Execution Date. “Material Adverse Effect” shall mean a material adverse effect upon Foundation’s purpose, function, operation or status or upon PPH’s security interest in the Collateral (as defined in Exhibit 4.1(b) attached hereto) or the priority thereof.

(c) Perfection. The Account described in Exhibit 4.1(b) of this Agreement shall have been established in a manner satisfactory to PPH, in its sole discretion, and PPH shall be satisfied that all steps shall have been taken necessary to create and perfect in favor of PPH a first priority security interest in the Account and all other Collateral described in such Exhibit 4.1(b).

**3.6 Promissory Note.** Foundation shall repay the Advances and accrued interest pursuant to the terms and conditions of the Note (as defined below). Foundation authorizes PPH

to record on the schedule annexed to the Note, the date and amount of each Advance made by PPH, the Interest Rate (as such term is defined in the Note) when each Advance is made, and each payment or prepayment of the Advances, and agrees that all such notations shall constitute *prima facie* evidence of the matters noted. Foundation further authorizes PPH to attach to and make a part of the Note continuations of the schedule as necessary. No failure to make any such notations, nor any errors in making any such notations, shall affect the validity of Foundation's obligations to repay the Advances or Foundation's obligations under this Agreement, the Note, or any other document, contract or instrument delivered to PPH in connection with this Agreement (collectively, the "Line of Credit Documents").

**ARTICLE IV.**  
**PROMISSORY NOTE; SECURITY AGREEMENT; GUARANTEE**

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

- (a) the secured promissory note in the form attached as Exhibit 4.1(a) (the "Note"); and
- (b) the security agreement in the form attached as Exhibit 4.1(b) (the "Security Agreement").

**4.2 Further Cooperation.** PPH and Foundation 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 Security Agreement, as reasonably requested by PPH from time to time.

**ARTICLE V.**  
**INSURANCE**

**5.1 Director/Officer Liability Insurance.** PPH shall purchase on behalf of Foundation and continuously maintain director/officer liability insurance coverage, issued by an insurance company licensed or otherwise qualified to issue liability insurance policies or coverage in the State of California, and acceptable to Foundation's Board, in an amount of at least ten million dollars (\$10,000,000) or, from time to time, such other amount that is consistent with that obtained by PPH for its own coverage. As of the Effective Date, Parties acknowledge the BETA Healthcare Group Policy, issued to PPH in the amount of ten million dollars (\$10,000,000), that meets the terms of this Section 5.1.

**5.2 Certificate of Insurance.** On or before the Effective Date, PPH shall provide Foundation with a copy of the certificate evidencing liability insurance coverage, and shall provide Foundation with proof of continued liability insurance coverage on an annual basis (or as periodically requested by Foundation's Board). PPH shall provide Foundation with no less than thirty (30) days prior written notice of cancellation or any material change in such liability insurance coverage.

**ARTICLE VI.**  
**TERM AND TERMINATION**

**6.1 Term.** This Agreement shall become effective on September 1, 2005 (the "Effective Date"), and shall continue until June 30, 2010 (the "Expiration Date"), subject to the termination provisions of this Agreement. All reference to "fiscal year" as used in this Agreement shall refer to the twelve months ending on June 30 of each year, except for the first year of the Term for which the fiscal year shall be the ten months ending on June 30, 2006.

**6.2 Termination by PPH.** PPH shall have the right to terminate this Agreement upon the occurrence of any one or more of the following events:

- (a) Breach of this Agreement by Foundation where the breach is not cured within thirty (30) calendar days after PPH gives written notice of the breach to Foundation;
- (b) Breach by Foundation of the requirements under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (as set forth in Exhibit 8.2);
- (c) Foundation is rendered unable to comply with the terms of this Agreement for any reason; or
- (d) Upon ninety (90) calendar days written notice without cause to Foundation in all other cases.

**6.3 Termination by Foundation.** Foundation shall have the right to terminate this Agreement according to the following terms and conditions:

- (a) Breach of this Agreement by PPH where the breach is not cured within thirty (30) calendar days after Foundation gives written notice of the breach to PPH or if the breach is not curable, then thirty (30) calendar days after Foundation gives written notice of the breach to PPH;
- (b) Foundation is rendered legally unable to comply with the terms of this Agreement for any reason, in which case termination shall be coterminous with the date of such legal inability; or
- (c) Upon ninety (90) calendar days written notice without cause to PPH in all other cases.

**6.4 Termination or Modification in the Event of Government Action.** If the Parties receive notice of any Government Action (defined below), the Parties shall attempt to amend this Agreement in order to comply with the Government Action. If the Parties, acting in good faith, are unable to agree to 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, this Agreement shall be terminated ten days after one party gives notice to the other of such fact. 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, interpretation, finding, or action by any governmental or private agency, court or other third-party which, in the opinion of counsel to PPH, because of the arrangement between the Parties pursuant to this Agreement, if or when implemented, would:

(a) revoke or jeopardize the status of any health facility license granted to PPH or any Affiliate (defined below) of PPH;

(b) prevent Foundation from being able to access and use the facilities of PPH or any Affiliate of PPH; or

(c) subject PPH, any Affiliate of PPH, Foundation, or any of their respective employees or agents, to civil or criminal prosecution (including any excise 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 Section, "Affiliate" shall mean any entity which, directly or indirectly, controls, is controlled by or is under common control with PPH.

**6.5 Rights upon Termination.** 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. Notwithstanding the above, upon termination of this Agreement by PPH and Foundation pursuant to Sections 6.2 and 6.3, respectively, of this Agreement, the outstanding principal amount of the Advances and all accrued but unpaid interest shall automatically become due and payable.

**6.6 Return of Property.** Upon any termination or expiration of this Agreement, Foundation shall immediately return and surrender to PPH all Office Space, FF&E and any other property of PPH, in good condition, normal wear and tear excepted, free and clear of any lien, security interest, claim or encumbrance of any kind, unless previously agreed to in writing by PPH.

**6.7 No Personal Liability of Foundation Directors or Officers.** PPH agrees that except in the case of criminal or grossly negligent conduct committed by the officers or directors of Foundation, PPH shall not seek to impose personal liability upon any officer or director of Foundation arising from or relating to: (a) any act, action, or inaction of any such officer or director, (b) any Advances as set forth above, (c) the Note, or (d) any indemnification of PPH given under this Agreement or in any documentation relating to this Agreement.

## **ARTICLE VII.**

### **TRADE SECRETS, TRADENAMES AND SERVICE MARKS**

**7.1 Trade Secrets.** During the term of this Agreement, Foundation will have access to and become acquainted with confidential information and trade secrets of PPH, including information and data relating to contracts and accounts, clients, billing practices and procedures, business techniques and methods, strategic plans, operations and related data (collectively, "Trade Secrets"). All Trade Secrets are the property of PPH and used in the course of PPH's

business, and shall be proprietary information protected under the Uniform Trade Secrets Act. Foundation shall not disclose to any person or entity, directly or indirectly, either during the term of this Agreement or at any time thereafter, any Trade Secrets, or use any Trade Secrets other than in the course of meeting Foundation's obligations under this Agreement. For purposes of this Agreement, any information which is or becomes part of the public domain, other than as a result of an improper disclosure by Foundation, is excluded from the definition of "Trade Secret."

**7.2 Tradenames and Service Marks.** PPH may adopt one or more tradenames or service marks. Foundation authorizes PPH to associate such tradenames or service marks with Foundation's name on any correspondence or other public or private communication or advertisement. During the term of this Agreement, Foundation shall not, absent PPH's prior written consent, use such tradenames or service marks. Foundation further agrees that upon any termination or expiration of this Agreement, Foundation shall not use such tradenames or service marks or contest PPH's sole and exclusive ownership and right to the use of such tradenames or service marks.

**7.3 Injunctive Relief.** Foundation acknowledges that any violation of the provisions of this Article will cause PPH irreparable injury. Accordingly, PPH may enforce such provisions by seeking injunctive or other equitable relief in addition to any other remedies available at law. If a court of competent jurisdiction declares any of the provision of this Article to be too broad to be specifically enforced, such provisions shall be enforced to the maximum extent permitted by law.

## **ARTICLE VIII.** **GENERAL PROVISIONS**

**8.1 Independent Contractor.** PPH is and shall at all times be an independent contractor with respect to Foundation in meeting PPH's 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 PPH and Foundation.

**8.2 Compliance with HIPAA.** PPH and Foundation shall comply with the HIPAA requirements as defined and set forth in Exhibit 8.2. The HIPAA requirements shall survive the expiration or termination of this Agreement for any reason.

**8.3 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 attached to this Agreement.

**8.4 Dispute Resolution.** In the event of any disagreement, dispute or claim (collectively, a "Dispute") arises between the Parties hereto with respect to whether an alleged breach hereof has or has not occurred, or with respect to any other matter related to or arising out of this Agreement, or the relationship or transactions contemplated hereby, the Dispute shall be resolved in accordance with the following procedures:

(a) **Meet and Confer.** In the event of a Dispute, either Party may give written notice to the other Party setting forth the nature of the Dispute (the "**Dispute Notice**"). The Parties shall meet and confer to discuss in good faith and attempt to resolve the Dispute within fifteen (15) days of the Party receiving the Dispute Notice. The representatives of the Parties shall meet at such date(s) and time(s) as are mutually convenient to the representatives of each Party within the 15-day period.

(b) **Arbitration.** Except as set forth below, any Dispute that cannot be resolved by the Parties under Section 8.4(a) within the 30-day meet-and-confer period, shall be submitted to final binding arbitration, as follows:

- (i) ***Designation of an Arbitrator.*** A single disinterested third party shall be selected by mutual agreement of the Parties. If the Parties are unable to mutually select an arbitrator within (15) days after each party notifies the other of its desire to arbitrate the Dispute, then the arbitrator shall be selected, and the arbitration shall be conducted, in accordance with JAMS's then-current Comprehensive Arbitration Rules and Procedures or Streamlined Rules of Practice and Procedure, as appropriate, depending on the amount in dispute.
- (ii) ***Venue.*** The arbitration shall be conducted in the County of San Diego, California, unless the Parties mutually determine that another venue would be more convenient.
- (iii) ***Arbitrator's Expenses and Fees.*** JAMS' administrative fees and the expenses and fees of the arbitrator shall be divided among the Parties equally. Each Party shall pay its own counsel fees, witness fees, and other expenses incurred.

**8.5 Assignment.** Except for assignment by PPH to an entity owned, controlled by, or under common control with PPH, neither Party may assign any interest or obligation under this Agreement without the 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 successors and assigns.

**8.6 Attorneys' Fees.** If either Party brings an action for any relief or collection against the other Party, declaratory or otherwise, arising out of the arrangement described in this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' fees and costs actually incurred in bringing such action, 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 in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. For the purpose of this Section, attorneys' fees shall include fees incurred in connection with discovery, post judgment motions, contempt proceedings, garnishment and levy.



**8.7 Authorized Persons.** Whenever any consent, approval or determination of a Party is required pursuant to this Agreement, the consent, approval or determination shall be rendered on behalf of the Party by the person or persons duly authorized to do so, which the other Party shall be justified in assuming means any officer of the Party rendering such consent, approval or determination, or the Party's board of directors.

**8.8 Choice of Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of California, except choice of law rules that would require the application of the laws of any other jurisdiction.

**8.9 Compliance with Laws.** Foundation shall comply with applicable laws, ordinances, codes and regulations of federal, state and local governments, including laws that require Foundation to disclose any economic interest or relationship with PPH.

**8.10 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.

**8.11 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, discussions or past practices between the Parties. No other understanding between the Parties shall be binding on them unless set forth in writing, signed and attached to this Agreement.

**8.12 Exhibits.** The attached exhibits, together with all documents incorporated by reference in the exhibits, form an integral part of this Agreement and are incorporated into this Agreement wherever reference is made to them to the same extent as if they were set out in full at the point at which such reference is made.

**8.13 Force Majeure.** Except with respect to obligations imposed with regard to payments to be paid by Foundation under this Agreement, neither Party is liable for nonperformance or defective 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), action of any governmental authority, riots, revolutions, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, failure of utilities, or strikes (or similar nonperformance or defective performance or late performance of employees, suppliers or subcontractors).

**8.14 Further Assurances; Good Faith.** Each Party shall, at the reasonable request of the other Party, execute and deliver to the other party all further instruments, assignments, assurances and other documents, and take any actions as the other Party reasonably requests in connection with the carrying out of this Agreement. In performing its obligations under this Agreement, each Party shall act in good faith.

**8.15 Indemnification.** To the extent that such acts or omissions are not covered by insurance, each Party shall indemnify, hold harmless and defend the other Party and its officers,

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agents or employees, against any loss or liability arising out of or resulting in any way from the acts or omissions of such Party or its own officers, employees or agents, except that any such obligation to indemnify and hold harmless shall be reduced by any amount of such loss or liability arising from the contributory acts or omissions of the indemnified Party and its owners, employees or agents. This obligation shall not be qualified or eliminated by an allegation or finding that the other Party or any of its personnel is responsible for a passively negligent act or omission. This section shall survive the termination of this Agreement.

**8.16 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.

**8.17 Interruption of Services.** Notwithstanding any provision in this Agreement to the contrary, PPH shall not be liable to Foundation in damages or otherwise for any failure, interruption or curtailment of any building service or utility (including without limitation heating, plumbing, electrical systems, security systems, communication systems, and fire protection and detection systems), or of the use of the FF&E, or the Office Space. PPH shall not be liable to Foundation for any injury or damage to Foundation or from damage to the goods, wares, merchandise or other property of Foundation's invitees or any other person in or about the Office Space, or for injury to the person of Foundation's employees (collectively, "Damages"), whether such Damages are caused by or result from fire, steam, electricity, gas, water or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, electrical systems, wires, appliances, plumbing, heating, air conditioning, lighting fixtures, security systems, communication systems, or fire protection and detection systems, or from any other cause relating to the condition of the Office Space or the FF&E, whether such Damages result from conditions arising in, on or upon the Office Space or in, on or upon other portions of the building of which the Office Space is a part or from other sources or places (including without limitation windstorm, hurricane or rainstorm), and regardless of whether the cause of such Damages or the means of repairing such Damages is inaccessible to Foundation. PPH shall not be liable for any Damages arising from (i) any act or neglect of any other tenant of the building (if any) in which the Office Space is located.

**8.18 Periodic Review.** This Agreement contemplates a close operating relationship between PPH and Foundation that will exist over a long period of time. The Board of Foundation is expected to be comprised of volunteers and donors; the board of PPH is comprised of elected officials. Accordingly, in approving this Agreement and directing its officers to enter into this Agreement on its behalf, PPH agrees that it will at six month intervals appoint a committee of not less than two individuals from among the elected members of its board of directors (i.e., the ad hoc committee would be exclusively comprised of individuals elected by the public to the board of PPH), which ad hoc committee shall on a semi-annual basis meet with a like number of members selected by the Chairman of the Board of Foundation. At each such semi-annual meeting, the participants shall mutually review the performance of both Parties to this Agreement, identifying deficiencies in the performance of either or both Parties to this Agreement, developing (as necessary) a plan for addressing any such deficiencies, discussing potential modifications to the terms and conditions of this Agreement and the responsibilities of the Parties as set forth herein, reviewing the outstanding principal amount of Advances, including all accrued but unpaid interest thereon, made pursuant to this Agreement and

addressing repayment of such amounts, and at the appropriate time addressing a plan for Foundation to attain self-sufficiency.

**8.19 Notices.** All notices or communications required or permitted under this Agreement shall be given in writing and delivered personally or sent by United States registered or certified mail with postage prepaid and return receipt requested or by overnight delivery service (e.g., Federal Express, DHL). Notice is deemed given when sent, if sent as specified in this Section, or otherwise deemed given when received. In each case, notice shall be delivered or sent to:

**If to PPH, addressed to:**

Palomar Pomerado Health

\_\_\_\_\_

Attention: \_\_\_\_\_

**If to Foundation, addressed to:**

Palomar Pomerado Health Foundation

\_\_\_\_\_

Attention: \_\_\_\_\_

Either Party may provide for a different address by notifying the other Party of such change as provided for in this Section.

**8.20 Severability.** If any provision of this Agreement is determined to be illegal or unenforceable, that provision shall be severed from this Agreement, and such severance shall have no effect upon the enforceability of the remainder of this Agreement unless the purpose of this Agreement is thereby destroyed.

**8.21 No Third-Party Beneficiary Rights.** The Parties do not intend to confer and this Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the Parties, including but not limited to the Personnel.

**8.22 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 to be effective, and shall apply solely to the specific instance expressly stated.

**8.23 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The Parties have executed this Agreement on the date written below (the "Execution Date").

**PALOMAR POMERADO HEALTH,**  
a California local health care district

Date: September 1, 2005

**DRAFT-DO NOT SIGN** \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**PALOMAR POMERADO HEALTH FOUNDATION,**  
a California nonprofit public benefit corporation

Date: September 1, 2005

**DRAFT-DO NOT SIGN** \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

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**EXHIBIT 1.1**

**ADMINISTRATIVE AND MANAGEMENT SERVICES**

1. **Financial Management Services.** PPH shall provide financial management services necessary and appropriate for the operation of Foundation, including accounting, bookkeeping, operating and capital budgeting, tax matters, payroll, pledge receivables and accounts payable processing, and electronic data processing. In providing financial management services, PPH shall create and implement, following Foundation Board's approval, appropriate segregation of duty policies and procedures. All business records, papers and documents shall remain the sole property of Foundation, shall be available for inspection by Foundation at all reasonable times, and shall be deliverable to Foundation upon any termination of this Agreement. PPH shall be entitled to copy and retain a complete copy of all such documents upon any termination or expiration of this Agreement.
2. **Compliance Program.** PPH shall develop a compliance program for Foundation, which shall be implemented following the approval, not unreasonably withheld, of Foundation's Board. The compliance shall include, but not be limited to, (i) establishing, implementing, consolidating and maintaining internal controls; (ii) monitoring controls to consider whether they are operating as intended; and (iii) ensuring that controls are modified as appropriate for changes in conditions. The compliance program shall encompass the establishment of an Audit Committee in accordance with the Nonprofit Integrity Act of 2004.
3. **Documentation.** PPH shall work with Foundation's Auditor in providing the following: (i) copies of articles and bylaws; (ii) books of account, minutes of proceedings and membership lists; (iii) waivers of notice, consents to holding and approvals of board meetings; (iv) consents to board action without meeting; (v) tax records (*e.g.*, Foundation tax returns); and (vi) general information.
4. **Preparation of Financial Statements.** PPH shall provide Foundation financial statements in a form that is acceptable and approved by Foundation's Board. Financial statements shall be presented to Foundation on a monthly basis, even during months of Board's inactivity. Annual financial statements prepared by an Audit Committee shall be subject to the approval, not unreasonably withheld, of Foundation's Board prior to finalization. All financial reports and filings shall comply with the regulations set forth in the Nonprofit Integrity Act of 2004.
5. **Operating and Capital Budgets.** A proposed operating and capital budget shall be developed prior to the close of the fiscal year and submitted to PPH on no later than 30 days before the close of such fiscal year. The operating and capital budgets shall be adopted following the Parties' approval. PPH shall have the right to review Foundation's operating and capital budget on a quarterly basis and in the event of an unexpected material change from the approved budgets. PPH may approve or modify the proposed capital and operating budget in whole or in part. In events where Foundation wishes to borrow additional funds exceeding those approved by PPH in the capital and operating

budgets, Foundation shall submit a written request to PPH, which PPH may approve or disprove, but nothing shall require PPH to do so.

6. **Grants.** Decisions with respect to grants will be made by Foundation's Joint Gift Acceptance Committee in collaboration with Palomar Pomerado North County Health Development, Inc., taking into account such input as is offered by PPH. The Joint Gift Acceptance Committee will consist of Foundation representatives and two individuals designated by PPH who are not PPH board members.
7. **Significant Receipts.** PPH shall provide Foundation's Board with a summary review of significant receipts received by Foundation on a monthly basis and upon specific request, shall promptly provide to Foundation Board of Directors, and to any requesting member of Foundation's Board of Directors, all requested financial information relating to Foundation.
8. **Investment Services.** PPH and Foundation shall mutually select and PPH shall retain and/or hire an investment manager or managers to review and prepare a summary of the Foundation's assets held for the production of income or for investment. The summary shall be presented and reviewed by Foundation's Board on a periodic basis.
9. **Planned Giving.** PPH shall designate an individual, subject to the approval of Foundation's Board, to oversee the planned giving function.
10. **Restricted Gift Accounting.** PPH shall provide to Foundation sufficient documentation as to the proper application of all disbursements made to PPH by Foundation so as to enable Foundation and the members of Foundation's Board to fully comply with all requirements of law relating to accounting for gifts or contributions as to which the donor thereof has attached a restriction.
11. **Right to Approve Executive Director.** Except as otherwise agreed between Foundation and PPH, Foundation shall provide input and shall advise PPH with respect to the selection, performance and annual evaluation of the Executive Director of Foundation, who shall be employed by PPH and whose services shall be provided to Foundation pursuant to this Agreement. PPH shall continue to provide an Executive Director acceptable to Foundation. Should the Executive Director change, any new Executive Director proposed by PPH shall be approved by the majority vote of Foundation Board of Directors.
12. **Personnel.** PPH shall provide the services of such full-time, part-time and/or contract employees to Foundation as PPH deems necessary for the operation of Foundation in accordance with this Agreement. Such employees are referred to in this Agreement as "Personnel." PPH shall be responsible for the day-to-day management of Personnel.
  - a. **Selection, Hiring, Supervision, and Termination.** Except as otherwise agreed between PPH and Foundation (i) PPH shall be exclusively responsible for the selection, hiring, supervision and discipline and, if necessary, termination of all Personnel providing services for the benefit of Foundation; (ii) the Executive

Director of Foundation shall review the performance of the Personnel on an annual basis and provide such performance evaluation to PPH for its use; and (iii) the Board of Directors of Foundation shall review the performance of the Executive Director on an annual basis and provide such performance evaluation to PPH for its use.

- b. **Compensation and Employee Benefits.** Except as otherwise agreed between PPH and Foundation, PPH shall have full and sole legal control over and responsibility for payments to all Personnel, including salaries, deferred compensation, fringe benefits, bonuses, health insurance, long-term disability and group life insurance, workers' compensation insurance, unemployment insurance, retirement benefits and any other benefits that Personnel may receive. PPH shall be responsible for all employee record keeping, payroll accounting (including social security and other payroll tax reporting), income tax withholding, social security and other payroll taxes, forms processing, payroll and Internal Revenue Service filings and records storage and retrieval on behalf of all Personnel.
  - c. **Direction and Control.** All Personnel shall be subject to the direction and control of PPH, and, at the discretion of PPH, shall be subject to PPH's standard personnel policies and procedures. Except as otherwise agreed between PPH and Foundation, PPH shall have full and sole control over and responsibility for the method, manner, means, time, and place of performance of the work of all Personnel, including compliance with all applicable wage and hour obligations, compliance with all applicable occupational safety and health laws, obligations under the Immigration Reform and Control Act of 1986, and any other applicable employment law requirements.
  - d. **Volunteers.** Volunteers performing services for Foundation shall be subject to PPH's approval, supervision, direction, control, and, if applicable, recordkeeping and workers' compensation coverage, in the same manner as Personnel. For purposes of this Section 12(d), a "volunteer" is a person qualifying under the definition set forth in Labor Code section 3352(i).
13. **Workers' Compensation Coverage.** The Parties agree that, for purposes of the exclusive remedy provisions of applicable California workers' compensation law, Foundation shall be the "special employer" of the Personnel, and PPH shall be the "general employer" of the Personnel. Both Foundation and PPH shall be subject to the exclusive remedy provisions of California Labor Code section 3602 with respect to the Personnel.
14. **Legal Counsel/Consultants.** PPH shall retain on behalf of Foundation legal counsel or consultants for certain legal and operational need, as necessary, and such legal counsel may be that routinely used by PPH; provided however, that when the need for legal counsel to Foundation may relate to a situation in which the issues for which counsel or the consultants are being sought are those that affect the relationship between PPH and Foundation, then in all of such instances Foundation shall select its own counsel and/or

consultants and the costs of the same shall *not* be a proper expense of Foundation pursuant to Section 3.3 of this Agreement.

15. **Meetings.** PPH shall meet with Foundation periodically to discuss PPH's performance in the selection and retention of Personnel and services under this Agreement.
16. **Day-to-Day Services.** PPH shall furnish or obtain all telephones, paging devices, office services (including secretarial, transcription, reception, scheduling, duplication and facsimile services), janitorial services, maintenance services, security services, and any other services of a similar nature reasonably necessary in connection with the day-to-day operations of Foundation.



**EXHIBIT 1.3**

**POWER OF ATTORNEY**

Effective as of September 1, 2005, PALOMAR POMERADO HEALTH FOUNDATION, a California nonprofit public benefit corporation ("Foundation") appoints PALOMAR POMERADO HEALTH, a local health care district organized under the laws of the State of California ("PPH"), as Foundation's attorney in fact to perform the following acts in Foundation's name and place:

(a) Collections. To collect all donations and grants from whatever source;

(b) Banking Powers. To deposit all donations and grants directly into a bank account held in Foundation's name at a banking institution mutually selected by PPH and Foundation. PPH (and any subcontractor designated by PPH) shall have the right to make withdrawals from such account to pay all costs and expenses incurred in the operation of Foundation, including payment of the Foundation Expenses as set forth in Exhibit 2.1 of the Management Services Agreement (the "Agreement"), and to fulfill all other terms of such Agreement. By this Power of Attorney, Foundation also grants PPH full authority to perform any act necessary and appropriate to the exercise of the foregoing purposes and to accomplish those purposes set forth in the Agreement between Foundation and PPH dated as of the date of this Power of Attorney, and ratifies every act that PPH may lawfully perform by virtue of this Power of Attorney; and

(c) Gifts. To file all documents and take all actions necessary to effectuate the receipt of gifts approved by the Joint Gift Acceptance Committee as such Committee is identified in the Agreement.

This Power of Attorney shall be effective as of the Effective Date of the Agreement and shall terminate upon the expiration or termination of the Agreement.

By this Power of Attorney, Foundation grants PPH the authority to determine, in PPH's sole discretion, the time, manner and purpose for which any power conferred upon PPH in this Power of Attorney shall be exercised, as well as the conditions, provisions and covenants of any instruments which may be executed by PPH pursuant to this Power of Attorney.

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**DRAFT-DO NOT SIGN**  
**For discussion purposes only.**

**PALOMAR POMERADO HEALTH FOUNDATION,**  
**a California nonprofit public benefit corporation**

Date: September 1, 2005

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

**[EXHIBIT 1.4]**

**OFFICE SPACE LICENSE AGREEMENT**

THIS LICENSE AGREEMENT ("License") is effective as of September 1, 2005 (the "Effective Date") by and between PALOMAR POMERADO HEALTH, a local health care district organized under the laws of the State of California ("Licensor"), and PALOMAR POMERADO HEALTH FOUNDATION, a California nonprofit public benefit corporation ("Licensee"). Licensor and Licensee are sometimes referred to in this License as a "Party" or, collectively, as the "Parties."

**RECITALS**

A. Licensee is a nonprofit philanthropic organization in San Diego, California ("Foundation") and operates to support PPH and its programs. Licensee's mission is the enhancement of individual and community health through the philanthropic support of Licensor.

B. Licensor provides certain management services to Licensee pursuant to that certain Management Services Agreement (the "Agreement"), effective as of September 1, 2005.

C. Pursuant to Section 1.4 of the Agreement, Licensor must provide Licensee with sufficient office space to enable Licensee to operate the Foundation.

D. Licensor desires to provide Licensee with a license to occupy and operate the Foundation in the office space identified in this License.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1.1 **License.** Licensor grants to Licensee a license to enter and occupy the property as described in the Attachment hereto (the "Premises") for commercial use by Licensee while Licensee is operating the Foundation (the "License"). The License grants Licensee only the use of the Premises and does not extend to or include any surrounding or contiguous area.

1.2 **License Only; Relationship of Parties.** The provisions of this License shall be deemed to create a mere license only, personal to Licensee, revocable by Licensor in its sole discretion, and shall not be construed to be an agreement, sublease, assignment or any other conveyance of any interest in or to the Premises or to anything contained therein or thereon. Nothing herein shall create, nor be deemed to create, an agency or partnership relationship between the Parties, and neither Party shall have the right to bind the other without its consent with respect to obligations to third parties. Licensor shall not be liable in any way to any person, firm or corporation as a result of any act or omission by Licensee, any entity associated with it, or any of their respective officers, directors, employees, representatives or other agents, or otherwise resulting from, arising out of or related in any way to the License or any use of the Premises by Licensee.

**1.3 Permitted Uses.** Licensee shall use the Premises solely to carry out its mission, and for no other purpose. Licensee shall not: (a) use or permit the use of the Premises or any part thereof in any way which would violate the terms of this License or any applicable law, rules or regulations, or for any unlawful purposes or in any unlawful manner; or (b) suffer or permit the Premises or any part thereof to be used in any manner, or anything to be done or anything to be brought into or kept on the Premises that, in the reasonable judgment of Licensor, impairs or tends to impair or interfere with the character of Licensor or the appearance of the Premises.

**1.4 Maintenance Costs.** Licensor, subject to the provisions of the Facility Lease Agreement, shall be solely responsible for maintenance costs associated with the operation and maintenance of the office space during the term of this Agreement, unless otherwise agreed to in writing by the Parties.

**1.5 Compliance.** Licensor shall be solely responsible for identifying compliance of the Premises with all applicable laws, including without limitation all fire codes and Americans With Disability Act rulings and regulations.

**1.6 Conduct of Business; Control of Premises.** Use and operation of the Premises shall at all time be under the direction and control of Licensee. Licensee shall not permit any person upon the Premises, except under the direction and control of Licensee, and in case of any injury to or death of any person, or damage to any property, by any person permitted or allowed on the Premises by Licensee, it shall be conclusively presumed for this purpose that the person permitted or allowed on the Premises by Licensee and causing the same is under the control and direction of Licensee.

**1.7 Alterations and Modifications.** Licensee shall not make, without prior written consent of Licensor, any alterations or structural or other modifications to the Premises or affix any permanent modifications on any of the surfaces thereof (such as wallpaper, flooring, etc.).

**1.8 Initial Condition of Premises.** It is understood that Licensor makes no representations or warranties whatsoever in connection with the License, including without limitation any warranties regarding the condition of the Premises or their suitability for the use described herein or for any other use. Licensee acknowledges and represents to Licensor that Licensee hereby accepts the Premises in its existing condition and state of repair (i.e., in "as is" and "where is" condition).

**1.9 Condition of Premises upon Completion.** Before the expiration or earlier termination of this License, Licensee shall, at its sole cost and expense, remove any and all improvements placed on the Premises by Licensee or otherwise pursuant to this License, clean the Premises and remove all materials and rubbish, and leave the Premises in as good condition as existed upon the Execution Date, reasonable wear and tear excepted.

**1.10 Damages.** Licensee shall pay to Licensor, on demand, the costs of any repairs required to be made to the Premises as a result of Licensee's (or its guests, invitees or any other persons admitted to the Premises by Licensee) use of the Premises.

**1.11 Hold Harmless; Indemnity.** Licensee shall indemnify, protect, defend (with counsel acceptable to Licensor) and hold harmless Licensor and its employees, contractors, and agents from all liability, judgments, costs, damages, claims or demands, including reasonable attorneys' fees, asserted by third parties and arising out of the use of the Premises by Licensee, invitee or employee of Licensee, out of the conduct of Licensees' operations, out of anything done by Licensee, or permitted by Licensee, to be done in or about the Premises, or out of any accident, injury, death, or damage to any person or property occurring in, on or about the Premises. Licensor need not first have paid any such expense in order to be so indemnified. Licensor agrees to notify Licensee promptly following Licensor's learning of any such claims, provided that Licensor's failure to provide such notice shall not diminish Licensee's obligations hereunder. Without limiting Licensor's rights under the foregoing, Licensor agrees that except in the case of criminal or grossly negligent conduct committed by the officers or directors of Licensee, Licensor shall not seek to impose personal liability upon any officer or director of Licensee relating to the indemnification set forth herein.

**1.12 Termination.** Either Party shall have the right to terminate the License, with or without cause, upon ninety (90) days written notice to the other Party.

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The Parties executed this License on the date set forth below.

**LICENSOR**

**PALOMAR POMERADO HEALTH,**  
a California nonprofit health care district

Date: September 1, 2005

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

**LICENSEE**

**PALOMAR POMERADO HEALTH FOUNDATION,**  
a California nonprofit public benefit corporation

Date: September 1, 2005

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

**ATTACHMENT TO EXHIBIT 1.4**  
**DESCRIPTION OF OFFICE SPACE**

ADDRESS/DESCRIPTION	SQUARE FOOTAGE
[960 Canterbury, San Diego, CA]	[ ]

**EXHIBIT 1.7**

**DESCRIPTION OF FF&E**

<b>Type</b>	<b>Description</b>	<b>Quantity</b>
Leasehold Improvements		
Furniture		
Computer and Peripheral Hardware		
Computer Software		
[ ]		
[ ]		



**EXHIBIT 1.8**

**INFORMATION SYSTEM FUNCTIONS**

Operating System

Phone System

Internet Broadband Connection

Power and Server Back-up (as deemed necessary)

All necessary application software

All necessary hardware—including, but not limited to  
servers, PC's printers, fax(es), and photocopiers

Other comparable equipment as requested by Foundation's Board and approved  
by PPH from time-to-time

**EXHIBIT 2.1**

**COMPENSATION**

1. **Foundation Expenses.** For purposes of this Exhibit, "Foundation Expenses" means all expenses or costs incurred by PPH, for which PPH is financially liable. Foundation Expenses shall include, but are not limited, to all of the following:
  - (1) the direct costs plus applicable benefits of Personnel, commonly referred to as salary, wages, and benefits, that provide services at or in connection with the functions of Foundation, such as management, accounting, fundraising, etc., provided that such services are provided and/or coordinated by PPH. Where an employee does not spend all of his or her time working on behalf of Foundation or Foundation activities, but also spends time working on PPH activities, PPH shall allocate that persons time between PPH and Foundation, and the costs associated with the allocation of that person's time to Foundation shall be a Foundation Expense;
  - (2) direct and allocated out-of-pocket expense of using, purchasing or otherwise procuring the Office Space and the FF&E, including depreciation and taxes;
  - (3) direct and allocated cost of capital (such as actual interest on indebtedness incurred on behalf of Foundation) to finance or refinance obligations of Foundation, purchase equipment, or finance fundraising activities of Foundation;
  - (4) direct and allocated information technology;
  - (5) direct and allocated taxes;
  - (6) direct and allocated marketing and advertising expenses;
  - (7) direct and allocated insurance;
  - (8) direct supplies
  - (9) direct purchase services, including professional fees and consulting; and
  - (10) other costs that are the responsibility of Foundation under this Agreement.
2. **General Allocation.** Where costs cannot be directly identified as being attributable to Foundation, PPH shall allocate those costs in a manner which is reasonable.
3. **Priority of Payments.** Each month, any payments made by Foundation to PPH shall be first applied to current Foundation Expenses and then to any outstanding obligation of Foundation to PPH.

**EXHIBIT 3.4**

**NOTICE OF BORROWING**

**[LETTERHEAD OF PALOMAR POMERADO HEALTH FOUNDATION]**

[Address of Foundation]

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

Re: Notice of Borrowing

To Whom It May Concern:

Please take notice that Palomar Pomerado Health Foundation, a California nonprofit public benefit corporation ("Foundation"), desires to borrow an Advance of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) from Palomar Pomerado Health, a local health care district organized under the laws of the State of California ("PPH"), on \_\_\_\_\_, 20\_\_ (the "Funding Date"). Advance requests exceeding One Hundred Thousand Dollars (\$100,000) must be accompanied by signatures from **both (a) PPH's Chief Executive Officer or Chief Financial Officer, and (b) Foundation's Chair or Treasurer.**

Foundation hereby certifies that as of the date of this Notice:

(a) all of Foundation's representations and warranties contained in the Management Services Agreement (the "Agreement") and all exhibits to the Agreement shall be true, correct and complete in all material respects to the same extent as though made on and as of that date;

(b) no Event of Default (as defined in Exhibit 4.1(b) of the Agreement) shall have occurred and shall continue, or shall result from, making the Advance;

(c) no law or regulation of general application shall prohibit, nor any order, judgment or decree of any court, arbitrator or governmental authority specifically naming Foundation and known to Foundation, shall purport to enjoin or restrain PPH from making the Advance; and

(d) no change having a Material Adverse Effect on Foundation (as such term is defined in the Agreement), either individually or in the aggregate, shall have occurred since the Execution Date.

Sincerely,

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

As Approved By

**PALOMAR POMERADO HEALTH,**  
a California nonprofit health care district

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

By: \_\_\_\_\_  
Its: Chief Executive Officer

**PALOMAR POMERADO HEALTH,**  
a California nonprofit health care district

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

By: \_\_\_\_\_  
Its: Chief Financial Officer

**PALOMAR POMERADO HEALTH FOUNDATION,**  
a California nonprofit public benefit corporation

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

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

**PALOMAR POMERADO HEALTH FOUNDATION,**  
a California nonprofit public benefit corporation

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

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

**EXHIBIT 4.1(a)**

**PROMISSORY NOTE**

[Place of Execution]

Not to Exceed \$3,000,000

**FOR VALUE RECEIVED**, Palomar Pomerado Health Foundation, a California nonprofit public benefit corporation ("Foundation"), promises to pay to the order of Palomar Pomerado Health, a local health care district organized under the laws of the State of California ("PPH"), the principal sum equal to the outstanding amount of Advances paid to Foundation pursuant to the Management Services Agreement by and between Foundation and PPH dated as of September 1, 2005 (the "Management Services Agreement"). Unless otherwise defined in this Promissory Note (the "Note"), each capitalized term shall have the meaning given in the Management Services Agreement. The outstanding principal amount of the Advances provided to Foundation pursuant to the Management Services Agreement (the "Principal") shall not exceed **Three Million Dollars (\$3,000,000)**.

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

(a) Foundation hereby promises to pay to the order of PPH, at such place as PPH 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 Advances at a rate equal to two and one-half percent (2.5%) above the one (1) year LIBOR (the "Interest Rate"), computed annually on the basis of a 360-day year, and the number of days elapsed from the date each Advance is deposited into Foundation's Account until the outstanding Advances are repaid. Accrued interest shall be paid monthly in arrears on the first Business Day of each month. The interest rate shall be adjusted quarterly to reflect changes in the prime rate. The first (1st) Advance shall fix the prime rate for that calendar quarter. Any subsequent Advance in that quarter shall be assigned the same prime rate. Notwithstanding any other provision of this Agreement, the Interest Rate shall not exceed the maximum rate permitted by applicable law (the "Permitted Rate"). If any payments in the nature of interest exceed the Permitted Rate, as finally determined by a court of competent jurisdiction, any such amount in excess shall be considered payment of Principal and the Principal outstanding shall be reduced accordingly.

**2. Repayment.**

(a) Notwithstanding any other provisions of this Note, Principal, accrued interest, and other applicable fees, costs and charges ("Costs"), if any, owing on this Note shall be payable as follows:

(b) Repayment. Principal and accrued interest thereon shall be payable in sixty (60) equal monthly installments sufficient to fully amortize the unpaid balance of this Note. Principal and accrued interest thereon shall be payable on the first (1<sup>st</sup>) Business Day of each successive calendar month beginning on the Credit Line Expiration Date and continuing until

the earlier of (i) the date on which the Principal and all accrued interest thereon, and all Costs, if any, are paid 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 Foundation to PPH no later than the Maturity Date, the "Maturity Date" shall mean the date that is sixty (60) months from the Credit Line Expiration Date

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

(d) Prepayment. Foundation 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 or alter the amount of any subsequent monthly installment. Any amounts prepaid prior to the Credit Line Expiration Date may be reborrowed.

3. Events of Default. The termination for any reason of the Management Services Agreement, the failure to make the full amount of any payment when due under this Note, or the occurrence of any Event of Default under the Management Services Agreement, shall each constitute an event of default ("Event of Default") under this Note.

4. Acceleration. If either an Event of Default (as defined in both Section 3 of this Note and Exhibit 4.1(b) of the Management Services Agreement) occurs, or if this Agreement is terminated by either PPH or Foundation pursuant to Sections 6.2 and 6.3, respectively, of the Management Services Agreement, PPH may, at its option, declare the entire Principal outstanding, together with accrued interest and all other Foundation Expenses immediately due and payable to PPH; and PPH shall have all rights, powers and remedies available under the Line of Credit Documents, or accorded by law to a beneficiary or a secured party, including the right to resort to any or all of the Collateral or any other security for any of the obligations of Foundation. PPH may exercise its rights and remedies with respect to the Collateral without resorting or regard to other security or sources for payment. All rights, powers and remedies of PPH in connection with each of the Line of Credit Documents may be exercised at any time by PPH, and from time to time after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

5. Termination. Upon the occurrence of an Event of Default or upon termination of the Management Services Agreement by PPH or Foundation pursuant to Sections 6.2 and 6.3, respectively, of the Management Services Agreement, the outstanding principal amount of the Advances, all accrued but unpaid interest and all other obligations of Foundation under this Note shall automatically become, or may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Management Services Agreement.

6. Costs of Collection. If PPH exercises its acceleration rights pursuant to this Note, in addition to the Principal outstanding and accrued interest thereon, PPH shall be entitled to collect all

costs of collection, including reasonable attorneys' fees incurred in connection with the protection or realization of collateral and PPH's reasonable collection efforts, whether or not suit on this Note or any foreclosure proceeding is filed. Any and all such costs and expenses shall be payable on demand and secured by the Security Agreement.

**7. Continuing Liability.** Following the occurrence of an Event of Default, Foundation's liability under this Note shall not be affected by PPH'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 Note), regardless of the order in which or the extent to which PPH may pursue any of such rights, powers or remedies, it being understood that the liability of Foundation shall cease only upon satisfaction in full of all of Foundation's obligations arising under this Note and the Management Services Agreement.

**8. No Waiver.** No failure on the part of PPH to exercise any right or remedy under this 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 for time to time shall constitute a waiver of the right to insist upon prompt payment, be deemed to be a novation of this Note or as a reinstatement of the debt evidenced by this Note, or be construed to preclude the exercise of any right which PPH may have under law, by agreement or otherwise. PPH 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. Foundation and endorsers of this Note consent to renewals and extensions of time at or after the maturity hereof, without notice, and hereby waive diligence, presentment, protest, demand and notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand under this Note.

**9. Waiver of Notice.** Foundation and each endorser or guarantor of this 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 Note, and (ii) agrees that PPH, 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. Choice of Law.** This Note shall be construed in accordance with and governed by the laws of the State 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 the State. Foundation and each endorser or guarantor hereby submit to jurisdiction in said State for the enforcement of Foundation's obligations under this Note and all other Line of Credit Documents, and waive any and all rights under the laws of any other state to object to jurisdiction within such State.

**11. Amendments.** This 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 Note.

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

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

**14. Security.** This Note is secured by a first priority security interest granted by Foundation to PPH in the Collateral described in that certain Security Agreement of even date herewith (the "Security Agreement") by and between Foundation and PPH. All of the provisions contained in the Security Agreement are hereby made a part of this Note to the same extent and with the same effect as if they were fully set forth in this Note.

**15. Severability.** If any provision of this 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 Note, and such severance shall have not effect upon the enforceability, performance or obligations of the remainder of this Note, including the remainder of such provision not determined to be illegal, invalid or unenforceable.

**16. Successors and Assigns.** The provisions of this Note shall inure to the benefit of and shall be binding upon the heirs, assigns, successors and representatives of Foundation and PPH, respectively. The term "Foundation" shall mean Foundation and each heir, successor, assign, and representative of Foundation as obligor of this Note; provided however, that PPH agrees that except in the case of criminal or grossly negligent conduct committed by the officers or directors of Foundation, PPH shall not seek to impose personal liability upon any officer or director of Foundation relating to the repayment of this Note. The term "PPH" shall mean PPH and each successor, assign, and representative of PPH as payee or holder of this Note.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



Foundation has executed and delivered this Note as of the date and at the place first above written.

**PALOMAR POMERADO HEALTH FOUNDATION,**  
**a California nonprofit public benefit corporation**

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



**EXHIBIT 4.1(b)**

**SECURITY AGREEMENT**

THIS SECURITY AGREEMENT (this "Security Agreement"), executed and delivered as of September 1, 2005, by PALOMAR POMERADO HEALTH FOUNDATION, a California nonprofit public benefit corporation ("Debtor"), for the benefit of PALOMAR POMERADO HEALTH, a local health care district organized under the laws of the State of California ("Secured Party").

**RECITALS**

A. Concurrently with the execution of this Security Agreement, Debtor and Secured Party are executing that certain Management Services Agreement (the "Agreement"), executed as of the date of this Security Agreement.

B. Debtor and Secured Party desire to enter into this Security Agreement to grant a security interest to Secured Party in the Collateral, as hereinafter defined, to secure the performance of the obligations and duties of Debtor under the Agreement and the Promissory Note ("Note") executed by Debtor in favor of Secured Party pursuant to such Agreement.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

**ARTICLE I.**

**COLLATERAL AND SECURITY INTEREST**

**1.1 Collateral and Grant of Security Interest.** Debtor hereby grants to Secured Party a security interest of first priority in the Collateral, as described in Attachment A, to secure the payment and performance of all indebtedness, liabilities and obligations of Debtor to Secured Party under the Agreement and repayment of the principal amount of the Advances (as defined in Section 3.2 of the Agreement) and accrued interest thereon pursuant to the Note. The security interest created by this Security Agreement shall attach immediately on execution of this Security Agreement by Debtor.

**1.2 Perfection and Priority.** Debtor shall take all action necessary to perfect the security interest granted to Secured Party in Section 1.1 of this Security Agreement. Secured Party's security interest in the Collateral is, and will continue to be, a first priority security interest which is free and clear of all liens, claims, security interest and encumbrances, except with respect to any liens, claims, security interest and encumbrances granted by statute or pursuant to any other agreement executed by and between Secured Party and Debtor. Secured Party shall have no duty to collect or protect the Collateral, nor to preserve rights against prior parties or any other rights pertaining to the Collateral except as may arise under other agreements between the parties. Secured Party shall perfect its security interest in the Account (as defined in Section 1.5 herein) by sending to the appropriate financial institution a letter in the form of

**Attachment B.** Secured Party is granted a Power of Attorney in the Agreement to perform certain acts relating to the financial assets of Debtor, and such Power of Attorney is intended by the parties hereto to reduce to possession Secured Party's security interest in such assets of Debtor as are covered by such Power of Attorney.

**1.3 Further Assurances.** Debtor shall, from time to time, at Debtor's expense, execute and file any financing or continuation statements, or amendments thereto, and other instruments, endorsements or notices, and take other actions, reasonably necessary or as Secured Party reasonably requests, in order to perfect and preserve the assignments and security interests granted or purported to be granted by this Security Agreement. Debtor authorizes Secured Party to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without Debtor's signature where permitted by law. Copies of any such statement or amendment shall promptly be delivered to Debtor. Debtor shall notify Secured Party of any change in Debtor's name, identity or corporate structure at least fifteen (15) days prior to any such change.

**1.4 Principal Place of Business.** Debtor's principal place of operation, where Debtor shall keep records regarding the Collateral, is located at [960 Canterbury, San Diego, CA]. Debtor shall not relocate Debtor's principal place of operation without providing at least sixty (60)-days prior written notice to Secured Party.

**1.5 Business Deposit Account.** Debtor, either itself or by a fiscal agency established in the Agreement, shall establish and maintain business deposit accounts ("Accounts") with \_\_\_\_\_, or such other financial institution as is mutually selected and approved in writing by Debtor and Secured Party (the "Depository Bank"). Debtor or its fiscal agent as established in the Agreement shall promptly deposit all donations and grants received by Debtor into the Account. If any Event of Default occurs, Secured Party may, by written notice to the Depository Bank, terminate Debtor's right to make any withdrawal from the Account and exercise any other right under this Agreement, at law, equity or otherwise applicable to the proceeds of the Account.

## **ARTICLE II.** **REPRESENTATIONS AND WARRANTIES**

Debtor makes the following representations and warranties to Secured Party, which shall be true and correct on and as of the date of this Agreement:

**2.1 Authorization and Validity.** This Security Agreement, and any other document, contract or instrument delivered to Secured Party in connection with this Security Agreement have **each** been duly authorized by Debtor, and are legal, valid and binding agreements and obligations of Debtor, enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.

**2.2 Governmental Consents.** No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local

governmental authority on the part of Debtor is required in connection with the consummation of the transactions contemplated by this Security Agreement.

**2.3 No Violation.** The execution, delivery and performance by Debtor of this Security Agreement, and any other document, contract or instrument delivered to Secured Party in connection with this Security Agreement, do not violate any provision of any law or regulation or result in a breach of or constitute a default under any contract, obligation, indenture or other instrument to which Debtor is a party or by which Debtor may be bound, except for any such breach or default which has been duly waived or consented to by all necessary parties.

**2.4 No Events of Default.** Debtor is not in default under any debt or obligation of Debtor and no event has occurred which would become an event of default under any such debt or obligation with or without the giving of notice, the lapse of time, or both.

**2.5 Collateral.** Except as may arise by reason of the language of its articles of incorporation or by reason of donor restrictions, both of such exceptions to the extent either exists under California law relating to charitable trusts, Debtor owns the property granted by it as Collateral to Secured Party free and clear of any and all liens, claims, charges, pledges, security interests, deeds of trust, mortgages and other encumbrances in favor of third parties, or any other arrangements having the practical effect of the foregoing, or preferential arrangements of any other kind.

**2.6 No Litigation.** There is no action, proceeding or investigation pending or threatened, or any basis therefor known to Debtor, that questions the validity of this Security Agreement or the right of Debtor to enter into this Security Agreement, or that would have, either individually or in the aggregate, a Material Adverse Effect. "Material Adverse Effect" shall mean a material adverse effect upon Debtor's purpose, function, operation or status or upon Secured Party's security interest in the Collateral. There is no judgment, decree or order of any court in effect against Debtor and Debtor is not in default with respect to any order of any governmental authority to which Debtor is a party or by which Debtor is bound.

**2.7 Existence and Authority.** Debtor is a public benefit corporation duly organized and validly existing in good standing under the laws of the State of California. Debtor has the power and authority, rights and franchises to own its properties and to carry on its operations as now conducted. Debtor has the power and authority to make and carry out this Security Agreement.

**ARTICLE III.**  
**COVENANTS OF DEBTOR**

Debtor covenants that so long as any indebtedness, liabilities and obligations (whether direct or contingent, liquidated or unliquidated) of Debtor to Secured Party under the Agreement (including payment of Foundation Expenses or repayment of the principal amount of the Advances and accrued interest thereon) remain outstanding, and until payment and performance in full of all obligations of Debtor under this Security Agreement:

**3.1 Compliance with Laws.** Debtor shall comply with the requirements of all laws, rules, regulations and orders of any governmental authority applicable to Debtor or its operation.

**3.2 Performance and Compliance with Other Agreements.** Debtor shall perform and comply in all material respects with each of the provisions of each material indenture, contract and other agreement by which Debtor or any of its properties is bound.

**3.3 Taxes and Other Liabilities.** Debtor shall pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real or personal and including federal and state income taxes, which in the aggregate the nonpayment of which would have a Material Adverse Effect, except such as Debtor may in good faith contest or as to which a bona fide dispute may arise, so long as provision is made to the satisfaction of Secured Party for eventual payment thereof if it is found that payment is an obligation of Debtor.

**3.4 Notices to Secured Party.** Within ten (10) days after Debtor has actual knowledge of the occurrence of each such event or matter, Debtor shall give written notice to Secured Party of: (i) the occurrence of any Event of Default (defined below), or any condition, event or act which would become an Event of Default with or without the giving of notice; or (ii) the commencement, or threatened commencement (of which Debtor has received written notice) of any litigation, arbitration or other proceeding against Debtor involving a reasonably potential liability.

**3.5 Records and Reports.** Debtor shall maintain books and records pertaining to the Collateral in such detail, form and scope as is consistent with good business practice, ensure that such books and records reflect Secured Party's interest in the Collateral, and permit Secured Party or its agents to enter upon the premises of Debtor at any time and from time to time, during normal business hours and upon reasonable notice under the circumstances, and at any time at all on and after the occurrence of an Event of Default, for the purposes of inspecting and verifying the Collateral, and inspecting and/or copying (at Debtor's expense) any and all records pertaining to the Collateral.

**3.6 Change in Collateral.** Debtor shall not transfer or otherwise dispose of or encumber all or any part of the Collateral, without Secured Party's prior written consent; provided, however, that in the absence of an Event of Default under this Agreement Debtor shall be entitled to utilize the Collateral in the ordinary course of business for the payment of the debts and obligations of Debtor in accordance with the terms set forth in the Agreement and any agreements, documents and exhibits incorporated in or ancillary to the Agreement. Debtor shall give Secured Party thirty (30) days' prior written notice of any proposed change in the location of any Collateral or in the location of Debtor's place of operation, advise Secured Party promptly, in sufficient detail, of any change relating to the type, quantity or quality of the Collateral, or any event which could have an adverse effect on the value of the Collateral or on the security interests granted to Secured Party in the Collateral, and defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest in the Collateral.

**3.7 Guaranties.** Debtor shall not agree to any guarantee or liability or become liable in any way as surety, endorser (other than as endorser of negotiable instruments for deposit or

collection in the ordinary course of business), accommodation endorser or otherwise for, nor pledge or hypothecate any assets of Debtor as security for, any liabilities or obligations of any other person or entity, without Secured Party's prior written consent.

**3.8 Change in Purpose and Operation.** Debtor shall not make any substantial change in the present character of Debtor's purpose and operation, without Secured Party's prior written consent.

**ARTICLE IV.**  
**EVENTS OF DEFAULT**

**4.1 Events of Default.** The occurrence of any of the following shall constitute an "Event of Default" under this Agreement:

(a) Failure, breach or default in the performance of the obligations and duties of Debtor under the Agreement including the payment of Foundation Expenses or repayment of the Advances as provided in Section 3.6 of the Agreement;

(b) Debtor fails to perform or satisfy when due any obligation, agreement, covenant or condition contained in this Security Agreement, and with respect to any such default which by its nature can be cured, such default continues for a period of thirty (30) days from its occurrence;

(c) Any representation or warranty made by Debtor in connection with this Security Agreement or the Agreement proves to be false, incorrect or incomplete in any material respect when furnished or made;

(d) Any levy upon, seizure or attachment of any of the Collateral, or any other event or circumstance pursuant to which Secured Party ceases to have a valid and perfected first priority security interest in the Collateral;

(e) Debtor admits in writing its inability to pay its debts as they mature, or commences any voluntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation or other similar law of any jurisdiction;

(f) Any application or proceeding described in (d) above is filed or commenced against Debtor, and Debtor indicates its approval, consent or acquiescence thereto, or an order is entered adjudicating Debtor bankrupt or insolvent and such order remains in effect for thirty (30) days;

(g) Debtor transfers all or substantially all of its properties to, or merges with or into, any other entity; or

(i) Any change having a Material Adverse Effect on Debtor, or any other event or condition which Secured Party reasonably and in good faith believes impairs, or is substantially likely to impair either: (i) the prospect of payment or performance by Debtor of its obligations under this Security Agreement or the Agreement; or (ii) the rights and remedies of Secured Party under this Security Agreement or the Agreement.

**4.2 Remedies.** If an Event of Default occurs, Secured Party shall have all rights, powers and remedies available under this Security Agreement or the Agreement, or accorded by law to a beneficiary or a secured party, including the right to resort to any or all of the Collateral or any other security for any of the obligations of Debtor. Secured Party may exercise its rights and remedies with respect to the Collateral without resorting or regard to other security or sources for payment. All rights, powers and remedies of Secured Party in connection with this Security Agreement or the Agreement may be exercised at any time by Secured Party, and from time to time after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

**4.3 Action on Collateral.** If any Event of Default occurs and continues, Secured Party may exercise with respect to the Collateral: (a) all the rights and remedies of a secured party on default under the Uniform Commercial Code of the State of California (the "Code") (whether or not the Code applies to the affected Collateral); (b) all of the rights and remedies provided for in this Security Agreement or the Agreement; and (c) such other rights and remedies as may be provided by law or otherwise.

**4.4 Waiver.** Debtor waives (to the extent permitted by applicable law): (a) notice of the acceptance of this Security Agreement and all other notices, demands or protests to which Debtor might otherwise be entitled by law in respect to this Security Agreement, all other Line of Credit Documents or the Collateral; and (b) all rights of redemption, stay and/or appraisal which Debtor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

## **ARTICLE V.** **GENERAL PROVISIONS**

**5.1 Amendment.** This Security 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 attached to this Security Agreement.

**5.2 Dispute Resolution.** In the event of any controversy or dispute related to or arising out of this Security Agreement, the Parties agree to meet and confer in good faith to attempt to resolve the controversy or dispute without an adversary proceeding. If the controversy or dispute is not resolved to the mutual satisfaction of the Parties within five (5) business days of notice of the controversy or dispute, the Parties agree to waive their rights, if any, to a jury trial, and to submit the controversy or dispute to a retired judge or justice pursuant to Section 638 *et seq.* of the California Code of Civil Procedure, or any successor provision, for resolution in accordance with Chapter 6 (References and Trials by Referees), of Title 8 of Part 2 of the California Code of Civil Procedure, or any successor chapter. The Parties agree that the only proper venue for the submission of claims is the County of San Diego, California, and that the hearing before the referee shall be concluded within nine (9) months of the filing and service of the complaint. The Parties reserve the right to contest the referee's decision and to appeal from any award or order of any court.

**5.3 Assignment.** This Security Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the



Parties; provided, however, that Debtor may not assign or transfer its interest or obligations under this Security Agreement without the prior written consent of Secured Party. Secured Party reserves the right to sell, assign, transfer, negotiate or grant participation in all or any part of, or any interest in, Secured Party's rights and benefits under this Security Agreement, the Note and any other Line of Credit Document.

**5.4 Attorneys' Fees, Costs and Expenses.** Debtor shall hold Secured Party harmless from, and pay to Secured Party immediately upon demand, the full amount of all costs and expenses, including reasonable attorneys' fees, incurred by Secured Party in connection with: (i) Secured Party's administration of this Security Agreement or the Agreement (including any costs or other expenses incurred in establishing or maintaining the Collateral); (ii) the enforcement of Secured Party's rights and/or the collection of any amounts which become due to Secured Party under the Agreement (including in connection with any bankruptcy, reorganization, or similar circumstance or proceeding); and (iii) the prosecution or defense of any claim, or action in any way arising out of or related to this Security Agreement, the Agreement or the transactions contemplated thereby, including without limitation any action for declaratory relief. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. For the purpose of this Agreement, "attorneys' fees" shall include fees incurred in connection with post judgment motions, contempt proceedings, garnishment, levy, and debtor and third-party examinations, discovery and bankruptcy litigation.

**5.5 Choice of Law.** This Security Agreement shall be construed in accordance with and governed by the laws of the State of California, except choice of law rules that would require the application of the laws of any other jurisdiction.

**5.6 Compliance with Laws.** Debtor shall comply with all applicable laws, ordinances, codes and regulations of federal, state and local governments, including without limitation laws that require Debtor to disclose any economic interest or relationship with Secured Party.

**5.7 Confidentiality.** Neither Party shall disclose this Security Agreement or any of its terms to any person or entity, other than its attorneys and accountants, without the prior written consent of the other Party, unless and only to the extent such disclosure is required by law.

**5.8 Counterparts.** This 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.

**5.9 Entire Agreement.** This Security Agreement (including all agreements incorporated herein by referenced or mentioned herein) together with the Agreement constitutes the entire understanding and agreement of the Parties regarding its subject matter, and supersedes any prior oral or written agreements, representations, understandings or discussions between the Parties. No other understanding between the Parties shall be binding on them unless set forth in writing, signed and attached to this Security Agreement.

**5.10 Exhibits.** The attached exhibits, together with all documents incorporated by reference in the exhibits, form an integral part of this Security Agreement and are incorporated into this Security Agreement wherever reference is made to them to the same extent as if they were set out in full at the point at which such reference is made.

**5.11 Force Majeure.** Neither Party is liable for nonperformance or defective or late performance of any of its obligations under this Security 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), 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).

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

**5.13 Notices.** All notices or communications required or permitted under this Security Agreement shall be given in writing and delivered personally, sent by United States registered or certified mail with postage prepaid and return receipt requested or by overnight delivery service (e.g., Federal Express). In each case, notice shall be delivered or sent to the address set forth for Debtor or Secured Party, as applicable, in the Agreement. Notice is deemed given when sent, if sent as specified in this paragraph, or otherwise deemed given when received.

**5.14 Severability.** If any provision of this Security Agreement is determined to be illegal or unenforceable, that provision shall be severed from this Security Agreement, and such severance shall have no effect upon the enforceability of the remainder of this Security Agreement, unless the purposes of this Security Agreement is thereby destroyed.

**5.15 No Third-Party Beneficiary Rights.** The Parties do not intend to confer and this Security Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the Parties.

**5.16 Termination.** This Security Agreement and the security interest in Collateral created hereby shall terminate after payment and performance in full of all obligations arising under the Agreement. Upon such termination, the Collateral shall be released from the security interest hereby created, and Secured Party will execute and deliver to Debtor such documents as Debtor shall reasonably request to evidence such release.

**5.17 Waiver.** No delay, failure or discontinuance of Secured Party in exercising any right, power or remedy under this Security Agreement or the Agreement shall constitute a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy. Any waiver, permit, consent or approval of any kind by Secured Party of any breach of or default under this Security Agreement or the

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Agreement must be in writing and shall be effective only to the extent expressly set forth in such writing.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Secured Party and Debtor have executed this Security Agreement on the date first above written.

**SECURED PARTY**

**PALOMAR POMERADO HEALTH,**  
a local California health care district

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

**DEBTOR**

**PALOMAR POMERADO HEALTH FOUNDATION, a**  
California nonprofit public benefit corporation

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

**ATTACHMENT A TO EXHIBIT 4.1(b)**

**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 Debtor in and to: (a) donations and grants from all sources; (b) furniture, fixtures and equipment; (c) all monies from time to time on deposit in Debtor's business bank accounts as established in accordance with this Agreement; (d) documents; (e) insurance proceeds; (l) all books and records in respect to the foregoing; and (m) to proceeds of all the foregoing, whether now existing or hereafter acquired or arising (collectively, the "Collateral").

**ATTACHMENT B TO EXHIBIT 4.1(b)**  
**[LETTERHEAD OF PALOMAR POMERADO HEALTH]**

[Address of Bank]

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

Re: Notice of Security Interest in Account

Ladies and Gentlemen:

Please take notice that PALOMAR POMERADO HEALTH, a local health care district organized under the laws of the State of California (“PPH”), holds a security interest in a business deposit account, number \_\_\_\_\_ at \_\_\_\_\_, maintained for PALOMAR POMERADO HEALTH FOUNDATION, a California nonprofit public benefit corporation (“Foundation”).

The security interest is held pursuant to that certain Security Agreement by and between PPH and Foundation, dated as of September 1, 2005, a copy of which is enclosed.

Sincerely,

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT 8.2**

**OBLIGATIONS UNDER THE HEALTH INSURANCE PORTABILITY AND  
ACCOUNTABILITY ACT OF 1996 ("HIPAA")**

PPH and Foundation shall execute a Business Associate Agreement which shall set forth the terms and conditions under which Protected Health Information ("PHI") that is created or received by Foundation from or on behalf of PPH will be used, disclosed and otherwise handled by Foundation, consistent with the following:

1. **Use of Protected Health Information.** Foundation shall use PHI only as expressly permitted by the Business Associate Agreement and for the purpose of performing its obligations under this Agreement or as otherwise required by law. Foundation shall not use PHI in any manner that would constitute a violation of HIPAA if done by PPH.
2. **Permitted Disclosures.** Foundation shall disclose PHI, only as expressly permitted or by the Business Associate Agreement and for the purpose of performing its obligations under this Agreement or as otherwise required by law. Foundation shall not disclose PHI in any manner that would constitute a violation of the HIPAA if done by PPH.
3. **Appropriate Safeguards.** Foundation shall implement appropriate safeguards as are necessary to prevent the use or disclosure of PHI other than as permitted or required by the Business Associate Agreement.
4. **Reporting of Improper Use or Disclosure.** Foundation shall notify PPH in writing of any use or disclosure of PHI that is not permitted or required by the Business Associate Agreement within two (2) days of becoming aware of such use or disclosure.
5. **Agents and Subcontractors.** Foundation shall require all of its subcontractors and agents that receive, use, or have access to PHI to agree to adhere to the same restrictions and conditions that apply to Foundation under the Business Associate Agreement
6. **Access to Records.** Foundation shall make their respective internal practices, books and records relating to the use and disclosure of PHI available to PPH for purposes of determining Foundation's compliance with the Business Associate Agreement or to the Secretary of the U.S. Department of Health and Human Services for purposes of determining PPH's compliance with the Privacy Rule.
7. **Access, Amendment and Accounting.** Foundation shall comply with requests by PPH regarding individuals' rights of access, amendment and to receive an accounting of the uses and disclosures of their PHI in accordance with processes and time frames which shall be set forth in the Business Associate Agreement.

8. **Security Rule Compliance.** Foundation shall (a) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI, (b) ensure that any agent or subcontractor to whom it provides any electronic PHI agrees in writing to implement similar safeguards as those required of the Business Associate Agreement, and (c) report to PPH, in writing, any security incident of which it becomes aware within two (2) days of becoming aware of such security incident.
  
9. **Term of Obligations.** Foundation's obligations shall commence as of the compliance date of the effective date of this Agreement, and shall terminate when the Business Associate Agreement is terminated and all of the PHI is destroyed or returned to PPH.
  
10. **Effect of Termination.** Upon expiration or termination of this Agreement or the Business Associate Agreement for any reason, Foundation shall return or destroy all PHI that Foundation still maintains in any form and shall retain no copies of such PHI. If return or destruction is not feasible, as determined by PPH, Foundation shall continue to extend the protections discussed above to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible.
  
11. **Amendment.** The parties agree to take such action as is necessary to amend the Business Associate Agreement from time to time in order for PPH to comply with the requirements of HIPAA, and other applicable laws relating to the security or confidentiality of PHI.
  
12. **Interpretation of Obligations.** The obligations as set forth above shall be interpreted as broadly as necessary to allow PPH to implement and comply with its obligations under HIPAA . The parties acknowledge and agree that any ambiguity in the obligations set forth in the Business Associate Agreement shall be resolved in favor of a meaning that permits PPH to comply with its obligations under HIPAA .
  
13. **Definitions.**
  - a. **"Privacy Rule"** shall mean the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E, as amended from time to time, under HIPAA.
  
  - b. **"Security Rule"** shall mean the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C, as amended from time to time, under HIPAA.
  
  - c. **"HIPAA"** shall mean 42 U.S.C. 1320d-1 *et seq.*, the Privacy Rule, the Security Rule, and the Standards for Electronic Transactions, 45 C.F.R. Part 160 and Part 162, all as amended from time to time.
  
  - d. All other capitalized terms used, but not otherwise defined, in the Business Associate Agreement shall have the meaning set forth in the Privacy Rule and/or Security Rule as applicable.





**Palomar Pomerado North County Health Development, Inc.  
Line of Credit**

**TO:** Board of Directors

**FROM:** Board Finance Committee  
Tuesday, October 25, 2005

**MEETING DATE:** Monday, November 14, 2005

**BY:** Bob Hemker, CFO

**Background:** As a newly formed entity of Palomar Pomerado Health (PPH), Palomar Pomerado North County Health Development, Inc. (Health Development), is in start-up mode. As such, certain cash flows were contemplated requiring cash infusion from PPH. The separation of legal entities requires this infusion to be separated and documented via a Line of Credit Agreement, in the requested form and documentation as per the attached.

The five-year *pro forma* warrants a not-to-exceed Line of Credit of \$1.6 million to cover the five-year period. It is expected that a cumulative draw on the line will result in this not-to-exceed amount rather than up-front draws.

**Budget Impact:** N/A

**Staff Recommendation:** Approval of the Line of Credit to Palomar Pomerado North County Health Development, Inc., as requested.

**Committee Questions:**

**COMMITTEE RECOMMENDATION:** The Finance Committee recommends approval of the Line of Credit to Palomar Pomerado North County Health Development, Inc., as requested.

**Motion:** X

**Individual Action:**

**Information:**

**Required Time:**

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**For discussion purposes only.**

**LINE OF CREDIT AGREEMENT**

**by and between**

**PALOMAR POMERADO HEALTH (“PPH”)**

**and**

**PALOMAR POMERADO NORTH COUNTY HEALTH DEVELOPMENT, INC.**  
**(“Health Development”)**

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Accountability Act of 1996 (“HIPAA”) .....  
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JK

**LINE OF CREDIT AGREEMENT**

THIS LINE OF CREDIT AGREEMENT (this "Agreement") is dated as of \_\_\_\_\_ 1, 2005, (the "Effective Date") by and between PALOMAR POMERADO HEALTH, a local health care district organized under the laws of the State of California ("PPH"), and PALOMAR POMERADO NORTH COUNTY HEALTH DEVELOPMENT, INC., a California nonprofit (pending) corporation ("Health Development"). PPH and Health Development are each sometimes referred to in this Agreement as a "Party" or, collectively, as the "Parties."

**RECITALS**

A. PPH, a local health care district organized under the California Local Hospital District Law (California Health and Safety Code § 32000 et seq.) (the "Law"), owns and operates healthcare facilities for the benefit of the communities within its boundaries.

B. Health Development, a nonprofit organization organized and operated to support PPH and its programs, is committed to its mission which is the enhancement of individual and community health through the obtaining of Grant Funding in support of PPH.

C. The Parties believe that it is in the best interests of the public served by PPH to facilitate the proper operation of Health Development so that it may carry out its mission.

D. Health Development desires to obtain from PPH certain funds, and PPH has agreed to provide such funds to Health Development to further the public purposes for which PPH and the Health Development operate, in accordance with the California Constitution and according to the terms and conditions set forth herein.

G. The Parties hereby reference the following additional agreements to which they are both parties:

- (i) Security Agreement dated \_\_\_\_\_, 2005, and attached hereto as Exhibit 2.1(b); and
- (ii) Business Associate Agreement dated \_\_\_\_\_, 2005, and attached hereto as Exhibit 4.2.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

**ARTICLE I.**  
**LINE OF CREDIT**

**1.1 Line of Credit.** PPH shall make available to Health Development, and Health Development agrees to accept from PPH, a line of credit, the aggregate amount of which shall not exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) or a greater amount solely in PPH's discretion ("Line of Credit"), subject to the terms set forth in this Article III. The Line of Credit shall expire \_\_\_\_\_ (the "Credit Line Expiration Date"). This expiration date does not affect Health Development's repayment obligation.

**1.2 Advances.** PPH shall advance to Health Development amounts requested pursuant to Section 1.4 of this Article (each, an "Advance", and collectively, the "Advances"), from time to time prior to, but not including, the Credit Line Expiration Date. The aggregate amount of all outstanding Advances shall not exceed the Line of Credit. Notwithstanding the foregoing, both PPH's Chief Executive Officer and Chief Financial Officer and Health Development's Chair and Treasurer shall approve in writing Advance requests exceeding One Hundred Thousand Dollars (\$100,000).

**1.3 Use of Advances.** Health Development shall use the Advances for the following purposes only:

(a) For amounts approved by PPH in the capital and operating budgets of Health Development;

(b) For subsequent repayment to PPH in any given month when Health Development does not have sufficient funds to cover Health Development Expenses.

**1.4 Request and Delivery of Advances.** When Health Development desires to obtain an Advance, it shall deliver to PPH a notice in the form attached hereto as Exhibit 1.4 (the "Notice of Borrowing") at least three (3) Business Days prior to the date on which the Advance is to be paid (the "Proposed Funding Date"). The Notice of Borrowing shall specify the Proposed Funding Date (which shall be a Business Day), the amount of the requested Advance, and certify as to the satisfaction of each of the conditions set forth in Exhibit 1.4. "Business Day" shall mean any day which is not a Saturday, Sunday or a generally observed holiday for banks in the State of California.

**1.5 Contingencies to PPH's Payment of Advances.** PPH's obligation to make any Advances to Health Development under this Agreement shall be contingent upon the following:

(a) Documentation. Health Development's submission to PPH, in form and substance satisfactory to PPH, this Agreement, the Note (as defined in Section 2.1(a)), the

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Security Agreement (as defined in Section 2.1(b)), and such other documents and instruments as PPH may reasonably request, all duly executed by Health Development.

(b) Notice of Borrowing. Health Development's submission to PPH of a Notice of Borrowing in which Health Development certifies that as of the date of the Notice of Borrowing:

- (i) all of Health Development's representations and warranties contained in this Agreement shall be true, correct and complete in all material respects to the same extent as though made on and as of that date;
- (ii) no Event of Default (as defined in Exhibit 2.1(b)) shall have occurred and shall continue, or shall result from, making the Advance;
- (iii) no law or regulation shall prohibit, and no order, judgment or decree of any court, arbitrator or governmental authority shall purport to enjoin or restrain PPH from making the Advance; and
- (iv) no change having a Material Adverse Effect on Health Development, either individually or in the aggregate, shall have occurred since the Execution Date. "Material Adverse Effect" shall mean a material adverse effect upon Health Development's purpose, function, operation or status or upon PPH's security interest in the Collateral (as defined in Exhibit 2.1(b) attached hereto) or the priority thereof.

(c) Perfection. The Account described in Exhibit 2.1(b) of this Agreement shall have been established in a manner satisfactory to PPH, in its sole discretion, and PPH shall be satisfied that all steps shall have been taken necessary to create and perfect in favor of PPH a first priority security interest in the Account and all other Collateral described in such Exhibit 2.1(b).

**1.6 Promissory Note.** Health Development shall repay the Advances and accrued interest pursuant to the terms and conditions of the Note (as defined below). Health Development authorizes PPH to record on the schedule annexed to the Note, the date and amount of each Advance made by PPH, the Interest Rate (as such term is defined in the Note) when each Advance is made, and each payment or prepayment of the Advances, and agrees that all such notations shall constitute *prima facie* evidence of the matters noted. Health Development further authorizes PPH to attach to and make a part of the Note continuations of the schedule as necessary. No failure to make any such notations, nor any errors in making any such notations, shall affect the validity of Health Development's obligations to repay the Advances or Health Development's obligations under this Agreement, the Note, or any other document, contract or instrument delivered to PPH in connection with this Agreement (collectively, the "Line of Credit Documents").

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**ARTICLE II.**  
**PROMISSORY NOTE; SECURITY AGREEMENT; GUARANTEE**

**2.1 Health Development's Deliverables.** Concurrently with the execution of this Agreement, Health Development shall execute and deliver to PPH:

- (a) the secured promissory note in the form attached as Exhibit 2.1(a) (the "Note"); and
- (b) the security agreement in the form attached as Exhibit 2.1(b) (the "Security Agreement").

**2.2 Further Cooperation.** PPH and Health Development 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 Security Agreement, as reasonably requested by PPH from time to time.

**ARTICLE III.**  
**TERM AND TERMINATION**

**3.1 Term.** This Agreement shall become effective on \_\_\_\_\_ (the "Effective Date"), and shall continue until \_\_\_\_\_ (the "Expiration Date"), subject to the termination provisions of this Agreement.

**3.2 Termination by PPH.** PPH shall have the right to terminate this Agreement upon the occurrence of any one or more of the following events:

- (a) Breach of this Agreement by Health Development where the breach is not cured within thirty (30) calendar days after PPH gives written notice of the breach to Health Development;
- (b) Breach by Health Development of the requirements under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (as set forth in Exhibit 4.2);
- (c) Health Development is rendered unable to comply with the terms of this Agreement for any reason; or
- (d) Upon ninety (90) calendar days written notice without cause to Health Development in all other cases.

**3.3 Termination by Health Development.** Health Development shall have the right to terminate this Agreement according to the following terms and conditions:

- (a) Breach of this Agreement by PPH where the breach is not cured within thirty (30) calendar days after Health Development gives written notice of the breach to PPH or if the breach is not curable, then thirty (30) calendar days after Health Development gives written notice of the breach to PPH;



(b) Health Development is rendered legally unable to comply with the terms of this Agreement for any reason, in which case termination shall be coterminous with the date of such legal inability; or

(c) Upon ninety (90) calendar days written notice without cause to PPH in all other cases.

**3.4 Termination or Modification in the Event of Government Action.** If the Parties receive notice of any Government Action (defined below), the Parties shall attempt to amend this Agreement in order to comply with the Government Action. If the Parties, acting in good faith, are unable to agree to 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, this Agreement shall be terminated ten days after one party gives notice to the other of such fact. 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, interpretation, finding, or action by any governmental or private agency, court or other third-party which, in the opinion of counsel to PPH, because of the arrangement between the Parties pursuant to this Agreement, if or when implemented, would:

(a) revoke or jeopardize the status of any health facility license granted to PPH or any Affiliate (defined below) of PPH;

(b) prevent Health Development from being able to access and use the facilities of PPH or any Affiliate of PPH; or

(c) subject PPH, any Affiliate of PPH, Health Development, or any of their respective employees or agents, to civil or criminal prosecution (including any excise 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 Section, "Affiliate" shall mean any entity which, directly or indirectly, controls, is controlled by or is under common control with PPH.

**3.5 Rights upon Termination.** 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. Notwithstanding the above, upon termination of this Agreement by PPH and Health Development pursuant to Sections 3.2 and 3.3, respectively, of this Agreement, the outstanding principal amount of the Advances and all accrued but unpaid interest shall automatically become due and payable.

#### **ARTICLE IV.** **GENERAL PROVISIONS**

**4.1 Independent Contractor.** PPH is and shall at all times be an independent contractor with respect to Health Development in meeting PPH's 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 PPH and Health Development.

**4.2 Compliance with HIPAA.** PPH and Health Development shall comply with the HIPAA requirements as defined and set forth in Exhibit 4.2. The HIPAA requirements shall survive the expiration or termination of this Agreement for any reason.

**4.3 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 attached to this Agreement.

**4.4 Dispute Resolution.** In the event of any disagreement, dispute or claim (collectively, a "Dispute") arises between the Parties hereto with respect to whether an alleged breach hereof has or has not occurred, or with respect to any other matter related to or arising out of this Agreement, or the relationship or transactions contemplated hereby, the Dispute shall be resolved in accordance with the following procedures:

(a) **Meet and Confer.** In the event of a Dispute, either Party may give written notice to the other Party setting forth the nature of the Dispute (the "Dispute Notice"). The Parties shall meet and confer to discuss in good faith and attempt to resolve the Dispute within fifteen (15) days of the Party receiving the Dispute Notice. The representatives of the Parties shall meet at such date(s) and time(s) as are mutually convenient to the representatives of each Party within the 15-day period.

(b) **Arbitration.** Except as set forth below, any Dispute that cannot be resolved by the Parties under Section 8.4(a) within the 30-day meet-and-confer period, shall be submitted to final binding arbitration, as follows:

- (i) ***Designation of an Arbitrator.*** A single disinterested third party shall be selected by mutual agreement of the Parties. If the Parties are unable to mutually select an arbitrator within (15) days after each party notifies the other of its desire to arbitrate the Dispute, then the arbitrator shall be selected, and the arbitration shall be conducted, in accordance with JAMS's then -current Comprehensive Arbitration Rules and Procedures or Streamlined Rules of Practice and Procedure, as appropriate, depending on the amount in dispute.
- (ii) ***Venue.*** The arbitration shall be conducted in the County of San Diego, California, unless the Parties mutually determine that another venue would be more convenient.
- (iii) ***Arbitrator's Expenses and Fees.*** JAMS' administrative fees and the expenses and fees of the arbitrator shall be divided among the Parties equally. Each Party shall pay its own counsel fees, witness fees, and other expenses incurred.

**4.5 Assignment.** Except for assignment by PPH to an entity owned, controlled by, or under common control with PPH, neither Party may assign any interest or obligation under this Agreement without the 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 successors and assigns.

**4.6 Attorneys' Fees.** If either Party brings an action for any relief or collection against the other Party, declaratory or otherwise, arising out of the arrangement described in this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' fees and costs actually incurred in bringing such action, 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 in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. For the purpose of this Section, attorneys' fees shall include fees incurred in connection with discovery, post judgment motions, contempt proceedings, garnishment and levy.

**4.7 Authorized Persons.** Whenever any consent, approval or determination of a Party is required pursuant to this Agreement, the consent, approval or determination shall be rendered on behalf of the Party by the person or persons duly authorized to do so, which the other Party shall be justified in assuming means any officer of the Party rendering such consent, approval or determination, or the Party's board of directors.

**4.8 Choice of Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of California, except choice of law rules that would require the application of the laws of any other jurisdiction.

**4.9 Compliance with Laws.** Health Development shall comply with applicable laws, ordinances, codes and regulations of federal, state and local governments, including laws that require Health Development to disclose any economic interest or relationship with PPH.

**4.10 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.

**4.11 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, discussions or past practices between the Parties. No other understanding between the Parties shall be binding on them unless set forth in writing, signed and attached to this Agreement.

**4.12 Exhibits.** The attached exhibits, together with all documents incorporated by reference in the exhibits, form an integral part of this Agreement and are incorporated into this Agreement wherever reference is made to them to the same extent as if they were set out in full at the point at which such reference is made.

**4.13 Force Majeure.** Except with respect to obligations imposed with regard to payments to be paid by Health Development under this Agreement, neither Party is liable for

nonperformance or defective 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), action of any governmental authority, riots, revolutions, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, failure of utilities, or strikes (or similar nonperformance or defective performance or late performance of employees, suppliers or subcontractors).

**4.14 Further Assurances; Good Faith.** Each Party shall, at the reasonable request of the other Party, execute and deliver to the other party all further instruments, assignments, assurances and other documents, and take any actions as the other Party reasonably requests in connection with the carrying out of this Agreement. In performing its obligations under this Agreement, each Party shall act in good faith.

**4.15 Indemnification.** To the extent that such acts or omissions are not covered by insurance, each Party shall indemnify, hold harmless and defend the other Party and its officers, agents or employees, against any loss or liability arising out of or resulting in any way from the acts or omissions of such Party or its own officers, employees or agents, except that any such obligation to indemnify and hold harmless shall be reduced by any amount of such loss or liability arising from the contributory acts or omissions of the indemnified Party and its owners, employees or agents. This obligation shall not be qualified or eliminated by an allegation or finding that the other Party or any of its personnel is responsible for a passively negligent act or omission. This section shall survive the termination of this Agreement. 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.

**4.16 Interruption of Services.** Notwithstanding any provision in this Agreement to the contrary, PPH shall not be liable to Health Development in damages or otherwise for any failure to advance any funds contemplated by this Agreement. This Agreement contemplates a close operating relationship between PPH and Health Development that will exist over a long period of time. Accordingly, in approving this Agreement and directing its officers to enter into this Agreement on its behalf, the Parties shall mutually review the performance of both Parties to this Agreement, identifying deficiencies in the performance of either or both Parties to this Agreement, developing (as necessary) a plan for addressing any such deficiencies, discussing potential modifications to the terms and conditions of this Agreement and the responsibilities of the Parties as set forth herein, reviewing the outstanding principal amount of Advances, including all accrued but unpaid interest thereon, made pursuant to this Agreement and addressing repayment of such amounts, and at the appropriate time addressing a plan for Health Development to attain self-sufficiency.

**4.17 Notices.** All notices or communications required or permitted under this Agreement shall be given in writing and delivered personally or sent by United States registered or certified mail with postage prepaid and return receipt requested or by overnight delivery service (e.g., Federal Express, DHL). Notice is deemed given when sent, if sent as specified in this Section, or otherwise deemed given when received. In each case, notice shall be delivered or sent to:

**If to PPH, addressed to:**

Palomar Pomerado Health

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

**If to Health Development, addressed to:**

Palomar Pomerado North County Health Development, Inc.

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Either Party may provide for a different address by notifying the other Party of such change as provided for in this Section.

**4.18 Severability.** If any provision of this Agreement is determined to be illegal or unenforceable, that provision shall be severed from this Agreement, and such severance shall have no effect upon the enforceability of the remainder of this Agreement unless the purpose of this Agreement is thereby destroyed.

**4.19 No Third-Party Beneficiary Rights.** The Parties do not intend to confer and this Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the Parties, including but not limited to the Personnel.

**4.20 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 to be effective, and shall apply solely to the specific instance expressly stated.

**4.21 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.

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**DRAFT-DO NOT SIGN**  
**For discussion purposes only.**

The Parties have executed this Agreement on the date written below (the "Execution Date").

PALOMAR POMERADO HEALTH,  
a California local health care district

Date: \_\_\_\_\_, 2005 **DRAFT-DO NOT SIGN** \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

PALOMAR POMERADO NORTH COUNTY HEALTH  
DEVELOPMENT, INC.,  
a California nonprofit public benefit corporation

Date: \_\_\_\_\_, 2005 **DRAFT-DO NOT SIGN** \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT 1.4**

**NOTICE OF BORROWING**

**[LETTERHEAD OF PALOMAR POMERADO NORTH COUNTY HEALTH  
DEVELOPMENT, INC.]**

[Address of Health Development]

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

Re: Notice of Borrowing

To Whom It May Concern:

Please take notice that Palomar Pomerado North County Health Development, Inc., a California nonprofit public benefit corporation ("Health Development"), desires to borrow an Advance of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) from Palomar Pomerado Health, a local health care district organized under the laws of the State of California ("PPH"), on \_\_\_\_\_, 20\_\_ (the "Funding Date"). Advance requests exceeding One Hundred Thousand Dollars (\$100,000) must be accompanied by signatures from PPH's Chief Executive Officer and Chief Financial Officer and Health Development's Chair and Treasurer.

Health Development hereby certifies that as of the date of this Notice:

(a) all of Health Development's representations and warranties contained in the Management Services Agreement (the "Agreement") and all exhibits to the Agreement shall be true, correct and complete in all material respects to the same extent as though made on and as of that date;

(b) no Event of Default (as defined in Exhibit 2.1(b) of the Agreement) shall have occurred and shall continue, or shall result from, making the Advance;

(c) no law or regulation of general application shall prohibit, nor any order, judgment or decree of any court, arbitrator or governmental authority specifically naming Health Development and known to Health Development, shall purport to enjoin or restrain PPH from making the Advance; and

(d) no change having a Material Adverse Effect on Health Development (as such term is defined in the Agreement), either individually or in the aggregate, shall have occurred since the Execution Date.

Sincerely,

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

As Approved By

**PALOMAR POMERADO HEALTH,**  
a California health care district

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

\_\_\_\_\_  
By:  
Its: Chief Executive Officer

**PALOMAR POMERADO HEALTH,**  
a California health care district

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

\_\_\_\_\_  
By:  
Its: Chief Financial Officer

**PALOMAR POMERADO NORTH COUNTY HEALTH**  
**DEVELOPMENT, INC., a California nonprofit corporation**

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

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

**PALOMAR POMERADO NORTH COUNTY HEALTH**  
**DEVELOPMENT, INC., a California nonprofit corporation**

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

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



**EXHIBIT 2.1(a)**

**PROMISSORY NOTE**

[Place of Execution]

Not to Exceed \$ \_\_\_\_\_

**FOR VALUE RECEIVED**, Palomar Pomerado North County Health Development, Inc., a California nonprofit public benefit corporation ("Health Development"), promises to pay to the order of Palomar Pomerado Health, a local health care district organized under the laws of the State of California ("PPH"), the principal sum equal to the outstanding amount of Advances paid to Health Development pursuant to the Management Services Agreement by and between Health Development and PPH dated as of \_\_\_\_\_, 2005 (the "Management Services Agreement"). Unless otherwise defined in this Promissory Note (the "Note"), each capitalized term shall have the meaning given in the Management Services Agreement. The outstanding principal amount of the Advances provided to Health Development pursuant to the Management Services Agreement (the "Principal") shall not \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

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

(a) Health Development hereby promises to pay to the order of PPH, at such place as PPH 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 Advances at a rate equal to **two and one-half percent (2.5%)** above the one (1) year LIBOR (the "Interest Rate"), computed annually on the basis of a 360-day year, and the number of days elapsed from the date each Advance is deposited into Health Development's Account until the outstanding Advances are repaid. Accrued interest shall be paid monthly in arrears on the first Business Day of each month. The interest rate shall be adjusted quarterly to reflect changes in the prime rate. The first (1st) Advance shall fix the prime rate for that calendar quarter. Any subsequent Advance in that quarter shall be assigned the same prime rate. Notwithstanding any other provision of this Agreement, the Interest Rate shall not exceed the maximum rate permitted by applicable law (the "Permitted Rate"). If any payments in the nature of interest exceed the Permitted Rate, as finally determined by a court of competent jurisdiction, any such amount in excess shall be considered payment of Principal and the Principal outstanding shall be reduced accordingly.

**2. Repayment.**

(a) Notwithstanding any other provisions of this Note, Principal, accrued interest, and other applicable fees, costs and charges ("Costs"), if any, owing on this Note shall be payable as follows:

(b) Repayment. Principal and accrued interest thereon shall be payable in sixty (60) equal monthly installments sufficient to fully amortize the unpaid balance of this Note. Principal and accrued interest thereon shall be payable on the first (1<sup>st</sup>) Business Day of each

successive calendar month beginning on the Credit Line Expiration Date and continuing until the earlier of (i) the date on which the Principal and all accrued interest thereon, and all Costs, if any, are paid 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 Health Development to PPH no later than the Maturity Date, the "Maturity Date" shall mean the date that is sixty (60) months from the Credit Line Expiration Date

(c) Application of Payments. Unless otherwise agreed in writing in advance by PPH, each payment or forgiveness with respect to this Note shall be credited as follows: first, against Health Development Expenses; second, against accrued and unpaid interest then due and owing; and third, against the Principal outstanding.

(d) Prepayment. Health Development 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 or alter the amount of any subsequent monthly installment. Any amounts prepaid prior to the Credit Line Expiration Date may be reborrowed.

**3. Events of Default.** The termination for any reason of the Management Services Agreement or the occurrence of any Event of Default of the Management Services Agreement shall constitute an event of default ("Event of Default") under this Note.

**4. Acceleration.** If either an Event of Default (as defined in Exhibit 2.1(b) of this Agreement) occurs, or if this Agreement is terminated by either PPH or Health Development pursuant to Sections 3.2 and 3.3, respectively, of the Agreement, PPH may, at its option, declare the entire Principal outstanding, together with accrued interest and all other Health Development Expenses immediately due and payable to PPH; and PPH shall have all rights, powers and remedies available under the Line of Credit Documents, or accorded by law to a beneficiary or a secured party, including the right to resort to any or all of the Collateral or any other security for any of the obligations of Health Development. PPH may exercise its rights and remedies with respect to the Collateral without resorting or regard to other security or sources for payment. All rights, powers and remedies of PPH in connection with each of the Line of Credit Documents may be exercised at any time by PPH, and from time to time after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

**5. Termination.** Upon the occurrence of an Event of Default or upon termination of the Agreement by PPH or Health Development pursuant to Sections 3.2 and 3.3, respectively, of the Agreement, the outstanding principal amount of the Advances, all accrued but unpaid interest and all other obligations of Health Development under the Agreement may automatically become, or may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Agreement.

**6. Costs of Collection.** If PPH exercises its acceleration rights pursuant to this Note, in addition to the Principal outstanding and accrued interest thereon, PPH shall be entitled to collect all costs of collection, including reasonable attorneys' fees incurred in connection with the

protection or realization of collateral and PPH's reasonable collection efforts, whether or not suit on this Note or any foreclosure proceeding is filed. Any and all such costs and expenses shall be payable on demand and secured by the Security Agreement.

7. **Continuing Liability.** Following the occurrence of an Event of Default, Health Development's liability under this Note shall not be affected by PPH'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 Note), regardless of the order in which or the extent to which PPH may pursue any of such rights, powers or remedies, it being understood that the liability of Health Development shall cease only upon satisfaction in full of all of Health Development's obligations arising under this Note and the Management Services Agreement.

8. **No Waiver.** No failure on the part of PPH to exercise any right or remedy under this 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 for time to time shall constitute a waiver of the right to insist upon prompt payment, be deemed to be a novation of this Note or as a reinstatement of the debt evidenced by this Note, or be construed to preclude the exercise of any right which PPH may have under law, by agreement or otherwise. PPH 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. Health Development and endorsers of this Note consent to renewals and extensions of time at or after the maturity hereof, without notice, and hereby waive diligence, presentment, protest, demand and notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand under this Note.

9. **Waiver of Notice.** Health Development and each endorser or guarantor of this 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 Note, and (ii) agrees that PPH, 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. **Choice of Law.** This Note shall be construed in accordance with and governed by the laws of the State 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 the State. Health Development and each endorser or guarantor hereby submit to jurisdiction in said State for the enforcement of Health Development's obligations under this Note and all other Line of Credit Documents, and waive any and all rights under the laws of any other state to object to jurisdiction within such State.

11. **Amendments.** This 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 Note.

12. **Assignment.** Health Development shall not assign, sell, transfer or delegate any of the Health Development's rights or duties under this Note without the prior written consent of

PPH. PPH may assign its rights and delegate its duties under this Note upon written notice to Health Development.

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

**14. Security.** This Note is secured by a first priority security interest granted by Health Development to PPH in the Collateral described in that certain Security Agreement of even date herewith (the "Security Agreement") by and between Health Development and PPH. All of the provisions contained in the Security Agreement are hereby made a part of this Note to the same extent and with the same effect as if they were fully set forth in this Note.

**15. Severability.** If any provision of this 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 Note, and such severance shall have not effect upon the enforceability, performance or obligations of the remainder of this Note, including the remainder of such provision not determined to be illegal, invalid or unenforceable.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**DRAFT-DO NOT SIGN**  
**For discussion purposes only.**

Health Development has executed and delivered this Note as of the date and at the place first above written.

**PALOMAR POMERADO NORTH COUNTY HEALTH  
DEVELOPMENT, INC.,**  
a California nonprofit public benefit corporation

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

**ATTACHMENT TO EXHIBIT 2.1(a)**

**SCHEDULE OF ADVANCES**

Date	Advance	Current LIBOR Rate	Prepayment or Repayment	Outstanding Balance

**EXHIBIT 2.1(b)**

**SECURITY AGREEMENT**

THIS SECURITY AGREEMENT (this "Security Agreement"), executed and delivered as of \_\_\_\_\_, 2005, by PALOMAR POMERADO NORTH COUNTY HEALTH DEVELOPMENT, INC., a California nonprofit public benefit corporation ("Debtor"), for the benefit of PALOMAR POMERADO HEALTH, a local health care district organized under the laws of the State of California ("Secured Party").

**RECITALS**

A. Debtor and Secured Party desire to enter into this Security Agreement to grant a security interest to Secured Party in the Collateral, as hereinafter defined, to secure the performance of the obligations and duties of Debtor under the Agreement.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

**ARTICLE I.**  
**COLLATERAL AND SECURITY INTEREST**

**1.1 Collateral and Grant of Security Interest.** Debtor hereby grants to Secured Party a security interest of first priority in the Collateral, as described in Attachment A, to secure the payment and performance of all indebtedness, liabilities and obligations of Debtor to Secured Party under the Agreement and repayment of the principal amount of the Advances (as defined in Section 3.2 of the Agreement) and accrued interest thereon. The security interest created by this Security Agreement shall attach immediately on execution of this Security Agreement by Debtor.

**1.2 Perfection and Priority.** Debtor shall take all action necessary to perfect the security interest granted to Secured Party in Section 1.1 of this Security Agreement. Secured Party's security interest in the Collateral is, and will continue to be, a first priority security interest which is free and clear of all liens, claims, security interest and encumbrances, except with respect to any liens, claims, security interest and encumbrances granted by statute or pursuant to any other agreement executed by and between Secured Party and Debtor. Secured Party shall have no duty to collect or protect the Collateral, nor to preserve rights against prior parties or any other rights pertaining to the Collateral. Secured Party shall perfect its security interest in the Account (as defined in Section 1.5 herein) by sending to the appropriate financial institution a letter in the form of Attachment B.

**1.3 Further Assurances.** Debtor shall, from time to time, at Debtor's expense, execute and file any financing or continuation statements, or amendments thereto, and other instruments, endorsements or notices, and take other actions, reasonably necessary or as Secured Party reasonably requests, in order to perfect and preserve the assignments and security interests

granted or purported to be granted by this Security Agreement. Debtor authorizes Secured Party to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without Debtor's signature where permitted by law. Copies of any such statement or amendment shall promptly be delivered to Debtor. Debtor shall notify Secured Party of any change in Debtor's name, identity or corporate structure at least fifteen (15) days prior to any such change.

**1.4 Principal Place of Business.** Debtor's principal place of operation, where Debtor shall keep records regarding the Collateral, is located at \_\_\_\_\_ Debtor shall not relocate Debtor's principal place of operation without providing at least sixty (60)-days prior written notice to Secured Party.

**1.5 Business Deposit Account.** Debtor shall establish and maintain business deposit accounts ("Accounts") with \_\_\_\_\_, or such other financial institution as is mutually selected and approved in writing by Debtor and Secured Party (the "Depository Bank"). Debtor shall promptly deposit all donations and grants received by Debtor into the Account. If any Event of Default occurs, Secured Party may, by written notice to the Depository Bank, terminate Debtor's right to make any withdrawal from the Account and exercise any other right under this Agreement, at law, equity or otherwise applicable to the proceeds of the Account.

## **ARTICLE II.** **REPRESENTATIONS AND WARRANTIES**

Debtor makes the following representations and warranties to Secured Party, which shall be true and correct on and as of the date of this Agreement:

**2.1 Authorization and Validity.** This Security Agreement, and any other document, contract or instrument delivered to Secured Party in connection with this Security Agreement have been duly authorized by Debtor, and are legal, valid and binding agreements and obligations of Debtor, enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.

**2.2 Governmental Consents.** No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority on the part of Debtor is required in connection with the consummation of the transactions contemplated by this Security Agreement.

**2.3 No Violation.** The execution, delivery and performance by Debtor of this Security Agreement, and any other document, contract or instrument delivered to Secured Party in connection with this Security Agreement, do not violate any provision of any law or regulation or result in a breach of or constitute a default under any contract, obligation, indenture or other instrument to which Debtor is a party or by which Debtor may be bound, except for any such breach or default which has been duly waived or consented to by all necessary parties.



**2.4 No Events of Default.** Debtor is not in default under any debt or obligation of Debtor and no event has occurred which would become an event of default under any such debt or obligation with or without the giving of notice, the lapse of time, or both.

**2.5 Collateral.** Debtor owns the property granted by it as Collateral to Secured Party free and clear of any and all liens, claims, charges, pledges, security interests, deeds of trust, mortgages and other encumbrances in favor of third parties, or any other arrangements having the practical effect of the foregoing, or preferential arrangements of any other kind.

**2.6 No Litigation.** There is no action, proceeding or investigation pending or threatened, or any basis therefor known to Debtor, that questions the validity of this Security Agreement or the right of Debtor to enter into this Security Agreement, or that would have, either individually or in the aggregate, a Material Adverse Effect. "Material Adverse Effect" shall mean a material adverse effect upon Debtor's purpose, function, operation or status or upon Secured Party's security interest in the Collateral. There is no judgment, decree or order of any court in effect against Debtor and Debtor is not in default with respect to any order of any governmental authority to which Debtor is a party or by which Debtor is bound.

**2.7 Existence and Authority.** Debtor is a public benefit corporation duly organized and validly existing in good standing under the laws of the State of California. Debtor has the power and authority, rights and franchises to own its properties and to carry on its operations as now conducted. Debtor has the power and authority to make and carry out this Security Agreement.

### **ARTICLE III.** **COVENANTS OF DEBTOR**

Debtor covenants that so long as any indebtedness, liabilities and obligations (whether direct or contingent, liquidated or unliquidated) of Debtor to Secured Party under the Agreement (including payment of Health Development Expenses or repayment of the principal amount of the Advances and accrued interest thereon) remain outstanding, and until payment and performance in full of all obligations of Debtor under this Security Agreement:

**3.1 Compliance with Laws.** Debtor shall comply with the requirements of all laws, rules, regulations and orders of any governmental authority applicable to Debtor or its operation.

**3.2 Performance and Compliance with Other Agreements.** Debtor shall perform and comply in all material respects with each of the provisions of each material indenture, contract and other agreement by which Debtor or any of its properties is bound.

**3.3 Taxes and Other Liabilities.** Debtor shall pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real or personal and including federal and state income taxes, which in the aggregate the nonpayment of which would have a Material Adverse Effect, except such as Debtor may in good faith contest or as to which a bona fide dispute may arise, so long as provision is made to the satisfaction of Secured Party for eventual payment thereof if it is found that payment is an obligation of Debtor.

**3.4 Notices to Secured Party.** Within ten (10) days after Debtor has actual knowledge of the occurrence of each such event or matter, Debtor shall give written notice to Secured Party of: (i) the occurrence of any Event of Default (defined below), or any condition, event or act which would become an Event of Default with or without the giving of notice; or (ii) the commencement, or threatened commencement (of which Debtor has received written notice) of any litigation, arbitration or other proceeding against Debtor involving a reasonably potential liability.

**3.5 Records and Reports.** Debtor shall maintain books and records pertaining to the Collateral in such detail, form and scope as is consistent with good business practice, ensure that such books and records reflect Secured Party's interest in the Collateral, and permit Secured Party or its agents to enter upon the premises of Debtor at any time and from time to time, during normal business hours and upon reasonable notice under the circumstances, and at any time at all on and after the occurrence of an Event of Default, for the purposes of inspecting and verifying the Collateral, and inspecting and/or copying (at Debtor's expense) any and all records pertaining to the Collateral.

**3.6 Change in Collateral.** Debtor shall not transfer or otherwise dispose of or encumber all or any part of the Collateral, without Secured Party's prior written consent; provided, however, that in the absence of an Event of Default under this Agreement Debtor shall be entitled to utilize the Collateral in the ordinary course of business for the payment of the debts and obligations of Debtor in accordance with the terms set forth in the Agreement and any agreements, documents and exhibits incorporated in or ancillary to the Agreement. Debtor shall give Secured Party thirty (30) days' prior written notice of any proposed change in the location of any Collateral or in the location of Debtor's place of operation, advise Secured Party promptly, in sufficient detail, of any change relating to the type, quantity or quality of the Collateral, or any event which could have an adverse effect on the value of the Collateral or on the security interests granted to Secured Party in the Collateral, and defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest in the Collateral.

**3.7 Guaranties.** Debtor shall not agree to any guarantee or liability or become liable in any way as surety, endorser (other than as endorser of negotiable instruments for deposit or collection in the ordinary course of business), accommodation endorser or otherwise for, nor pledge or hypothecate any assets of Debtor as security for, any liabilities or obligations of any other person or entity, without Secured Party's prior written consent.

**3.8 Change in Purpose and Operation.** Debtor shall not make any substantial change in the present character of Debtor's purpose and operation, without Secured Party's prior written consent.

**ARTICLE IV.**  
**EVENTS OF DEFAULT**

**4.1 Events of Default.** The occurrence of any of the following shall constitute an "Event of Default" under this Agreement:

(a) Failure, breach or default in the performance of the obligations and duties of Debtor under the Agreement including the payment of Health Development Expenses or repayment of the Advances as provided in Section 3.6 of the Agreement;

(b) Debtor fails to perform or satisfy when due any obligation, agreement, covenant or condition contained in this Security Agreement, and with respect to any such default which by its nature can be cured, such default continues for a period of thirty (30) days from its occurrence;

(c) Any representation or warranty made by Debtor in connection with this Security Agreement or the Agreement proves to be false, incorrect or incomplete in any material respect when furnished or made;

(d) Any levy upon, seizure or attachment of any of the Collateral, or any other event or circumstance pursuant to which Secured Party ceases to have a valid and perfected first priority security interest in the Collateral;

(e) Debtor admits in writing its inability to pay its debts as they mature, or commences any voluntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation or other similar law of any jurisdiction;

(f) Any application or proceeding described in (d) above is filed or commenced against Debtor, and Debtor indicates its approval, consent or acquiescence thereto, or an order is entered adjudicating Debtor bankrupt or insolvent and such order remains in effect for thirty (30) days;

(g) Debtor transfers all or substantially all of its properties to, or merges with or into, any other entity; or

(i) Any change having a Material Adverse Effect on Debtor, or any other event or condition which Secured Party reasonably and in good faith believes impairs, or is substantially likely to impair either: (i) the prospect of payment or performance by Debtor of its obligations under this Security Agreement or the Agreement; or (ii) the rights and remedies of Secured Party under this Security Agreement or the Agreement.

**4.2 Remedies.** If an Event of Default occurs, Secured Party shall have all rights, powers and remedies available under this Security Agreement or the Agreement, or accorded by law to a beneficiary or a secured party, including the right to resort to any or all of the Collateral or any other security for any of the obligations of Debtor. Secured Party may exercise its rights and remedies with respect to the Collateral without resorting or regard to other security or sources for payment. All rights, powers and remedies of Secured Party in connection with this Security Agreement or the Agreement may be exercised at any time by Secured Party, and from time to time after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

**4.3 Action on Collateral.** If any Event of Default occurs and continues, Secured Party may exercise with respect to the Collateral: (a) all the rights and remedies of a secured

party on default under the Uniform Commercial Code of the State of California (the "Code") (whether or not the Code applies to the affected Collateral); (b) all of the rights and remedies provided for in this Security Agreement or the Agreement; and (c) such other rights and remedies as may be provided by law or otherwise.

**4.4 Waiver.** Debtor waives (to the extent permitted by applicable law): (a) notice of the acceptance of this Security Agreement and all other notices, demands or protests to which Debtor might otherwise be entitled by law in respect to this Security Agreement, all other Line of Credit Documents or the Collateral; and (b) all rights of redemption, stay and/or appraisal which Debtor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

**ARTICLE V.**  
**GENERAL PROVISIONS**

**5.1 Amendment.** This Security 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 attached to this Security Agreement.

**5.2 Dispute Resolution.** In the event of any controversy or dispute related to or arising out of this Security Agreement, the Parties agree to meet and confer in good faith to attempt to resolve the controversy or dispute without an adversary proceeding. If the controversy or dispute is not resolved to the mutual satisfaction of the Parties within five (5) business days of notice of the controversy or dispute, the Parties agree to waive their rights, if any, to a jury trial, and to submit the controversy or dispute to a retired judge or justice pursuant to Section 638 *et seq.* of the California Code of Civil Procedure, or any successor provision, for resolution in accordance with Chapter 6 (References and Trials by Referees), of Title 8 of Part 2 of the California Code of Civil Procedure, or any successor chapter. The Parties agree that the only proper venue for the submission of claims is the County of San Diego, California, and that the hearing before the referee shall be concluded within nine (9) months of the filing and service of the complaint. The Parties reserve the right to contest the referee's decision and to appeal from any award or order of any court.

**5.3 Assignment.** This Security Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the Parties; provided, however, that Debtor may not assign or transfer its interest or obligations under this Security Agreement without the prior written consent of Secured Party. Secured Party reserves the right to sell, assign, transfer, negotiate or grant participation in all or any part of, or any interest in, Secured Party's rights and benefits under this Security Agreement, the Note and any other Line of Credit Document.

**5.4 Attorneys' Fees, Costs and Expenses.** Debtor shall hold Secured Party harmless from, and pay to Secured Party immediately upon demand, the full amount of all costs and expenses, including reasonable attorneys' fees, incurred by Secured Party in connection with: (i) Secured Party's administration of this Security Agreement or the Agreement (including any costs or other expenses incurred in establishing or maintaining the Collateral); (ii) the enforcement of Secured Party's rights and/or the collection of any amounts which become due to Secured Party

under the Agreement (including in connection with any bankruptcy, reorganization, or similar circumstance or proceeding); and (iii) the prosecution or defense of any claim, or action in any way arising out of or related to this Security Agreement, the Agreement or the transactions contemplated thereby, including without limitation any action for declaratory relief. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. For the purpose of this Agreement, "attorneys' fees" shall include fees incurred in connection with post judgment motions, contempt proceedings, garnishment, levy, and debtor and third-party examinations, discovery and bankruptcy litigation.

**5.5 Choice of Law.** This Security Agreement shall be construed in accordance with and governed by the laws of the State of California, except choice of law rules that would require the application of the laws of any other jurisdiction.

**5.6 Compliance with Laws.** Debtor shall comply with all applicable laws, ordinances, codes and regulations of federal, state and local governments, including without limitation laws that require Debtor to disclose any economic interest or relationship with Secured Party.

**5.7 Confidentiality.** Neither Party shall disclose this Security Agreement or any of its terms to any person or entity, other than its attorneys and accountants, without the prior written consent of the other Party, unless and only to the extent such disclosure is required by law.

**5.8 Counterparts.** This 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.

**5.9 Entire Agreement.** This Security Agreement (including all agreements incorporated herein by referenced or mentioned herein) together with the Agreement constitutes the entire understanding and agreement of the Parties regarding its subject matter, and supersedes any prior oral or written agreements, representations, understandings or discussions between the Parties. No other understanding between the Parties shall be binding on them unless set forth in writing, signed and attached to this Security Agreement.

**5.10 Exhibits.** The attached exhibits, together with all documents incorporated by reference in the exhibits, form an integral part of this Security Agreement and are incorporated into this Security Agreement wherever reference is made to them to the same extent as if they were set out in full at the point at which such reference is made.

**5.11 Force Majeure.** Neither Party is liable for nonperformance or defective or late performance of any of its obligations under this Security 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), 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).

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

**5.13 Notices.** All notices or communications required or permitted under this Security Agreement shall be given in writing and delivered personally, sent by United States registered or certified mail with postage prepaid and return receipt requested or by overnight delivery service (e.g., Federal Express). In each case, notice shall be delivered or sent to the address set forth for Debtor or Secured Party, as applicable, in the Agreement. Notice is deemed given when sent, if sent as specified in this paragraph, or otherwise deemed given when received.

**5.14 Severability.** If any provision of this Security Agreement is determined to be illegal or unenforceable, that provision shall be severed from this Security Agreement, and such severance shall have no effect upon the enforceability of the remainder of this Security Agreement, unless the purposes of this Security Agreement is thereby destroyed.

**5.15 No Third-Party Beneficiary Rights.** The Parties do not intend to confer and this Security Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the Parties.

**5.16 Termination.** This Security Agreement and the security interest in Collateral created hereby shall terminate after payment and performance in full of all obligations arising under the Agreement. Upon such termination, the Collateral shall be released from the security interest hereby created, and Secured Party will execute and deliver to Debtor such documents as Debtor shall reasonably request to evidence such release.

**5.17 Waiver.** No delay, failure or discontinuance of Secured Party in exercising any right, power or remedy under this Security Agreement or the Agreement shall constitute a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy. Any waiver, permit, consent or approval of any kind by Secured Party of any breach of or default under this Security Agreement or the Agreement must be in writing and shall be effective only to the extent expressly set forth in such writing.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Secured Party and Debtor have executed this Security Agreement on the date first above written.

**SECURED PARTY**

**PALOMAR POMERADO HEALTH, a local California health care district**

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

**DEBTOR**

**PALOMAR POMERADO NORTH COUNTY HEALTH DEVELOPMENT, INC., a California nonprofit public benefit corporation**

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

**ATTACHMENT A TO EXHIBIT 2.1(b)**

**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 Debtor in and to: (a) donations and grants from all sources; (b) furniture, fixtures and equipment; (c) all monies from time to time on deposit in Debtor's business bank accounts as established in accordance with this Agreement; (d) documents; (e) insurance proceeds; (l) all books and records in respect to the foregoing; and (m) to proceeds of all the foregoing, whether now existing or hereafter acquired or arising (collectively, the "Collateral").



**ATTACHMENT B TO EXHIBIT 2.1(b)**  
**[LETTERHEAD OF PALOMAR POMERADO HEALTH]**

[Address of Bank]

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

Re: Notice of Security Interest in Account

Ladies and Gentlemen:

Please take notice that PALOMAR POMERADO HEALTH, a local health care district organized under the laws of the State of California (“PPH”), holds a security interest in a business deposit account, number at \_\_\_\_\_, maintained for PALOMAR POMERADO NORTH COUNTY HEALTH DEVELOPMENT, INC., a California nonprofit public benefit corporation (“Health Development”).

The security interest is held pursuant to that certain Security Agreement by and between PPH and Health Development, dated as of \_\_\_\_\_, 2005, a copy of which is enclosed.

Sincerely,

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT 4.2**

**OBLIGATIONS UNDER THE HEALTH INSURANCE PORTABILITY AND  
ACCOUNTABILITY ACT OF 1996 ("HIPAA")**

PPH and Health Development shall execute a Business Associate Agreement which shall set forth the terms and conditions under which Protected Health Information ("PHI") that is created or received by Health Development from or on behalf of PPH will be used, disclosed and otherwise handled by Health Development, consistent with the following:

1. **Use of Protected Health Information.** Health Development shall use PHI only as expressly permitted by the Business Associate Agreement and for the purpose of performing its obligations under this Agreement or as otherwise required by law. Health Development shall not use PHI in any manner that would constitute a violation of HIPAA if done by PPH.
2. **Permitted Disclosures.** Health Development shall disclose PHI, only as expressly permitted or by the Business Associate Agreement and for the purpose of performing its obligations under this Agreement or as otherwise required by law. Health Development shall not disclose PHI in any manner that would constitute a violation of the HIPAA if done by PPH.
3. **Appropriate Safeguards.** Health Development shall implement appropriate safeguards as are necessary to prevent the use or disclosure of PHI other than as permitted or required by the Business Associate Agreement.
4. **Reporting of Improper Use or Disclosure.** Health Development shall notify PPH in writing of any use or disclosure of PHI that is not permitted or required by the Business Associate Agreement within two (2) days of becoming aware of such use or disclosure.
5. **Agents and Subcontractors.** Health Development shall require all of its subcontractors and agents that receive, use, or have access to PHI to agree to adhere to the same restrictions and conditions that apply to Health Development under the Business Associate Agreement
6. **Access to Records.** Health Development shall make their respective internal practices, books and records relating to the use and disclosure of PHI available to PPH for purposes of determining Health Development's compliance with the Business Associate Agreement or to the Secretary of the U.S. Department of Health and Human Services for purposes of determining PPH's compliance with the Privacy Rule.
7. **Access, Amendment and Accounting.** Health Development shall comply with requests by PPH regarding individuals' rights of access, amendment and to receive an accounting of the uses and disclosures of their PHI in accordance with processes and time frames which shall be set forth in the Business Associate Agreement.

8. **Security Rule Compliance.** Health Development shall (a) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI, (b) ensure that any agent or subcontractor to whom it provides any electronic PHI agrees in writing to implement similar safeguards as those required of the Business Associate Agreement, and (c) report to PPH, in writing, any security incident of which it becomes aware within two (2) days of becoming aware of such security incident.

9. **Term of Obligations.** Health Development's obligations shall commence as of the compliance date of the effective date of this Agreement, and shall terminate when the Business Associate Agreement is terminated and all of the PHI is destroyed or returned to PPH.

10. **Effect of Termination.** Upon expiration or termination of this Agreement or the Business Associate Agreement for any reason, Health Development shall return or destroy all PHI that Health Development still maintains in any form and shall retain no copies of such PHI. If return or destruction is not feasible, as determined by PPH, Health Development shall continue to extend the protections discussed above to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible.

11. **Amendment.** The parties agree to take such action as is necessary to amend the Business Associate Agreement from time to time in order for PPH to comply with the requirements of HIPAA, and other applicable laws relating to the security or confidentiality of PHI.

12. **Interpretation of Obligations.** The obligations as set forth above shall be interpreted as broadly as necessary to allow PPH to implement and comply with its obligations under HIPAA . The parties acknowledge and agree that any ambiguity in the obligations set forth in the Business Associate Agreement shall be resolved in favor of a meaning that permits PPH to comply with its obligations under HIPAA .

13. **Definitions.**

- a. **"Privacy Rule"** shall mean the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E, as amended from time to time, under HIPAA.
- b. **"Security Rule"** shall mean the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C, as amended from time to time, under HIPAA.
- c. **"HIPAA"** shall mean 42 U.S.C. 1320d-1 *et seq.*, the Privacy Rule, the Security Rule, and the Standards for Electronic Transactions, 45 C.F.R. Part 160 and Part 162, all as amended from time to time.
- d. All other capitalized terms used, but not otherwise defined, in the Business Associate Agreement shall have the meaning set forth in the Privacy Rule and/or Security Rule as applicable.

**PALOMAR MEDICAL CENTER  
STEREOTACTIC RADIOSURGERY SYSTEM**

**TO:** Board of Directors

**FROM:** Board Finance Committee  
Tuesday, October 25, 2005

**MEETING DATE:** Monday, November 14, 2005

**BY:** Gerald E. Bracht  
Chief Administrative Officer

**BACKGROUND:** Management is proposing the acquisition of a Trilogy Stereotactic Radiosurgery System (SRS). SRS is a new technology providing for non-invasive treatment of cancer in the brain, spine, pancreas, liver, kidney and lung that was previously performed surgically. This technology is not available anywhere in North San Diego County and will enhance the clinical services offered by Palomar Medical Center's Radiation Therapy Department. The technology supports the development of Centers of Excellence in Neuroscience and Oncology. The attached business plan provides a complete and thorough description of the program, and the *pro forma* reflects a positive return on investment with a 2.4-year payback. The program is supported by Radiation Oncologists, Neurosurgeons and Oncologists and was presented and approved by the Physicians' Capital Advisory Committee on September 8, 2005, and by the Cancer Committee on September 28, 2005. The plan was submitted to the Executive Management Team and approved on September 12, 2005.

**BUDGET IMPACT:** None

**STAFF RECOMMENDATION:** Approval.

**COMMITTEE QUESTIONS:**

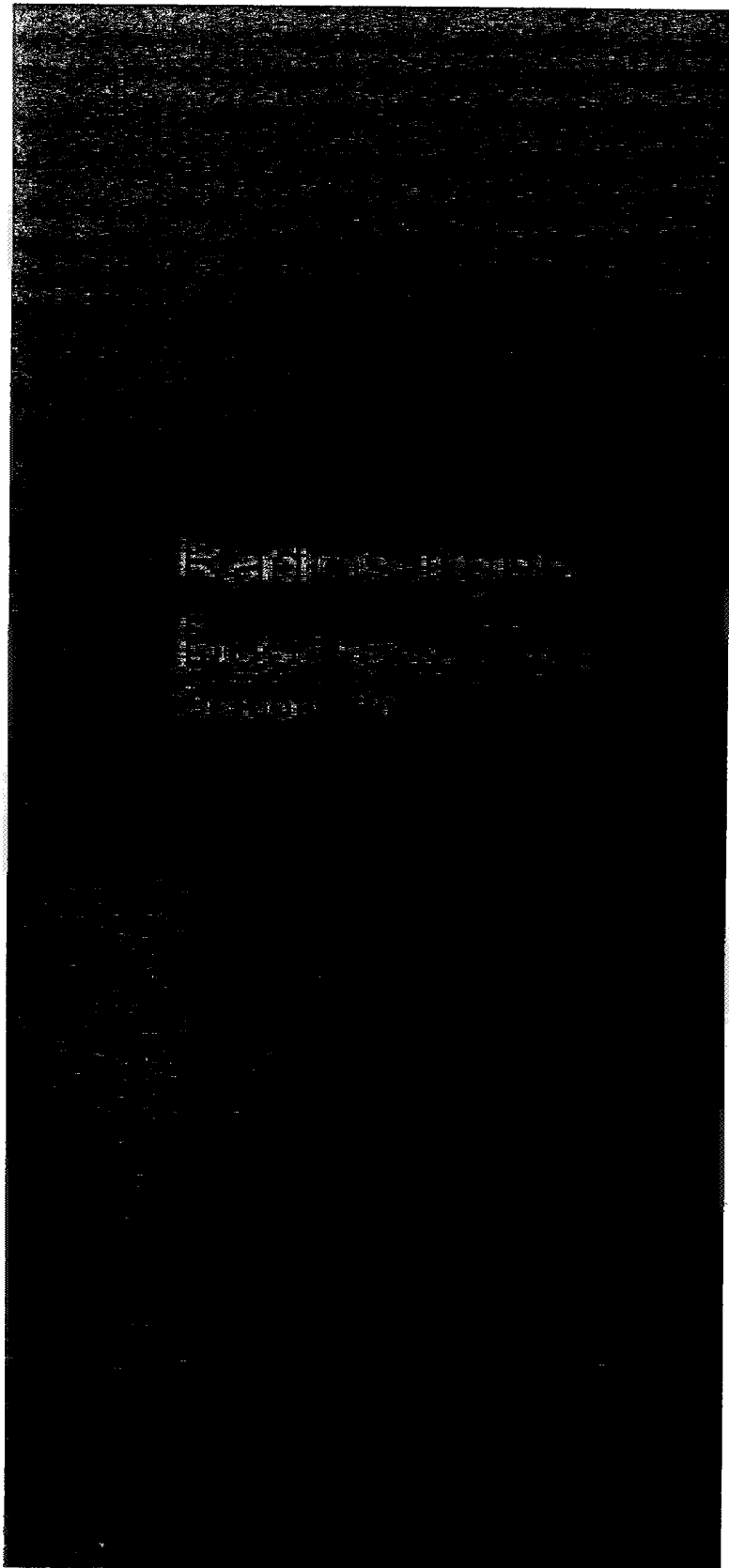
**COMMITTEE RECOMMENDATION:** The Finance Committee recommends authorizing Management to proceed with the Radiosurgery Business plan for Palomar Medical Center, which includes the purchase or lease (to be determined at acquisition) of a Varian Trilogy Stereotactic Radiosurgery System.

**Motion:** X

**Individual Action:**

**Information:**

**Required Time:**



Prepared for:  
Palomar Pomerado Health  
By: Hudson Healthcare Consulting

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# Executive Summary

## Service / Program Description

*What is the proposed service or program?*

This business plan outlines a proposal to acquire a Stereotactic Radiosurgery System for installation at Palomar Medical Center (PMC) in the Radiation Oncology Department. This new technology, not currently available at PMC, is used to treat cancers and other conditions with radiosurgery.

### What is radiosurgery?

Stereotactic radiosurgery (SRS) is a relatively new technology that is a less invasive alternative to surgical intervention. It is not surgery but a special form of radiation treatment not available on conventional linear accelerators. Treatment involves the use of focused radiation beams delivered to a specific area of the brain or elsewhere in the body to treat tumors or other functional disorders.

Radiosurgery has such a dramatic effect in the target zone that the changes are considered "surgical." It allows brain surgery to be performed on an outpatient basis with reduced pain, a brief recovery period and no incision. This means many brain abnormalities, once treated only through open brain surgery, can now be treated without an incision in a single day.

The intracranial disorders that can be treated by radiosurgery include:

<b>Intracranial Cancers and Disorders Treated by SRS</b>	
Benign brain tumors	1. Acoustic Neuromas
	2. Meningiomas
	3. Pituitary Tumors
Malignant brain tumors	All types
Metastatic brain tumors	All types
Functional disorders	1. Trigeminal Neuralgia
	2. AV Malformations

Radiosurgery is also being expanded to treat cancers outside of the brain in the spine, pancreas, liver, kidney and lung. The newer systems have the robotic capability to rotate position and target tumors throughout the body. This application of radiosurgery outside the brain is still emerging and is predicted to grow in the future.



**Why Radiosurgery at Palomar Medical Center?**

1. Radiosurgery will introduce a new therapy not currently available at PMC for brain and other cancers that will greatly improve the quality outcome for these patients. It will allow them to have a less invasive treatment instead of a surgical open procedure. In some cases, where cancers are too advanced for surgery, radiosurgery is the only option.
2. Stereotactic Radiosurgery (SRS) and Image-Guided Radiation Therapy (IGRT) are highly profitable with a positive ROI and a 2.4-year payback of the initial capital investment.
3. Radiosurgery is an advanced and high-tech therapy that will enhance the reputation of PPH for neuroscience care and improve the overall quality perception of PPH by the community.
4. Competition for radiosurgery is still low in San Diego County, only Scripps La Jolla and Sharp Memorial Hospital offer it currently. UCSD plans to add it in the near future to their new cancer center. The demand for the modality is projected to grow. There is good potential to attract additional patients from outside the traditional PPH service area from the more coastal zip codes of Oceanside, Vista and Carlsbad as well as the inland cities of Temecula and Fallbrook.
5. The proposed unit for purchase, a Varian Trilogy Stereotactic System, is multifunctional with the ability to do standard radiation therapy plus SRS, and other new modalities like IGRT (Imaged Guided Radiation Therapy) and IMRT (Intensity-Modulated Radiation Therapy). It has additional features that allow for greatly improved tumor targeting.
6. The existing Varian linear accelerator at PPH was purchased in 1998 and is almost at the end of its functional life. Replacement would be necessary in the next three to five years and likely cost more than two million dollars. With the purchase of this new multi-functional system, all therapy performed in the department will be shifted to the new machine and negate the need for a replacement linear accelerator in the near future.
7. PPH physicians are supportive of the acquisition of this technology and in agreement about the vendor choice. Some physicians have already expressed a willingness to refer cases for SRS to PMC instead of competitors.

Executive Summary Continued

8. Instead of sending PPH patients to the Scripps Memorial campus for radiosurgery or to Sharp Memorial, these patients can now stay at PMC. This sends the message that PPH is a comprehensive healthcare provider and able to do the most sophisticated therapeutic treatments.

## **Plan Summary**

*What are the key points of the plan?*

### **Current Situation**

PMC has a high-volume radiation oncology department but does not have radiosurgery capability. Patients in the PPH service area who need radiosurgery now travel to La Jolla for treatment at San Diego Gamma Knife or to Sharp Memorial in San Diego.

### **Stereotactic Radio Surgery Program Objectives**

1. Quality and Service Improvement
2. Enhanced reputation by positioning PPH as having the latest and most advanced technology
3. Profitably grow market share for Neuroscience and Oncology
4. Achieve high patient and physician satisfaction
5. Realize financial targets and volumes

### **Location**

The Radiation Oncology Department, on the third floor of PMC, will be the site for the new Stereotactic Radiosurgery System. It will be installed in an existing suite after an older non-functioning linear accelerator is removed.

### **Program Structure and Operations**

This new service will be offered through the existing PMC Radiation Oncology Department and managed by the existing supervisor Shelby Mason, R.T.T.

### **Medical Staff Implications**

The medical staff is supportive of adding radiosurgery capability to PMC. The neurosurgeons and radiation oncologists are especially supportive. The Cancer Committee endorsed the addition of this service.

### **Competitive Issues**

Currently there are two competitors in the county for radiosurgery: San Diego Gamma Knife, located on the campus of Scripps Memorial Hospital La Jolla and Sharp Memorial Hospital in San Diego.

Executive Summary Continued

**Requirements**

The equipment purchase is the most significant requirement to establish the program. The Varian Trilogy Stereotactic System is the unit proposed for PMC. This unit is the latest in multifunctional linear accelerators and can deliver conventional radiation therapy as well as stereotactic radiosurgery plus image guided radiation therapy. This makes it a very practical choice, as it can perform all radiation therapy modalities. Some construction is required for the installation. Specifically an additional one-inch of lead must be added to certain portions of the existing vault. The new unit itself arrives in modular sections, requires just a four-foot doorway width for delivery, and is assembled on-site.

**Financials**

*What are the financial implications of the plan?*

Two sources of incremental revenue will be generated by the addition of this advanced technology for the new modalities of SRS and IGRT.

Key elements from the complete Pro Forma (located in the appendix) for the proposed program shows:

**Static Growth Scenario**

<b>Initial Capital Investment</b>	\$4,250,491 includes the equipment, construction and tax.
<b>Net Present Value:</b>	\$5,579,688
<b>Payback period:</b>	2.4 years

**Recommendation**

The proposed radiosurgery program will improve the overall quality of services at PPH, deliver positive financial returns, enhance and improve the satisfaction of both physicians and patients, and profitably deliver advanced therapy. The implementation process is relatively uncomplicated and the project will have the support of the medical staff. Patient retention will be higher as it eliminates the need for a trip to other hospitals for advanced services.

# Introduction

In the public's mind, brain surgery has been considered the most sophisticated of medical specialties. Historically, our culture has a high regard for the complexity and skill it takes to perform neurosurgery. A recent PPH consumer study showed that neuroscience services are one of the top two services for positively driving a hospital's image and reputation.<sup>1</sup>

Stereotactic radiosurgery (SRS) is a relatively new technology that is a less invasive alternative to surgical intervention. It is a way of treating brain disorders with a precise dose of radiation in one session or multi-sessions. Treatment involves the use of focused radiation beams delivered to a specific area of the brain to treat tumors or other functional disorders

Radiosurgery has such a dramatic effect in the target zone that the changes are considered "surgical." It may be the primary treatment; utilized where a tumor is inaccessible by surgical means; or as a boost or adjunct to other treatments with a recurring or malignant tumor. In some cases, multiple session treatment is more advantageous than single session; this is called fractionated stereotactic radiotherapy or SRT.

Stereotactic radiosurgery works the same as all other forms of radiation treatment. It does not remove the tumor or lesion, but it distorts the DNA of the tumor cells. The cells then lose their ability to reproduce and retain fluids.

## **Types:**

There are three basic forms of stereotactic radiosurgery represented by three different technologies. Each instrument operates differently, has a different source of radiation and may be more effective under different circumstances. The three are: the Cobalt 60 based machines such as the Gamma Knife, linear accelerator based machines and the proton particle beam units.

The cobalt 60 based machines provide extremely accurate targeting and precise treatment for brain cancers. They are dedicated to treating only brain tumors and dysfunctions in a one-day treatment. The most well known machine is the Gamma Knife®. It delivers a gamma radiation ray.

The Gamma Knife® does not move during treatment, thus providing a high degree of precision within the brain. It has been available for 30 years with substantial research and follow-up backing its treatments and outcomes. The unit today is much the same as when it was developed. Over 200,000 people have received treatment with this machine at this time. These machines are ideal for smaller tumors (less than 3.5 cm) and for functional disorders of the

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<sup>1</sup> Neurosciences Assessment Plan, PPH Planning Department, 2004

brain but they cannot treat cancers outside of the brain because of the frame design.

Linear accelerator based radiosurgery machines are also prevalent throughout the world. One benefit of this technology is its ability to easily treat large tumor volumes (over 3.5 cm) by treating over several sessions. The machines are made by multiple manufacturers with these brand names: X-Knife®, SynergyS®, Trilogy®, Novalis®, CyberKnife®, and others. Linear accelerator based machines are not dedicated to just treatment within the brain. They can be utilized throughout the body as well as the head and neck. They deliver an X-ray form of radiation.

The radiosurgery unit under consideration by PPH is a Varian Trilogy Stereotactic Surgery System that is based on the linear accelerator technology.

Proton beam technology is used mostly in research settings and rarely found in a hospital.

# Mission / Strategy Alignment

## **Mission Implications**

*How does the program/service advance the mission?*

### **PPH Mission**

The mission of Palomar Pomerado Health is to heal, comfort and promote health in the communities it serves.

This new radiosurgery technology will allow PPH to offer the most advanced treatment option available for the care of patients with brain and other cancers as well as many neurological disorders, through the delivery of the most current radiotherapies with improved precision, accuracy, and enhanced tumor targeting.

### **PPH Vision**

Palomar Pomerado Health will be the health system of choice for patients, physicians, and employees, recognized nationally for the highest quality of clinical care and access to comprehensive services.

### **Proposed Radiosurgery Program Vision**

Palomar Pomerado Health will be a symbol of excellence in providing a comprehensive approach to radiation oncology. It will feature the most advanced technology, highly skilled physicians and clinical staff, excellent clinical outcomes and a patient-centered approach to care.

## **Strategy Implications**

*How does the program /service fit with larger strategic goals?*

PPH is targeting to become one of the top five public health systems in the country. A Neuroscience Center of Excellence is under development at PPH. This technology for SRS would differentiate PPH from other competitors who lack the technology.

Delivering the highest quality of clinical care is consistent with both PPH strategy and mission. Enhancement of the neuroscience services at PPH will have a positive effect on the perceived reputation of PPH in the community. In addition, having radiosurgery available within the hospital system, instead of sending patients to competing hospitals, sends a strong message that PPH has comprehensive and advanced care.

# Market Analysis

## Target Population

*Who are the customers and what are their needs?*

The target population for this service is adults residing in the PPH primary and secondary service area who have diseases and disorders that are treatable with radiosurgery.

Palomar Pomerado is located inland in North San Diego County. The hospital district covers an 800-square mile area and is the largest hospital district in California.

The primary service area for PPH includes the cities of

- Escondido,
- San Marcos
- Poway
- Rancho Bernardo
- Rancho Penasquitos
- Valley Center
- Julian
- Pala
- Pauma Valley
- Ramona
- Santa Ysabel
- Rancho Penisquitos

A secondary service area (see next page for listing) for radiosurgery at PMC is possible within the cities of Vista, Oceanside, Carlsbad along the coast and inland areas of Temecula and Fallbrook. It is thought that this program will have a larger geographic pull due to several factors including:

- This new technology is not yet prevalent in the county. Neither Tri-City nor Sharp has systems. Only Sharp Memorial and Scripps Memorial Hospital La Jolla have the capability for radiosurgery in all of San Diego County. Therefore, opportunity exists at PPH due to geographic proximity.
- Physician referral patterns for patients who are SRS candidates flow from neurologist to neurosurgeon and then to oncologist and radiation oncologist. Neurosurgeons are members of multiple hospital medical staffs as are oncologists. This factor opens a window for potential referrals from the neurosurgeons and oncologists on staff at Tri City who are already on staff at PPH.

**Palomar Pomerado Primary and Secondary Service Area**

PPH Primary Service Area	Zip Code
Escondido	92025
	92026
	92027
	92029
San Marcos	92069
	92078
	92096
Poway	92064
Rancho Bernardo	92127
	92128
Rancho Penasquitos	92129
Valley Center	92082
Julian	92036
Pala	92059
Pauma Valley	92061
Ramona	92065
Santa Ysabel	92070
Proposed PPH/Secondary SPS Service Area	Zip Code
Carlsbad	92008
	92009
Cardiff	92007
Del Mar	92014
Encinitas	92024
Fallbrook	92028
Oceanside	92054
	92056
	92057
Solana Beach	92075
Vista	92081
	92083
	92084
Temecula	92589
	92591
	92592



## Demand Forecasting

*What are the incidence rates of conditions or diseases to be treated by the new service?*

Three methods are available to estimate incidence and volume for this new SRS program. They include:

1. **National Data** - from sources such as the Health Care Advisory Board and the Cancer Surveillance Program
2. **Local Marketplace Expertise** - the experience of local experts such as the Medical Director of Radiation Oncology at PMC
3. **Historical Data** - from hospital admissions collected by the State of California

### **National Data**

The table below shows the intracranial diagnosis that can be treated with SRS with national projections for incidence rates from the Health Care Advisory Board. These metrics are next applied to the PPH population size of the primary service area<sup>2</sup> and market share to calculate an estimated number of cases. This methodology predicts 34 intracranial cases of SRS annually for PPH.

Diagnosis	ICD-9 Code	National Incidence per 100,000	Market Share	Estimated Cases	Estimated Cases
Brain Metastases Solid/Multiple	198.19 8.4	63	27%	78.8	24.4
Benign Brain Tumors	225.0- 225.2	2	40%	3.7	1.1
Malignant Brain Neoplasm	191.0- 191.9	4	25%	4.6	1.4
Trigeminal Neuralgia	350.1	4.3	50%	10.0	3.1
AV Malformation	747.81	1.9	70%	6.16	1.9
Acoustic Neuroma	192.0, 225.1	0.9	70%	2.92	0.9
Pituitary Adenoma	227.3	2.1	20%	1.94	0.6
Cerebral Meninges	192.1	0.8	25%	0.93	0.3

<sup>2</sup> PPH PSA population equaled 463,088 in 2004

<sup>3</sup> Future of Neuroscience, Health Care Advisory Board, 2005

<sup>4</sup> Source: PPH Planning Dept

Intracranial Diagnosis	ICD #	National Incidence per 100,000	Treatable with SRS or SRT	PPH Cases	PMC/SRS Cases at PPH or other Sites
Neoplasms of Uncertain Behavior	237.0-237.3	0.4	25%	0.46	0.1
<b>Total</b>				109.4	34

The Varian Trilogy Stereotactic Radiosurgery System is multifunctional unit that has the capability to treat tumors both intracranial and extracranial cancers giving it a broad treatment base.

Extracranial use of SRT (outside the brain) is still a new concept that is expanding in application. The potential for even greater demand and greater application over time is high. As this application for SRT is just emerging, the national predictions for PMC (142 cases) are higher than local marketplace experience suggests.

Extracranial Diagnosis	ICD #	National Incidence per 100,000	Treatable with SRS or SRT	PPH Cases	PMC/SRS Cases at PPH or other Sites
Spine	170.2,170.6,171.9,191.7,191.2-3,198.3-4,225.3-4,237.5-6	3.4	50%	7.9	3.3
Pancreas	157.0-9,211.6,230.9,235.5	11.1	75%	38.6	16.2
Liver	155.0,155.2,197.7,211.5,230.8,235.3	6.1	45%	12.7	5.3
Lung	162.2-9, 197.0, 212.3,231.2,235.7,239.1	59.5	28%	77.2	32.4
Prostate	185,189.3,222.2,233.4,236.5	80	50%	185.2	77.8
Renal	189.0-1,198.0,223.0-1,236.91	12.5	30%	17.4	7.3
<b>Total</b>				339	142

<sup>5</sup>Source: PPH Report on Oncology Service Line

## Projected Volumes

*How many patients will the program serve each year?*

### **Local Marketplace Expertise**

For this methodology, projections for SRS and SRT are based on PMC Radiation Therapy's current 300 annual patients. The following estimates for radiosurgery were made by the Medical Director, Dr. Lori Coleman from her knowledge of the local market using this base of existing 300 patients seen now at PMC.

Modality	Estimated Percentage	Projected Annual Volume
Stereotactic Radiosurgery	10%	30
Stereotactic Radiotherapy	7%	21
Image Guided Radiation Therapy	12%	36

Comparing these internal estimates against national data from the Health Care Advisory Board<sup>6</sup> showed a close correlation for the intracranial application.

### **Historical Data**

Finally, 2003 inpatient hospital admissions as reported annually to the State of California are a measure for potential SRS cases in the primary and secondary service areas in the most recent data year. This data documents how many cases were actually discharged from San Diego Hospitals with the diagnosis codes appropriate for SRS and SRT. The treatable percentage estimated for these discharges is 30% for intracranial cases and 42% for extracranial cases.<sup>5</sup> This data suggests fewer numbers of intracranial SRS (15) and more cases of extracranial SRT (80) than previous methods.

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<sup>6</sup> Future of Neuroscience, Health Care Advisory Board, 2005

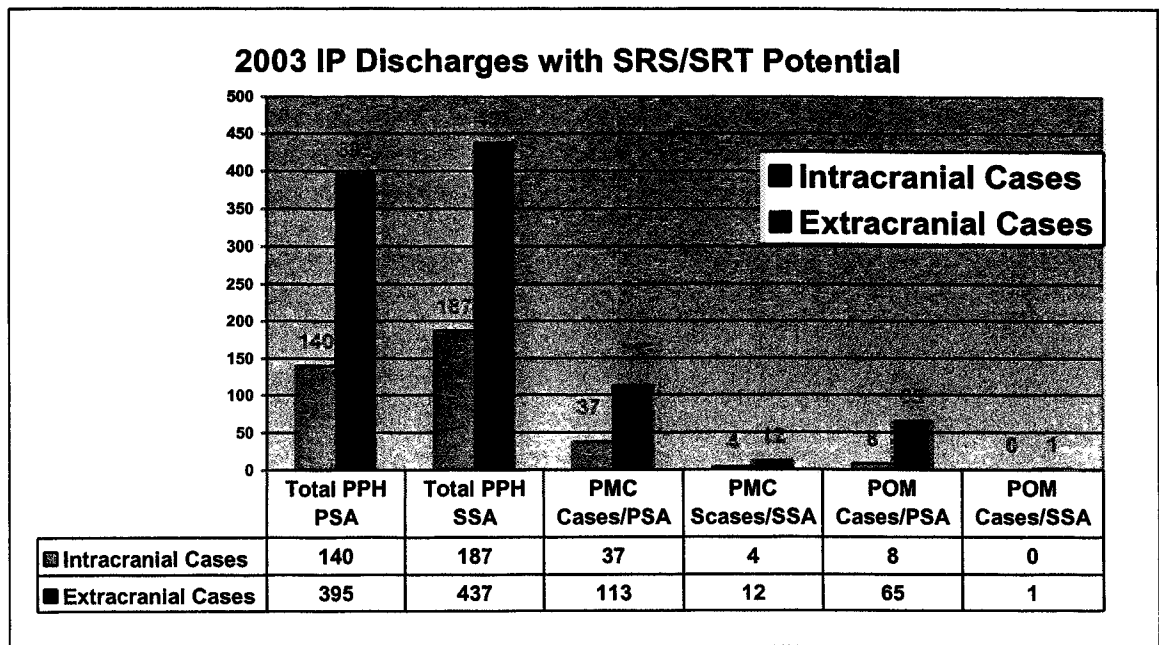
The following two tables below show the 2003-inpatient admissions for intracranial cases and extracranial cases in the PPH primary and secondary service areas for all hospital and also specifically for PPH hospitals<sup>7</sup>.

Intracranial Disease	ICD-9	Total Inpatient Discharges in the PPH	Total Inpatient Discharges in the PPH	Total Inpatient Discharges in the PPH	Total Inpatient Discharges in the PPH
Brain Metastases Solid/Multiple	198.198.4				
Benign Brain Tumors	225.0-225.2				
Malignant Brain Neoplasm	191.0-191.9				
Trigeminal Neuralgia	350.1				
AV Malformation	747.81				
Acoustic Neuroma	192.0, 225.1				
Pituitary Adenoma	227.3				
Cerebral Meninges	192.1				
Neoplasms of Uncertain Behavior	237.0-237.3				
<b>Total</b>		<b>140</b>	<b>187</b>	<b>45</b>	<b>4</b>

<sup>7</sup> OSHPD Inpatient 2003 Database

Extract Site	ICD-9	Total Inpatient Discharges from the PPH in 2003	Total Inpatient Discharges from the PPH in 2003	PPH	PPH
Spine	170.2,170.6,171.9,191.7,191.2-3,198.3-4,225.3-4,237.5-6				
Pancreas	157.0-9,211.6,230.9,235.5				
Liver	155.0,155.2,197.7,211.5,230.8,235.3				
Lung	162.2-9, 197.0, 212.3,231.2,235.7,239.1				
Prostate	185,189.3,222.2,233.4,236.5				
Renal	189.0-1,198.0,223.0-1,236.91				
<b>Total</b>		<b>395</b>	<b>437</b>	<b>178</b>	<b>13</b>

The following is a graph of the above tables and the ICD-9 codes and volumes for 2003, which is the most recent data-year available.



Two growth scenarios for the new SRS program at PPH have been modeled in the proforma (see appendix). They are based on the local marketplace predictions.

1. **Conservative:** no growth in volume over time is projected, only the servicing of the existing PPH patients receiving radiation therapy being sent to other providers.
2. **Moderate:** annual volume growth of 5% year one and 2% grow annually for six years subsequent to reflect the capture of additional secondary service area referrals in Vista, Oceanside, Carlsbad, Encinitas Temecula, Ramona and the predicted population growth rate for the county of 1.6% annually.

## Competitive Environment

*What is the existing market share distribution for this service in the market?*

No market share data exists for outpatient SRS volumes in the county, as it is not tracked by the state database.

### Market share for Brain Cancer

Since no SRS market share data exists, looking at the DRGs where inpatient neurological cancer track is a helpful indicator of provider ranking. This market share for the PSA can assist with predicting referral patterns. The 2003 market share table below shows that the Scripps System and UCSD have a huge pull in the PPH primary service area, likely because of their SRS capability.

#### State Inpatient Market Share for Selected Hospital

<sup>8</sup>Database: OSHPD Inpatient 2003

Area Selection: PPH Primary Service Area

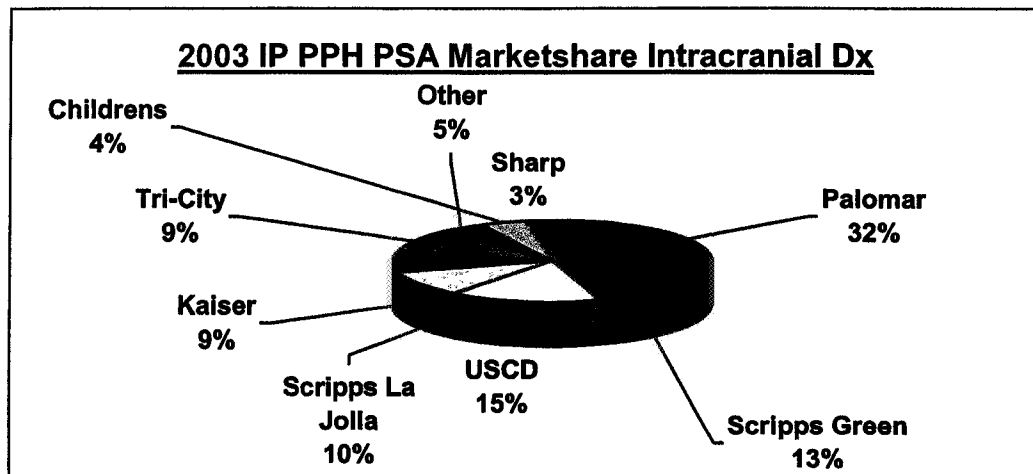
Neurologic Cases

DRGs 1, 2, 10, 11

Hospital	Cases	Market Share
Palomar Medical Center	77	31%
Scripps Memorial Hospital - La Jolla	28	11%
Scripps Green Hospital	24	10%
Kaiser Fnd Hosp - San Diego	23	9%
University of Calif-San Diego Medical Center	23	9%
Tri-City Medical Center	17	7%
Sharp Memorial Hospital	16	6%
UCSD/La Jolla - Thornton Hospital	14	6%
Pomerado Hospital	8	3%
UCLA Medical Center	4	2%
Kaiser Fnd Hosp - Sunset	3	1%
Scripps Mercy Hospital	3	1%
Grossmont Hospital	2	1%

<sup>8</sup> OSHPD Data Sorted by PPH Planning Department

Drilling down from the DRG level to the intracranial diagnosis codes (ICD-9) appropriate for Stereotactic Radiosurgery (see page 13 for listing) shows a slight change in market share from 31% to 32%<sup>9</sup>.



## Competitor Capabilities

*What are the competitors' existing capabilities in this service?*

San Diego Gamma Knife, located on the campus of Scripps Memorial Hospital La Jolla, is currently the only provider of the Gamma Knife brand of SRS in San Diego. Sharp Memorial Hospital has installed in their Outpatient Pavilion a Novalis® LINAC System in 2005, which can perform radiosurgery. The University of California San Diego Medical Center (UCSDMC) has recently purchased a Varian Trilogy Radiosurgery System like the one PPH is considering, and will soon open that service in their Cancer Center on the Thorton Campus in La Jolla.

### San Diego Gamma Knife

The San Diego Gamma Knife Center was opened in October 1994.<sup>10</sup> It is available for use by all qualified neurosurgeons and radiation oncologists in Southern California receives referrals from the hospitals of Scripps Health, Sharp, UCSD, PPH, Tri-City, Grossmont and Inland Valley.

The medical director of the Center is Dr. Kenneth Ott, a Scripps Memorial Hospital La Jolla Neurosurgeon. The center allows clinical privileges to every Neurosurgeon and Radiation Oncologist who meets their criteria. The San Diego Gamma Knife has a better than average website and is able to negotiate contracts rates for all payers including

<sup>9</sup> State Inpatient Discharge Data 2003

<sup>10</sup> www.sdgkc.com



self-pay. They have active marketing and customer service programs. They provide extra perks like daily lunch for physicians and gifts at Christmas.

### SAN DIEGO GAMMA KNIFE CLINICAL STAFF<sup>11</sup>

Physician	Specialty	Location	Hospital Affiliations
John Alksne, M.D.	Neurosurgeon	San Diego	UCSD
Lance Altenau, M.D.	Neurosurgeon	La Jolla	Scripps
Sam Assam, M.D.	Neurosurgeon	La Jolla	Scripps
David Barba, M.D.	Neurosurgeon	San Diego	UCSD
Faith Barnet, M.D.	Neurosurgeon	La Jolla	Scripps
Sanjay Ghosh, M.D.	Neurosurgeon	San Diego	Alvarado
Tyrone Hardy, M.D.	Neurosurgeon	La Mesa	Grossmont
William Loudon, M.D.	Neurosurgeon	Orange	St. Joseph Hospital
Thomas Marcisz, M.D.	Neurosurgeon	Escondido, Oceanside	PPH, Tri-City
Hal Meltzer, M.D.	Pediatric Neurosurgery	San Diego	Children's Hospital of San Diego
Scott Meyer, M.D.	Neurosurgeon	Encinitas	Scripps
Richard Ostrup, M.D.	Neurosurgeon	La Jolla	Scripps
Kenneth Ott, M.D.	Neurosurgeon	La Jolla	Scripps
Lokesh Tantuwaya, M.D.	Neurosurgeon	San Diego	
Howard Tung, M.D.	Neurosurgeon	San Diego	UCSD
Lori Coleman, M.D.	Radiation Oncologist	La Mesa	Sharp and PPH
Robert Goebel, M.D.	Radiation Oncologist	Long Beach	Long Beach Memorial
David Hodgens, M.D.	Radiation Oncologist	La Jolla	Scripps
Theodore Masek, M.D.	Radiation Oncologist	Rancho Mirage	Eisenhower
Ken Shimazu, M.D.	Radiation Oncologist	Vista	Tri-City
Damon Smith, M.D.	Radiation Oncologist	San Diego	RMG
Mathew Spear	Radiation Oncologist	San Diego	UCSD
Prabhakar Tripuraneni, M.D.	Radiation Oncologist	San Diego	
Geoffrey Weinstein, M.D.	Radiation Oncologist	San Diego	Sharp

<sup>11</sup> www.sdgkc.com

The Gamma Knife program unit is an integral part of the neurosciences services of Scripps Memorial Hospital La Jolla. Physician sources revealed that the San Diego Gamma Knife usually has a three-week wait to book a new patient. The main advantage of the center is that it is the only Gamma Knife located in San Diego.

#### **Other Gamma Knife Centers**

Outside of the San Diego area, the closest Gamma Knife Center is in Orange County. It is located in Newport Beach on the campus of Hoag Hospital. Hoag and the University of California Irvine Medical Center own it jointly. The Center performs about 200 cases per year. The medical director, Dr. Christopher Duma, is a neurosurgeon. Hoag also has the capability of doing SRT on a linear accelerator. The Hoag Center targets marketing to both Orange County and Riverside County where no SRS exist.

In Los Angeles two Gamma Knife Center exist, one at USC University Hospital and one at Good Samaritan Hospital. In Northern California, UCSF, UC Davis, and Sutter in Sacramento have Gamma Knives. Seven exist in California in total.

#### **Hospitals**

##### **University of California San Diego Medical Center**

The Moores UCSD Cancer Center, located on the UCSD Medical Center Campus in La Jolla, recently opened a new 270,000-square-foot state-of-the-art Cancer Center facility. This Center offers comprehensive services including conventional conformal and focused radiation therapy (stereotactic radiosurgery with Gamma Knife is through San Diego Gamma Knife) and will have a new Varian Trilogy Stereotactic Radiosurgery system soon.

Established in 1979, the Rebecca and John Moores UCSD Cancer Center is a National Cancer Institute-designated Comprehensive Cancer Center. UCSD is the only Comprehensive Cancer Center in San Diego and Imperial counties to have this designation.

##### **Scripps Memorial Hospital La Jolla**

In addition to having the San Diego Gamma Knife on campus, Scripps La Jolla and Scripps Green (Scripps Clinic) have strong neuroscience market share in San Diego as a whole.

##### **Sharp Memorial Hospital**

In 2005, a Novalis System was installed in the Sharp Memorial Outpatient Pavilion, to perform stereotactic radiosurgery. Sharp Grossmont hospital had a TomoTherapy System, which has IMRT and

IGRT capability and the unit has FDA approval to do SRS. X-ray Medical Group has the contract for Radiation Oncology for Sharp.

**Freestanding Centers**

**RMG**

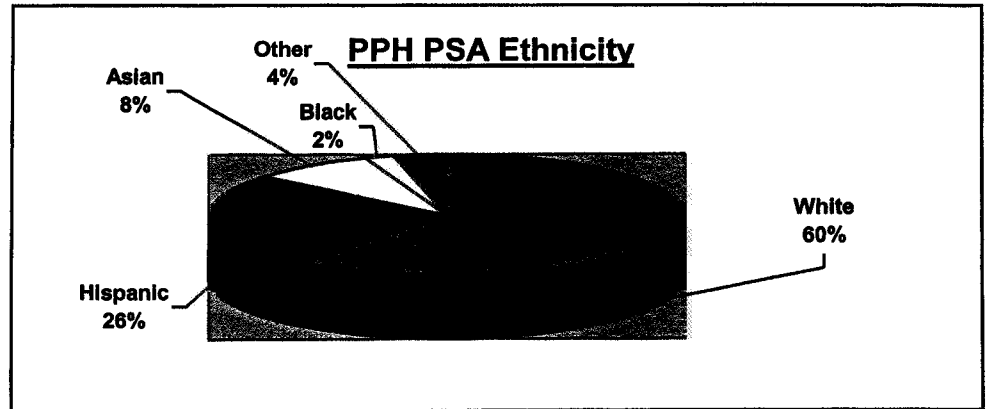
Located across from PMC, RMG competes for radiation oncology services. They have several other locations including: Encinitas, San Diego and San Clemente. RMG holds many IPA and medical group contracts and focuses on customer and physician relations and satisfaction. They have secured the radiation oncology referrals of PMC's number one admitting oncologist. RMG does not have SRS capability, but will remain a tough competitor for radiation therapy. Below is a side-by-side comparison of the Neuroscience and Radiation Oncology programs of local competitors.

Hospital	Radiosurgery	Radiation Therapy	Oncology	Neuroscience Program	Comment
Scripps Health	X	X	X	X	Gamma knife pulls volume from entire county. Scripps Clinic has positive reputation and strong name recognition for cancer
Sharp Memorial Hospital	X	X	X	X	Low market share in the PSA for Neurologic Cancers. Installed a Novalis in 2005
Tri-City		X	X		A potential physician client base for SRS and SRT
UCSD	X	X	X	X	Academic medical centers have automatic prestige, a new cancer center and NCI designation will make the U a tough competitor for cancer into the future
Palomar Medical Center		X	X		No clearly defined programs for oncology nor neurosciences, but offer many components of such programs

# Current Situation

## Demographics

The PPH primary service area population is 463,088 in size as of 2004.<sup>12</sup> It is projected to grow by 7.8% by 2009. Compared to national averages, the service area is more educated and affluent. Average household income is \$81,900 compared to \$63,300 in the nation. Ethnicity in the primary service area is shown below.



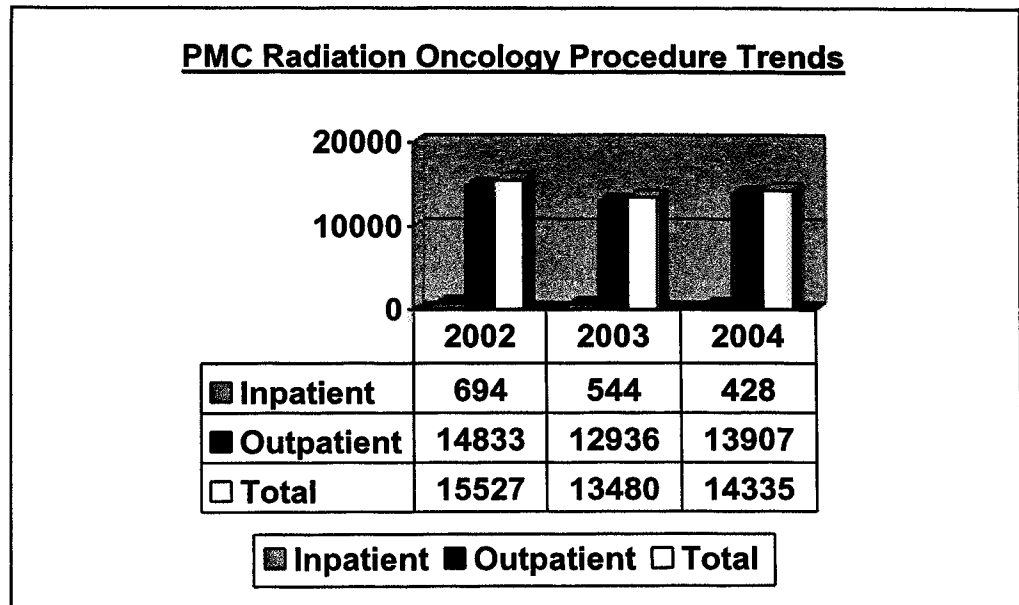
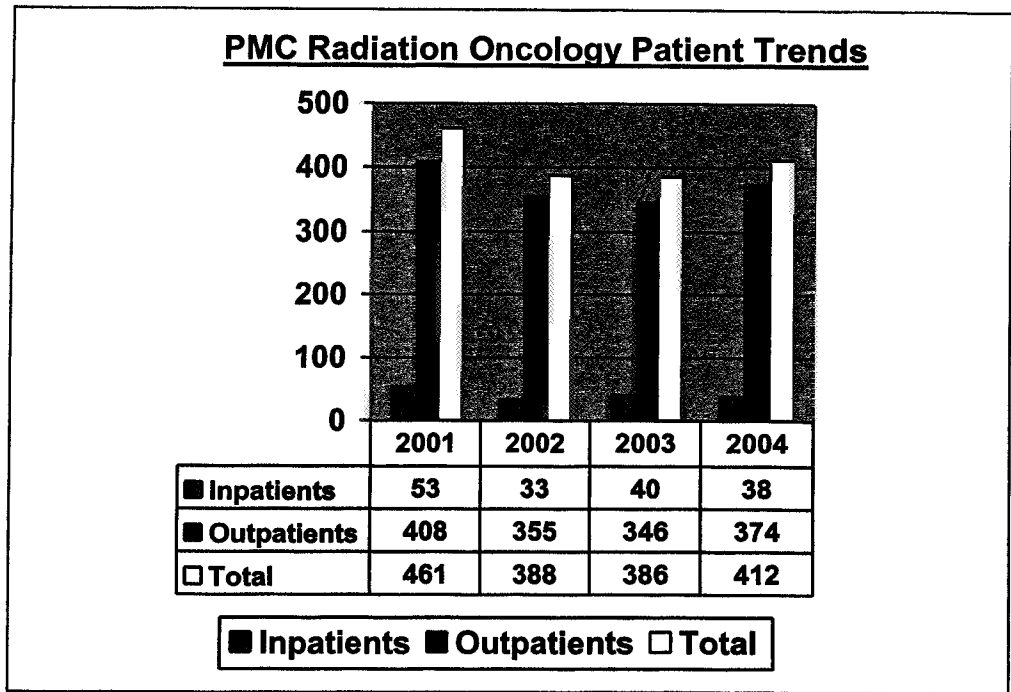
## Current Product

No stereotactic radiosurgery is offered at PMC at this time due to lack of equipment. The Radiation Oncology Department at Palomar Medical Center treats about 30-40 patients per day for conventional radiation therapy. Almost all are outpatients. The greatest volume by site is Breast Cancer, followed by Prostate Cancer second, with Lung Cancer third. Volume for the department has seen a slight decline due to intense competition by a freestanding center across the street, RMG.

The department has two radiation therapy suites both equipped with Varian linear accelerators. The oldest of the units is non-functional.

<sup>12</sup> Medstat Data

## PMC Radiation Oncology Volume Trends<sup>13</sup>



The data above shows a decreasing trend in patients and procedures at PMC since 2001.

<sup>13</sup> Source: PPH Planning Department

## Current Volume

There is no reportable volume, as currently PPH does not have the technology to perform radiosurgery. Cancer cases are obviously the greatest source of referrals for radiosurgery. PPH has a strong inpatient market share overall in the primary service area for oncology as demonstrated by the following chart<sup>12</sup>.

Oncology Volumes PPH Service Area <sup>1</sup>	PPH Market Share
2003	42.25%
2002	43.23%
2001	41.48%
2000	42.06%

Current efforts are underway at PPH to develop a formal comprehensive Neurosciences Program. Growth in oncology, neurology and neurosurgery would feed a newly developed radiosurgery program for PPH.

## Patient Origin

For the neurological diagnoses appropriate for treatment with SRS, the patient origin was obtained using State of California Inpatient Data for 2003<sup>14</sup>. It shows the zip codes in San Marcos, Oceanside and Poway as having the greatest number of patients with intracranial disorders and tumors. The coastal zips of Carlsbad and Encinitas as well as the inland areas of Fallbrook and Ramona were secondary areas of high incidence. Two maps showing the patient origin for intracranial and extracranial conditions that can be treated by SRS are located in the appendix.

The secondary service area is a potential source of patients and volume for a new radiosurgery program at PMC. There were a total of 187 potential intracranial cases in the SSA in 2003. Neurosurgeons control the referral site choice for patients needing SRS services. Since the primary neurosurgeon at PMC is on staff at Tri-City also, it may be possible to shift those referrals currently going to San Diego Gamma Knife to PMC.

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<sup>12</sup> Data sorted by PPH Planning Department

<sup>14</sup> OSHPD Inpatient Data State of California 2003

## Payer Mix

No data is available on SRS payer mix, however inpatient data on neurological discharges is available and indicative of the patient population to be served with radiosurgery.

Inpatient discharge data from the State of California for Neurological Discharges for 2003 for PPH PSA is listed below.

State Inpatient Data	2003		
DRG 1,2,10,11	Neurological Discharges		
Payor	Total Patients	Market Share	Market Share
County Indigent Programs	525	54.1%	11.4%
Medi-Cal	8,296	65.3%	8.3%
Medicare	15,163	43.4%	20.2%
Other Government	349	13.5%	10.0%
Other Indigent	38	0.0%	0.0%
Other Payer	16	0.0%	0.0%
Private Coverage	19,050	25.9%	14.8%
Self Pay	1,336	60.1%	11.2%
Workers Compensation	408	32.8%	5.6%
<b>Total</b>	<b>45,181</b>	<b>40.3%</b>	<b>15.1%</b>

## Physician Environment

A radiosurgery program will receive referrals almost entirely from physician sources in the specialties of neurology, neurosurgery, oncology and radiation oncology. Therefore understanding the current medical staff situation at PMC is important for the establishment of this new service.

No critical shortages in physician manpower in these specialties were detected in relation to implementing a new SRS program, however, the physician community needs assessment completed in February 2006 did identify that the community needs 2 additional oncologists, two additional neurologists, and one additional neurosurgeon.

PPH has a very experienced and knowledgeable Physician Liaison, Kerry Trillijo, who provided the information on the physician dynamics related to neuroscience outlined below.

### Neurosurgeons

There are nine neurosurgeons on staff at PMC. The most active are Drs. Thomas Marcisz and Mark Stern. Another physician, relatively new to staff, Dr. Kevin Yoo, was recruited to fill a community need

<sup>15</sup> OSHPD Data Sorted by PPH Planning Department

and is in solo practice. The other neurosurgeons on staff have minimal activity but do provide call coverage.

**Oncologists**

Six oncologists are on staff at PMC, all are in solo or small practices. The top admitters to PMC and POM are Dr. Just, in solo practice in Escondido, and Southwest Cancer Care. Southwest Cancer Care, a group with Dr. Felthouse, Dr. Lamon and Dr. Kosmo, has offices in Escondido, Temecula and Poway.

**Radiation Oncologists**

X-ray Medical Group is the contracted provider for PMC for radiation oncology services. Dr. Lori Coleman, a member of X-Ray Medical Group, is the medical director for PMC. X-ray Medical Group is also the provider for the Sharp Health System.

**Neurology**

Southwest Neurology Medical Group, located across from the hospital, is a group of five neurologists who provide the majority of neurology at PMC. Four UCSD neurologists are also on staff.

**Primary Care**

The primary care medical groups of Penn Elm Medical Group, Graybill Medical Group and PMG hold the majority of HMO contracts important to PMC. Kaiser Permanente has several PCPs on staff and a large Escondido office. In addition there are a fair number of solo and independent PCPs on staff at PMC.



# Program Proposal

## Overview

*What will the proposed project look like when complete? What exactly is changing from the current state?*

PPH will purchase and install a Varian Trilogy Stereotactic System in the Radiation Oncology Department at Palomar Medical Center. It will be placed in an existing suite within the department. This new radiosurgery system proposed for purchase is the most current and advanced available. It will give PMC the new capability to offer IGRT-image guided radiation therapy, as well as SRS and SRT. PPH will implement a marketing and communication campaign that will target referring physicians.

## Program Goals and Objectives

The goals for the newly established radiosurgery program are:

1. Quality and Service Improvement
2. Enhance reputation by positioning PPH as having the latest and most advanced technology
3. Profitably grow market share for Neuroscience and Oncology
4. Achieve high patient and physician satisfaction
5. Realization of financial targets

## Operations Management

### Location

*Where will the program/service be located?*

The Radiation Therapy Department of PMC is located on the third floor of the hospital. The department has two suites equipped with Varian linear accelerators for performing radiation therapy. The oldest of the Varian unit is non-operational. This suite will provide the space for the new Trilogy Stereotactic System once the defunct equipment is removed.

## **Space**

*How much and what type of space will the program /service require?*

The vendor, Varian Medical Systems, has evaluated the proposed location in Radiation Oncology and determined the new system will fit into the area within the existing walls with minimal accommodations. They have prepared drawings of the room lay out and Radiation shielding was also evaluated. The current vault in place will need additional lead fortification of one inch in some places to accommodate the new system. The control room currently in place will need to be expanded to an adjacent small office to have the capacity for the additional equipment required for this new system.

## **Management Structure**

*Who will oversee the program/service?*

Shelby Mason, R.T.T., the current supervisor of Radiation Oncology, will be responsible for the new radiosurgery program. Ms. Mason has been employed at PPH for multiple years and is supportive and enthusiastic about offering SRS at PMC. Dr. Lori Coleman, the Medical Director for Radiation Oncology, will provide medical oversight. She has been a strong advocate for the acquisition of the Varian Trilogy System. She has committed to shifting her radiosurgery patient load from San Diego Gamma Knife to PMC once the service is available.

## **Staffing**

*How many and what type of FTE's will be required?*

No additional staffing is needed for the initiation of this new service because the working supervisor of the department will shift some of her administrative hours to technical hours to perform the extra SRS procedures. Existing staff will be trained on SRS by the vendor. The new volume will be absorbed into current hours of operation. Education is included in the purchase agreement of the system.

The labor dollars required from the existing staff, to perform the new SRS, SRT and IGRT modalities is listed in the complete Proforma in the appendix. Year one labor costs is \$104,000.

## **Equipment**

*What type of equipment will be required?*

The purchase of a radiosurgery system is required for PMC to perform radiosurgery. The system of choice for PMC after input from

physicians and staff is the Varian Trilogy Stereotactic System. It is a multifunctional system that has these beneficial modalities/features:

- Single-session or fractionated stereotactic radiosurgery
- Image-guided radiation therapy
- 3D conformal radiation therapy
- Intensity-modulated radiation therapy
- Conformal arc therapy
- Gated radiotherapy which is a feature that accounts for the movement of respiration when delivering radiation. It is an incredible advancement that is only in the newest equipment
- The versatility of this system makes it perfectly suited for PMC because it upgrades all levels of therapy in addition to adding the features of SRS and IGRT previously unavailable

PPH has determined that the Trilogy System is the best choice for PMC for several reasons:

1. It has the ability to treat both intracranial and extracranial tumors which broadens the referral base with a wider range of patients for SRS
2. Multifunctional capability means it can be used for
  - 3D conformal radiation therapy
  - IMRT-Intensity Guided Radiation Therapy
  - IGRT – Image Guided Radiation Therapy
  - Stereotactic Radiosurgery, single session or fractionated
3. PPH has had a positive experience with Varian equipment and the current linear accelerator in place is a Varian
4. The Trilogy System choice is strongly supported by the Medical Director and medical staff
5. The On-Board Imager integrated into the Trilogy System greatly improves tumor targeting

## Timeframe

*What are the estimated project start and completion dates?*

The project will take approximately 15 months to implement once the plan has been approved. The major tasks are listed below.

	M1-2	M3-4	M5-6	M7-8	M9-10	M11-12	M13-14	M15
<b>Project Approval</b>	▲							
<b>Equipment Purchase</b>	▲							
<b>Design/Plan Preparation</b>	-----							
<b>OSHPD Permitting</b>		-----						
<b>Construction</b>					-----			
<b>Equipment Installation</b>							-----	
<b>Physicist Commissioning/ Training</b>								-----
<b>Medical Staff Credentialing</b>								-----
<b>Contracting</b>						-----		
<b>OSHPD &amp; DHS Approval</b>								▲
<b>Begin Service</b>								▲
<b>Marketing</b>								➔

## **Clinical Quality**

*How will this program/service affect existing clinical quality in this area?*

Radiosurgery capability will improve the quality outcome for patients because it is a less invasive treatment than open neurosurgery. For patients, a non-invasive procedure eliminates the inherent surgical risks. Surgical risks can often lead to debilitating symptoms, which come as a by-product of the surgery. For instance, if the patient is kept longer on a ventilator, due to intra-cranial swelling, ventilator induced pneumonia may be an unwanted outcome. In addition, any major surgery runs the risk of infections which in today's healthcare environment are much more difficult to eradicate.

The monitoring of quality for the new radiosurgery program will operate in conjunction with the current Quality Management programs in place at PMC. This includes the Tumor Board and Registrar, and the Radiation Oncology Department's monthly Quality Management meeting. Additional metrics may be developed for Radiosurgery if the medical director determines a need.

### **Patient Safety**

Radiation in any therapeutic form relies on the ability of the staff and technicians and the Radiation Physicist to insure appropriate and safe amounts of radiation dosing to the patient. There are many policies and procedures in place to insure a patient's safety. Radiation Oncology is not new to PMC so these standards are already working to protect patients.

## **Service Quality**

*How will this program/service affect existing service quality in this area?*

The Gallup survey tool will be used to measure the service quality of this new program. It drills data down to the department level in order to provide relevant information to continuously improve patient quality and customer satisfaction. The Gallup tool will effectively measure the service quality of this new program.

Improvement in survey scores are expected in patient and physician satisfaction as this new program allows patients to receive care locally, with their current physician and staff, rather than to be sent to an unfamiliar provider. This is more than inconvenience for the patient; it represents a better continuum of care for the patient.

# Marketing Initiatives

## Marketing strategy

*What is the promotion strategy for this program /service?*

The marketing strategy for this new service will be to focus on communication with physicians especially neurosurgeons, neurologists and oncologists. The two competitors for radiosurgery in the county are San Diego Gamma Knife, located on the campus of Scripps Memorial Hospital La Jolla, and Sharp Memorial Hospital. UCSD will also be introducing this technology in their new cancer center soon.

Currently most PPH patients are sent to San Diego Gamma Knife for radiosurgery. Retaining these patients at PMC and attracting other cases in the secondary service area will be the target of the marketing efforts.

Focused marketing efforts and a dedicated budget will be required for the launching of this new program. The estimated marketing budget need for the first year is \$100,000. The marketing objectives for the program include:

## Marketing Objectives (Proposed)

1. Increase community and physician awareness of the new program
2. Establish and gain the reputation for having the most expertise in radiation oncology and neurosciences in the county
3. Achieve dominant market position for SRS in the primary service area and grow market share and volume in the secondary service area over a specific timeframe

## Marketing Goals

- Shift existing PPH radiosurgery candidates in PSA from competing facilities (Sharp and San Diego Gamma Knife) to PMC
- Attract new cases from the secondary service area to the new service
- Achieve volume targets outline in proforma
- Achieve improvement of patient satisfaction and physician satisfaction scores over baseline
- Improve consumer perception as measured by available survey tools like Gallup

## **Referral Sources and Audiences**

- General Oncologists
- Neurologists
- Neurosurgeons
- Primary Care physicians on staff who refer to neurologists
- Payer sources from IPAs and Medical Groups that contract for services
- Other community providers such as nurse practitioners nurses and physician office staff
- Self-referrals from patient (although a smaller referral source) generated by word of mouth and reputation

## **Referral Patterns**

Intra-cranial Radiosurgery referral patterns are very specific. Interviews with the PMC medical director of Radiation Oncology and the top admitting neurosurgeon identified the referral flow in the PPH service area as follows.

- In most neurology cases, a patient will present to their PCP or to the hospital emergency with symptoms, such as a headache or blurred vision. Diagnostics may be performed, such as MRIs or EEGs, and the patient is referred to a neurologist and/or a neurosurgeon for further evaluation based on test results.
- The neurosurgeon, after evaluating a patient, is ultimately the one who determines if radiosurgery is indicated.
- Radiosurgery is then performed as a team effort with the collaboration between the neurosurgeon and radiation oncologist.
- The neurosurgeon, being the expert on brain anatomy, is responsible for tumor targeting. The radiation oncologist is responsible for the treatment plan and radiation dosage.

A more detailed Marketing Plan will be prepared by the PPH Marketing Department and will include tactics and cost. An initial list of possible initiatives for that complete plan is listed on the next page.

## Marketing Initiatives (Proposed)

Below is a comprehensive list of possible marketing initiatives to promote the new service. The final approved marketing budget will determine how many initiatives are feasible to implement.

Audience	Initiatives
Public	Develop content for the new service on the PPH Website
	Develop two-way communication via email with the radiation oncology Department for inquiries
	Develop a consistent presentation and look for the Center's print material within the style guidelines of PPH
	Identify positive patient stories to pitch with the local media – newspapers, cable and local TV news
	Host Community Education within the neuroscience product line
	Host a press conference in conjunction with a grand opening event
	Direct Physician Referrals to neurosurgeons on staff familiar with the program
	Introduce the new SRS program to be launch in 2006 at the PPH "Collaborating Against Cancer" Conference in October 2005
	Include SRS in any PPH media placement around neurosciences
	Feature articles in PPH Community Magazine "Healthsource"
Providers/ Payors	Contact representatives including the major IPAs to inform them of the new service and the need to establish contract rates
	Send out PPO case managers communication
Physician	Develop physician office marketing collateral and mail to MD offices
	Initiate Physician outreach/sales and marketing
	Host Physician Dinners
	Host CME and Grand Rounds at the hospital
	Set up a fast track radio surgery consult program for area neurologists and oncologists
	Establish an annual symposium within the neuroscience product line
	Quarterly send out an exceptional journal article from the medical director of radiation oncology
	Host a grand opening event for physicians when the system is installed and licensed
	Develop relationships with neurosurgeons, neurologists, radiologists and oncologists who collaborate on care
	Initiate an ask a doc program where referring physicians can get quick access with the medical director to assess if a patient is appropriate for SRS
Office Staff	Host an office staff luncheon to introduce the program and access procedures to local neurology, oncology and neurosurgeons offices
PPH Employees	Place SRS Program introduction on PPH Intranet
	Place article in "Momentum" Magazine
	Invite employees to a special grand opening event
Nurse Practitioners	Sponsor a meeting for the local association of nurse practitioners with radiosurgery as the topic



## **Brand Extension**

*How will this program/service affect the existing brand?*

PPH has established Centers of Excellence for specific product lines such as Cardiac, Women's, Orthopedics and Vascular. A neuroscience product line is under development. The addition of this new technology will enhance the service line offering in neuroscience and oncology and strengthen the overall perceived value of the PPH brand.

# Financial Analysis

*The financial proforma located in the appendix, was prepared by PPH Financial Services and provided to Hudson Healthcare Consulting.*

## Revenue Sources

Three new sources of revenue are generated for PPH by the new modalities introduced to PPH by the purchase of this advanced system.

1. Single dose Stereotactic Radiosurgery, SRS
2. Multi-fractionated, Stereotactic Radiotherapy, SRT
3. Image-guided Radiation Therapy, IGRT

### SRS

On the surface, it would not seem that a program with just 30 cases per year could be profitable, especially with a significant capital investment required for start up. Yet the reimbursement for the neurosciences is by far one of the highest of all product lines. On average, net reimbursement per patient for SRS will equal \$6,700<sup>16</sup>. In addition, there is little to no supplies or disposables used during therapy session that add extra cost.

### SRT

Multiple dose therapy, delivered in two to five fractions, treats both intracranial and extracranial tumors. Each fraction is reimbursed \$5,250 per dose. Therefore the net payment can reach up to \$28,000 for a patient who receives five fractions plus the reimbursement for treatment planning.

### IGRT – Image–Guided Radiation Therapy

Unlike conventional radiation therapy, IGRT involves imaging the patient immediately before treatment and then again while the patient is receiving treatment. Small adjustments are made based on the image comparison to improve the targeting. IGRT can be performed on the full range of radiation therapy patients such as breast, prostate, and lung. Therefore the volume is high for this modality because of such wide application.

Added reimbursement dollars of approximately \$900,000 per year for IGRT is available plus the radiation therapy reimbursement. This will provide a significant portion of the revenue for this new capital purchase.

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<sup>16</sup> Source: Health Care Advisory Board, Future on Neurosciences 2005

PMC does not have IGRT capability currently within the department. Not only does it add profitable revenue, it greatly improves the quality outcomes for radiation therapy patients. Every patient benefits by this enhanced tumor targeting capability.

### Start-Up Capital

*How much capital is required for equipment, renovation, and other start-up costs?*

\$4,250,491 is needed for the total initial investment. This amount includes equipment, construction and tax.

### Operating Costs

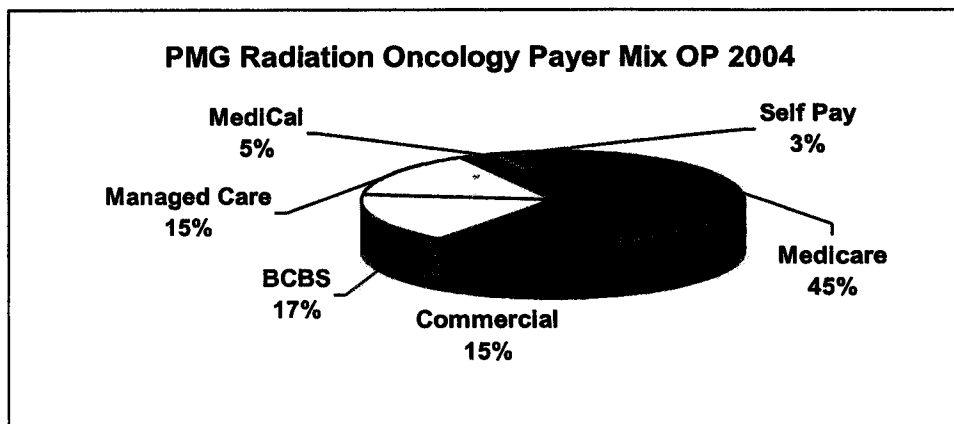
*What are the projected operating expenses for this program or service?*

First year operating cost for the program is \$207,000. In year two the equipment maintenance contract begins which brings the second year operating costs to \$427,820.

### Payer Mix

*How is this service reimbursed?*

The payer mix for this service, shown below, was obtained from the PMC Radiation Oncology Outpatient mix for last fiscal year.



Payer	Mix
Medicare	45%
Commercial	15%
BCBS	17%
Managed Care	15%
Self Pay	3%
MediCal	5%

## Cash Flow

*What is the projected income statement for this program / service including operating and capital costs?*

See complete proforma in the appendix for seven-year cash flow.

## Net Present Value (NPV)

*What is the NPV of this program/service?*

### Static Growth Model Purchase Option

NPV:	\$5,579,688
Discount Rate:	5.00 %
Reinvestment Rate:	1.90%
Modified Init Rate of Return:	17.24%

## Conservative/Moderate/ Aggressive Scenarios

*How much does it vary with different cash-flow scenarios?*

The first scenario taken by PPH is conservative. It predicts a static growth (0%) over the seven-year projection. Small gross revenue growth of 3% is predicted for contract rate increases.

The second scenario modeled in the proforma is a growth scenario a with 5% annual growth rate year one and 2% each year successive year. It is not unreasonable to believe that volume growth will occur through marketing and communication efforts and outreach to physicians especially in the secondary service area. The population growth projected for the service area alone is 7.9 % over the next five years. The NPV for this scenario is \$6,954,422.

## Payback Period

*How long is the program /service's payback period?*

Payback occurs in 2.4 years in the conservative scenario.

# Requirements

## Launch / Implementation Timeline

*How long will it take to launch /implement this program /service?*

From the time of approval, it will take fifteen months to initiate the new service. The implementation requires OSHPD approval, facility construction, equipment installation, training and licensing (see timeline).

## Facility

*What are the facility requirements for this program /service?*

The new system will be installed in a current radiation therapy suite. The existing vault can be used but the lead shielding must be supplemented in a few locations. Part of the floor slab will have to be cut to accommodate a somewhat different floor plate for the new equipment. The control room will need to be enlarged to accommodate the additional equipment. The construction project will require OSHPD approval (see timeline).

## Information Systems

*What are the information systems requirements for this program /service?*

A new server was installed for the Radiation Oncology Department recently and will be able to adequately store the projected volume of additional SRS cases for several years.

Software that will be purchased with Varian System includes:

- **DICOM RT** – provides patient and image-based data transfer to/from non-Varian equipment.
- **Varis Vision Image Management** – image review, image management and treatment plan application. It provides enhancements and analysis tools for diagnostic, simulation, treatment planning and portal images.
- **Large Rack Image File Server**

Connectivity may be needed with cabling connections from the treatment suite to the control panel or elsewhere in the department. Varian will provide the cables, but PPH will be financially responsible for the cable pulls.

## **Medical Staff**

*What are the medical staff needs for this program /service?*

The PPH medical staff will have the following needs.

- Training on the new equipment
- Credentialing and privileging for the new modalities for those physicians interested in performing SRS and SRT must occur prior to go-live. Usually for new services, credentialing is accomplished by having physicians attend a course hosted by the vendor
- Buy-in from the existing medical staff who could provide referrals
- Notification of the new capability

## **Payers**

*What are the contracting activities necessary to launch/ implement this program /service?*

Contract issues important to review for SRS and SRT are:

- Correctly setting the charge master with the initial rates for the new service
- Validating the reimbursement possibility of On Board Imaging feature
- Capturing the reimbursement bump for the IGRT modality
- Negotiate commercial contract rates for SRS and SRT if contract rates are not in place

## **Regulatory**

*What are the regulatory hurdles for launching /implementing this program /service?*

The Radiation Oncology Department at PMC is a licensed outpatient service of the hospital. The new SRS capability will likely trigger a DHS visit to certify before licensing.

# Feasibility

## **Risk Assessment**

*How much risk is associated with this program /service's returns?*

### **Legal Risk**

There is a minimal legal risk associated with the introduction of this new service. It presents no new contractual issues for the hospital. Protection for malpractice risk should already be secured but a thorough review should be done to insure that coverage exists.

### **Lack of Capacity**

There is always a risk that a program will be so successful, it creates problems in service delivery. Easy solutions exist to increase capacity if needed, such as extending the hours of operation.

### **Financial Risk**

There is a financial risk if the volumes projected are not achieved. The staffing costs are minimal to none on an incremental basis.

### **Medical Staff Support**

For program success, physician participation is a necessity. If there is not sufficient volume of patients, the program will not be successful. Administration has interviewed targeted medical staff physicians to assess their support of offering this new program at PMC. The Neurosurgery Sub-Section at PMC has expressed support for offering this new service.

Two key potential referring physicians who currently practice at San Diego Gamma Knife, a PMC neurosurgeon and a PMC radiation oncologist, were also interviewed in August 2005. Both indicated they would send their cases to PMC instead of San Diego Gamma Knife once the program was in place.

Marketing has to be ongoing, structured and is essential to the viability of the program. The acquisition of new equipment and technology will also help to drive the physician support of in this program.

### **Competitive Risk**

Any successful program is at risk for duplication by competitors. The competitive risk for this project is defined as low because the price to enter the SRS market is significant.

Physicians are still the force behind where the patient ultimately receives their care. Physician loyalty is influenced by financial returns as well as other factors like customer service. To shift the PPH referrals from San Diego Gamma Knife, PPH will need to compete effectively on customer service.



## **Launch / Implementation Difficulty**

*How difficult will the launch / implementation of this program /service be?*

Overall, the implementation of this program should be relatively uncomplicated. Preparation of the facility should not be problematic. The vendor is responsible for the installation of the equipment and they provide training of the staff. All staff and clinicians are already in place.

The marketing materials should be routine to produce. Outreach sales efforts will need to be performed before and after opening.

## **Recommendation**

The proposed radiosurgery program will improve the overall quality of services at PPH, deliver positive financial returns, enhance and improve the satisfaction of both physicians and patients, and profitably deliver advanced therapy. The implementation process is relatively uncomplicated and the project will have the support of the medical staff. Patient retention will be higher as it eliminates the need for a trip to the Scripps Memorial La Jolla campus or Sharp Memorial for advanced services.

# Appendix

1. Proforma
2. Maps
3. Market Share Data
4. PPH Service Area Demographics

**Palomar Medical Center  
Trilogy - Multimodality System  
Lease/Purchase Analysis (Static Procedure Growth)**

Current Yr      Year 1      Year 2      Year 3      Year 4      Year 5      Year 6      Year 7

<b>Incremental Cash Flow</b>							
<b>Purchase</b>	1,925,359	1,629,983	1,674,295	1,718,698	1,738,188	1,757,758	1,777,403
<b>Lease (a)</b>	1,267,387	972,011	1,016,323	1,060,726	1,080,216	1,099,786	1,119,431

Other than the monthly lease payment, expenses and revenue assumed to be consistent with purchase although maintenance may be included in op lease.

Lease amount does not include purchasing equipment at the end of the 5-year operating lease term for FMV. It is assumed that the lease would be renewed at original monthly cost of \$54,831 through the remaining months of 2011.

<b>Purchase</b>	<b>Lease (b)</b>
\$ 3,480,819	\$ 4,605,804
769,672	769,672
<b>\$ 4,250,491</b>	<b>\$ 5,375,476</b>

<b>NPV</b>	<b>\$ 5,579,688</b>	<b>\$ 4,898,971</b>
<b>Discount Rate</b>	5.00%	5.00%
<b>Reinvestment Rate</b>	1.90%	1.90%
<b>Payback in Years</b>	2.4	
<b>Modified Int Rate of Return</b>	17.24%	31.96%

<b>Patients</b>	300	300	300	300	300	300	300
<b>Gross Patient Revenue</b>	7,037,473	7,466,055	7,690,037	7,920,738	8,158,360	8,403,111	8,655,205
<b>Net Revenue ©</b>	2,111,242	2,164,340	2,196,805	2,229,757	2,263,203	2,297,151	2,331,609
<b>Net Rev % of Gross</b>	30.00%	28.99%	28.57%	28.15%	27.74%	27.34%	26.94%

Provided by AMAC

<b>Incremental Expenses</b>							
<b>Total Labor Expense</b>	100,000	108,160	112,486	116,986	121,665	126,532	131,593
<b>Non Labor Expense</b>							
Maintenance/Biomed Contract**	-	348,082	356,784	365,704	374,846	384,217	393,823
Supplies	2,880	3,115	3,240	3,369	3,504	3,644	3,790
Marketing Expense	-	75,000	50,000	25,000	25,000	25,000	25,000
<b>Total Non-Labor Expense</b>	2,880	426,197	410,024	394,073	403,350	412,861	422,613

<b>Net Incremental Cash</b>	1,925,359	1,629,983	1,674,295	1,718,698	1,738,188	1,757,758	1,777,403
Cumulative Cash for Payback Years for Payback	(2,325,132)	(695,149)	979,146	2,697,844	4,436,032	6,193,790	7,971,193
	-	-	2.42				

<b>Procedure Growth</b>	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Gross Revenue Increase	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Net Revenue Growth	1.0%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%
Labor Inflation	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%
Non Labor Inflation	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%

\*\*Warranty period is assumed to be 1 year. Assumed maintenance cost to be 10% of purchase price for Trilogy system.  
 (a) Lease amount based on lease term of 60 months at \$54,831 per month.  
 (b) Does not include purchase of equipment for Fair Market Value at the end of the lease.  
 © Net Revenue provided by AMAC

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**Palomar Medical Center  
Trilogy - Multimodality System  
Lease/Purchase Analysis (Variable Procedure Growth)**

Current\_Yr      Year\_1      Year\_2      Year\_3      Year\_4      Year\_5      Year\_6      Year\_7

<b>Incremental Cash Flow</b>	<b>Purchase</b>	2,031,977	1,783,651	1,877,324	1,973,489	2,047,237	2,123,659	2,202,853
	<b>Lease (a)</b>	1,374,005	1,125,679	1,219,352	1,315,517	1,389,265	1,465,687	1,544,881

Other than the monthly lease payment, expenses and revenue assumed to be consistent with purchase although maintenance may be included in op lease

Lease amount does not include purchasing equipment at the end of the 5-year operating lease term for FMV. It is assumed that the lease would be renewed at original monthly cost of \$4,831 through the remaining months of 7 year life

<b>Initial Investment</b>	<b>Lease (b)</b>
<b>Purchase</b>	\$ 4,250,491
<b>Lease (a)</b>	\$ 5,375,476

<b>Equipment</b>	\$ 3,480,819	\$ 4,605,804
<b>Construction</b>	769,672	769,672
<b>NPV</b>	\$ 6,954,422	\$ 6,273,705
<b>Discount Rate</b>	5.00%	5.00%
<b>Reinvestment Rate</b>	1.90%	1.90%
<b>Payback in Years</b>	2.2	
<b>Modified Int Rate of Return</b>	19.56%	36.00%

<b>Patients</b>	300	315	321	328	334	341	348	355
<b>Gross Patient Revenue</b>	7,037,473	7,611,027	7,996,145	8,400,750	8,825,828	9,272,415	9,741,599	10,234,524
<b>Net Revenue ©</b>	2,111,242	2,238,972	2,318,008	2,399,834	2,484,548	2,572,252	2,663,053	2,757,058
<b>Net Rev % of Gross</b>	30.00%	29.42%	28.99%	28.57%	28.15%	27.74%	27.34%	26.94%

Provided by AMAC

<b>Incremental Expenses</b>								
<b>Total Labor Expense</b>	100,000	104,000	108,160	112,486	116,986	121,665	126,532	131,593
<b>Non Labor Expense</b>								
<b>Maintenance/Biomed Contract**</b>			348,082	356,784	365,704	374,846	384,217	393,823
<b>Supplies</b>	2,880	2,995	3,115	3,240	3,369	3,504	3,644	3,790
<b>Marketing Expense</b>		100,000	75,000	50,000	25,000	25,000	25,000	25,000
<b>Total Non-Labor Expense</b>	2,880	102,995	426,197	410,024	394,073	403,350	412,861	422,613

<b>Net Incremental Cash</b>	2,031,977	1,783,651	1,877,324	1,973,489	2,047,237	2,123,659	2,202,853
<b>Cumulative Cash for Payback</b>	(2,218,514)	(434,863)	1,442,460	3,415,950	5,463,186	7,586,846	9,789,698

2.2

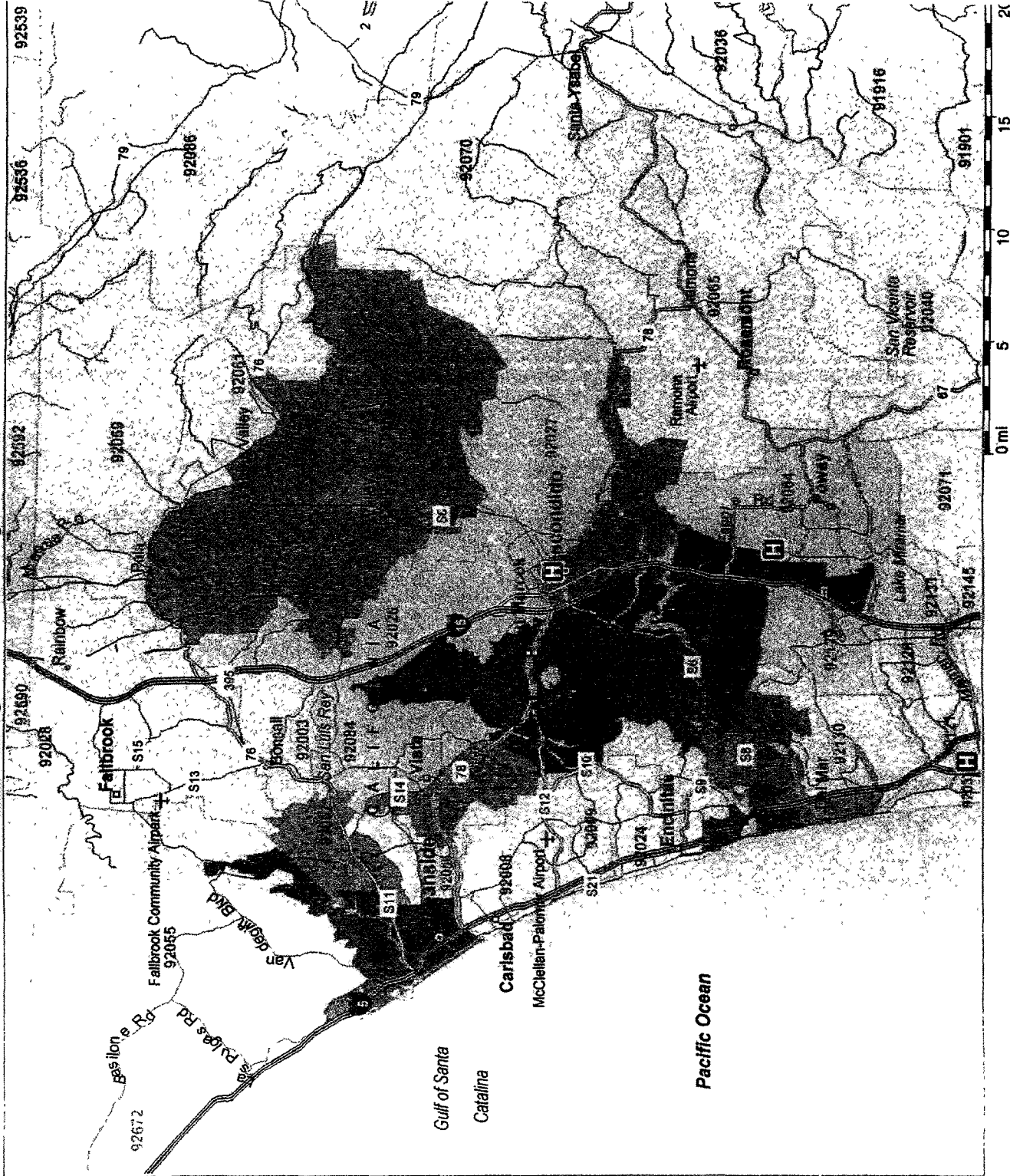
<b>Procedure Growth</b>	5.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%
-------------------------	------	------	------	------	------	------	------	------

<b>Gross Revenue Increase</b>	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%
<b>Net Revenue Growth</b>	1.0%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%
<b>Labor Inflation</b>	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%
<b>Non Labor Inflation</b>	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%

\*\*Warranty period is assumed to be 1 year. Assumed maintenance cost to be 10% of purchase price for Trilogy system.  
(a) Lease amount based on lease term of 60 months at \$54,631 per month.  
(b) Does not include purchase of equipment for Fair Market Value at the end of the lease.  
© Net Revenue provided by AMAC

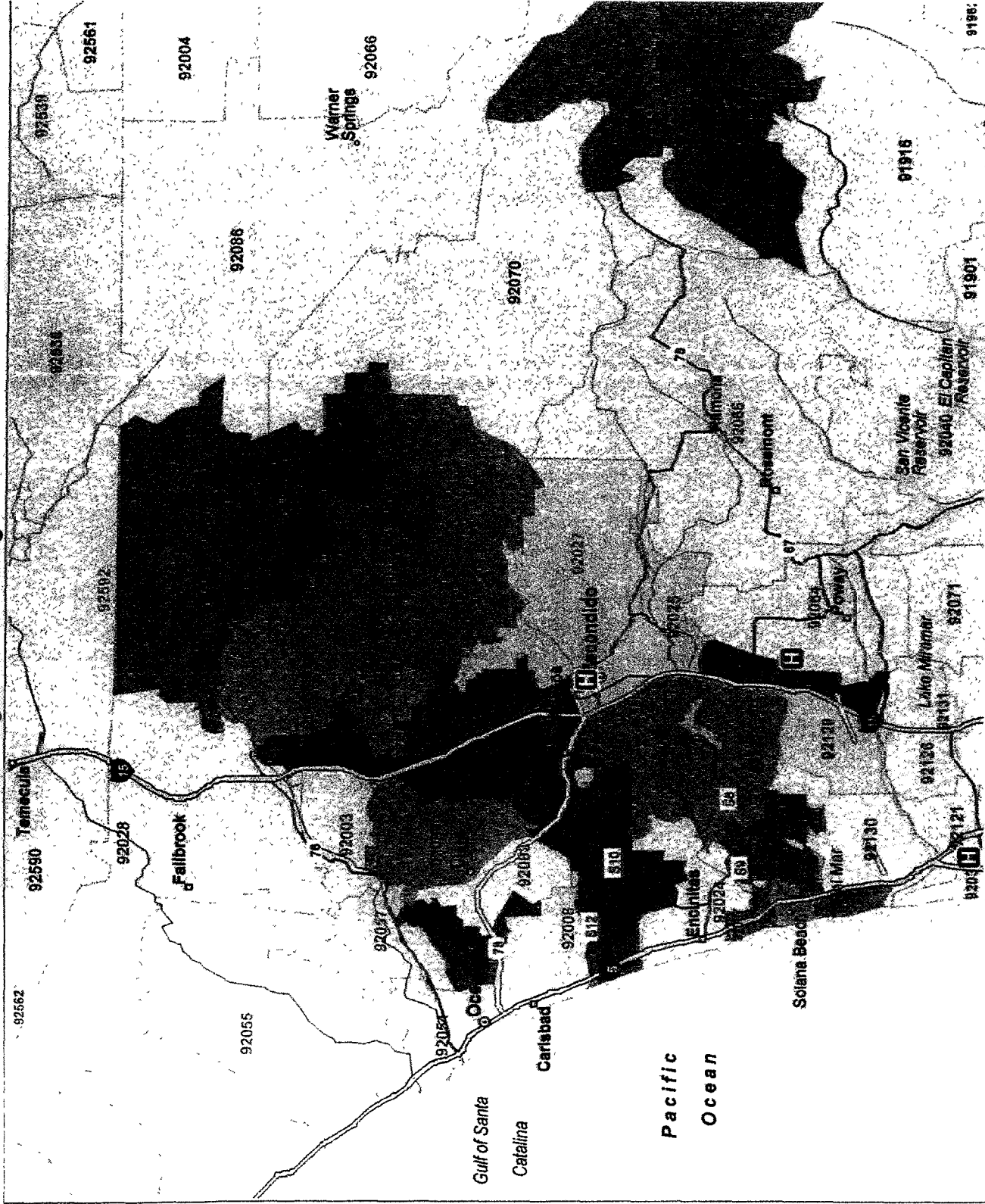
# Intracranial Diagnoses Discharges 2003

- Intracranial Diagnoses Discharges 2003
- 22 to 23
- 16 to 21
- 11 to 15
- 7 to 10
- 2 to 6



# Extracranial Diagnoses Discharges 2003

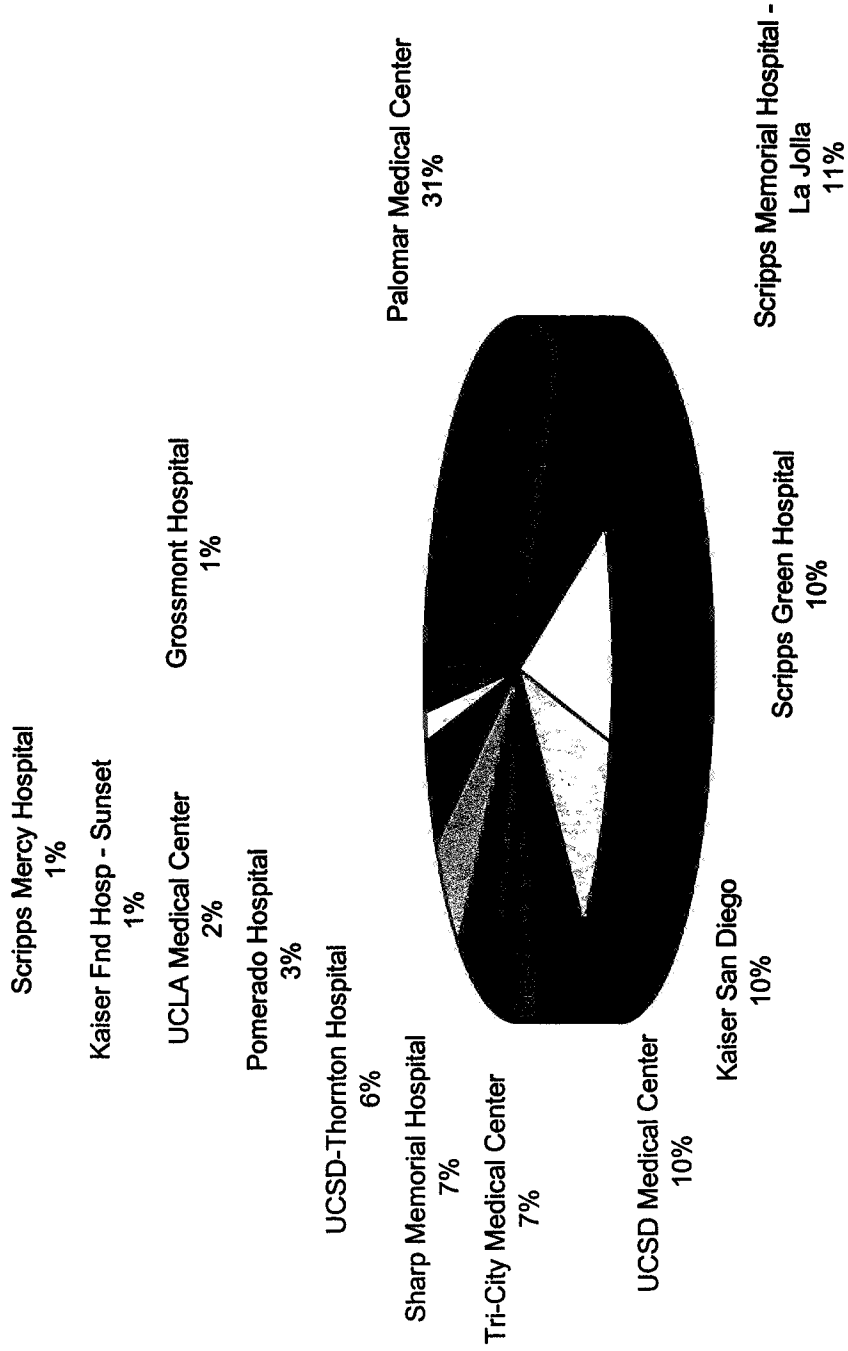
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- 49 to 67
- 35 to 48
- 25 to 34
- 15 to 24
- 1 to 14



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**PPH Primary Sevice Area Neurologic DRGs Inpatient Marketshare 2003**



2004 Demographic Snapshot  
 Area: PPH Service Area  
 Level of Geography: ZIP Code

**DEMOGRAPHIC CHARACTERISTICS**

	2004	2009	% Change
<b>Selected Area</b>			
2000 Total Population	435,150	281,421,906	
2004 Total Population	463,088	292,936,668	
2009 Total Population	499,260	307,115,866	
% Change 2004 - 2009	7.8%	4.8%	
Average Household Income	\$81,905	\$63,301	

Total Male Population  
 Total Female Population  
 Females, Child Bearing Age (15-44)

2004	228,589	246,622	7.9%
2009	234,499	252,638	7.7%
	95,174	99,387	4.4%

**POPULATION and INCOME DISTRIBUTION**

Age Group	2004	% of Total	2009	% of Total	USA 2009	% of Total
0-14	108,825	23.5%	113,048	22.6%	20.7%	
15-24	59,583	12.9%	66,176	13.3%	14.2%	
25-44	132,601	28.6%	135,514	27.1%	28.9%	
45-64	105,237	22.7%	120,265	24.1%	23.7%	
65+	56,842	12.3%	64,257	12.9%	12.5%	
<b>Total</b>	<b>463,088</b>	<b>100.0%</b>	<b>499,260</b>	<b>100.0%</b>	<b>100.0%</b>	

2004 Age Group	% of Total	USA 2009	% of Total
<15K	11,937	7.6%	14.7%
\$15-25K	12,724	8.1%	11.3%
\$25-50K	35,988	22.9%	27.7%
\$50-75K	31,346	19.9%	19.1%
\$75-100K	23,851	15.1%	11.6%
Over \$100K	41,597	26.4%	15.7%
<b>Total</b>	<b>157,443</b>	<b>100.0%</b>	<b>100.0%</b>

**SOCIO-ECONOMIC INDICATORS**

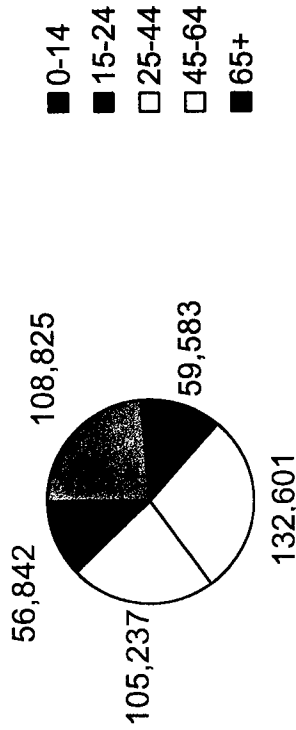
2004 Adult Education Level	Pop. Age 25+	% of Total	USA 2009	% of Total
Less than High School	22,440	7.6%	7.5%	
Some High School	25,140	8.5%	12.0%	
High School Degree	55,182	18.7%	28.5%	
Some College/Assoc. Degree	97,549	33.1%	27.5%	
Bachelor's Degree or Greater	94,369	32.0%	24.6%	
<b>Total</b>	<b>294,680</b>	<b>100.0%</b>	<b>100.0%</b>	

2004 Race/Ethnicity	Pop. Age 25+	% of Total	USA 2009	% of Total
White Non-Hispanic	280,181	60.5%	67.0%	
Black Non-Hispanic	8,565	1.8%	12.1%	
Hispanic	118,704	25.6%	14.0%	
Asian Non-Hispanic	38,342	8.3%	4.0%	
All Others	17,296	3.7%	2.8%	
<b>Total</b>	<b>463,088</b>	<b>100.0%</b>	<b>100.0%</b>	

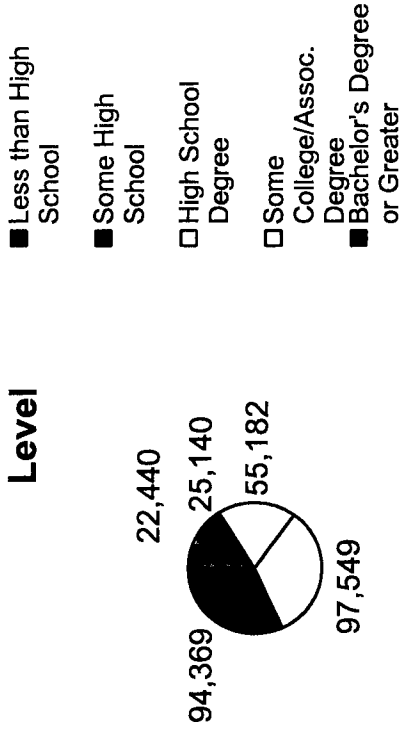
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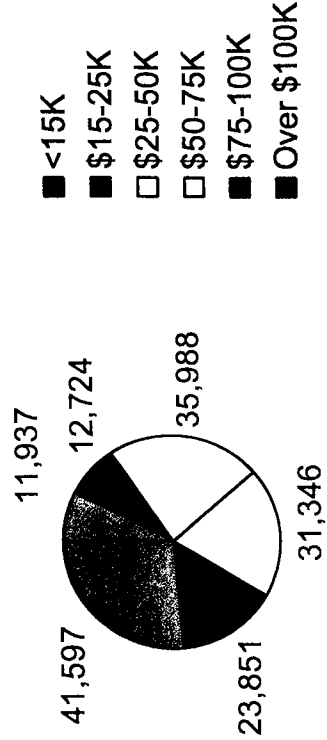
### Population Distribution by Age Group



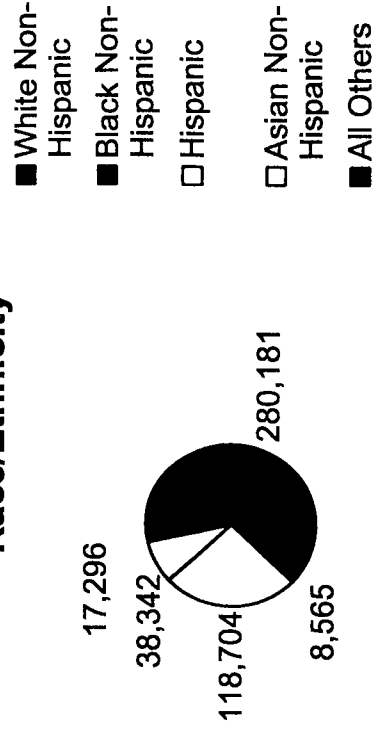
### Population Age 25+ by Education Level



### Current Households by Income Group



### Population Distribution by Race/Ethnicity



# MEDICAL STAFF SERVICES

October 25, 2005



TO: Board of Directors

BOARD MEETING DATE: November 14, 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 (11/14/2005 – 10/31/2007)  
Erika M. Cox, M.D., Family Practice  
Michele M. Fang, M.D., Internal Medicine  
Aaron M. Lehman, M.D., Internal Medicine/Pediatrics  
Josue D. Leon, M.D., OB/GYN  
Jennifer A. Neff, M.D., Family Practice  
Alicja S. Steiner, M.D., Pain Management (includes PCCC)
- II. Advancement from Provisional to Active Category  
Riaz Bohkari, M.D., General Vascular Surgery (11/14/2005 – 01/31/2007)  
Malini M. Reddy, M.D., Anesthesiology (11/14/2005 – 08/31/2007)
- III. Additional Privileges  
John H. Detwiler, M.D., Cardiology
  - Deep Sedation/AnalgesiaLeslie Gullahorn, M.D., Orthopaedic Surgery
  - Patient Controlled Analgesia (PCA)John J. Martin, M.D., Urology
  - Moderate SedationSunil S. Rayan, M.D., General Vascular Surgery
  - Moderate Sedation
- IV. Voluntary Resignations/Withdrawal of Membership  
Arnold N. Singer, M.D., Internal Medicine (Effective 11/17/2005)  
Tabita A. Wright, M.D., Diagnostic Radiology (Effective 10/02/2005)
- V. Allied Health Professional Appointment (11/14/2005 - 10/31/2007)  
Catherine E. Archdeacon, P.A.-C, Emergency Department Physician Assistant; Sponsors: CEP
- VI. Allied Health Professional Resignation/Withdrawal  
Nellie A. Hall-Blunt, P.A., Physician Assistant; Sponsors: Valley Radiology  
Karen Y. Richardson, R.N., Registered Nurse; Sponsors: Drs. Jauregui, Panzer and Verma

PALOMAR MEDICAL  
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ESCONDIDO  
SURGERY CENTER  
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Escondido, CA 92025  
Tel 760.480.6606  
Fax 760.480.1288

VII. Reappointments Effective 12/01/2005 – 11/30/2007

Celestine J. Arambulo, D.O. (includes PCCC)	Internal Medicine	Dept of Medicine	Associate
Michael J. Beecher, M.D.	OB/GYN	Dept of OB/GYN	Active
Duane M. Buringrud, M.D.	OB/GYN	Dept of OB/GYN	Active
Ying C. Chen, M.D.	OB/GYN	Dept of OB/GYN	Active
David W. Cloyd, M.D.	General/Vascular Surgery	Dept of Surgery	Active
Robert G. Connolly, M.D.	Diagnostic Radiology	Dept of Radiology	Active
Russell W. Engevik, M.D.	Emergency Medicine	Dept of Emergency Med	Active
Anna R. Foraci, D.O.	Family Practice	Dept of Family Practice	Active
Tahir Ijaz, M.D.	Radiation Oncology	Dept of Radiology	Consulting
Thomas A. Jones, M.D.	Urology	Dept of Surgery	Active
Steve Laverson, M.D.	Plastic Surgery	Dept of Surgery	Active
Ronald Levin, M.D.	Anesthesiology	Dept of Anesthesia	Active
William J. Lewis, M.D.	Pediatric Neurology	Dept of Pediatrics	Courtesy
Michael D. Manley, M.D.	OB/GYN	Dept of OB/GYN	Active
Vincent R. Okamoto, M.D.	Anesthesiology	Dept of Anesthesia	Associate
Steven G. Pratt, M.D.	Ophthalmology	Dept of Surgery	Associate
Thomas E. Rastle, M.D. (includes PCCC)	Family Practice	Dept of Family Practice	Active
Steve S. Song, M.D.	Internal Medicine	Dept of Medicine	Active
William D. Tench, M.D.	Pathology	Dept of Pathology	Active
Gang Tong, M.D.	Neurology	Dept of Medicine	Active

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  
November, 2005**

**PERSONAL INFORMATION**

<i>Provider Name &amp; Title</i>	Delois J. Bean, M.D.
<i>PPHS Facilities</i>	Pomerado Hospital

**SPECIALTIES/BOARD CERTIFICATION**

<i>Specialties</i>	Orthopaedic Surgery Certified - 1994/2005 Surgery, Hand Certified - 1997/2005
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**ORGANIZATIONAL NAME**

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

<i>Medical Education Information</i>	Stanford University School of Medicine, Stanford, CA FROM: 09/01/1976 TO: 06/15/1980
<i>Internship Information</i>	N/A
<i>Residency Information</i>	Vanderbilt University Hospital, Nashville, TN General Surgery From: 06/24/1980 To: 06/24/1982  University of California, San Diego Orthopaedics From: 07/01/1985 To: 06/30/1989
<i>Fellowship Information</i>	Vanderbilt University Hospital Research From: 06/24/1982 To: 09/30/1983 Surgery  University of California, San Diego Research From: 07/01/1983 To: 06/30/1984 Orthopaedic  Scripps Clinic and Research Foundation Hand Surgery From: 08/01/1989 To: 12/31/1989  University of California, San Diego Hand Surgery and Microsurgery From: 01/01/1990 To: 12/31/1990
<i>Current Affiliation Information</i>	Kaiser Permanente, San Diego

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

**PERSONAL INFORMATION**

<i>Provider Name &amp; Title</i>	Maria L. Castillo, M.D.
<i>PPHS Facilities</i>	Pomerado Hospital

**SPECIALTIES/BOARD CERTIFICATION**

<i>Specialties</i>	Obstetrics and Gynecology Certified - 1996
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**ORGANIZATIONAL NAME**

<i>Name</i>	Drs2C, Inc.
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**EDUCATION/AFFILIATION INFORMATION**

<i>Medical Education Information</i>	Wayne State University, Detroit, MI FROM: 08/25/1986 TO: 06/05/1990 Doctor of Medicine Degree
<i>Internship Information</i>	N/A
<i>Residency Information</i>	Henry Ford Hospital, Detroit, MI Obstetrics/Gynecology From: 07/01/1990 To: 06/30/1994
<i>Fellowship Information</i>	N/A
<i>Current Affiliation Information</i>	Scripps Memorial Hospital, La Jolla Sharp Mary Birch Hospital Sharp Grossmont Hospital Alvarado Hospital and Medical Center

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

**PERSONAL INFORMATION**

<i>Provider Name &amp; Title</i>	Erika M. Cox, M.D.
<i>PPHS Facilities</i>	Palomar Medical Center

**SPECIALTIES/BOARD CERTIFICATION**

<i>Specialties</i>	Family Practice Certified - 2005
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**ORGANIZATIONAL NAME**

<i>Name</i>	Erika M. Cox, M.D.
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**EDUCATION/AFFILIATION INFORMATION**

<i>Medical Education Information</i>	Central University of Venezuela FROM: 09/01/1993 TO: 03/17/2000 Doctor of Medicine Degree
<i>Internship Information</i>	N/A
<i>Residency Information</i>	Riverside County Regional Medical Center, Moreno Valley, CA Family Practice From: 07/01/2002 To: 06/30/2005
<i>Fellowship Information</i>	University of California, San Diego Research From: 05/01/2001 To: 05/01/2002 Translational Research in Autoimmunity
<i>Current Affiliation Information</i>	None

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

**PERSONAL INFORMATION**

<i>Provider Name &amp; Title</i>	Michele M. Fang, M.D.
<i>PPHS Facilities</i>	Palomar Medical Center

**SPECIALTIES/BOARD CERTIFICATION**

<i>Specialties</i>	Internal Medicine Certified - 2005
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**ORGANIZATIONAL NAME**

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

<i>Medical Education Information</i>	Indiana University School of Medicine, Indianapolis, IN FROM: 08/26/1998 TO: 05/12/2002 Doctor of Medicine Degree
<i>Internship Information</i>	N/A
<i>Residency Information</i>	Washington University, St. Louis Internal Medicine From: 06/21/2002 To: 06/22/2005
<i>Fellowship Information</i>	N/A
<i>Current Affiliation Information</i>	Kaiser Permanente, San Diego

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

**PERSONAL INFORMATION**

<i>Provider Name &amp; Title</i>	Aaron M. Lehman, M.D.
<i>PPHS Facilities</i>	Palomar Medical Center

**SPECIALTIES/BOARD CERTIFICATION**

<i>Specialties</i>	Internal Medicine – Not Board Certified Pediatrics – Not Board Certified
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**ORGANIZATIONAL NAME**

<i>Name</i>	North County Health Services
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**EDUCATION/AFFILIATION INFORMATION**

<i>Medical Education Information</i>	University of Arizona, Tucson FROM: 09/01/1997 TO: 05/12/2001
<i>Internship Information</i>	University of California, San Diego Medicine/Pediatrics From: 06/24/2001 To: 06/27/2002
<i>Residency Information</i>	University of California, San Diego Medicine/Pediatrics From: 07/01/2002 To: 06/30/2005
<i>Fellowship Information</i>	N/A
<i>Current Affiliation Information</i>	None



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

**PERSONAL INFORMATION**

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

**SPECIALTIES/BOARD CERTIFICATION**

<b>Specialties</b>	Obstetrics and Gynecology Not Board Certified
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**ORGANIZATIONAL NAME**

<b>Name</b>	Escondido OB/GYN
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**EDUCATION/AFFILIATION INFORMATION**

<b>Medical Education Information</b>	University of Southern California, Los Angeles FROM: 08/01/1997 TO: 05/11/2001 Doctor of Medicine Degree
<b>Internship Information</b>	White Memorial Medical Center, Los Angeles, CA Obstetrics/Gynecology From: 07/01/2001 To: 06/30/2002
<b>Residency Information</b>	White Memorial Medical Center Obstetrics/Gynecology From: 07/01/2002 To: 06/30/2005
<b>Fellowship Information</b>	N/A
<b>Current Affiliation Information</b>	None

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

**PERSONAL INFORMATION**

<i>Provider Name &amp; Title</i>	James P. Lyons, M.D.
<i>PPHS Facilities</i>	Pomerado Hospital

**SPECIALTIES/BOARD CERTIFICATION**

<i>Specialties</i>	Orthopaedic Surgery Certified – 2000
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**ORGANIZATIONAL NAME**

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

<i>Medical Education Information</i>	Creighton University, Omaha, NB FROM: 05/31/1987 TO: 05/17/1991 Doctor of Medicine Degree
<i>Internship Information</i>	LAC/University of Southern Calif. Medical Center General Surgery From: 06/24/1991 To: 06/24/1992
<i>Residency Information</i>	LAC/University of Southern Calif. Medical Center Orthopaedics From: 07/01/1992 To: 06/30/1996
<i>Fellowship Information</i>	LAC/University of Southern Calif. Medical Center Orthopaedics, Hand From: 08/01/1996 To: 08/31/1997
<i>Current Affiliation Information</i>	Kaiser Permanente, San Diego

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

**PERSONAL INFORMATION**

<b>Provider Name &amp; Title</b>	Jennifer A. Neff, M.D.
<b>PPHS Facilities</b>	Palomar Medical Center

**SPECIALTIES/BOARD CERTIFICATION**

<b>Specialties</b>	Family Practice Certified -1998
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**ORGANIZATIONAL NAME**

<b>Name</b>	QualityCare Medical Center
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**EDUCATION/AFFILIATION INFORMATION**

<b>Medical Education Information</b>	University of Wisconsin Medical School, Madison FROM: 08/20/1990 TO: 05/22/1994 Doctor of Medicine Degree
<b>Internship Information</b>	University of Minnesota, Minneapolis Family Practice From: 07/01/1994 To: 06/30/1995 Bethesda Family Practice Residency Program
<b>Residency Information</b>	University of Minnesota Family Practice From: 07/01/1995 To: 06/03/1997 Bethesda Family Practice Residency Program
<b>Fellowship Information</b>	N/A
<b>Current Affiliation Information</b>	Tri-City Medical Center

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

**PERSONAL INFORMATION**

<b>Provider Name &amp; Title</b>	Parmjit M. Singh, M.D.
<b>PPHS Facilities</b>	Pomerado Hospital

**SPECIALTIES/BOARD CERTIFICATION**

<b>Specialties</b>	Internal Medicine Certified through American Board of Ambulatory Medicine
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**ORGANIZATIONAL NAME**

<b>Name</b>	Parmjit M. Singh, M.D.
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**EDUCATION/AFFILIATION INFORMATION**

<b>Medical Education Information</b>	University College of Medical Sciences, India, New Delhi FROM: 07/01/1972 TO: 12/31/1976
<b>Internship Information</b>	N/A
<b>Residency Information</b>	Veterans Affairs Edward Hines, Jr. Hospital, Hines, IL Internal Medicine From: 06/09/1980 To: 06/11/1983  Schwab Rehabilitation Hospital and Care Network, Chicago, IL Physical Medicine/Rehab From: 10/08/1979 To: 04/04/1980 6 months of training
<b>Fellowship Information</b>	N/A
<b>Current Affiliation Information</b>	Fallbrook Hospital Palomar Medical Center Tustin Hospital and Medical Center Doctor's Hospital of Montclair

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

**PERSONAL INFORMATION**

<i>Provider Name &amp; Title</i>	Alicja S. Steiner, M.D.
<i>PPHS Facilities</i>	Palomar Medical Center Palomar Continuing Care Center Escondido Surgery Center Pomerado Hospital Villa Pomerado

**SPECIALTIES/BOARD CERTIFICATION**

<i>Specialties</i>	Pain Medicine - Certified: 2000 Anesthesiology - Certified: 1999
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**ORGANIZATIONAL NAME**

<i>Name</i>	Alicja Steiner, M.D.
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**EDUCATION/AFFILIATION INFORMATION**

<i>Medical Education Information</i>	Medical Academy of Warsaw, Poland FROM: 09/01/1985 TO: 05/28/1991 Doctor of Medicine Degree
<i>Internship Information</i>	N/A
<i>Residency Information</i>	Cabrini Medical Center, New York, NY General Surgery From: 07/01/1993 To: 06/30/1995  New York University Medical Center, New York, NY Anesthesia From: 07/01/1995 To: 06/30/1998
<i>Fellowship Information</i>	New York University Medical Center, New York, NY Pain Management From: 07/01/1998 To: 10/31/1999
<i>Current Affiliation Information</i>	Pacific Surgical Institute of Pain Management, San Diego, CA

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

**NAME:** Catherine E. Archdeacon, P.A.-C  
**SPECIALTY:** Physician Assistant  
**SERVICES:** Physician Assistant services for California Emergency Physicians  
**TRAINING:** Anne Arundel Community College, Arnold, Maryland  
 Physician Assistant Certificate 06/01/99-08/18/01  
**PRACTICE:** Physician Assistant, California Emergency Physicians, Emergency  
 Department, Palomar Medical Center and Pomerado Hospital 11/01/05-Present  
 Physician Assistant, Emergency Department, Doctors Community  
 Hospital, Leonardtown, MD 12/14/04-Present  
 Physician Assistant, Physician Management, Bethesda, MD 10/01/01-Present  
 Physician Assistant, Emergency Dept., Calvert Memorial Hospital,  
 Prince Frederick, MD 09/15/01-Present  
 Physician Assistant, Emergency Medicine, St. Mary's Hospital,  
 Leonardtown, MD 10/03/01-12/31/02  
**SPONSORS:** California Emergency Physicians  
**CERTIFICATION:** National Commission on Certification of Physician Assistants 2001  
**FACILITY:** Palomar Medical Center and Pomerado Hospital

**NAME:** Kalani K. Thomson, P.A.-C  
**SPECIALTY:** Physician Assistant  
**SERVICES:** Physician Assistant services for Kaiser Orthopaedic Surgeons  
 at Pomerado Hospital  
**TRAINING:** Western University of Health Science, Pomona, CA  
 Certificate – Physician Assistant program 08/07/97-07/31/99  
 Arrowhead Regional Medical Center, Colton, CA  
 Orthopaedic Physician Assistant Residency Program 09/01/00-08/31/01  
**PRACTICE:** Orthopaedic Physician Assistant, Kaiser Permanente, San Diego, CA 05/20/02-Present  
 Physician Assistant, Southern California Institute, Van Nuys, CA 10/01/01-05/10/02  
 Physician Assistant, Emergency Dept, Arrowhead Regional Medical  
 Center, Colton, CA 02/29/00-08/29/01  
**SPONSORS:** Kaiser Orthopaedic Surgeons at Pomerado Hospital  
**CERTIFICATION:** National Commission on Certification of Physician Assistants 1999  
**FACILITY:** Pomerado Hospital



## MEDICAL STAFF SERVICES

**DATE:** October 25, 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 11/14/2005 – 10/31/2007

- ◆ Josue D. Leon, M.D., OB/GYN
- ◆ Alicja S. Steiner, M.D., Pain Management

### Reappointment:

Effective 11/14/2005 – 01/31/2007

- ◆ Riaz Bohkari, M.D., General Vascular Surgery

Effective 11/14/2005 – 08/31/2007

- ◆ Malini Reddy, M.D., Anesthesiology

Effective 12/01/2005 – 11/30/2007

- ◆ Duane M. Buringrud, M.D., OB/GYN
- ◆ Ying C. Chen, M.D., OB/GYN
- ◆ David W. Cloyd, M.D., General Vascular Surgery
- ◆ Thomas A. Jones, M.D., Urology
- ◆ Steve Laverson, M.D., Plastic Surgery
- ◆ Ronald Levin, M.D., Anesthesiology
- ◆ Vincent R. Okamoto, M.D., Anesthesiology
- ◆ Steven G. Pratt, M.D., Ophthalmology
- ◆ Thomas E. Rastle, M.D., Family Practice
- ◆ William D. Tench, M.D., Pathology

### 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  
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**Pomerado Hospital Medical Staff Services**

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

DATE: October 26, 2005  
TO: Board of Directors - November 14, 2005 Meeting  
FROM: Paul E. Tornambe, M.D., Chief of Staff, Pomerado Hospital Medical Staff  
SUBJECT: Medical Staff Credentials Recommendations – October 2005:

Provisional Appointments:

Delois J. Bean, M.D. – Orthopedic Surgery  
Maria L. Castillo, M.D. – OB/GYN  
Josue D. Leon, M.D. – OB/GYN  
James P. Lyons, M.D. – Orthopedic Surgery  
Parmjit Singh, M.D. – Internal Medicine  
Alicja Steiner, M.D. – Anesthesia (Villa also – Consulting)

Biennial Reappointments: Effective through 11/30/2007

Celestine J. Arambulo, D.O. – Medicine – Associate (Villa also)  
Michael J. Beaumont, M.D. – OB/GYN - Active  
Ying Chang Chen, M.D. – OB/GYN - Courtesy  
Robert G. Connolly, M.D. – Radiology - Active  
Russell W. Engevik, M.D. – Emergency Medicine - Active  
Anna Rita Foraci, D.O. – Medicine - Courtesy  
Robert W. Herbst, M.D. – Surgery – Active (Villa also)  
Tahir Ijaz, M.D. – Radiology - Consulting  
James M. Jacquet, M.D. – Surgery - Active  
Thomas A. Jones, M.D. – Surgery - Courtesy  
Andrew M. Kahn, M.D., PhD - Medicine  
Steve Laverson, M.D. – Surgery - Active  
Patrocina A. Magat, M.D. – Medicine - Affiliate  
Richard A. Merino, M.D. – Medicine - Affiliate  
Steven G. Pratt, M.D. – Surgery - Courtesy  
William D. Tench, M.D. – Pathology - Active

Advancement to Affiliate Category

Vincent R. Okamoto, M.D. - Anesthesia

Allied Health Appointments:

Catherine E. Archdeacon, P.A. – Sponsors – CEP Physicians  
Kalani K. Thomson, P.A.-C – Sponsors Kaiser Physicians.

Resignations/Withdrawals:

David Kaegi, M.D. – Pediatrics  
Priscilla Madsen, M.D. – Internal Medicine  
James F. Marino, M.D. – Orthopedic Surgery  
Howard J. Roselinsky - Anesthesia  
Bassam Sinno, M.D. – Psychiatry  
Tabita A. Wright, M.D. - Radiology

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Additional Privileges:

Rosalyn Baxter-Jones, M.D – OB privileges  
Leslie J. Gullahorn, M.D. – PCA  
Gary P. Spoto, M.D. – Moderate Sedation Privileges  
Craig D. Stevenson, M.D. - PCA

Allied Health Resignation:

Sarah A. Bohn, Ph.D  
Nellie Hall-Blunt, P.A.

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.

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# MEDICAL STAFF SERVICES



**TO:** Palomar Pomerado Health Board of Directors

**MEETING DATE:** November 14, 2005

**FROM:** Paul E. Tornambe, M.D., Chief of Staff  
Pomerado Hospital Medical Staff Executive Committee

**SUBJECT:** Pomerado Hospital Medical Staff Bylaws

## 14.1 MANDATED AMENDMENTS

In the event any amendment to the bylaws or the rules and regulations is required based on any provision of state or federal statute or regulation, or any interpretation of any such law or regulation by duly authorized regulatory body or court of competent jurisdiction, such amendment may be approved by the Executive Committee and presented to the Board of Directors. Notwithstanding any other provision of this article, such amendment shall become effective upon approval by the Board, and shall be distributed to active category Members as soon as reasonably possible.

In accordance with the above the Executive Committee in its meeting of October 25, 2005 recommended that the attached amendments be made to the Pomerado Hospital Bylaws. Regulations mandated by Code of Federal Regulations, Title 42 section 482.22

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CENTER  
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POMERADO HOSPITAL  
MEDICAL STAFF BYLAWS  
PROPOSED REVISIONS

ARTICLE III  
CLINICAL PRIVILEGES

3.3 SPECIAL CONDITIONS

3.3.1 ~~Dental and Podiatry Privileges~~

~~Requests for clinical privileges from dentists and podiatrists are processed in the same manner as specified in this Article. Surgical procedures performed by dentists and podiatrists are under the overall supervision of the Clinical Service Division Director of Surgery. Appropriately credentialed dentists and podiatrists may be permitted to perform pre-operative history and physical exams on ASA Physical Status 1 and ASA Physical Status 2 patients. A Physician on the Medical Staff shall be responsible for the care of any medical problems that may be present at admission or that may arise during hospitalization. If significant medical abnormality is present, the final decision on whether to proceed with surgery must be agreed upon by the dentist or podiatrist and the Physician consultant. The Surgical-Clinical Service Division will decide the issue in case of dispute.~~

RULES AND REGULATIONS

3. MEDICAL RECORDS

3.5 If a complete history has been recorded and a physical examination performed prior to the patient's admission to the Hospital, either a dictated copy through the hospital or a reasonable durable, legible copy of these reports may be used in the patient's Hospital medical record, provided these reports may only be done by an M.D. or D.O. for cases other than oromaxillofacial surgery, and for oromaxillofacial surgery the special case permits oromaxillofacial surgeons to do the H&P provided that they have proper privileges. ~~are recorded by a Member~~ and that the history and physical examination have not been performed more than ~~thirty (30)~~ seven (7) days prior for the same medical condition. In such circumstances, an interval admission note that includes all additions to the history and any subsequent changes in physical findings must always be recorded within twenty-four (24) hours of admission. Prenatal records shall be accepted for ~~thirty (30)~~ seven (7) days before the expected date of confinement. An interval admission note is required.

## Healing Environment Champion Team

**TO:** PPH Board of Directors

**MEETING DATE:** November 14, 2005

**FROM:** Strategic Planning Committee on October 18, 2005

**BY:** Carrie Frederick, Director Performance Excellence  
Laurie Garry, Healing Environment Champion Team Chair

**BACKGROUND:** The Healing Environment Champion Team sub-group presented evidence-based research and reference materials. The purpose of this presentation was to provide more detailed information on recommendations, impact to scorecard quadrants, summaries of the evidence, and to provide more detail on referenced articles. It was noted that Carrie Frederick oversees all of the Champion Teams.

Laurie Garry, sub-group Chairperson, provided an introduction to the Healing Environment presentation.

Peggy Orr presented a summary of the Planetree philosophy, which includes an emphasis on human interaction and achieving an organizational culture of caring, nurturing, compassionate, and personalized care to patients, families and staff. The Planetree model utilizes best practices and a culture of healing environments, as a process whereby a patient-centered hospital becomes an integral part of the community it serves.

Stephanie Heames presented on Patient Perspective, Art, and Individual Control.

Dan Farrow presented on the topic of Wayfinding

Judy Cavallo and Gloria Dungca presented on Community and Cultures

Rachel Thornberry presented on Social Support

Kim Wallace presented on the topic of Lighting

Terry Scherl presented the topic of Noise

Dionne Blaha presented on Healing Gardens, Indoors and Outdoors

Laurie Garry presented on the topic of the Employee Lounge

Dr. Larson thanked the Healing Environment sub-group for an excellent presentation.

**BUDGET IMPACT:** None

**STAFF RECOMMENDATION:** For information and discussion only.

### COMMITTEE RECOMMENDATION:

**Information:** X

## Update on Satellite Planning

**TO:** PPH Board of Directors

**MEETING DATE:** November 14, 2005

**FROM:** Strategic Planning Committee on October 18, 2005

**BY:** Marcia Jackson, Chief Planning Officer  
Mike Shanahan, Director Facilities Planning & Development

**BACKGROUND:** Information was shared with the Committee regarding our planning for the Rancho Peñasquitos satellite clinic. Mike Shanahan introduced local architects Leary, Childs, Mascari, and Warner, and together they discussed the Rancho Peñasquitos satellite center, including various schemes. The shared schemes included those that would preserve the current structures, and others that would involve demolition of the existing structures and the building of new ones.

Additional options were discussed, including converting the church or the school into a health center. Mike Shanahan noted that there are architectural problems with utilizing the existing Maranatha church, such as infrastructure, ventilation, plumbing, floor height, upgrade, and elevators, which would cost approximately \$100,000 to rectify.

It was noted that parking spaces would determine the actual building size, due to the zoning ratio of five (5) parking spaces per 1,000 square feet of office building. There will be a 55,000 square foot maximum for the building size, without creating a need for structured parking.

Regardless of the option selected, PPH can plan to spend approximately \$5 million to \$6 million on this project. Mike Shanahan noted that there is a definite need for a satellite center on the east side of the Highway 56 corridor, since there are not a lot of health care facilities in that area. PPH is now conducting environmental and traffic studies, and the results will help determine the satellite center's size and placement.

We will have to get the property rezoned before construction, since the site is currently designated as "residential." It will probably take us a year to obtain all the clearances needed before breaking down, and then another year before the satellite center is ready to open.

**BUDGET IMPACT:** Unknown

**STAFF RECOMMENDATION:** For information and discussion only.

### COMMITTEE RECOMMENDATION:

**Information:** X

## Status of the Internal Audit Committee

**TO:** Board of Directors

**DATE:** November 14, 2005

**FROM:** Internal Audit Committee  
October 13, 2005

**BY:** Thomas Boyle, CIA, CISA, CFE, Director Internal Audit Services

**Background:** This was the 4<sup>th</sup> quarter meeting. In attendance were: Directors Rivera (Chair), Kleiter, Greer (Alternate), and Dr. Trifunovic.

**Internal Audit Report:** Tom Boyle presented the following topics for information to the Audit Committee regarding the Internal Audit activities for the past quarter.

1. Administrative Activities
  - 1.2 Internal Audit Initiatives
  - 1.3 Audit Risk Assessment – 2006 Audit Plan
  - 1.4 Establish Reference Library
2. Completed Projects
  - 2.1 PPH Foundation - Follow up
  - 2.2 Physician Contracting
  - 2.3 Home Health Audit
  - 2.4 Cerner Implementation
  - 2.5 Patient Billing – Coordination of review by Gustafson & Associates
3. Active Projects
  - 3.1 Revenue Cycle Management - Gustafson & Associates
  - 3.2 Outpatient Coding Audit - expect completion within 30 days
  - 3.3 Patient Billing Audits - RevCare
  - 3.4 Payroll Audit – to be complete by month-end.
  - 3.5 Construction Audit –planning stages to prepare for expansion project
  - 3.6 Cardiac Rehabilitation ‘incident to’ Benefit Audit
  - 3.7 Lithotripsy Charging
  - 3.8 Continuous Controls Monitoring – to integrate the automation of significant and repetitive tests of internal controls. Currently in the planning stages; identifying key areas and establishing data access capabilities.

Next Meeting: An Audit Committee meeting on December 8, 2005 to review the Control Risk Assessment results and the revised Audit Plan. Additionally, the year-end audit report and audit process will be reviewed.

## Status of the Internal Audit Committee

**Budget Impact:** None

**Staff Recommendation:** None

**Committee Questions:** None

**Next Meeting:** December 8, 2005, 12:00 @ Innovation Conference Room A.

### COMMITTEE RECOMMENDATION:

**Motion:**

**Individual Action:**

**Information:** X

**Required Time:**

## Update on Bond Financing and Debt Strategy

**TO:** Board of Directors

**FROM:** Board Finance Committee  
Tuesday, October 25, 2005

**MEETING DATE:** Monday, November 14, 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 made a recommendation 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.”

At the August 30, 2005, Finance Committee meeting, a progress update on Management’s collaboration with the Financing Team to develop the next steps of financing, as well as the components of the requisite debt/swap policy, was presented.

Progress and next steps regarding bond financing and the PPH debt strategy will be discussed at the Board meeting.

**Budget Impact:** N/A

**Staff Recommendation:** Review and discussion; no action anticipated.

**Committee Questions:**

**COMMITTEE RECOMMENDATION:** Review and discussion for the Board’s information.

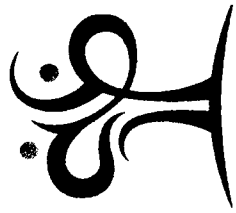
**Motion:**

**Individual Action:**

**Information:** X

**Required Time:**





PALOMAR  
POMERADO  
HEALTH

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## **Update and Discussion Materials**

**October 25, 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 an initial tranche of Revenue Bonds
  - Approximately \$100 million of new money bonds targeted for 2006
  - Additional bonds related to restructuring existing revenue bond debt (approximately \$91 million) for covenant relief and possible savings
- ◆ Key decisions for the the revenue bond financing include
  - Fixed versus variable rate mix
  - Credit enhancement
  - Hedging interest rate risk by locking in today's low rates

## **Debt Policy Overview**

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- ◆ A Draft Debt Policy was presented at the August meeting
- ◆ The Debt Policy will be tailored to PPH, addressing various financing components including:
  - Credit enhancement – what type, and when to use
  - Variable rate debt – how much, and which structure(s)
  - Interest rate swaps -- rationale, risk analysis and authorization process

## **Summary and Next Steps**

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- ◆ To date, the Financing Team has covered with the Board:
  - The appropriate mix of fixed and variable rate debt
  - Analysis of alternative financing products
  - The draft Debt Policy
- ◆ In the coming months, we will work with the Board to:
  - Identify restructuring opportunities for the existing revenue bonds
  - Finalize the recommended structure for the initial revenue bond issuance
  - Finalize the Debt Policy authorizing the use of variable rate debt
- ◆ Based upon the further education and the development/adoption of a Debt Policy, it is anticipated that we will be seeking final approvals to move forward with the next phase of the Plan of Finance Roadmap at the December meeting

# Financing Timeline

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- |                             |                                                                                                                                                                                                                                                                                                   |
|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>November</b>             | <ul style="list-style-type: none"><li>◆ Distribute credit packages to insurers</li><li>◆ Adopt debt and swap policy</li></ul>                                                                                                                                                                     |
| <b>December to February</b> | <ul style="list-style-type: none"><li>◆ Determine use of credit enhancement</li><li>◆ Select credit enhancement provider</li><li>◆ Determine borrowing amount</li><li>◆ Finalize Plan of Finance</li><li>◆ Determine hedging strategy</li><li>◆ Lock in interest rates (if appropriate)</li></ul> |
| <b>March/April</b>          | <ul style="list-style-type: none"><li>◆ Draft Bond Documents</li></ul>                                                                                                                                                                                                                            |
| <b>April</b>                | <ul style="list-style-type: none"><li>◆ Marketing of Bonds</li></ul>                                                                                                                                                                                                                              |
| <b>May</b>                  | <ul style="list-style-type: none"><li>◆ Close Revenue Bond Financing</li></ul>                                                                                                                                                                                                                    |

**Authorized Individuals and Enabling Resolutions  
for Morgan Stanley Investment Accounts**

**TO:** Board of Directors  
**FROM:** Board Finance Committee  
Tuesday, October 25, 2005  
**MEETING DATE:** Monday, November 14, 2005  
**FROM:** Rob Jewett, Cash Control Manager  
Bob Hemker, CFO

**Background:** Morgan Stanley has requested that the Board adopt their standard corporate resolution titled "Authorized Individuals and Enabling Resolutions for Corporations" ("MS Resolution"). That document lists the PPH Officers who are authorized by the Board to provide Morgan Stanley with instructions concerning PPH's Investment Accounts. It is attached, along with a draft PPH Resolution concerning adoption of the MS Resolution by the Board.

Morgan Stanley's request is being made as the existing names on file with that institution are not current, and Morgan Stanley finds the format of PPH's current Resolution listing authorized account signors inadequate.

While PPH's Resolution designates individuals as the "Officers" of the District, it does not specify their authority pertaining to specific activities. The MS Resolution specifies the banking related instructions that the PPH Officers are authorized to provide Morgan Stanley to conduct routine business activities.

Statements in the MS Resolution related to Equity Investments and Margin Investments were struck from the document.

**Budget Impact:** N/A

**Staff Recommendation:** At the Finance Committee meeting, staff recommended adoption of the amended Morgan Stanley resolution—as an attachment to a PPH overriding resolution—as presented.

**Committee Questions:**

**COMMITTEE RECOMMENDATION:** The Finance Committee recommends adoption of the amended Morgan Stanley resolution—as an attachment to a PPH overriding resolution—as presented.

**Motion:**

**Individual Action:** X

**Information:**

**Required Time:**

PALOMAR POMERADO HEALTH

RESOLUTION NO. 11.14.05 (01) - 20

RESOLUTION OF THE GOVERNING BOARD OF PALOMAR POMERADO  
HEALTH RE: AUTHORIZED INDIVIDUALS AND ENABLING RESOLUTIONS  
FOR MORGAN STANLEY INVESTMENT ACCOUNTS

WHEREAS, Palomar Pomerado Health maintains three investment accounts with Morgan Stanley, Account Numbers 123-95465-0-038, 123-95476-0-038 and 123-95464-0-038; and,

WHEREAS, Morgan Stanley requires Client Corporations to adopt certain enabling Resolutions regarding the opening and handling of those accounts; and,

WHEREAS, Morgan Stanley requires a full true and correct copy of said Resolutions in the form and format attached hereto as pages 1 through 4 of Morgan Stanley's "Authorized Individuals and Enabling Resolutions for Corporations"; and,

WHEREAS, Palomar Pomerado Health is desirous of adopting enabling resolutions 3.1 through 3.10 inclusive, excluding 3.3, as identified in the "Authorized Individuals and Enabling Resolutions for Corporations";

NOW, THEREFORE, BE IT RESOLVED that the Governing Board of Palomar Pomerado Health hereby adopts by this Resolution the enabling resolutions 3.1 through 3.10 inclusive, excluding 3.3, as identified in the "Authorized Individuals and Enabling Resolutions for Corporations"

PASSED AND ADOPTED by the Governing Board of Palomar Pomerado Health in Poway, California, this 14th day of November, 2005, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAINING:

IN WITNESS WHEREOF, this instrument has been duly signed and sealed as of the 14th day of November, 2005.

\_\_\_\_\_  
Nancy L. Bassett, RN, MBA  
Vice Chairperson, Board of Directors  
for Marcelo R. Rivera, M.D.  
Chairman, Board of Directors  
Palomar Pomerado Health

ATTEST: \_\_\_\_\_  
Nancy H. Scofield  
Secretary, Board of Directors  
Palomar Pomerado Health

# Authorized Individuals and Enabling Resolutions for Corporations

123-95465-0-038

123-95476-0-038

123-95464-0-038

Account Number

In consideration of Morgan Stanley opening and/or maintaining one or more accounts for the corporation named below, I, the undersigned, hereby certify as follows:

## 1. General Information

1. The full legal name of the corporation to which this document applies is:

Palomar Pomerado Health

2. Is the corporation a not-for-profit entity?

Yes       No

(If yes, you must provide the federal tax-exempt status determination letter or, if none, other proof of not-for-profit status.)

PPH is a California local healthcare district

## 2. Authorized Individuals

Morgan Stanley is hereby authorized, pursuant to Resolutions "second" and "fourth" on the second page hereto, to accept investment instructions and other instructions from those officers of the corporation named above (the "Client") and/or other individuals listed below (all of whose signatures below are hereby certified pursuant to Resolution "sixth" on the second page hereto), unless their authority is expressly limited on this document. In addition, all check-signing and withdrawal privileges have been indicated below; these privileges include, but are not limited to, the authority to make distributions (e.g., of cash or securities) and transfers by check or otherwise to anyone, including the undersigned officers and/or other individuals.

**(ALL AUTHORIZED INDIVIDUALS MUST COMPLETE THIS SECTION, EVEN IF ALSO SIGNING ON BEHALF OF THE CLIENT AT THE END OF THIS DOCUMENT.)**

**Michael Covert**

Name		Address		
		<b>Chief Executive Officer</b>		
Signature	Soc. Sec. No.	Date of Birth	Title	
Check-signing privileges:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		
Other withdrawal privileges:	<input type="checkbox"/> Unrestricted	<input checked="" type="checkbox"/> Wire/Journal to Same-Name Account	<input type="checkbox"/> None	

**Robert A. Hemker**

Name		Address		
		<b>Chief Financial Officer</b>		
Signature	Soc. Sec. No.	Date of Birth	Title	
Check-signing privileges:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		
Other withdrawal privileges:	<input type="checkbox"/> Unrestricted	<input checked="" type="checkbox"/> Wire/Journal to Same-Name Account	<input type="checkbox"/> None	

**Morgan Stanley**



Melanie L. Van Winkle

Name Address

Signature Soc. Sec. No. Date of Birth Title Corporate Controller

Check-signing privileges: [X] Yes [ ] No
Other withdrawal privileges: [ ] Unrestricted [X] Wire/Journal to Same-Name Account [ ] None

BLANK

Name Address

Signature Soc. Sec. No. Date of Birth Title

Check-signing privileges: [ ] Yes [ ] No
Other withdrawal privileges: [ ] Unrestricted [ ] Wire/Journal to Same-Name Account [ ] None

Subject to Morgan Stanley's policies, if Morgan Stanley receives conflicting instructions with respect to a particular account from different Authorized Individuals, or reasonably believes instructions from one Authorized Individual might conflict with the wishes of another Authorized Individual, Morgan Stanley may do any of the following: (a) choose which instructions to follow and which to disregard; (b) suspend all activity in the account until written instructions signed by all Authorized Individuals are received; (c) close the account and deliver all securities and other property, net of debits or liabilities, to the address of record; and/or (d) take other legal action.

3. Enabling Resolutions

Organizing Resolution

The following is a full, true and correct copy of Resolutions duly and regularly adopted by vote of the Board of Directors of the Client, that such Resolutions have not been rescinded or modified and are in full force and effect, and the Client further represents and warrants that: (1) the Resolutions are in accord with and pursuant to the Client's underlying charter and bylaws; (2) the Resolutions are in accord with all constitutional, statutory and regulatory provisions pertaining to the Client; (3) the Client is empowered to take the actions called for by the Resolutions; (4) the Client is duly organized, validly existing and in good standing under all applicable state laws; and (5) the persons designated above as officers of the Client have been duly installed and now hold the offices in the Client set forth by their respective names and their true signatures.

- 1. Resolved that the Client is authorized and empowered to open one or more investment accounts (collectively, the "Securities Account") with Morgan Stanley.
2.. Resolved that the Securities Account shall be a Cash Account or a Margin Account for the purpose of purchasing, no selling (including short sales), transferring, exchanging, pledging and generally dealing in any and all forms of securities and financial instruments of every kind or nature whatsoever, including, without limitation, purchasing, selling, etc., of option contracts (including uncovered option contracts); All orders and instructions, written or oral, relating to the Account shall be given by one of the individuals designated above under the heading "Authorized Individuals," and each of them individually is hereby authorized and directed to purchase and/or sell and/or deal in any and all securities and financial instruments for the Client, including the power to deliver, accept delivery of, pledge, endorse, and direct the transfer of record title of any assets beneficially owned by the Client, without obligation on Morgan Stanley's part to inquire into the reasons for said order or instructions.

3. ~~Resolved that the Client is authorized to obtain, and borrow at any time and from time to time under any commercial line of credit that may be extended, and/or term loan that may be made or any other financial accommodation, financial service or extension of credit, to the Client at any time and from time to time (a "Credit Facility"), and to secure payment therefor with property of the Client (including but not limited to equipment, inventory, accounts, general intangibles, real property and investment property), and to enter into any credit, security and other agreements and other documents necessary to effect the foregoing, in form and substance and in such amounts and with such repayment provisions, interest and fees, and other terms, as shall be satisfactory to any of the Authorized Individuals, acting alone, such satisfaction to be conclusively evidenced by the execution and delivery of such agreements and other documents by such Authorized Individual.~~
4. Resolved that Morgan Stanley may deal with any one of the Authorized Individuals as though Morgan Stanley were dealing with the Client directly.
5. Resolved that each of the Authorized Individuals is authorized and directed to execute and deliver to Morgan Stanley on behalf of the Client any and all agreements, documents, contracts and other writings that Morgan Stanley may require, **related to investments and investment instructions pursuant to client and Morgan Stanley's business relationship.**
6. Resolved that the Secretary (or other duly designated officer) of the Client is hereby authorized, empowered and directed to certify, under the Seal of the Client, or otherwise to Morgan Stanley:
  - (a) a true copy of these Resolutions;
  - (b) specimen signatures of each and every individual empowered by these Resolutions;
  - (c) a certificate (which, if Morgan Stanley requires, shall be supported by an opinion of the ~~general~~ **special** counsel of the Client, or other counsel satisfactory to Morgan Stanley) that the Client is duly organized and existing, that its charter empowers to transact the business contemplated in these Resolutions, and that no limitation has been imposed upon such powers by constitution, statute, regulations, ~~charter~~, bylaw or otherwise.
7. Resolved that Morgan Stanley may rely upon any certification given in accordance with these Resolutions as continuing fully effective unless and until Morgan Stanley shall receive due written notice of an amendment, modification or rescission of such Resolutions or certification. Further resolved that Morgan Stanley shall not be liable for any action taken or not taken upon instruction of any Authorized Individual prior to Morgan Stanley's actual receipt of written notice of the termination or impairment of such person's authority. The failure to supply any specimen signature shall not invalidate any transaction which is in accordance with authority actually granted. Further resolved that the Client shall indemnify and hold harmless Morgan Stanley and any of its subsidiaries and affiliates from any and all claims that a transaction was unauthorized or outside the scope of the Client's powers, if such transaction was authorized by any of the Authorized Individuals.
8. Resolved that in the event of any change in the office or powers of persons hereby empowered, the Secretary (or other duly designated officer) shall certify such changes to Morgan Stanley, in writing, which certification, when Morgan Stanley receives it, shall terminate the powers of the persons previously authorized and empower the persons thereby substituted.
9. Resolved that the Client hereby authorizes Morgan Stanley to charge any amount due Morgan Stanley under any arrangement with the Client against any or all of the accounts and other property of the Client held with Morgan Stanley or any of its affiliates, with the Client remaining liable for any deficiency.
10. Resolved that the Client hereby authorizes Morgan Stanley to only invest in instruments permissible under district law and the California Government Code and will not be obligated or responsible to Morgan Stanley for failure to comply, notwithstanding other provisions of the resolution(s).

**Trauma, Emergency Department & Inpatient Consultative Services Agreement  
North County Emergency Medical Associates, Inc. (NCEMA)**

**TO:** Board of Directors

**FROM:** Board Finance Committee  
Tuesday, October 25, 2005

**MEETING DATE:** Monday, November 14, 2005

**BY:** Gerald Bracht, Chief Administrative Officer, Palomar Medical Center

**Background:** PPH has worked with the Medical Staffs to develop a methodology to assure uninterrupted emergency on-call and in-patient consultation coverage that is fair and equitable to the on-call physician. Various alternatives have been researched and discussed with the Medical Staffs. Both Medical Staffs recently surveyed their memberships to obtain their preference for either continuing the current on-call coverage program managed by the hospital and medical staff or to contract the coverage with an outside entity. Results of the survey indicated significant preference for contracting with an outside entity, and specifically with North County Emergency Medical Associates, Inc. (NCEMA).

PPH and NCEMA are near completion of negotiations to enter into a Trauma, Emergency Department and Inpatient Consultative Services Agreement, whereby NCEMA would provide continuous and uninterrupted Trauma, ED and Inpatient Consultative Panel Coverage and Professional Services for the Specialties, 24 hours per day and seven days per week, regardless of a patient's payor class, to patients at both Palomar Medical Center and Pomerado Hospital. The Agreement, included as Addendum B to the agenda, reflects the expected business relationship. It is anticipated that changes, if any, to this Agreement will be minor.

**Budget Impact:** FY2006 Budgeted Amount – no negative impact.

**Staff Recommendation:** At the Finance Committee meeting, staff recommended approval of the Agreement, subject to resolution of D&O Coverage.

**Committee Questions:**

**COMMITTEE RECOMMENDATION:** The Finance Committee recommends approval of the Trauma, Emergency Department & Inpatient Consultative Services Agreement with North County Emergency Medical Associates, Inc.

**Motion:** X

**Individual Action:**

**Information:**

**Required Time:**

## PALOMAR POMERADO HEALTH - AGREEMENT ABSTRACT

Section Reference	Term/Condition	Term/Condition Criteria
	TITLE	Trauma, Emergency Department and Inpatient Consultative Services Agreement
7.1	AGREEMENT DATE	November 1, 2005
	PARTIES	North County Emergency Medical Associates, Inc. and Palomar Pomerado Health
Recitals E Section 1.1	PURPOSE	Provision of 24 hour per day and seven days per week continuous uninterrupted availability of specialty Trauma and Emergency on-call coverage and inpatient consultative services.
Attachment 1	SCOPE OF SERVICES	Specialty coverage for those specialties defined by the agreement, attachment 1
	PROCUREMENT METHOD	<input checked="" type="checkbox"/> Request For Proposal <input type="checkbox"/> Discretionary In coordination with the medical staffs and medical executive committees of Palomar and Pomerado Hospitals.
6.1	TERM	November 1, 2005 through June 30, 2010, (Five years) with 180 days written notice prior to expiration date to terminate
6.1	RENEWAL	Two automatic one year renewals unless terminated upon 180 days written notice prior to the expiration date
7.1 7.2 (1-9)	TERMINATION	Without cause by either party with following the first 24 months of the agreement by giving 180 days written notice. For cause as defined in the agreement
3.1	COMPENSATION METHODOLOGY	Annual stipend
	BUDGETED	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO – IMPACT:
1.15	EXCLUSIVITY	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO – EXPLAIN:
	JUSTIFICATION	Required for delivery of high quality uninterrupted trauma, emergency and inpatient consultative specialty coverage
	AGREEMENT NOTICED	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <b>Methodology &amp; Response:</b> All medical staff invited in writing to provide comment, multiple forums held.
	ALTERNATIVES/IMPACT	No other viable proposals were submitted that were supported by the general medical staff.
Exhibit 1.5 #’s 4, 5, 8, 16, 19, 21,	Duties of Medical Director	<input type="checkbox"/> Provision for Staff Education <input type="checkbox"/> Provision for Medical Staff Education <input checked="" type="checkbox"/> Provision for participation in Quality Improvement <input type="checkbox"/> Provision for participation in budget process development
	COMMENTS	Duties of the Trauma Program Medical Director include staff and medical staff education and participation in the budget process development.
	APPROVALS REQUIRED	<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

**TRAUMA, EMERGENCY DEPARTMENT AND INPATIENT CONSULTATIVE  
SERVICES AGREEMENT**

THIS TRAUMA, EMERGENCY DEPARTMENT AND INPATIENT CONSULTATIVE SERVICES AGREEMENT ("Agreement") is made and entered into effective as of \_\_\_\_\_, ("Start Date") by and between Palomar Pomerado Health, a California local health care district ("PPH" or "Hospital"), and North County Emergency Medical Associates, Inc., a California professional medical corporation ("NCEMA").

**RECITALS**

A. PPH owns and operates two facilities ("Hospitals"), Palomar Medical Center ("PMC"), a general acute care hospital, located at 555 East Valley Parkway, Escondido, California, in which there is a Level II Trauma Center ("Trauma Center"), and Pomerado Hospital ("POM"), a general acute care hospital, located at 15615 Pomerado Road, Poway, California.

B. PPH has entered into an agreement with the County of San Diego that designates PMC as a Level II Trauma Center (the "Trauma Center Designation Agreement"), whereby PMC has agreed to provide on-call trauma coverage and professional medical services for presenting trauma patients. PMC has established a panel of physicians ("Trauma Panel") in order to assure the availability of adequate physician coverage for the Trauma Center.

C. The Hospitals each operated emergency departments ("ED"s) and inpatient care areas for general acute care hospital services, under established local, state and federal regulations, and maintain on-call agreements with qualified medical and surgical specialists to provide consultative services to these areas.

D. NCEMA has agreements with physicians who are Board certified or Board eligible, with specialty training and recent experience in one or more of the following: trauma/general surgery (including organ repair and vascular surgery), cardiology, neurosurgery, orthopedics, otolaryngology, urology, plastic/hand/maxillofacial/microvascular surgery and anesthesia. All such physicians are licensed to practice medicine in the State of California, are members in good standing of the medical staff of Hospital with no disciplinary/probation actions in process, and are approved by the Hospital medical staff to serve on the Trauma, ED and Inpatient Consultative Services Panel and/or ED panels.

E. PPH and NCEMA recognize that the Trauma, ED and Inpatient Consultative Panels perform a necessary patient care function at the Hospitals, and NCEMA agrees to arrange for Trauma, ED and Inpatient Consultative Panel Coverage and Professional Services (as defined below) by NCEMA Physicians, assuring continuous and uninterrupted availability of Specialty services to Hospital's and Trauma Center patients.

F. In arranging for and providing Trauma, ED and Inpatient Consultative Services as specified in Attachment 1 under this Agreement, PPH and NCEMA desire to provide and coordinate continuous, high quality and efficient patient care at the Trauma Center.

G. This Agreement is not intended to affect the rights or responsibilities of any physician to provide emergency on-call coverage or professional services to patients in the Hospital Emergency Department, which are separate and distinct from the Trauma Coverage and Professional Services covered by this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, conditions and promises herein contained, the parties hereby agree as follows:

**1. TRAUMA, ED AND INPATIENT CONSULTATIVE SERVICES**

1.1 NCEMA shall arrange for NCEMA Physicians meeting the requirements of Section 1.6 of this Agreement to provide continuous and uninterrupted Trauma, ED and Inpatient Consultative Panel Coverage and Professional Services for the Specialties as specified in Attachment 1, 24 hours per day and seven days per week, regardless of a patient's payor class, to patients of Hospital ("Patients").

1.1.1 "Trauma Panel Coverage" shall mean NCEMA Physician is either physically present at the Trauma Center or available by telephone and/or pager to arrive at the Trauma Center within the time period required by the Standards/Requirements for Level II Trauma Centers (set forth in Chapter 7, Division 9, Title 22 of the California Code of Regulations and the Trauma Center Designation Agreement), and includes NCEMA Physicians' availability to continue to provide Professional Services to the Trauma Patient as provided in Section 1.2 below.

1.1.2 "ED Panel Coverage" shall mean NCEMA Physician is either physically present at the ED or available by telephone and/or pager to arrive at the ED within the time period required by the Medical Staff bylaws.

1.1.3 "Inpatient Consultation Coverage" shall mean NCEMA Physician is either physically present at the ED or available by telephone and/or pager to consult on Hospital Patients at the request of another medical staff physician.

1.1.4 "Professional Services" shall mean those professional medical services that NCEMA Physician is qualified and privileged by the Hospitals to provide.

1.1.5 The phrase "the bylaws, rules and regulations, policies and procedures of PPH, the Hospital," or words to that effect, as used throughout this Agreement shall mean only those matters which apply to the medical staff of the Hospital as a whole and such matters as may be required for Hospitals to maintain their status as general acute care facilities, and PMC to maintain its status as a Level II Trauma Center under the Trauma Center Designation Agreement, provided any such matters are not in conflict with or do not otherwise usurp the duties, rights and responsibilities of the medical staff of the Hospital under the Medical Staff Bylaws.

1.2 A Trauma Patient shall maintain such designation under this Agreement even after he or she has been stabilized. NCEMA recognizes that per the American College of Surgeons Level II Trauma Center guidelines, in providing Professional Services pursuant to this Agreement, the general surgeons and trauma surgeons serve in the role of "team leader" and "captain of the resuscitating team" for the Trauma Patient throughout the initial resuscitation and critical care stay. Transfer of care to the most clinically appropriate medical or surgical specialist for patients with single system problems or injuries may occur after discharge from critical care with the concurrence of both the trauma surgeon and the accepting specialty physician. In addition, NCEMA Physicians shall take such action as may reasonably be required, in accordance with the Standard of Care, as that term is defined in Section 1.4 below, to expedite the transition of Trauma Patients to other levels of patient care and health care facilities (e.g. skilled nursing) following the provision of Professional Services, in order to prevent such patients from experiencing unnecessary extended stays in Hospital.

1.3 NCEMA shall use its best efforts to provide the medical staff office of the Hospital with a complete Trauma, ED and Inpatient Consultative Panel monthly schedule of NCEMA Physicians at least thirty (30) days in advance of the first day of each month but no less than fifteen (15) days in advance of the first day of each month. NCEMA agrees to notify the medical staff office of any changes to the Trauma, ED and Inpatient Consultative Services Panel schedule as soon as reasonably possible.

1.4 NCEMA shall cause NCEMA Physicians to provide Trauma, ED and Inpatient Consultative Services as specified in Attachment 1 in accordance with the bylaws, rules and regulations, policies and procedures of PPH, the Hospital and the Hospital's medical staff, the prevailing standard of care in San Diego County and in addition to all requirements imposed by statute, California licensing regulations, American College of Surgeons Level II Trauma Center guidelines, Standards/Requirements for Level II Trauma Centers (set forth in Chapter 7, Division 9, Title 22 of the California Code of Regulations and the Trauma Center Designation Agreement), and applicable standards of the Joint Commission on Accreditation of Healthcare Organizations (collectively, the "Standard of Care").



1.5 NCEMA shall cause NCEMA Physicians to report promptly the results of Professional Services to Trauma Patients' attending physicians, if any, and to prepare promptly all written reports and medical records in accordance with and as required by the bylaws, rules and regulations, policies and procedures now or hereafter established by PPH, the Hospital or the Hospital's medical staff. The ownership and right of control of all reports, records, and supporting documents prepared in connection with services performed by NCEMA Physicians shall rest exclusively in PPH, and PPH shall be custodian of all patient records. PPH shall make copies of all such reports, records and supporting documents available to NCEMA Physicians in accordance with the bylaws, rules and regulations, policies and procedures of PPH, the Hospital and the Hospital's medical staff, as allowed by California and federal confidentiality of patient information laws. NCEMA agrees to keep all such information confidential, and agrees to use such information only for purposes consistent with this Agreement. Both parties acknowledge their independent obligations to maintain the confidentiality of patient information in accordance with California and federal law. NCEMA shall cause NCEMA Physicians to cooperate fully with PPH by maintaining and making available all necessary records relating to Professional Services for Trauma Patients to enable PPH to meet the Professional Services record keeping requirements for participation and payment associated with public or private third-party payment programs, including but not limited to the Medicare and Medi-Cal Programs.

1.6 NCEMA shall ensure that NCEMA Physicians are at all times during the term of this Agreement licensed to practice medicine in the State of California, Board certified or Board eligible, certified by the Federal Drug Enforcement Administration, and members in good standing on the Hospital medical staff in an active, courtesy or provisional status, with the appropriate privileges to render Trauma, ED and Inpatient Consultative Services as specified in Attachment 1. At all times during the term of this Agreement, NCEMA Physicians shall not be convicted of any crime punishable as a felony or be excluded from participation in any state or federal health care program, including but not limited to Medicare or Medi-Cal. Any NCEMA Physician who fails at any time to satisfy the criteria for a NCEMA Physician under this Agreement shall, subject to compliance with applicable procedures under the Medical Staff Bylaws, if any, be immediately removed from Trauma, ED and Inpatient Consultative Services Panel Coverage by NCEMA and shall not be eligible to render Professional Services hereunder.

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

1.7.1 has his or her Medical Staff membership or clinical privileges at Hospital terminated, suspended, revoked or relinquished for any reason, whether voluntarily or involuntarily;

1.7.2 has his or her license to practice medicine in the State of California, board certification or DEA registration 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;

1.7.3 is convicted of a felony or any crime relevant to the services provide pursuant to this Agreement or the practice of medicine;

1.7.4 is debarred, suspended, excluded or otherwise ineligible to participate in any Federal Health Care Program in which the Hospital participates;

1.7.5 fails to satisfy any of the standards and qualifications set forth in Sections 1.4, 1.5 or 1.6 of this Agreement; or

1.7.6 fails to be covered by the professional liability insurance required to be maintained under this Agreement.

1.7.7 acts, or causes another person to act, in a manner which conflicts with or violates the Code (as defined in Section 23).

1.7.8 breaches any HIPAA Obligation (as defined in Exhibit 8.5), and has not resolved the breach or the situation that caused the breach within sixty (60) days to the satisfaction of Hospital that such breach will not occur again;

1.8 Removal of NCEMA Physicians upon Hospital Request. After consultation and formal review with NCEMA and upon written request by Hospital, NCEMA shall immediately remove any NCEMA Physician, including Medical Director, from furnishing Services under this Agreement who:

1.8.1 engages in conduct that, jeopardizes the mental or physical health, safety or well-being of any person;

1.8.2 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 of at least 15 days to comply;

1.8.3 within a twelve (12) month period, has two (2) or more Medical Board reportable malpractice judgments against him or her as a result of actions within the previous two (2) year period, or he or she becomes the subject of two (2) or more proceedings by the Medical Staff regarding the performance of professional medical services.

1.9 No NCEMA Physician removed from furnishing services pursuant to Section 1.7 or Section 1.8 of this Agreement, shall be entitled to any "fair hearing" or any other similar hearing or appellate review as may be set forth in the Medical Staff bylaws, except to the extent PPH reasonably determines that such removal is reportable to the Medical Board of California pursuant to the reporting requirements of the State of California.

1.10 The parties acknowledge that this Agreement does not constitute an exclusive arrangement for Trauma, ED and Inpatient Consultative Services. Qualified physicians with specialty training and recent experience in the Specialties other than anesthesia who are not affiliated with NCEMA but who otherwise satisfy the criteria set forth in Section 1.6, above, shall be afforded a reasonable opportunity by NCEMA to provide Trauma, ED and Inpatient Consultative Services. NCEMA shall add such additional physicians to the monthly Trauma, ED and Inpatient Consultative Services Panel schedule on a fair, equitable and non-discriminatory basis upon request of PPH, in accordance with applicable Medical Staff Bylaws, rules and regulations. Such additional physicians shall not be required to become members or shareholders of NCEMA or to have a contractual relationship with NCEMA, and the

compensation payable to NCEMA under this agreement shall not be subject to offset, deduction or reduction with respect to such additional Trauma, ED and Inpatient Consultative Services Panel Coverage.

1.10.1 NCEMA shall make available independent contractor agreements for ED and inpatient services to physicians who would otherwise qualify as shareholders and are voluntarily participating on the ED call panels as of the Start Date. Such contracts will be for a reasonably equitable proportion of call days, at a rate not less than the rate for such services prior to the Start Date.

1.11 NCEMA acknowledges that the Hospital has entered into an exclusive arrangement for anesthesia services with Anesthesia Consultants of California Medical Group, Inc. ("ACCMG") and therefore only anesthesiologists who are members of ACCMG may provide anesthesia at the Hospital. Consequently, NCEMA Physicians providing Trauma, ED and Inpatient Consultative Services as specified in Attachment 1 for anesthesia at PMC shall be members of ACCMG. NCEMA and PPH agree that if the exclusive arrangement between Hospital and ACCMG terminates, and if Hospital then enters into an exclusive arrangement with a different anesthesia medical group, either (i) this Agreement shall be amended to delete anesthesia services and the compensation reduced accordingly, or (ii) members of the new anesthesia medical group shall be provided a reasonable opportunity to join NCEMA upon execution of NCEMA's standard physician services agreement, purchase of shares of stock of NCEMA and full compliance with NCEMA membership criteria. If this Agreement is amended to delete anesthesia services as set forth in option (i) above, the monthly compensation under this Agreement shall be reduced by the amount of monthly compensation that NCEMA had been paying to ACCMG members hereunder, and NCEMA shall provide PPH with documentation to substantiate such amount.

1.12 NCEMA recognizes that PPH retains qualified Medical Directors to provide clinical and administrative leadership for service lines provided by NCEMA physicians.

1.12.1 PPH reserves the exclusive right to select Non-Trauma Medical Directors as needed without the prior consent of NCEMA. PPH recognizes NCEMA's role in facilitating care of patients admitted through the Trauma and Emergency Departments and

therefore shall in good faith solicit recommendations from NCEMA in filling Medical Director Positions and shall take such recommendations into consideration. PPH shall consult with NCEMA with respect to a Medical Director' qualifications and to develop a job description compatible with the Medical Staff Bylaws, rules and regulations. NCEMA agrees to cooperate with such Medical Directors once he or she commences Medical Director duties.

1.12.2 NCEMA recognizes that PPH is seeking to engage a qualified Trauma Medical Director to provide clinical and administrative leadership for the Trauma Center. NCEMA shall have the right to participate in and have approval rights with respect to the selection of the Trauma Medical Director. PPH shall consult with NCEMA with respect to a Trauma Medical Director's qualifications and PPH and NCEMA shall work on a collaborative basis to develop a job description compatible with the bylaws and rules and regulations of the Hospital's medical staff, and the Trauma Center Designation Agreement, and acceptable to both parties. PPH shall not offer the position to any candidate who does not satisfy the agreed qualifications or who is not otherwise acceptable to NCEMA. NCEMA agrees to cooperate with such Trauma Medical Director once he or she commences Trauma Medical Director duties for the Trauma Center.

1.12.3 If NCEMA and PPH disagree on the qualifications, job description or as to which candidate should be offered the position, PPH and NCEMA shall submit the issue to an ad hoc committee for final resolution. The ad hoc committee shall be comprised of six members, with each party having the right to appoint three representatives. A two-thirds vote of the committee shall be required to take any action on matters presented to the committee.

1.12.4 Once a Trauma Medical Director acceptable to both parties (as determined by agreement or the ad hoc committee) has been hired, the Trauma Medical Director will be encouraged to join NCEMA, and NCEMA shall (i) add such Trauma Medical Director to the Trauma Panel schedule on a fair, equitable and nondiscriminatory basis consistent with the call and coverage procedures of NCEMA so that he or she may provide Trauma Panel Coverage and Professional Services under this Agreement, and (ii) if Trauma Medical Director is added to the Trauma Panel schedule to meet a demonstrable need agreed to by the parties, reduce its compensation under this Agreement to offset the Trauma Medical Director's compensation for providing Trauma Panel Coverage and Professional Services under this Agreement, with any

such reduction being an amount equivalent to the compensation paid by NCEMA to NCEMA Physicians for such specialty services.

1.12.5 If PPH hires a Trauma Medical Director without full compliance with the provisions of this Section 1.12, then the compensation payable to NCEMA under this Agreement shall not be subject to offset or deduction for any Trauma Panel Coverage provided by such Trauma Medical Director.

1.13 NCEMA and PPH agree to participate in a periodic review of aggregate and individual performance of Hospitals and NCEMA Physicians and consider in good faith opportunities for improvement of overall performance and the quality of care as identified from the review of objective information. PPH and NCEMA agree that benchmarks for comparison of overall clinical performance shall include a comparison of performance with nationally recognized databases. NCEMA will cooperate with PPH to identify Quality Improvement Initiatives to be addressed collaboratively to improve efficiency and effectiveness of the Trauma, Emergency Department and Inpatient Consultative Services. Metrics will be established cooperatively in the first year and performance reviewed and evaluated by the Medical Executive Committee annually. NCEMA will cooperate with other Hospital and Medical Staff departments in facilitating their efforts at performance improvement where such efforts may involve NCEMA Physicians.

1.14 NCEMA and PPH agree to meet and confer at least annually to discuss coverage needs. NCEMA shall facilitate the addition of physicians to the panel schedule if a coverage need is documented by an independent needs assessment and the physicians satisfy the criteria set forth in Section 1.6. NCEMA shall allow physicians to be removed from the panel schedule if they so desire and coverage is not adversely impacted. If there are more physicians available to provide coverage than a need for coverage exists, NCEMA will initiate a process to optimize panel performance.

1.15 NCEMA acknowledges that PPH is currently recruiting physicians to relocate to the Hospital services area and agrees to work with PPH on a collaborative basis to recruit qualified physicians for Trauma, ED and Inpatient Consultative Panel Coverage as may, from time to time, be required to meet a demonstrable need (as defined below) for additional Trauma, ED and Inpatient Consultative Services Panel Coverage. NCEMA agrees to consider

the admission to its membership of qualified physicians with specialty training and the requisite experience in the Specialties to the extent there is a demonstrable need for additional Trauma, ED and Inpatient Consultative Panel Coverage, provided, any such additional physicians satisfy the criteria set forth in Section 1.6, sign NCEMA's standard physician services agreement, purchase shares of stock of NCEMA, fully satisfy NCEMA membership criteria and reasonably demonstrate that their practice styles and professional demeanor are compatible with other NCEMA Physicians. For purposes of this Section 1.15, "demonstrable need" shall mean as determined by an independent needs assessment.

1.16 NCEMA shall appoint a Medical Director for management and performance improvement purposes, including but not limited to monitoring clinical pathways, best practices, utilization effectiveness quality indicators and customer service. PPH will provide assistance in the development and generation of reports to aid in monitoring performance.

## **2. PPH AND HOSPITAL RESPONSIBILITIES**

2.1 PPH shall provide all equipment (in good working order and state of repair), supplies, qualified and experienced nursing, trauma coordinators and other non-physician support personnel and facilities (including operating rooms) necessary and appropriate for operation of the Trauma Center in full compliance with the Trauma Center Designation Agreement and reasonably required for NCEMA Physicians to provide Professional Services under this Agreement, all in a manner comparable with standards for trauma centers throughout the County of San Diego, California.

2.2 PPH shall use commercially reasonable best efforts to expedite paperwork, as appropriate, for determination of benefits eligibility and reimbursement by Medi-Cal and other payors for health care services provided by Hospital and NCEMA Physicians.

2.3 PPH shall use its best efforts, in accordance with the Standard of Care, to expedite the transition of Trauma Patients to other levels of patient care and health care facilities (e.g., skilled nursing) following the provision of Professional Services, in order to prevent such patients from experiencing unnecessary extended stays in Hospital.

### 3. COMPENSATION

3.1 PPH shall pay NCEMA for providing and arranging Trauma, ED and Inpatient Consultative Services Panel Coverage hereunder at the initial annual rate of \$ \_\_\_\_\_, payable in monthly installments of \$ \_\_\_\_\_, as adjusted pursuant to Section 1.9, above, and Section 3.6, below. Monthly payment is contingent on NCEMA submitting to PPH each calendar month, a written invoice attaching a copy of the Trauma, ED and Inpatient Consultative Services Panel schedule evidencing the NCEMA Physicians who actually provided Trauma, ED and Inpatient Consultative Services as specified in Attachment 1 on each day for the previous month for the Specialties. PPH shall pay each monthly installment to NCEMA upon receipt of the written invoice described above. All payments shall be without offset or deduction, except as expressly permitted under this Agreement, and any offset or deduction for any calendar month shall be deducted from the payment for the following calendar month, except for the last month of the term of this agreement, in which case any such deduction for the last two (2) months of the term shall be deducted from the final payment. Any installment not paid within fifteen (15) days of PPH's receipt of the written invoice and supporting documentation shall give NCEMA the right to terminate this Agreement and shall be subject to a late charge of one percent (1%) of the amount of such installment, and all compensation not paid by PPH to NCEMA in a timely manner shall bear interest at the annual rate of three percent (3%) until paid in full.

3.2 The compensation payable to NCEMA shall be subject to an upward annual adjustment of three percent (3%) on each July 1<sup>st</sup> of each year of the Agreement. Should PPH exercise the two one year automatic renewals pursuant to Section 6.1, the compensation payable to NCEMA shall be subject to an upward annual adjustment of the lesser of three percent (3%) or the cumulative CPI-U for hospital costs, Western United States, less the actual cumulative CPI-U for hospital costs, Western United States, increases received over the term of the agreement as specified on the United States Department of Labor (DOL) website.

3.3 NCEMA Physicians shall bill and collect for the Professional Services they provide as a result of serving on the Trauma, ED and Inpatient Consultative Services Panel and such collections shall be NCEMA Physicians' sole compensation for all Professional Services they provide. NCEMA Physicians shall comply with applicable laws and customary professional practices governing billing for Medicare, Medi-Cal, and other third party programs,



whether public or private. NCEMA Physicians' rates shall be reasonable and consistent with the usual and customary charges of comparable physicians in the community.

3.4 NCEMA will use its best efforts to encourage that NCEMA physicians enter into fair and reasonable contracts with Third Party Payors under contract with PPH.

3.5 No NCEMA Physician is entitled to receive any compensation directly from PPH under this Agreement. NCEMA shall compensate its member/shareholder physicians at rates it determines in its own discretion. NCEMA shall not be obligated to compensate non-NCEMA Physicians who provide Trauma, ED and Inpatient Consultative Services Panel Coverage at the Hospital, and such physicians shall look solely to their own agreements with PPH for compensation for such services.

3.6 NCEMA shall enter into written agreements with all NCEMA Physicians performing Trauma, ED and Inpatient Consultative Services as specified in Attachment 1 at Trauma Center pursuant to this Agreement. Such written agreements shall incorporate the provisions of this Agreement, and NCEMA Physicians shall be obligated to perform the duties and responsibilities of NCEMA Physicians under this Agreement. NCEMA represents and warrants to PPH that the compensation paid or to be paid by NCEMA to any physician is and will at all times be fair market value for services and items actually provided by such physician, not taking in to account the value or volume of referrals or other business generated by such physician for PPH. NCEMA further represents and warrants to PPH that NCEMA has and will at all times maintain a written agreement with each physician receiving compensation from NCEMA. Upon PPH's request, NCEMA shall provide PPH a copy of the standard form of such agreement and a list of the physicians who have signed such agreement.

3.7 NCEMA recognizes PPH's obligation to the County of San Diego to arrange Trauma services as specified in Attachment 1 for the Specialties as set forth in the Trauma Center Designation Agreement, and that Trauma Center may not accept any patients for treatment during times when any of the medical specialties required by the Trauma Center Designation Agreement are unavailable. NCEMA acknowledges that its failure to provide Trauma, ED and Inpatient Consultative Services as specified in Attachment 1 as set forth in this

Agreement constitutes a breach of this Agreement, and may cause a lapse in Trauma Center coverage for one or more of the Specialties or require PPH to procure alternate coverage at significant cost. Any such lapse would prevent PPH from meeting its obligations to the County of San Diego, and cause Trauma Center to go on diversionary status whereby it may not accept any patients for treatment. Therefore, NCEMA agrees to forfeit the amount of eight thousand two hundred nineteen dollars (\$8,219) for each full day that NCEMA fails to provide Trauma services as specified in Attachment 1 for any of the Specialties as set forth in this Agreement. PPH shall offset such amounts against the amounts owed to NCEMA pursuant to Section 3.1 of this Agreement.

3.8 PPH recognizes that any failure by PPH to comply with the terms of the Trauma Center Designation Agreement or to meet its obligations under this Agreement to provide the appropriate facilities, equipment, supplies and personnel required for operation of the Trauma Center may cause the Trauma Center to go on diversionary status, in which case the medical practices of NCEMA and NCEMA Physicians will be adversely affected. Consequently, PPH agrees that if the Trauma Center goes on diversionary status as a result of the fault of PPH, then PPH shall continue to compensate NCEMA under this Agreement without offset or deduction, unless such diversionary status continues for a period of 60 consecutive days, in which case PPH shall not be obligated to compensate NCEMA following expiration of such 60-day period. PPH shall notify NCEMA of any suspension of Trauma Center operations as soon as reasonably practicable. Suspension or termination of Trauma Center operations under this Section 3.7 shall not limit NCEMA's rights under Section 8.1 to pursue reasonable and appropriate damages.

3.9 In the event the Trauma Center is closed due to the exclusive decision of the Board of Directors of PPH, then PPH will provide compensation to NCEMA for 30 days following the date the Trauma Center is terminated. Additionally, PPH will provide NCEMA with 90 days notice of Trauma Center closure. NCEMA will continue to provide coverage until the date of closure.

3.10 In the event the Trauma Center is closed for reasons beyond the control of either party, neither party shall be held liable to the other in any form or amount.

3.11 NCEMA recognizes its obligation to PPH to arrange ED and Inpatient Consultative Services as set forth in this Agreement and a failure to provide such coverage for the specialties specified in Attachment 1 constitutes a breach of this Agreement, and may cause a lapse in ED and Inpatient Consultative Services coverage and may require PPH to procure alternate coverage at significant cost. Any such lapse would prevent PPH from meeting its obligations to the communities it serves. Therefore, NCEMA agrees to forfeit the amount of five thousand dollars (\$5,000.00) for each day that NCEMA fails to provide ED and Inpatient Consultative Services coverage, as set forth in this Agreement for any of the Specialties specified in Attachment 1. PPH shall offset such amounts against the amounts owed to NCEMA pursuant to Section 3.1 of this Agreement.

#### **4. GOVERNMENTAL AUDIT**

Until the expiration of four years after the furnishing of any services pursuant to this Agreement, NCEMA and NCEMA Physicians shall make available, upon written request of the Secretary of the United States Department of Health and Human Services or of the United States Comptroller General, or other State or federal governmental agency, or any of their duly authorized representatives, this Agreement, and such books, documents and records of NCEMA and NCEMA Physicians as are necessary to certify the nature and extent of the reasonable costs of service to PPH. NCEMA and NCEMA Physicians shall notify PPH promptly in the event of any requests for information from a governmental agency for the purpose of an audit as contemplated by this Section 4, and shall make available to PPH for inspection at offices of NCEMA Physicians, upon request, all information, books, and records which may be subject to such audit. This Section shall be of no force or effect unless required by law.

## **5. PROFESSIONAL RELATIONSHIP**

5.1 In the performance of the work, duties and obligations under this Agreement, it is mutually understood and agreed that all NCEMA Physicians at all times are acting and performing as independent contractors with respect to PPH, practicing the profession of medicine; that no relationship of employer and employee is created by this Agreement, and that NCEMA Physicians therefore can make no claim against PPH under this Agreement for Social Security benefits, workers compensation benefits, disability benefits, unemployment insurance benefits, vacation pay, sick leave, retirement benefits, health insurance, professional liability insurance, or any other employee benefits of any kind.

5.2 PPH shall neither have nor exercise any control or discretion over the methods used by NCEMA Physicians; the sole interest of PPH is for the services covered by this Agreement to be performed in a competent, efficient and satisfactory manner, consistent with the Standard of Care.

5.3 NCEMA and NCEMA Physicians, as the case may be, shall be solely responsible for paying all taxes on the compensation paid to NCEMA pursuant to this Agreement. PPH will not withhold any taxes, including income taxes, social security taxes (FICA) or other taxes.

## **6. TERM OF AGREEMENT**

6.1 Notwithstanding its date(s) of execution by the parties, the term of this Agreement shall commence effective as of July 1, 2005 ( the "Effective Date") and shall continue until June 30, 2010 (the "Expiration Date"), unless earlier terminated as hereinafter provided. On the Expiration Date, and on the first annual anniversary date of this Agreement thereafter, this Agreement shall automatically renew for an additional 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.

## 7. TERMINATION

7.1 Notwithstanding Section 6 above, either party shall have the right to terminate this Agreement without cause at any time after the first 24 months after the effective date of this Agreement, by giving written notice of termination to the other party. Termination shall be effective automatically upon the expiration of 180 calendar days after the giving of such notice of termination.

7.2 Termination by PPH. Upon the occurrence of any one or more of the following events, PPH may terminate this Agreement by giving written notice of termination to NCEMA, which termination shall be effective the later of the date set forth in Hospital's written notice of termination to NCEMA or, the date the notice is delivered to NCEMA, unless otherwise specified below:

7.2.1 breach of this Agreement by NCEMA where the breach is not cured within sixty (60) calendar days after Hospital first gives written notice of the breach to NCEMA;

7.2.2 NCEMA breaches any representation or warranty in this Agreement where the breach is not cured within ten (10) calendar days after Hospital first gives written notice of the breach to NCEMA;

7.2.3 NCEMA breaches any HIPAA Obligation (as defined in Exhibit 8.5), and has not resolved the breach or the situation that caused the breach within sixty (60) days to the satisfaction of Hospital that such breach will not occur again;

7.2.4 NCEMA: (i) utilizes a physician who has not been granted privileges by Hospital's Medical Staff; or (ii) fails to remove a NCEMA Physician from furnishing Services under this Agreement in accordance with Section 1.7 or Section 1.8 of this Agreement;

7.2.5 NCEMA 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;

7.2.6 NCEMA is indicted for or convicted of a felony or any crime relevant to the provision of services pursuant to this Agreement;

7.2.7 Medical Director and his designee become unable to furnish Director Services for a period of thirty (30) days in the aggregate over any three (3) month period, and a replacement Medical Director is not designated by NCEMA and approved by Hospital in accordance with Section 1.5(f) of this Agreement;

7.2.8 NCEMA acts, or causes another person to act, in a manner which conflicts with or violates the Code;

7.2.9 failure to provide sufficient, continuous and uninterrupted Trauma, ED and Inpatient Consultative Services as specified in Attachment 1 as required by this Agreement; or (ii) failure to remove any NCEMA Physician who does not satisfy the criteria set forth in Section 1.6 above from Trauma, ED and Inpatient Consultative Services Panel Coverage where either breach is not cured within (10) calendar days after Hospital first gives written notice of the breach to NCEMA..

7.3 Termination by NCEMA. NCEMA shall have the right to terminate this Agreement upon: (i) PPH's failure to pay NCEMA the compensation payable under Sections 3.1 and 3.2 of this Agreement in a timely manner, or an improper offset or deduction by PPH from such compensation; or (ii) breach of this Agreement by PPH where the breach is not cured within sixty (60) calendar days after NCEMA gives written notice of the breach to PPH.

7.4 Termination or Modification in the Event of Government Action.

7.4.1 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.

7.4.2 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 thirty (30) days after a written notice of termination is given to the other Party.

7.4.3 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:

7.4.3.1 revocation or threat of revocation of the status of any license, certification or accreditation granted to Hospital or any Affiliate;

7.4.3.2 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;

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

7.4.3.4 prevent NCEMA from being able to access and use the facilities of Hospital or any Affiliate of Hospital;

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

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

7.4.3.7 prohibit NCEMA, any NCEMA Physician, 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 NCEMA or any NCEMA Physician;

7.4.3.8 subject Hospital, NCEMA, any NCEMA 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 Section 4958), on the basis of their approval of or participation in this Agreement or performing their respective obligations under this Agreement; or

7.4.3.9 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 of NCEMA under Section 1.15 of this Agreement.

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 This Agreement shall terminate automatically, immediately and without notice if one of the following events has occurred:

7.5.1 The appointment of a receiver of NCEMA assets, the assignment by NCEMA for the benefit of creditors, or any relief taken or suffered by NCEMA under any bankruptcy or insolvency act.

## 8. EFFECT OF TERMINATION



8.1 If this Agreement is terminated as a result of the breach by either party, the other party shall have the right to pursue reasonable and appropriate damages.

8.2 To the extent permitted by law, the expiration of this Agreement, or its earlier termination with or without cause, shall not require compliance with any medical staff hearing or other similar procedures for any affected physician, and, in and of itself, shall not have any effect on the medical staff privileges of any NCEMA Physician.

8.3 Upon termination of this Agreement, NCEMA Physicians shall not be required to give the notice required under Section 13.1 of the Medical Staff Bylaws for termination of Trauma, ED and Inpatient Consultative Services Panel Coverage, and such coverage obligations shall be deemed to have terminated as of the termination date of this Agreement, except to the extent any NCEMA Physician has entered into a separate agreement with the Hospital for such coverage.

## **9. JEOPARDY**

Notwithstanding anything to the contrary hereinabove contained, in the event the performance by either party hereto of any term, covenant, condition or provision of this Agreement should jeopardize the licensure of NCEMA, NCEMA Physicians or Hospital, their participation in Medicare or Medi-Cal, or Hospital's participation in the San Diego County Trauma Program, or Hospital's full accreditation by the Joint Commission on Accreditation of Healthcare Organizations or any other state or nationally recognized accreditation organization, or jeopardize the tax exempt status of any of PPH's financing or be deemed in violation of any covenant in connection therewith, or if for any other reason performance should violate any statute, regulation, ordinance, or be otherwise deemed illegal, or be deemed unethical by any recognized body, agency or association in the medical or hospital fields, the affected party may at its option terminate this Agreement immediately.

## **10. RENEGOTIATIONS**

10.1 If the Trauma Center Designation Agreement between the County of San Diego and PPH is terminated, or the Standards/Requirements for Level II Trauma Centers (set forth in Chapter 7, Division 9, Title 22 of the California Code of Regulations and the Trauma

Center Designation Agreement) and/or other requirements specified in the Trauma Center Designation Agreement should change, and therefore require changes to Trauma Center operations affecting the provision of Trauma, ED and Inpatient Consultative Services as specified in Attachment 1 for the Specialties, NCEMA agrees to work cooperatively with PPH in implementing such changes. In the event that such changes materially impact this Agreement, both parties agree to meet to renegotiate this Agreement in the manner most beneficial to both parties. Both parties agree to continue performing under the terms of this Agreement, to the extent allowed by the change(s) in requirements at issue, for ninety (90) days while renegotiating this Agreement.

10.2 PPH reserves the right, following the termination of this Agreement, to put the provision of the Trauma, Emergency Department and Inpatient Consultative services contemplated by this Agreement out to bid. However, NCEMA shall have the first right of refusal of PPH's terms and conditions of any new agreement.

## 11. INSURANCE

11.1 All NCEMA Physicians shall maintain at their expense a policy or policies of professional liability insurance as required by the Hospital's medical staff bylaws, but in any event no less than One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual aggregate.

11.2 PPH shall maintain at its expense the insurance coverages required under the Trauma Center Designation Agreement. PPH shall not provide insurance coverage for professional medical services provided by NCEMA Physicians.

11.3 NCEMA shall maintain at its expense all insurance coverage that is reasonable and customary for an organization of its type, and shall provide proof of coverage to PPH on request.

## 12. ASSIGNMENT

NCEMA shall have no right to assign, delegate or in any manner other than contracting with NCEMA Physicians to provide Professional Services, transfer all or any portion

of its interest, obligation or duty under this Agreement, except as provided above, without first obtaining the written consent of PPH, which consent shall be in PPH's sole and absolute discretion.

### **13. WAIVER**

Any waiver of any term, covenant or condition of this Agreement by any party hereto shall not be effective unless set forth in writing signed by the party granting such waiver, and in no event shall any such waiver be deemed a waiver of any preceding or succeeding breach of the same term, covenant or condition nor of any other term, covenant or condition of this Agreement.

### **14. AMENDMENTS; ENTIRE AGREEMENT**

All oral and written agreements, contracts, understandings or arrangements which may have been heretofore made or entered into between the parties hereto are hereby terminated and superseded by this Agreement. This document contains the entire Agreement between the parties regarding the subject matter hereof. No modification or alteration of this Agreement shall be valid and/or binding unless endorsed hereon and executed by all parties hereto. Except as set forth herein, no representations, promises, warranties or guarantees, oral or written, express or implied in fact or in law, have been made by either party concerning the transaction herein.

### **15. NOTICES**

All notices required or permitted to be given hereunder shall be in writing and sufficient if personally delivered, sent by overnight delivery, or sent by certified or registered mail, return receipt requested, postage prepaid, to the addresses set forth below. All notices shall be deemed given on the date of delivery if delivered personally or by overnight delivery, or three (3) business days after such notice is deposited in the United States mails, addressed and sent as provided above.

To PPH: Palomar Medical Center  
555 East Valley Parkway  
Escondido, CA 92025  
Attention: Administration

To NCEMA: North County Emergency Medical Associates, Inc.  
488 East Valley Parkway, Suite 311  
Escondido, CA 92025  
Attention: President

Either party may change its address by giving notice in the manner provided herein.

**16. DISPUTE RESOLUTION**

All controversies, claims, disputes or counterclaims, other than PPH's failure to pay the compensation due NCEMA under this Agreement, arising out of, relating to or in connection with this Agreement or any resulting transaction, whether it involves a disagreement about meaning, interpretation, application, performance, breach, termination, enforceability or validity and whether based on statute, tort, contract, common law or otherwise ("Dispute"), shall be resolved by binding arbitration as set forth in this paragraph 16.

16.1 Arbitration. At any time, any party may commence binding arbitration proceedings by providing the other party written notice of intent to arbitrate ("Notice"). Arbitration of the Dispute shall be conducted in accordance with the procedures set forth in Title 9 of Part III of the California Code of Civil Procedure (Sections 1280, et seq.). The arbitration shall be conducted in San Diego, California, and the proceedings shall be governed by California law. The arbitrator shall be any independent third party agreed to by the parties, but if the parties cannot agree within 15 days from the date Notice is given, the arbitrator shall be appointed by a judge of the San Diego County Superior Court from lists of nominees submitted by each party. The arbitration proceeding shall be completed within 60 days after appointment of the arbitrator, unless the parties otherwise agree.

The arbitrator shall have jurisdiction over the Dispute, and the decision of the arbitrator shall be final and binding upon the parties. Depositions may be taken and discovery may be conducted in the manner designated by the arbitrator with good cause shown by the parties. The parties shall share the cost of the arbitration and the arbitrator's fees equally. The attorneys' fees and costs incurred by the prevailing party shall be paid by the parties in the manner determined by the arbitrator. Judgment upon the arbitration award may be entered in any court having

jurisdiction; or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as applicable.

16.2 Negotiation or Mediation. The parties may, by mutual written agreement only, stay the commencement of the arbitration proceedings from time to time as they may mutually agree to allow for any form of negotiation or mediation of the Dispute.

## 17. GOVERNING LAW

The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the internal laws (not the choice of law) of the State of California.

## 18. NO REQUIREMENT TO REFER; FAIR MARKET VALUE

Nothing in this Agreement, nor any other written or oral agreement, nor any consideration in connection with this Agreement contemplates or requires the admission or referral of any patient to PPH, the Hospital or NCEMA. Neither this Agreement, nor any agreement between NCEMA and any NCEMA Physician, is intended to influence any physician's judgment in choosing the medical facility appropriate for the proper care and treatment of their patients. All compensation paid by PPH to NCEMA under this Agreement, and all compensation paid to NCEMA Physicians under any agreement with NCEMA, if any, shall be in accordance with fair market value for services provided.

## 19. SEVERABILITY

The provisions of this Agreement shall be deemed severable and if any portion shall be held invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the parties.

## **20. NON-DISCRIMINATION**

NCEMA represents and warrants that in providing services hereunder it is, and at all times during the term of this Agreement will be, and will use best efforts to ensure that NCEMA Physicians providing Trauma, ED and Inpatient Consultative Services as specified in Attachment 1 are, in full compliance with California Health and Safety Code Section 1317 et seq., the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 United States Code Section 1395dd, the Federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Section 504 of the Rehabilitation Act of 1973 and Title VI and VII of the 1964 Civil Rights Act, as amended, and that NCEMA Physicians shall not discriminate against or refuse to provide care and services under this Agreement to any patients on the basis of race, ethnicity, religion, national origin, citizenship, age, sex, pre-existing medical condition, physical or mental handicap, insurance status, economic status or ability to pay for medical services, except to the extent that a circumstance such as age, sex, pre-existing medical condition, or physical or mental handicap is medically significant to the provision of appropriate medical care to the patient.

## **21. CORPORATE COMPLIANCE**

NCEMA shall cause all NCEMA Physicians to comply at all times with all policies, procedures and rules of PPH relating to the provision of services as required under the terms of this Agreement. Such policies and procedures shall include, without limitation, compliance with PPH's corporate compliance program, to the extent such program is applicable to the medical staff of the Hospital as a whole and is not in conflict with or does not otherwise usurp the duties and responsibilities of the medical staff of the Hospital under the Medical Staff Bylaws.

## **22. COMPLIANCE WITH HIPAA**

NCEMA and each NCEMA physician shall comply with the HIPAA Obligations as defined and set forth in Attachment 3. The HIPAA Obligations shall survive the expiration or termination of this Agreement for any reason. PPH shall also comply with all of its obligations under HIPAA.

## **23. CODE OF CONDUCT**

NCEMA hereby acknowledges receipt of PPH's Code of Conduct for Physician Arrangements, attached to this Agreement as Attachment 2 (the "Code"). With respect to their business dealings with PPH and their performance of duties under this Agreement, NCEMA and all NCEMA 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. NCEMA and the NCEMA Physicians shall comply with the Code as it relates to their business relationships with PPH or any subsidiaries, employees, agents, servants, officers, directors, contractors and suppliers of every kind.

#### **24. EFFECT OF HEADINGS, SCHEDULES AND EXHIBITS**

The subject headings of the paragraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. All schedules and exhibits to this Agreement are incorporated into and made part of this Agreement as if set forth in their entirety in this Agreement.

#### **25. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument as to the party whose signature appears on such counterpart, and all of which together shall constitute one and the same instrument.

#### **26. CONSTRUCTION**

This Agreement has been negotiated at arms length and each party has been given the opportunity to be represented by legal counsel and to the extent each party has deemed necessary, each party has consulted with independent legal counsel with respect to such party's rights and obligations under this Agreement. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the party drafting it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the intent of the parties and the purpose of this Agreement.

**27. FORCE MAJEURE**

Neither party shall be liable nor deemed to be in default for any delay, interruption or failure in performance under this Agreement deemed resulting, directly or indirectly, from Acts of God, civil or military authority, war, accidents, fires explosions, earthquakes, floods, failure of machinery or supplies (but only to the extent any such failure is cured by the responsible party in a timely manner consistent with the needs of the Trauma Center), vandalism, riots, civil disturbances, strike or other work interruptions by either party's employees, or any similar or dissimilar cause beyond the reasonable control of either party. However, both parties shall make good faith efforts to perform under this Agreement in the event of any such circumstances. In the event PPH determines that Trauma Center or Hospital facilities have been entirely or substantially destroyed by any of the above, this Agreement may be terminated by either party upon ten days written notice to the other.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

PALOMAR POMERADO HEALTH ("PPH")

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

NORTH COUNTY EMERGENCY MEDICAL  
ASSOCIATES, INC. ("NCEMA")

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



**ATTACHMENT 1**

**Palomar Pomerado Health  
ED/Trauma Call Stipend Analysis**

New Line	Specialty	NCEMA Proposal
<b>PMC Trauma Call</b>		
1	Anesthesia (Trauma)	X
2	Trauma Surgery (5)	X
3	Neurosurgery (Trauma)	X
4	Ophthalmology	X
5	Orthopaedic Surgery	X
6	Plastic Surgery/Hand ED & Trauma	X
7	NCEMA IPA (4)	X
8	Vascular Surgery	X
9	Cardiology	X
10	ENT	X
11	Urology	X
<b>PMC ED Call</b>		
14	Cardiology	X
15	Cardiovascular/Thoracic Surgery	X
16	ENT (District Coord)	X
17	General Surgery	X
19	Vascular Surgery (District Coord)	X
20	Nephrology	X
22	Neurosurgery (non-Trauma)	X
23	Orthopaedic Surgery	X
24	Plastic Surgery/Hand (3)	X
25	Pulmonary (2)	X
26	Urology	X
<b>POM ED Call</b>		
30	Cardiology	X
31	ENT (District Coord)	X
32	General Surgery	X
34	Vascular Surgery (District Coord)	X
35	Nephrology	X
38	Ophthalmology	X
39	Oral Surgery	X
40	Orthopaedic Surgery	X
42	Pulmonary (2)	X
43	Urology	X

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## **ATTACHMENT 2**

### **Code of Conduct for Physician Agreements**

1. I will perform my duties faithfully and to the best of my ability, and in the interest of PPH as it relates to services provided under this agreement.
2. I will not lie, cheat, steal, or violate any law in connection with my practice at any PPH facility.
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 with interest of PPH, as it relates to services provided under this agreement.
6. I will not improperly use PPH's confidential or proprietary information gathered during my association with PPH for my own personal benefit.
7. I will not obtain any improper personal benefits by virtue of my practice at PPH facilities.
8. I will notify the compliance officer of PPH 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 accept any gift of more than nominal value, and hospitality or entertainment that because of its source or value might influence my independent judgment in transactions involving PPH as it relates to services provided under this agreement.
12. I will not provide any gifts to any government or public agency representative as it relates to services provided under this agreement.
13. I will disclose any compensation arrangements or an ownership in a privately-owned entity (not big pharmaceutical or other major public companies and not ownership through mutual funds) that I or a member of my immediate family has.
14. I will not disclose confidential medical information pertaining to PPH patients without the express written consent of the patient in accordance with HIP AA, other applicable law and PPH applicable policies or procedures.
15. I will promptly report all violations or suspected violations of this code by myself to the compliance officer of PPH.
16. I will not conspire with a competitor of PPH to illegally fix prices, labor cost, allocate markets, or engage in group boycotts.

### Attachment 3

## 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 each Group Practitioner as set forth in this Exhibit.
- c. "Privacy Rule" means the HIPAA Regulation that is codified at Title 45 of the Code of Federal Regulations, 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 any Group Practitioner or created or received by Group or any Group Practitioner 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 any Group Practitioner shall use Protected Information except as permitted by and for the purpose of performing their respective obligations under this Agreement. Neither Group nor any Group Practitioner 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 any Group Practitioner shall disclose Protected Information in any manner that would constitute a violation of the Privacy Rule if disclosed by Hospital, except that Group and any Group Practitioner may disclose

Protected Information in a manner permitted pursuant to this Agreement or as Required by Law.

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. **Group Practitioner's Agents.** Group and each Group Practitioner shall ensure that any agents, including subcontractors, to whom either provides Protected Information, agree in writing to the same restrictions and conditions that apply to Group and each Group Practitioner with respect to such Protected Information.
7. **Access to Protected Information.** Group and each Group Practitioner shall make Protected Information maintained by Group, any Group Practitioner or their respective agents or subcontractors in Designated Record Sets available to Hospital for inspection and copying within ten (10) days of a request by Hospital to enable Hospital to fulfill its obligations under the Privacy Rule.
8. **Amendment of Protected Health Information.** Within ten (10) days of receipt from Hospital for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Group, each Group Practitioner and their respective agents or subcontractors shall make such Protected Information available to Hospital for amendment and incorporate any such amendment to enable Hospital to fulfill its obligations under the Privacy Rule.
9. **Accounting Rights.** Within ten (10) days of notice by Hospital of a request for an accounting of disclosures of Protected Information, Group and each Group Practitioner and their respective 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 any Group Practitioner 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 or other notification purposes; (iv) for national security or intelligence purposes; or (v) to correctional institutions or law enforcement officials. [*Group shall implement a process that allows for an accounting to*

*be collected and maintained by Group and its agents or subcontractors for at least six (6) years prior to the request, 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. **Governmental Access to Records.** Group and each Group Practitioner shall make their respective internal practices, books and records relating to the use and disclosure of Protected Information available to Hospital 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, each Group Practitioner and their respective agents or subcontractors shall retain all Protected Information throughout the term of this Agreement and shall continue to maintain the information required hereunder for a period of six (6) years after expiration or termination of this Agreement.
12. **Term of Obligations.** Group's and each Group Practitioner'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 14 of this Exhibit.
13. **Effect of Termination.** Upon expiration or termination of this Agreement for any reason, Group and each Group Practitioner shall return or destroy all Protected Information that Group, any Group Practitioner or their respective agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, Group and each Group Practitioner 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.