

No. S259364
IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

SUNDAR NATARAJAN, M.D.,

Petitioner and Appellant,

vs.

DIGNITY HEALTH,

Respondent.

After a Decision of the Court of Appeal
Third Appellate District, No. C085906

San Joaquin County Superior Court
No. STK-CV-UWM-2-16-4821

**RESPONDENT'S MOTION FOR JUDICIAL NOTICE;
[PROPOSED] ORDER**

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MOTION FOR JUDICIAL NOTICE

Pursuant to California Rules of Court, rule 8.252(a), and California Evidence Code section 451, subdivision (a); section 452, subdivisions (b), (c), (h); and section 459, respondent Dignity Health moves this Court for an order taking judicial notice of the following materials:

Exhibit 1: CD containing searchable .pdf files of the entire legislative histories of (A) Sen. Bill No. 1211 (1989-1990 Reg. Sess.) and (B) Assem. Bill No. 120 (2009-2010 Reg. Sess.).¹

Exhibit 2: Declaration of Dianne Schaumburg of Legislative Intent Service, authenticating the legislative history of Sen. Bill No. 1211 (1989-1990 Reg. Sess.).

Exhibit 3: Sen. Amend. to Sen. Bill No. 1211 (1989-1990 Reg. Sess.) April 12, 1989.

Exhibit 4: Sen. Amend. to Sen. Bill No. 1211 (1989-1990 Reg. Sess.) May 2, 1989.

Exhibit 5: Assem. Subcom. on Admin. of Justice, Analysis of Sen. Bill No. 1211 (1989-1990 Reg. Sess.) as amended July 17, 1989.

Exhibit 6: Howard L. Lang, M.D., Chairman of the Council, California Medical Association, letter to the Hon. George Deukmejian, Governor, State of California, Aug. 25, 1989.

Exhibit 7: Jay D. Michael, Vice President, Division of Government Relations, California Medical Association, letter to the Hon. George Deukmejian, Governor, State of California, Aug.

¹ The CD is being transmitted to the Court and served on counsel by mail.

29, 1989.

Exhibit 8: Declaration of Anna Maria Bereczky-Anderson of Legislative Intent Service, authenticating the legislative history of Assem. Bill No. 120 (2009-2010 Reg. Sess.).

Exhibit 9: Assem. Amend. to Assem. Bill No. 120 (2009-2010 Reg. Sess.) March 26, 2009.

Exhibit 10: Assem. Amend. to Assem. Bill No. 120 (2009-2010 Reg. Sess.) May 7, 2009.

Exhibit 11: Assem. Amend. to Assem. Bill No. 120 (2009-2010 Reg. Sess.) June 1, 2009.

Exhibit 12: Sen. Amend. to Assem. Bill No. 120 (2009-2010 Reg. Sess.) June 22, 2009.

Exhibit 13: Brett Michelin, California Medical Association, letter to the Hon. Mary Hayashi, Chair, Assembly Business & Professions Committee, May 6, 2009.

Exhibit 14: Declaration of Elizabeth Shih and Amended and Restated Bylaws of Dignity Health.

Exhibit 15: Declaration of Teresa Diaz and California Medical Association 2020 Annotated Model Medical Staff Bylaws, section 7.4-3.

Exhibit 16: Appellant's Opposition to Respondent's Second Motion for Judicial Notice in *Natarajan v. Dignity Health*, No. C085906, filed February 19, 2019.²

Exhibit 17: Order of the Court of Appeal in *Natarajan v. Dignity Health*, No. C085906, dated March 26, 2019, denying

² The document is erroneously dated February 19, 2018.

Dignity Health's motion for judicial notice filed November 14, 2018.

Exhibit 18: Order of the Court of Appeal in *Natarajan v. Dignity Health*, No. C085906 dated March 26, 2019, denying Dignity Health's motion for judicial notice filed February 6, 2019.

MEMORANDUM OF POINTS AND AUTHORITIES

Dignity Health requests that the Court take judicial notice of the attached materials, described in the Notice, pursuant to Evidence Code section 451, subdivision (a); section 452, subdivisions (b), (c), (h); and section 459, and California Rules of Court, rule 8.252(a).

All of the materials of which judicial notice is requested are pertinent to arguments in Dignity Health's Answer Brief on the Merits regarding the interpretation of Business & Professions Code section 809.2, subdivision (b) and the applicable standard for disqualifying financial bias of a hearing officer in a physician peer review proceeding. None of the materials relates to proceedings occurring after the judgment that is the subject of the appeal.

A. Legislative history materials.

Exhibit 1 is a searchable CD containing .pdf files of the entire legislative histories of (A) Sen. Bill No. 1211 (1989-1990 Reg. Sess.) and (B) Assem. Bill No. 120 (2009-2010 Reg. Sess.).³

³ The CD is being transmitted to the Court and served on counsel

Exhibits 2 through 7 are excerpts of the legislative history of Sen. Bill No. 1211 (1989-1990 Reg. Sess.). Senate Bill No. 1211 was enacted as Business & Professions Code, section 809 et seq., including section 809.2, subdivision (b), the statute at issue in this case.

- Exhibit 2 is a declaration authenticating the legislative history.
- Exhibits 3 and 4 are versions of the legislation that are relevant to demonstrate that the provision in section 809.2, subdivision (b) requiring that a hearing officer “gain no direct financial benefit from the outcome” of the peer review proceeding was not part of section 809.2, subdivision (b) as originally introduced, but was added by subsequent amendment to the bill. As Dignity Health argues in its Answer Brief, the addition of the “direct financial benefit” language to section 809.2, subdivision (b), would have been superfluous had the statute already prohibited a broader range of financial conflicts.
- Exhibit 5 is a legislative subcommittee analysis of Sen. Bill No. 1211 that sets forth the explanation of its sponsor, the California Medical Association (CMA), of the reasons for sponsoring the legislation, including that CMA was concerned that the peer review process under the common law was not sufficiently fair to physicians. This is relevant to Dignity Health’s argument that Sen. Bill No.

by mail.

1211 codifies and supplants the common law.

- Exhibits 6 and 7 are letters from CMA to Governor Deukmejian regarding the bill. These letters are relevant to show that CMA intended that SB No. 1211 would provide procedural protections and ensure fairness to physicians.⁴

Exhibits 8 through 13 are excerpts of the legislative history of Assem. Bill No. 120 (2009-2010 Reg. Sess.). Assembly Bill No. 120 was proposed as an amendment to section 809.2 and other sections of the peer review statute. The bill did not become law.⁵

- Exhibit 8 is a declaration authenticating the legislative history.

- Exhibits 9 through 12 are versions of the proposed bill as it went through various amendments. These materials demonstrate that CMA sponsored and urged passage of a bill that would have made several amendments to the requirements in section 809.2, subdivision (b) regarding hearing officers, including the information they would be required to disclose, their qualifications, their duties and authority, and the process for their selection. The bill did not become law, meaning

⁴ In *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 38, the court explained that letters to the Governor or a bill's author are not cognizable as evidence of the Legislature's intent as to the meaning of a statute. These materials are submitted as evidence of the *sponsor's* intent.

⁵ The bill was vetoed by Governor Schwarzenegger. (See Ex. 8.)

that the hearing officer provisions are the same today as they were when section 809.2, subdivision (b) was enacted in 1989.

- Exhibit 13 is a letter from CMA to the author of the bill. The letter is relevant to show CMA's views on conflicts of interest of hearing officers.⁶

The materials were compiled by Legislative Intent Service, Inc., as reflected in the declarations. (Exs. 2, 8.) Legislative histories of California statutes, including compilations by Legislative Intent Service, are commonly the subjects of judicial notice by California courts. (See *People v. Sanchez* (2001) 24 Cal.4th 983, 992, fn. 4, overruled on other grounds by *People v. Reed* (2006) 38 Cal.4th 1224; *People v. Spriggs* (2014) 224 Cal.App.4th 150, 157, fn. 3; *Page v. Miracosta Commun. Coll. Dist.* (2009) 180 Cal.App.4th 471, 490, fn. 9; *Bonner v. City of San Diego* (2006) 139 Cal.App.4th 1336, 1346, fn. 9.)

These legislative history materials were not presented to the trial court. Exhibit 1 (the disk containing the entire legislative histories) was not presented to the Court of Appeal. Dignity Health requested judicial notice of the legislative history excerpts (Exs. 2-13) in the Court of Appeal on February 6, 2019. That request was opposed by Appellant on February 19, 2019. The Court of Appeal denied Dignity Health's motion on March 26, 2019, stating: "[T]he 12 exhibits detailed in the motion are not necessary to resolution of the issues before the Court." (Ex. 18.)

⁶ See *supra* fn. 3.

Judicial notice of the legislative history materials in Exhibits 1-13 is appropriate. Evidence Code section 451, subdivision (a) requires a court to take judicial notice of “[t]he . . . public statutory law of this state” Evidence Code section 452, subdivision (b) allows a court to take judicial notice of “legislative enactments issued by or under the authority of . . . any public entity in the United States.” Evidence Code section 452, subdivision (c) allows a court to take judicial notice of “[o]fficial acts of the legislative . . . departments of . . . any state of the United States.” Evidence Code Section 452, subdivision (h) allows a court to take judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (See also Evid. Code § 459 [setting forth procedure for requesting that a court take judicial notice]; Cal. R. Ct. 8.252(a) [setting forth procedure for requesting that the Court of Appeal take judicial notice].)

It is proper to take judicial notice of failed legislation that would have amended an existing statute. (See *Doe v. Becerra* (2018) 20 Cal.App.5th 330, 342 [“We . . . take the view that the legislative history of unpassed bills can, depending on the circumstances, provide some guidance” in statutory interpretation]; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1199 [in interpreting statute, considering history of predecessor bill that was passed but vetoed by the governor]; *Cuevas v. Contra Costa County* (2017) 11 Cal.App.5th 163, 177-178 [considering legislative

history of unpassed bill]; *Joannou v. City of Rancho Palos Verdes* (2013) 219 Cal.App.4th 746, 760-61 [legislative history of failed legislation “in some circumstances . . . may be a reliable indicator of existing legislative intent”].)

B. Bylaws.

Exhibit 14 is the Amended and Restated Bylaws of Dignity Health (“Corporate Bylaws”) effective as of January 17, 2012, with the authenticating declaration of Dignity Health Corporate Secretary Elizabeth Shih. Dignity Health requested that the superior court take judicial notice of the Corporate Bylaws. (8-CT-2030-2068.) Appellant opposed the request. (8-CT-2119-2125.) The superior court granted Dignity Health’s request to take judicial notice of other materials, but denied the request as to the Corporate Bylaws. (8-CT-2188.) The trial court did not state any reasons for declining to take judicial notice of the Corporate Bylaws.

Dignity Health again requested judicial notice of the Corporate Bylaws in the Court of Appeal on November 14, 2018. Appellant opposed the request on November 19, 2018. The Court of Appeal denied the request on March 26, 2019, stating “[t]he court generally does not take judicial notice of evidence that was not before the trial court.” (Ex. 17.)

The Corporate Bylaws include relevant facts that would be of substantial consequence to the determination of the action. (Evid. Code, § 459, subd. (c).) Dignity Health’s Answer Brief cites sections 11.1 and 11.3 of the Corporate Bylaws to support its

point that the medical staff at the individual hospital—and not Dignity Health, the corporate owner of St. Joseph’s—was responsible for appointment of hearing officers to preside over peer review matters at the hospital.

Exhibit 15 is the California Medical Association 2020 Annotated Model Medical Staff Bylaws, section 7.4-3, with the authenticating declaration of Teresa Diaz.

CMA Model Bylaw section 7.4-3 addresses the subject of peer review hearing officers and is relevant to the interpretation of section 809.2, subdivision (b) because it incorporates the identical “gain no direct financial benefit from the outcome” standard as well as other provisions absent from the legislation CMA sponsored. Section 7.4-3 also contains annotations that express CMA’s view regarding the qualifications of hearing officers.

The CMA Model Bylaw was not presented to the superior court or to the Court of Appeal. However, Dignity Health cited and discussed the Model Bylaw in its answer to the brief of CMA as amicus curiae in the Court of Appeal, filed on February 6, 2019.

Judicial notice of Exhibits 14 and 15 is appropriate. Evidence Code section 452, subdivision (h) allows a court to take judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (See also Evid. Code, § 459 [setting forth procedure for requesting that a court take judicial notice]; Cal. Rules of Ct.,

rule 8.252(a) [setting forth procedure for requesting that the Court of Appeal take judicial notice].) This Court has specifically taken judicial notice of CMA’s Model Bylaws and found them instructive in physician peer review cases. (See, e.g., *El-Attar v. Hollywood Presbyterian Med. Ctr.* (2013) 56 Cal.4th 976, 989; *Anton v. San Antonio Community Hosp.* (1977) 19 Cal.3d 802, 819, abrogated by Code Civ. Proc., § 1094.5, subd. (d) on other grounds). Further, courts have often taken judicial notice of an institution’s bylaws or similar institutional documents. (See, e.g., *Provost v. Regents of Univ. of Cal.* (2011) 201 Cal.App.4th 1289, 1292 [taking judicial notice of university bylaw]; *Kashmiri v. Regents of Univ. of Cal.* (2008) 156 Cal.App.4th 809, 822, fn. 7 [taking judicial notice of university bylaw and minutes].)

With respect to the Corporate Bylaws, the superior court was *required* to take judicial notice under Evidence Code section 453 because (a) Dignity Health requested judicial notice; (b) Appellant had sufficient notice to meet the request; and (c) the court was provided with “sufficient information to enable it to take judicial notice of the matter.” (Evid. Code, § 453; see also 31 Cal. Jur. 3d Evidence § 20; *Bridges v. City of Wildomar* (2015) 238 Cal.App.4th 859, 869, fn. 2 [taking judicial notice of materials where the court was “required by law” to do so under section 453].)

Thus, this Court is required to take judicial notice of the documents as well. (Evid. Code, § 459, subd. (a) [“The reviewing court shall take judicial notice of (1) each matter properly noticed by the trial court and (2) each matter that the trial court was

required to notice under Section 451 or 453.”]; see also 31 Cal. Jur. 3d Evidence § 83 [“A reviewing court must take judicial notice of each matter that the trial court was required to notice either because taking notice was mandatory upon the trial court, or because a proper request for judicial notice was made to it.”] [footnotes omitted].)

C. Documents filed in the Court of Appeal.

Exhibits 16 through 18 are documents filed in the Court of Appeal in this case, *Natarajan v. Dignity Health*, No. C085906.

- Exhibit 16 is Appellant’s Opposition to Respondent’s Second Motion for Judicial Notice, filed February 19, 2019.⁷ This opposition is relevant to the point made in Dignity Health’s Answer Brief that Natarajan objected to judicial notice of legislative history materials on grounds that are equally applicable to his own request for judicial notice in this Court.

- Exhibits 17 and 18 are orders of the Court of Appeal denying Dignity Health’s motions for judicial notice on March 26, 2019. These orders are relevant to the discussions in this motion for judicial notice regarding the bases for the Court of Appeal’s denials of judicial notice.

⁷ The document is erroneously dated February 19, 2018.

Dignity Health respectfully requests that the Court grant this motion and take judicial notice of the materials.

Dated: August 7, 2020 MANATT, PHELPS & PHILLIPS, LLP

By: s/ Barry S. Landsberg
BARRY S. LANDSBERG
*Attorneys for Defendant and
Respondent* DIGNITY HEALTH

No. S259364
IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

SUNDAR NATARAJAN, M.D.,

Petitioner and Appellant,

vs.

DIGNITY HEALTH,

Respondent.

After a Decision of the Court of Appeal
Third Appellate District, No. C085906

San Joaquin County Superior Court
No. STK-CV-UWM-2-16-4821

[PROPOSED] ORDER

The Court having read and considered Respondent Dignity Health's motion for judicial notice, and good cause appearing therefor,

IT IS HEREBY ORDERED that the Court takes judicial notice of the following:

Exhibit 1: CD containing searchable .pdf files of the entire

legislative histories of (A) Sen. Bill No. 1211 (1989-1990 Reg. Sess.) and (B) Assem. Bill No. 120 (2009-2010 Reg. Sess.).

Exhibit 2: Declaration of Dianne Schaumburg of Legislative Intent Service, authenticating the legislative history of Sen. Bill No. 1211 (1989-1990 Reg. Sess.).

Exhibit 3: Sen. Amend. to Sen. Bill No. 1211 (1989-1990 Reg. Sess.) April 12, 1989.

Exhibit 4: Sen. Amend. to Sen. Bill No. 1211 (1989-1990 Reg. Sess.) May 2, 1989.

Exhibit 5: Assem. Subcom. on Admin. of Justice, Analysis of Sen. Bill No. 1211 (1989-1990 Reg. Sess.) as amended July 17, 1989.

Exhibit 6: Howard L. Lang, M.D., Chairman of the Council, California Medical Association, letter to the Hon. George Deukmejian, Governor, State of California, Aug. 25, 1989.

Exhibit 7: Jay D. Michael, Vice President, Division of Government Relations, California Medical Association, letter to the Hon. George Deukmejian, Governor, State of California, Aug. 29, 1989.

Exhibit 8: Declaration of Anna Maria Berezky-Anderson of Legislative Intent Service, authenticating the legislative history of Assem. Bill No. 120 (2009-2010 Reg. Sess.).

Exhibit 9: Assem. Amend. to Assem. Bill No. 120 (2009-2010 Reg. Sess.) March 26, 2009.

Exhibit 10: Assem. Amend. to Assem. Bill No. 120 (2009-2010 Reg. Sess.) May 7, 2009.

Exhibit 11: Assem. Amend. to Assem. Bill No. 120 (2009-

2010 Reg. Sess.) June 1, 2009.

Exhibit 12: Sen. Amend. to Assem. Bill No. 120 (2009-2010 Reg. Sess.) June 22, 2009.

Exhibit 13: Brett Michelin, California Medical Association, letter to the Hon. Mary Hayashi, Chair, Assembly Business & Professions Committee, May 6, 2009.

Exhibit 14: Declaration of Elizabeth Shih and Amended and Restated Bylaws of Dignity Health.

Exhibit 15: Declaration of Teresa Diaz and California Medical Association 2020 Annotated Model Medical Staff Bylaws, section 7.4-3.

Exhibit 16: Appellant's Opposition to Respondent's Second Motion for Judicial Notice in *Natarajan v. Dignity Health*, No. C085906, filed February 19, 2019.⁸

Exhibit 17: Order of the Court of Appeal in *Natarajan v. Dignity Health*, No. C085906, dated March 26, 2019, denying Dignity Health's motion for judicial notice filed November 14, 2018.

⁸ The document is erroneously dated February 19, 2018.

Exhibit 18: Order of the Court of Appeal in *Natarajan v. Dignity Health*, No. C085906 dated March 26, 2019, denying Dignity Health's motion for judicial notice filed February 6, 2019.

IT IS SO ORDERED.

Dated: _____

By: _____
JUSTICE OF THE CALIFORNIA
SUPREME COURT

PROOF OF SERVICE

I, Brigette Scoggins, declare as follows:

I am employed in Los Angeles County, Los Angeles, California. I am over the age of eighteen years and not a party to this action. My business address is Manatt, Phelps & Phillips, LLP, 11355 West Olympic Boulevard, Los Angeles, California 90064-1614. On **August 7, 2020**, I served the within:

RESPONDENT’S MOTION FOR JUDICIAL NOTICE on the interested parties in this action addressed as follows:

<p>Stephen D. Schear, Esq. Law Offices of Stephen D. Schear 2831 Telegraph Avenue Oakland, CA 94609 Telephone: (510) 708-9636 Email: steveschear@gmail.com</p>	<p><i>Attorneys for Petitioner and Appellant Sundar Natarajan, M.D.</i></p>
<p>Jenny Huang, Esq. Justice First 180 Grand Avenue, Suite 1300 Oakland, CA 94612 Telephone: (510) 628-0695 Email: jhuang@justicefirst.net</p>	
<p>Tara Natarajan 8111 Presidio Drive Cupertino, CA 95014 Telephone: (408) 250-7269 Email: tarabadwal@yahoo.com</p>	

(BY ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via the Court's Electronic Filing System (EFS) operated by TrueFiling.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on **August 7, 2020**, at Los Angeles, California.


Brigette Scoggins

EXHIBIT 1

CD Containing searchable .PDF files of the entire legislative histories of (A) Sen. Bill No. 1211 (1989-1990 Reg. Sess.) and (B) Assem. Bill No. 120 (2009-2010 Reg. Sess.).

EXHIBIT 2



LEGISLATIVE
INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF DIANNE SCHAUMBURG

I, Dianne Schaumburg, declare:

I am an attorney licensed to practice in California, State Bar No. 260704, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Senate Bill 1211 of 1989. Senate Bill 1211 was approved by the Legislature and was enacted as Chapter 336 of the Statutes of 1989.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Senate Bill 1211 of 1989. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

EXHIBIT A - SENATE BILL 1211 OF 1989:

1. All versions of Senate Bill 1211 (Keene-1989);
2. Procedural history of Senate Bill 1211 from the 1989-90 Senate Final History;
3. Analysis of Senate Bill 1211 prepared for the Senate Committee on Judiciary;
4. Material from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 1211;
5. Third Reading analysis of Senate Bill 1211 prepared by the Office of Senate Floor Analyses;
6. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 1211;
7. Material from the legislative bill file of the Assembly Committee on Judiciary on Senate Bill 1211.

8. Two analyses of Senate Bill 1211 prepared for the Assembly Committee on Judiciary's Subcommittee on the Administration of Justice;
9. Material from the legislative bill file of the Assembly Committee on Judiciary's Subcommittee on the Administration of Justice on Senate Bill 1211, as follows:
 - a. General correspondence;
 - b. Background material;
10. Third Reading analysis of Senate Bill 1211 prepared by the Assembly Committee on Judiciary's Subcommittee on the Administration of Justice;
11. Material from the legislative bill file of the Assembly Republican Caucus on Senate Bill 1211;
12. Legislative Counsel's Rule 26.5 analysis of Senate Bill 1211;
13. Unfinished Business analysis of Senate Bill 1211 prepared by the Office of Senate Floor Analyses;
14. Excerpt regarding Senate Bill 1211 from the Journal of the Senate, September 13, 1989;
15. Material from the legislative bill file of Senator Barry Keene on Senate Bill 1211;
16. Post-enrollment documents regarding Senate Bill 1211;
17. Press Release #541 issued by the Office of the Governor on September 11, 1989 to announce that Senate Bill 1211 had been signed.

EXHIBIT B - SENATE BILL 2565 OF 1988 (VETOED PREDECESSOR):

1. All versions of Senate Bill 2565 (Keene-1988);
2. Procedural history of Senate Bill 2565 from the 1987-88 Senate Final History;
3. Analysis of Senate Bill 2565 prepared for the Senate Committee on Judiciary;
4. Material from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 2565;
5. Material from the legislative bill file of the Senate Committee on Appropriations on Senate Bill 2565;
6. Analysis of Senate Bill 2565 prepared by the Legislative Analyst;
7. Third Reading analysis of Senate Bill 2565 prepared by the Office of Senate Floor Analyses;
8. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 2565;
9. Two analyses of Senate Bill 2565 prepared for the Assembly Committee on Health;
10. Material from the legislative bill file of the Assembly Committee on Health on Senate Bill 2565;

11. Two Analyses of Senate Bill 2565 prepared for the Assembly Committee on Ways and Means;
12. Five Third Reading analyses of Senate Bill 2565 prepared by the Assembly Committee on Health;
13. Material from the legislative bill file of the Assembly Republican Caucus on Senate Bill 2565;
14. Unfinished Business analysis of Senate Bill 2565 prepared by the Office of Senate Floor Analyses;
15. Material from the legislative bill file of Senator Keene on Senate Bill 2565;
16. Post-enrollment documents regarding Senate Bill 2565;
17. Veto message by Governor George Deukmejian, September 30, 1988.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 27th day of August, 2009 at Woodland, California.



DIANNE SCHAUMBURG

EXHIBIT 3

AMENDED IN SENATE APRIL 12, 1989

SENATE BILL

No. 1211

Introduced by Senator Keene

March 8, 1989

An act to add ~~Section 804.5~~ Sections 809, 809.1, 809.2, 809.3, 809.4, 809.5, 809.6, 809.7, and 809.8 to the Business and Professions Code, relating to ~~physicians and surgeons~~ healing arts practitioners.

LEGISLATIVE COUNSEL'S DIGEST

SB 1211, as amended, Keene. ~~Physicians and surgeons~~ *Healing arts practitioners*: peer review.

Existing federal law provides for the encouragement of effective professional peer review of physicians, and provides that its provisions shall apply to state laws, unless a state by legislation opts out.

This bill would make specified legislative findings and declarations regarding the need for California to opt out of the federal law and design its own peer review system which, if fairly conducted, will preserve the highest standards of medical practice.

This bill would provide that a licentiate, as defined, who is the subject of a final proposed action of a peer review body for which a report is required to be filed, as specified, shall be entitled to various due process rights before, during, and after a hearing on the matter, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



The people of the State of California do enact as follows:

1 ~~SECTION 1.~~ Section 804.5 is added to the Business
2 SECTION 1. Section 809 is added to the Business and
3 Professions Code, to read:

4 809. (a) The Legislature hereby finds and declares
5 the following:

6 (1) In 1986, Congress enacted the Health Care Quality
7 Improvement Act of 1986 (Chapter 117 (commencing
8 with Section 11101) Title 42, United States Code), to
9 encourage physicians to engage in effective professional
10 peer review, but giving each state the opportunity to
11 “opt-out” of some of the provisions of the federal act.

12 (2) Because of deficiencies in the federal act and the
13 possible adverse interpretations by the courts of the
14 federal act, it is preferable for California to “opt-out” of
15 the federal act and design its own peer review system.

16 (3) Peer review, fairly conducted, is essential to
17 preserving the highest standards of medical practice.

18 (4) Peer review which is not conducted fairly results
19 in harm both to patients and healing arts practitioners by
20 limiting access to care.

21 (5) Peer review, fairly conducted, will aid the
22 appropriate state licensing boards in their responsibility
23 to regulate and discipline errant healing arts
24 practitioners.

25 (6) To protect the health and welfare of the people of
26 California, it is the policy of the State of California to
27 exclude, through the peer review mechanism as provided
28 for by California law, those healing arts practitioners who
29 provide substandard care or who engage in professional
30 misconduct, regardless of the effect of that exclusion on
31 competition.

32 (7) It is the intent of the Legislature that peer review
33 of professional health care services be done efficiently, on
34 an ongoing basis, with an emphasis on early detection of
35 potential quality problems and resolutions through
36 informal educational interventions.

37 (8) Sections 809 to 809.8, inclusive, shall not affect the
38 respective responsibilities of the organized medical staff



1 or the governing body of an acute care hospital with
2 respect to peer review in the acute care hospital setting.

3 (9) The Legislature thus finds and declares that the
4 laws of this state pertaining to the peer review of healing
5 arts practitioners shall apply in lieu of Chapter 117
6 (commencing with Section 11101) of Title 42 of the
7 United States Code, because the laws of this state provide
8 a more careful articulation of the protections for both
9 those undertaking peer review activity and those subject
10 to review, and better integrates public and private
11 systems of peer review. This election shall not affect the
12 availability of any immunity under California law.

13 (b) For the purpose of this section and Sections 809.1
14 to 809.8, inclusive, "healing arts practitioner" or
15 "licentiate" means a physician and surgeon, podiatrist,
16 clinical psychologist, or dentist.

17 SEC. 2. Section 809.1 is added to the Business and
18 Professions Code, to read:

19 809.1. (a) A licentiate who is the subject of a final
20 proposed action of a peer review body for which a report
21 is required to be filed under Section 805 shall be entitled
22 to written notice as set forth in subdivisions (b) and (c).
23 For the purposes of this section, the "final proposed
24 action" shall be the final decision or recommendation of
25 the peer review after informal investigatory activity or
26 prehearing meetings, if any.

27 (b) The peer review body shall give the licentiate
28 written notice of the final proposed action. This notice
29 shall include all the following information:

30 (1) That an action against the licentiate has been
31 proposed by the peer review body which, if adopted, shall
32 be taken and reported pursuant to Section 805.

33 (2) The proposed adverse action.

34 (3) That the licentiate has the right to request a
35 hearing on the proposed action.

36 (4) The time limit, within which to request such a
37 hearing.

38 (c) If a hearing is requested on a timely basis, the peer
39 review body shall give the licentiate a written notice
40 stating all of the following:



1 (1) The reasons for the adverse action taken or
2 recommended, including the acts or omissions with
3 which the licentiate is charged.

4 (2) The place, time, and date of the hearing.

5 SEC. 3. Section 809.2 is added to the Business and
6 Professions Code, to read:

7 809.2. If a licentiate timely requests a hearing
8 concerning a final proposed action for which a report is
9 required to be filed under Section 805, the following shall
10 apply:

11 (a) The hearing shall be held, as determined by the
12 peer review body, before a trier of fact, which shall be an
13 arbitrator or arbitrators selected by a process mutually
14 acceptable to the licentiate and the peer review body, or
15 before a panel of unbiased individuals who shall gain no
16 direct financial benefit from the outcome and who have
17 not acted as an accuser, investigator, factfinder, or initial
18 decisionmaker in the same matter.

19 (b) If a hearing officer is selected to preside at a
20 hearing held before a panel, the hearing officer shall not
21 act as a prosecuting officer or advocate, and shall not be
22 entitled to vote.

23 (c) The licentiate shall have the right to a reasonable
24 opportunity to voir dire the panel members and any
25 hearing officer, and the right to challenge the
26 impartiality of any member or hearing officer.
27 Challenges to the impartiality of any member or hearing
28 officer shall be ruled on by the presiding officer, who shall
29 be the hearing officer if one has been selected.

30 (d) The licentiate shall have the right to inspect and
31 copy at the licentiate's expense any documentary
32 information relevant to the charges which the peer
33 review body has in its possession or under its control, as
34 soon as practicable after the receipt of the licentiate's
35 request for a hearing. The peer review body shall have
36 the right to inspect and copy at the peer review body's
37 expense any documentary information relevant to the
38 charges which the licentiate has in his or her possession
39 or control as soon as practicable after receipt of the peer
40 review body's request. The failure by either party to



1 provide access to this information at least 30 days before
2 the hearing shall constitute good cause for a continuance.
3 The right to inspect and copy by either party does not
4 extend to confidential information regarding other
5 individually identifiable licentiates. The arbitrator or
6 presiding officer shall consider and rule upon any request
7 for access to information, and may impose any safeguards
8 the protection of the peer review process and justice
9 requires.

10 (e) At the request of either side, the parties shall
11 exchange lists of witnesses expected to testify and copies
12 of all documents expected to be introduced at the
13 hearing. Failure to disclose the identity of a witness or
14 produce copies of all documents expected to be produced
15 at least 10 days before the commencement of the hearing
16 shall constitute good cause for a continuance.

17 (f) Continuances shall be granted upon agreement of
18 the parties or by the arbitrator or presiding officer on a
19 showing of good cause.

20 SEC. 4. Section 809.3 is added to the Business and
21 Professions Code, to read:

22 809.3. (a) During a hearing concerning a final
23 proposed action for which reporting is required to be
24 filed under Section 805, both parties shall have all of the
25 following rights:

26 (1) To be provided with all of the information made
27 available to the trier of fact.

28 (2) To have a record made of the proceedings, copies
29 of which may be obtained by the licentiate upon payment
30 of any reasonable charges associated with the preparation
31 thereof.

32 (3) To call, examine, and cross-examine witnesses.

33 (4) To present and rebut evidence determined by the
34 arbitrator or presiding officer to be relevant.

35 (5) To submit a written statement at the close of the
36 hearing.

37 (b) The burden of presenting evidence and proof
38 during the hearing shall be as follows:

39 (1) The peer review body shall have the initial duty to
40 present evidence which supports the charge or



1 recommended action.

2 (2) Initial applicants shall bear the burden of
3 persuading the trier of fact by a preponderance of the
4 evidence of their qualifications by producing information
5 which allows for adequate evaluation and resolution of
6 reasonable doubts concerning their current qualifications
7 for staff privileges, membership, or employment. Initial
8 applicants shall not be permitted to introduce
9 information not produced upon request of the peer
10 review body during the application process, unless the
11 initial applicant establishes that the information could
12 not have been produced previously in the exercise of
13 reasonable diligence.

14 (3) Except as provided above for initial applicants, the
15 peer review body shall bear the burden of persuading the
16 trier of fact by a preponderance of the evidence that the
17 action or recommendation is reasonable and warranted.

18 (c) The peer body shall adopt written provisions
19 governing whether a licentiate shall have the option of
20 being represented by an attorney at the licentiate's
21 expense. No peer review body shall be represented by an
22 attorney if the licentiate is not so represented.

23 SEC. 5. Section 809.4 is added to the Business and
24 Professions Code, to read:

25 809.4. (a) Upon the completion of a hearing
26 concerning a final proposed action for which a report is
27 required to be filed under Section 805, the licentiate
28 involved has the right to receive all of the following:

29 (1) A written decision of the trier of fact, including
30 findings of fact and a conclusion articulating the
31 connection between the evidence produced at the
32 hearing and the decision reached.

33 (2) A written explanation of the procedure for
34 appealing the decision, if any appellate mechanism exists.

35 (b) If an appellate mechanism is provided, it need not
36 provide for de novo review, but it shall include the
37 following minimum rights for both parties:

38 (1) The right to appear and respond.

39 (2) The right to be represented by an attorney.

40 (3) The right to receive the written decision of the



1 appellate body.

2 SEC. 6. Section 809.5 is added to the Business and
3 Professions Code, to read:

4 809.5. Notwithstanding Sections 809 to 809.8,
5 inclusive, a peer review body may immediately suspend
6 or restrict clinical privileges of a licentiate where the
7 failure to take that action may result in an imminent
8 danger to the health of any individual, provided that the
9 licentiate is subsequently provided with the notice and
10 hearing rights set forth in Sections 809.1 to 809.4,
11 inclusive.

12 SEC. 7. Section 809.6 is added to the Business and
13 Professions Code, to read:

14 809.6. The parties are bound by any additional notice
15 and hearing provisions contained in any applicable
16 professional society or medical staff bylaws or other
17 contract between the licentiate and peer review body or
18 health care entity which are not inconsistent with
19 Sections 809.1 to 809.4, inclusive.

20 SEC. 8. Section 809.7 is added to the Business and
21 Professions Code, to read:

22 809.7. Sections 809.1 to 809.4, inclusive, shall not apply
23 to peer review proceedings conducted in state or county
24 hospitals or in hospitals operated as teaching facilities by
25 medical schools approved pursuant to Section 2084. This
26 section shall not affect the obligation to afford due
27 process of law to licentiates involved in peer review
28 proceedings in these hospitals.

29 SEC. 9. Section 809.8 is added to the Business and
30 Professions Code, to read:

31 809.8. Nothing in Sections 809 to 809.7, inclusive, shall
32 affect the availability of judicial review under Section
33 1094.5 of the Code of Civil Procedure nor the provisions
34 relating to discovery and testimony in Section 1157 of the
35 Evidence Code or Sections 1370 and 1370.1 of the Health
36 and Safety Code.

37 and Professions Code, to read:

38 804.5. The Legislature finds and declares the
39 following:

40 (a) In 1986, Congress enacted the Health Care Quality



- 1 Improvement Act of 1986 (Chapter 117 (commencing
2 with Section 11101), Title 42, U.S.C.), to encourage
3 physicians to engage in effective professional peer review,
4 but giving each state the opportunity to "opt/out" of
5 some of the provisions of the federal act (see subdivision
6 (c) Section 11111, Title 42 U.S.C.).
- 7 (b) Because of deficiencies in the federal act and the
8 possible adverse interpretations by the courts of the
9 federal act, it is preferable for California to "opt/out" of
10 the federal act and design its own peer review system.
- 11 (c) Peer review, fairly conducted, is essential to
12 preserving the highest standards of medical practice.
- 13 (d) Peer review which is not fairly conducted results
14 in harm both to patients and physicians and surgeons by
15 limiting access to health care.
- 16 (e) Peer review, fairly conducted, will aid the
17 appropriate state licensing boards in their responsibility
18 to regulate and discipline errant physicians and surgeons.

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EXHIBIT 4

AMENDED IN SENATE MAY 2, 1989
AMENDED IN SENATE APRIL 12, 1989

SENATE BILL

No. 1211

Introduced by Senator Keene

March 8, 1989

An act to add Sections 809, 809.1, 809.2, 809.3, 809.4, 809.5, 809.6, 809.7, and 809.8 to the Business and Professions Code, relating to healing arts practitioners, and *declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1211, as amended, Keene. Healing arts practitioners: peer review.

Existing federal law provides for the encouragement of effective professional peer review of physicians, and provides that its provisions shall apply to state laws, unless a state by legislation opts out.

This bill would make specified legislative findings and declarations regarding the need for California to opt out of the federal law and design its own peer review system which, if fairly conducted, will preserve the highest standards of medical practice.

This bill would provide that a licentiate, as defined, who is the subject of a final proposed action of a peer review body for which a report is required to be filed, as specified, shall be entitled to various due process rights before, during, and after a hearing on the matter, as specified.

The bill would provide that its provisions shall not apply to peer review proceedings conducted in specified hospitals and facilities, or to specified licentiates engaged in postgraduate medical education; and that the provisions of the bill opting out of the federal law on peer review shall be null and void

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under certain circumstances.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~ $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 809 is added to the Business and
2 Professions Code, to read:

3 809. (a) The Legislature hereby finds and declares
4 the following:

5 (1) In 1986, Congress enacted the Health Care Quality
6 Improvement Act of 1986 (Chapter 117 (commencing
7 with Section 11101) Title 42, United States Code), to
8 encourage physicians to engage in effective professional
9 peer review, but giving each state the opportunity to
10 "opt-out" of some of the provisions of the federal act.

11 (2) Because of deficiencies in the federal act and the
12 possible adverse interpretations by the courts of the
13 federal act, it is preferable for California to "opt-out" of
14 the federal act and design its own peer review system.

15 (3) Peer review, fairly conducted, is essential to
16 preserving the highest standards of medical practice.

17 (4) Peer review which is not conducted fairly results
18 in harm both to patients and healing arts practitioners by
19 limiting access to care.

20 (5) Peer review, fairly conducted, will aid the
21 appropriate state licensing boards in their responsibility
22 to regulate and discipline errant healing arts
23 practitioners.

24 (6) To protect the health and welfare of the people of
25 California, it is the policy of the State of California to
26 exclude, through the peer review mechanism as provided
27 for by California law, those healing arts practitioners who
28 provide substandard care or who engage in professional
29 misconduct, regardless of the effect of that exclusion on
30 competition.

31 (7) It is the intent of the Legislature that peer review
32 of professional health care services be done efficiently, on

1 an ongoing basis, with an emphasis on early detection of
2 potential quality problems and resolutions through
3 informal educational interventions.

4 (8) Sections 809 to 809.8, inclusive, shall not affect the
5 respective responsibilities of the organized medical staff
6 or the governing body of an acute care hospital with
7 respect to peer review in the acute care hospital setting.

8 (9) The Legislature thus finds and declares that the
9 laws of this state pertaining to the peer review of healing
10 arts practitioners shall apply in lieu of Chapter 117
11 (commencing with Section 11101) of Title 42 of the
12 United States Code, because the laws of this state provide
13 a more careful articulation of the protections for both
14 those undertaking peer review activity and those subject
15 to review, and better integrates public and private
16 systems of peer review. This election shall not affect the
17 availability of any immunity under California law.

18 (b) For the purpose of this section and Sections 809.1
19 to 809.8, inclusive, "healing arts practitioner" or
20 "licentiate" means a physician and surgeon, podiatrist,
21 clinical psychologist, or dentist.

22 SEC. 2. Section 809.1 is added to the Business and
23 Professions Code, to read:

24 809.1. (a) A licentiate who is the subject of a final
25 proposed action of a peer review body for which a report
26 is required to be filed under Section 805 shall be entitled
27 to written notice as set forth in subdivisions (b) and (c).
28 For the purposes of this section, the "final proposed
29 action" shall be the final decision or recommendation of
30 the peer review after informal investigatory activity or
31 prehearing meetings, if any.

32 (b) The peer review body shall give the licentiate
33 written notice of the final proposed action. This notice
34 shall include all the following information:

35 (1) That an action against the licentiate has been
36 proposed by the peer review body which, if adopted, shall
37 be taken and reported pursuant to Section 805.

38 (2) The proposed adverse action.

39 (3) That the licentiate has the right to request a
40 hearing on the proposed action.



1 (4) The time limit, within which to request such a
2 hearing.

3 (c) If a hearing is requested on a timely basis, the peer
4 review body shall give the licentiate a written notice
5 stating all of the following:

6 (1) The reasons for the adverse action taken or
7 recommended, including the acts or omissions with
8 which the licentiate is charged.

9 (2) The place, time, and date of the hearing.

10 SEC. 3. Section 809.2 is added to the Business and
11 Professions Code, to read:

12 809.2. If a licentiate timely requests a hearing
13 concerning a final proposed action for which a report is
14 required to be filed under Section 805, the following shall
15 apply:

16 (a) The hearing shall be held, as determined by the
17 peer review body, before a trier of fact, which shall be an
18 arbitrator or arbitrators selected by a process mutually
19 acceptable to the licentiate and the peer review body, or
20 before a panel of unbiased individuals who shall gain no
21 direct financial benefit from the outcome ~~and~~, who have
22 not acted as an accuser, investigator, factfinder, or initial
23 decisionmaker in the same matter, *and which shall*
24 *include, where feasible, an individual practicing the same*
25 *specialty as the licentiate.*

26 (b) If a hearing officer is selected to preside at a
27 hearing held before a panel, the hearing officer shall *gain*
28 *no direct financial benefit from the outcome, shall* not act
29 as a prosecuting officer or advocate, and shall not be
30 entitled to vote.

31 (c) The licentiate shall have the right to a reasonable
32 opportunity to voir dire the panel members and any
33 hearing officer, and the right to challenge the
34 impartiality of any member or hearing officer.
35 Challenges to the impartiality of any member or hearing
36 officer shall be ruled on by the presiding officer, who shall
37 be the hearing officer if one has been selected.

38 (d) The licentiate shall have the right to inspect and
39 copy at the licentiate's expense any documentary
40 information relevant to the charges which the peer



1 review body has in its possession or under its control, as
2 soon as practicable after the receipt of the licentiate's
3 request for a hearing. The peer review body shall have
4 the right to inspect and copy at the peer review body's
5 expense any documentary information relevant to the
6 charges which the licentiate has in his or her possession
7 or control as soon as practicable after receipt of the peer
8 review body's request. The failure by either party to
9 provide access to this information at least 30 days before
10 the hearing shall constitute good cause for a continuance.
11 The right to inspect and copy by either party does not
12 extend to confidential information regarding other
13 individually identifiable licentiates. The arbitrator or
14 presiding officer shall consider and rule upon any request
15 for access to information, and may impose any safeguards
16 the protection of the peer review process and justice
17 requires.

18 (e) At the request of either side, the parties shall
19 exchange lists of witnesses expected to testify and copies
20 of all documents expected to be introduced at the
21 hearing. Failure to disclose the identity of a witness or
22 produce copies of all documents expected to be produced
23 at least 10 days before the commencement of the hearing
24 shall constitute good cause for a continuance.

25 (f) Continuances shall be granted upon agreement of
26 the parties or by the arbitrator or presiding officer on a
27 showing of good cause.

28 (g) *The hearing shall be held within 60 days, and the*
29 *peer review process shall be completed within one year,*
30 *after a licentiate receives notice of an immediate*
31 *suspension or restriction of clinical privileges, unless the*
32 *licentiate fails to comply with subdivisions (d) and (e) in*
33 *a timely manner.*

34 SEC. 4. Section 809.3 is added to the Business and
35 Professions Code, to read:

36 809.3. (a) During a hearing concerning a final
37 proposed action for which reporting is required to be
38 filed under Section 805, both parties shall have all of the
39 following rights:

40 (1) To be provided with all of the information made



1 available to the trier of fact.

2 (2) To have a record made of the proceedings, copies
3 of which may be obtained by the licentiate upon payment
4 of any reasonable charges associated with the preparation
5 thereof.

6 (3) To call, examine, and cross-examine witnesses.

7 (4) To present and rebut evidence determined by the
8 arbitrator or presiding officer to be relevant.

9 (5) To submit a written statement at the close of the
10 hearing.

11 (b) The burden of presenting evidence and proof
12 during the hearing shall be as follows:

13 (1) The peer review body shall have the initial duty to
14 present evidence which supports the charge or
15 recommended action.

16 (2) Initial applicants shall bear the burden of
17 persuading the trier of fact by a preponderance of the
18 evidence of their qualifications by producing information
19 which allows for adequate evaluation and resolution of
20 reasonable doubts concerning their current qualifications
21 for staff privileges, membership, or employment. Initial
22 applicants shall not be permitted to introduce
23 information not produced upon request of the peer
24 review body during the application process, unless the
25 initial applicant establishes that the information could
26 not have been produced previously in the exercise of
27 reasonable diligence.

28 (3) Except as provided above for initial applicants, the
29 peer review body shall bear the burden of persuading the
30 trier of fact by a preponderance of the evidence that the
31 action or recommendation is reasonable and warranted.

32 (c) The peer review body shall adopt written
33 provisions governing whether a licentiate shall have the
34 option of being represented by an attorney at the
35 licentiate's expense. No peer review body shall be
36 represented by an attorney if the licentiate is not so
37 represented.

38 SEC. 5. Section 809.4 is added to the Business and
39 Professions Code, to read:

40 809.4. (a) Upon the completion of a hearing



1 concerning a final proposed action for which a report is
2 required to be filed under Section 805, the licentiate
3 involved has the right to receive all of the following:

4 (1) A written decision of the trier of fact, including
5 findings of fact and a conclusion articulating the
6 connection between the evidence produced at the
7 hearing and the decision reached.

8 (2) A written explanation of the procedure for
9 appealing the decision, if any appellate mechanism exists.

10 (b) If an appellate mechanism is provided, it need not
11 provide for de novo review, but it shall include the
12 following minimum rights for both parties:

13 (1) The right to appear and respond.

14 (2) The right to be represented by an attorney.

15 (3) The right to receive the written decision of the
16 appellate body.

17 SEC. 6. Section 809.5 is added to the Business and
18 Professions Code, to read:

19 809.5. Notwithstanding Sections 809 to 809.8,
20 inclusive, a peer review body may immediately suspend
21 or restrict clinical privileges of a licentiate where the
22 failure to take that action may result in an imminent
23 danger to the health of any individual, provided that the
24 licentiate is subsequently provided with the notice and
25 hearing rights set forth in Sections 809.1 to 809.4,
26 inclusive.

27 SEC. 7. Section 809.6 is added to the Business and
28 Professions Code, to read:

29 809.6. The parties are bound by any additional notice
30 and hearing provisions contained in any applicable
31 professional society or medical staff bylaws or other
32 contract between the licentiate and peer review body or
33 health care entity which are not inconsistent with
34 Sections 809.1 to 809.4, inclusive.

35 SEC. 8. Section 809.7 is added to the Business and
36 Professions Code, to read:

37 809.7. Sections 809.1 to 809.4, inclusive, shall not apply
38 to peer review proceedings conducted in state or county
39 hospitals or in hospitals operated as teaching facilities by
40 hospitals, in hospitals owned by, operated by, or licensed



1 to the Regents of the University of California or any of its
2 subsidiary corporations which serve as a primary
3 teaching facility, or in health facilities which serve as the
4 primary teaching facility for medical schools approved
5 pursuant to Section 2084. In addition, Sections 809.1 to
6 809.4, inclusive, shall not apply to licentiates engaged in
7 postgraduate medical education under the auspices of a
8 medical school approved pursuant to Section 2084. This
9 section shall not affect the obligation to afford due
10 process of law to licentiates involved in peer review
11 proceedings in these hospitals.

12 SEC. 9. Section 809.8 is added to the Business and
13 Professions Code, to read:

14 809.8. Nothing in Sections 809 to 809.7, inclusive, shall
15 affect the availability of judicial review under Section
16 1094.5 of the Code of Civil Procedure nor the provisions
17 relating to discovery and testimony in Section 1157 of the
18 Evidence Code or Sections 1370 and 1370.1 of the Health
19 and Safety Code.

20 SEC. 10. In the event that Congress enacts legislation
21 declaring that the federal Health Care Quality
22 Improvement Act of 1986 is supplemental to, and is not
23 preemptive of, any immunity or due process right
24 provided by the statutory or decisional law of this state,
25 and declaring that in the event that any provisions of the
26 federal Health Care Quality Improvement Act of 1986
27 conflict with state law, then state law shall prevail; then
28 the provisions of this act opting out of the federal Health
29 Care Quality Improvement Act of 1986 shall be null and
30 void.

31 SEC. 11. This act is an urgency statute necessary for
32 the immediate preservation of the public peace, health,
33 or safety within the meaning of Article IV of the
34 Constitution and shall go into immediate effect. The facts
35 constituting the necessity are:

36 The federal Health Care Quality Improvement Act of
37 1986 provides that unless a state opts out of the federal
38 law by October 14, 1989, the provisions of the federal law
39 concerning state immunities and due process shall
40 automatically apply. Therefor, in order to ensure that

- 1 *state law rather than federal law shall apply with respect*
- 2 *to the immunities and due process rights to be provided*
- 3 *when there is peer review of healing arts practitioners, it*
- 4 *is necessary that this act take effect immediately.*

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EXHIBIT 5

Date of Hearing: July 19, 1989

ASSEMBLY SUBCOMMITTEE ON THE ADMINISTRATION OF JUSTICE
LLOYD G. CONNELLY, Chairperson

SB 1211 (Keene) - As Amended: July 17, 1989

SUBJECT: This bill (1) makes specified legislative findings regarding the need for California to "opt-out" of the federal Health Care Quality Improvement Act of 1986 (Act) and (2) establishes basic due process rights to which specified health care providers shall be entitled during peer review proceedings that propose action adverse to the practitioner.

DIGEST

Existing law, as found in the federal Act, provides immunities, including an immunity from federal anti-trust liability, to specified participants in peer review proceedings. The Act also permits States to "opt-out" of the federal law if such an election is made by October 1989.

Existing law, as found in the Civil Code, Evidence Code, and Business and Professions Code, provides various immunities to persons and organizations that participate in peer review activity.

THIS BILL, with regard to the "opt-out" issue provides the following:

- 1) California shall opt-out of the federal Act because the laws of this state "provide a more careful articulation of the protections for both those undertaking peer review activity and those subject to review" and "better integrates public and private systems of peer review."
- 2) If the federal Act is amended to specify that (a) it is "supplemental to, and is not preemptive of" state law immunities and (b) in the event of conflicts with federal law, state law shall prevail, California's decision to opt-out shall be "null and void."
- 3) States that it is not the intent of the Legislature to opt-out of the national reporting requirements.
- 4) In order to meet the October 1989 deadline, contains an urgency clause, for this Section of the bill only.

This bill, with regard to due process rights afforded practitioners who are the subject of peer review proceedings, provides the following:

- 1) Defines licentiate to include a physician, surgeon, podiatrist, or dentist and defines "peer review body" as that expression is defined under Business and Professions Code Section 805.

- continued -

- 2) Licentiates who are the subject of a proposed adverse action which is required to be reported to the appropriate licensing board under Business and Professions Code Section 805 are provided certain "due process" rights.

(Section 805 requires reports to be submitted when a licentiate's request for privileges is denied for medical disciplinary reasons, privileges are revoked for a medical disciplinary reason, privileges are restricted for at least 30 days for medical disciplinary reasons, or privileges are suspended for at least 14 days.)

- 3) The "due process" rights granted to licentiates include the following:
- a) Written notice of the proposed adverse action.
 - b) The right to a hearing before either an arbitrator (selected by a process agreeable to both the licentiate and the peer review body) or a panel of unbiased individuals who shall gain no direct economic benefit from the outcome.
 - c) The right to voir dire the panel members and challenge the impartiality of the hearing officer, if any.
 - d) The right to inspect and copy documentary information possessed by the peer review body, except confidential information relating solely to other licentiates may only be inspected if the hearing officer so permits.
 - e) An exchange of lists of witnesses.
 - f) The hearing shall be commenced within 60 days and completed within a reasonable time.
 - g) The right to call, examine, and cross-examine witnesses.
- 4) The peer review body shall have the burden of proving by a preponderance of the evidence that the proposed adverse action is "reasonable and warranted."
- 5) Guidelines regarding whether a licentiate may be represented by an attorney shall be adopted by the peer review body. The peer review body may not be represented by an attorney if the licentiate is not.
- 6) The peer review body must adopt written findings of fact and conclusions articulating the connection between the findings and the evidence.
- 7) Appellate procedures, if any, need not include a de novo review, but must include the right to appear, be represented by an attorney, and receive a written decision.

- continued -

- 8) These procedures need not proceed an immediate suspension, but may be invoked by the suspended licentiate thereafter.
- 9) Provides that the governing body may directly summarily suspend the privileges of a licentiate who presents an imminent danger to an individual's health. Such action may be only taken if the peer review body, or its designee, is unavailable and any such action must be ratified by the peer review body within two working days or the suspension is dissolved.
- 10) Bylaws and contracts or agreements, other than bylaws, may provide for additional procedures insofar as they are not inconsistent with the provisions of this bill. However, the provisions of this bill may not be waived.
- 11) These peer review procedures do not apply to peer review proceedings in public hospitals, including the University of California, or teaching hospitals.
- 12) Judicial review remains available under Code of Civil Procedure Section 1094.5.
- 13) The urgency clause of the bill does not apply to these provisions of the bill.

FISCAL EFFECT

None

COMMENTS

- 1) This bill is sponsored by the California Medical Association (CMA) and opposed by the California Association of Hospitals and Health Systems.

CMA is committed to the process of peer review to ensure the quality of care. However, the decision in Patrick v. Burget (1988) 108 S.Ct. 1658, in which the Supreme Court ruled that the state-action doctrine did not protect physicians participating in peer review activity from liability under the federal anti-trust laws, has made many licentiates unwilling or reluctant to participate in peer review.

According to the CMA, the "primary goal of SB 1211 is to increase the peer reviewer's willingness to participate in peer review by increasing the protections from liability. This will be done by increasing the likelihood California will obtain an exemption for peer reviewers from the federal antitrust laws ..." Additionally, the "clear procedural standards" contained in SB 1211 will "reduce the risk of erroneous peer review decisions."

CMA's primary reason for "opting-out" of the federal Act is that California's immunities for peer review activity are more comprehensive

- continued -

than those contained in the federal Act. CMA fears that it may be argued by others that the Act pre-empts California's statutory scheme of peer review immunities. Also, opting out will permit continued review of the body of peer review law by California's courts.

CMA also notes that the Act defines "peer review body" as including the "governing body" of a hospital. This definition of "peer review body" is different than that contained in SB 1211 and acknowledges the role of a hospital governing body in peer review -- an acknowledgment that CMA is currently unwilling to make in SB 1211.

Lastly, CMA notes that SB 1211 guarantees licentiates basic due process rights and will ensure fair peer review proceedings. Under case law, a licentiate facing a recommendation for adverse action is entitled to "fair procedure" as a matter of common law. A private organization which makes the decision to "exclude or expel an individual" must "refrain from arbitrary action." The "action to exclude or expel must be substantively rational and procedurally fair." (See Hackethal v. California Medical Assoc. (1982) 138 Cal.App.3d 435.)

However, "the common law requirement of a fair procedure does not compel formal proceedings with all the embellishments of a court trial." (See Anton v. San Antonio Community Hosp. (1977) 19 Cal.3d 802.) In this case, the Supreme Court refused to find peer review bylaws, which required the accused licentiate to demonstrate that the proposed adverse action should not be adopted absent a clear and convincing showing by the licentiate that the action should be overturned, as violative of the common law requirement of "fair procedure."

CMA argues strongly that these procedures will prevent abuse of the peer review process, such as that witnessed in the Patrick case when the peer review process was wielded as an economic club against a competitor and not on the basis of patient care. For example, CMA argues that licentiates who admit "too many" Medi-Cal patients or refuse to quickly discharge elderly patients will, under SB 1211, be safe from the abusive use of the peer review process.

SB 1211 requires adoption of procedures which may not be required as a matter of the common law doctrine of fair procedure.

- 2) CAHHS opposes SB 1211 for the following reasons:
- a) The federal Act does not preempt state peer review immunity law, as indicated, by among others, the author of the Act, Congressman Waxman. Opting-out may discourage the free flow of information about unsatisfactory licentiates among hospitals, thereby frustrating one of the major purposes of the federal Act -- the creation of a national data bank containing information pertaining to licentiates who are the subject of adverse peer review decisions.

- continued -

(CAHHS would support an amendment to SB 1211 that would reverse the presumption in the bill to provide that SB 1211 becomes effective when the federal Act is declared preemptive of state peer review immunities.)

- b) SB 1211 "will make it more difficult to discipline" licentiates. The procedures contained in SB 1211 may threaten patient care by making it more difficult to dismiss "marginal" physicians.
- c) Case law "provides ample guidance to hospitals, physicians, and others" involved in peer review. It is unwise to overturn the common law of "fair procedure" and enact rigid statutory prescriptions.
- d) Licentiates will be less willing to serve on peer review bodies if SB 1211 is enacted because the proceedings will be more laborious and time-consuming.
- e) SB 1211 does not contain any explicit statutory recognition of the legitimate role that governing boards of hospitals have in the peer review process. Since a hospital remains liable for its "failure to insure the competence of its medical staff through careful selection and review" it is only fair to expressly acknowledge a hospital's legitimate function in statute. (See Elam v. College Park Hospital (1982) 132 Cal.App.3d 332.)

This issue of "governance" is particularly important in those instances in which the peer review process fails and the hospital is required to initiate action.

- f) Any benefit of the doubt with regard to the notion of "due process" must be given to the patient. Patients suffer when licentiates who should be "disciplined" are not and continue to practice while litigating the issue of their competency.
 - g) CAHHS prefers that the peer review process remain a matter of hospital bylaws. SB 1211 acknowledges the use of bylaws to develop additional procedures, but any such procedures may not be "inconsistent with the provisions of SB 1211."
- 3) At least four issues remain unresolved:
- a) Should the bill contain a bilateral attorney fee clause, which compels the payment of the other party's attorney fees if the peer review proceeding was either brought or defended in bad faith or frivolously?
 - b) Should the bill confer a qualified immunity on hospitals for their peer review activities? (The federal act currently

- continued -

confers a similar, qualified immunity, which will be lost if California opts-out of the federal Act.)

- c) Should the discovery provisions of the bill be modified?
- d) Should a policy statement proposed by Assembly Member Isenberg, relating to the issue of governance, be amended into the bill?

SUPPORT

California Medical Association
Physicians Insurance Management
NORCAL Mutual Insurance Company
Osteopathic Physicians and Surgeons of California

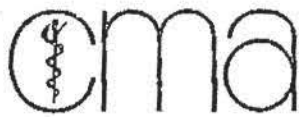
OPPOSITION

California Association of Hospitals and Health Systems
Various Hospitals

G. ERBIN
324-7593
7/11/89:asadj

SB 1211
Page 6

EXHIBIT 6



California Medical Association

221 Main Street, P.O. Box 7690, San Francisco, CA 94120-7690 (415) 541-0900

August 25, 1989

The Honorable George Deukmejian
Governor of California
State Capitol
Sacramento, California 95814

Dear Governor Deukmejian:

I am writing to encourage you to sign Senate Bill 1211.

Senate Bill 1211 will clearly enhance and tighten the disciplinary process and encourage physicians to participate in peer review.

The overwhelming majority of physicians in California support this bill, and I encourage you to sign Senate Bill 1211.

Sincerely,

A handwritten signature in cursive script that reads "Howard L. Lang".

Howard L. Lang, M.D.
Chairman of the Council

HLL:aw

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EXHIBIT 7



California Medical Association

221 Main Street, P.O. Box 7690, San Francisco, CA 94120-7690 (415) 541-0900

Reply to: 925 L Street, Suite 1150 - Sacramento 95814 - (916) 444-5532

August 29, 1989

The Honorable George Deukmejian
Governor, State of California
State Capitol
Sacramento, CA 95814

RE: SB 1211
CMA Position: SUPPORT
Peer Review

Dear Governor Deukmejian:

You received a letter dated August 25, 1989, from the California Association of Hospitals and Health Systems (CAHHS) opposing Senate Bill 1211. Much of this letter is misleading and simply makes inaccurate statements regarding the substance of SB 1211. Our response follows:

CAHHS alleges: "THE LEGISLATION, INCLUDING OPTING OUT, IS UNNECESSARY."

CAHHS claims the bill is unnecessary; that it is not necessary for California to opt-out of the federal Health Care Quality Improvement Act. They claim the federal Act is supplemental to, not preemptive of state law. However, the first court to address this issue (a state court in Indiana) held that the federal Act was preemptive. This is not a "theoretical legal debate" but a real concern of the physicians of California. If our better state immunities for peer reviewers and whistleblowers are preempted by the federal Act, peer review activity will be chilled in California. Furthermore, other states including Hawaii, Colorado, and Maryland have already opted out for the same reasons we have raised -- to protect their better immunities and preserve the state's right to design its own peer review system.

The hospitals cite the recent case of Pinhas v. Summit Health, Ltd. which they claim "makes clear that state action immunity ... will not apply to any system proposed by SB 1211." First, CMA does not claim SB 1211 establishes a state action immunity. Second, in no way does Pinhas address the system proposed by SB 1211. Rather, the Pinhas decision makes it even more important that peer review be conducted properly so as to protect both the process and those who participate in it. Briefly, Dr. Pinhas brought this lawsuit after he refused to enter into a "sham contract" with the hospital and its parent corporation and then was allegedly threatened with peer review proceedings. He alleged numerous problems with that hearing, including:

1. That the hearing officer had a "sweetheart deal" with the hospital's attorneys, resulting in a financial bias against him;

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2. That he was not given an opportunity to ask questions concerning the potential bias of the hearing officer or members of the hearing panel;
3. That he was improperly denied the assistance of an attorney, which denial extended to prohibit his attorney's assistance outside of the peer review hearing itself;
4. That the attorney for the hospital had ex parte communications with the hearing officer and members of the judicial review committee;
5. That Dr. Pinhas' witnesses, certain hospital employees, were intimidated by the hospital administrator and risk-management coordinator;
6. That neither the chief of staff nor the hospital administrator who signed the notice of charges were made available for cross-examination; and
7. There was a conspiracy between the lawyer for the hospital, the lawyer's law firm and the shorthand reporting service which resulted in a refusal by the shorthand reporter to produce transcripts on an expedited basis such as to enable Dr. Pinhas to review them in preparation for successive hearings.

The U.S. Court of Appeals held that Dr. Pinhas could proceed with his lawsuit against the hospital, the hospital's parent corporation, the medical staff and various individuals, including but not limited to, the hospital attorney.

This case provides yet more evidence of the importance of SB 1211. Had SB 1211 been the law when this peer review proceeding was undertaken, much of the activity which Dr. Pinhas points to in his complaint to create the impression of peer review abuse would never have occurred. Moreover, a fair system decreases both the risk of erroneous outcomes and the likelihood of suit.

Finally, CAHHS claims the sunset provision is not sufficient. CMA leaders met July 24 with Mr. Waxman and continue to work with him towards resolving the problems that the federal Act present for California. Mr. Waxman has agreed to seek amendments to the federal Act and has asked us to work with CAHHS. As the enclosed correspondence indicates, we have deferred to CAHHS to draft the amendments. As of yet, we have not received any amendments from CAHHS (see attachments).

CAHHS alleges: "THE LEGISLATION WILL UNNECESSARILY BURDEN THE PEER REVIEW PROCESS."

A. Increase in Litigation

The fact is that there is already a substantial amount of litigation in the peer review arena. Most of this litigation is the result of claims of unfair procedures. There is a lack of uniformity in procedures which encourages litigation. SB 1211 would establish minimum guidelines which would make for a more certain, defined process of peer review, encouraging information to be fully and fairly aired. Setting forth clear procedures and eliminating peer review abuse will reduce litigation, not increase it. As a district court judge in a recent antitrust case in another state cogently pointed out:



"The Court was shocked to discover that a physician's career can be --- and in this instance has been --- destroyed through patently improper proceedings. Peer review as it is presently practiced is fundamentally flawed. The purpose of monitoring physician's conduct is laudable and necessary; however, to accomplish that purpose, the review must be conducted by disinterested parties who have examined all of the pertinent evidence ... [T]he Court is convinced that unless fundamental reform is made in peer review, litigation will continue to proliferate."

B. Breakdown of Administrative Process

CAHHS argues that SB 1211 "burdens peer review with new, unnecessary formalities." Yet in one of their own publications ("News" - May 1989) they admit: "SB 1211 (Keene, D-Benica) would not substantially alter the CAHHS model medical staff bylaws..." (See attachment.) The statements by CAHHS regarding the discovery provisions of SB 1211 are simply not true. Their letter alleges that SB 1211 "would give a right of access to letters of reference, incident reports, proctoring reports, and committee minutes that are confidential today. It would allow demands for disclosure of reports about the morbidity, mortality, and problems of other physicians." SB 1211 does not change the confidential nature of peer review documents. In fact, SB 1211 specifically provides that the hearing officer may issue protective orders preserving the confidential nature of information. This authority is a newly created statutory provision to protect the confidentiality of documents which did not exist before SB 1211. Assemblyman McClintock was extremely concerned about the discovery provisions of SB 1211 and spent considerable time in the Assembly Judiciary Committee fashioning amendments to address the concerns of CAHHS.

Finally, CAHHS argues that "the new discovery right would hamper efforts to obtain information..." Thus, they seem to argue this provision is too broad and too narrow! They can't have it both ways!

C. Delay In 805 Reporting

SB 1211 will not delay reports to BMQA and, to the contrary, will increase the accuracy and completeness of these reports. What has delayed reports in the past are lengthy notices over what are fair procedures in the peer review process. SB 1211 establishes a uniform system. Moreover, the bill will reduce the likelihood that baseless reports will be filed, thus preserving BMQA's resources for true quality of care problems. Contrary to the allegations of CAHHS, patient health or safety should never be jeopardized by peer review -- summary suspension is always available where there is even a likelihood of danger to patients and any suspension over 14 days must be immediately reported to the BMQA.



CAHHS alleges: "A SHIFT IN THE BURDEN OF PROOF FAVORS PHYSICIANS' RIGHTS OVER THOSE OF PATIENTS."

This is a real red herring. SB 1211's burden of proof provisions are modeled after the CAHHS Model Medical Staff Bylaws! (see attached CAHHS bylaws) Is it CAHHS' position that their own bylaws favor physicians' rights over those patients? One would hardly think so. This is just another example of the inflammatory emotional but baseless arguments CAHHS has advanced.

CAHHS alleges: "CONCERNS REGARDING DIMINUTION OF THE HOSPITAL BOARD'S AUTHORITY PERSIST."

The Assembly Judiciary Committee spent nearly six hours hearing SB 1211. Much of the hearing centered upon discovery rights and the role of governing board. These amendments are not ambiguous. In fact, for the first time, the role of governing board in peer review is specifically set forth in statute. This was a major compromise for the CMA.

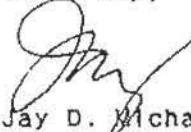
CONCLUSION

Although both the BMQA and the Governor encouraged a compromise be worked out, CAHHS has never had a position other than OPPOSE. Even in committee when they demanded amendments, they testify the amendments, if accepted, would not remove their opposition. Simply stated, they have stonewalled the issue. CMA has made every effort to address their concerns.

Their latest letter of opposition reveals how weak their arguments are. They have been reduced to misrepresenting the substance of the bill and making obscure comments that the bill is "ambiguous" and "will lead to litigation."

The fact is that the current system is resulting in a lot of litigation and the peer review system has been under attack for protecting the "good old boys". SB 1211 seeks to end abuse of the peer review system and restore the public's faith in the ability of profession to discipline itself.

Sincerely,



Jay D. Michael
Vice President
Division of Government Relations

cc: Members of the BMQA
Carol A. Lee, Esq.
CMA Executive Committee
CALB.21E

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EXHIBIT 8



LEGISLATIVE INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF ANNA MARIA BERECKZY-ANDERSON

I, Anna Maria Bereckzy-Anderson, declare:

I am an attorney licensed to practice in California, State Bar No. 227794, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to Assembly Bill 120 of 2009. Assembly Bill 120 was approved by the Legislature and was subsequently vetoed by Governor Arnold Schwarzenegger on October 26, 2009.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Assembly Bill 120 of 2009. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

ASSEMBLY BILL 120 OF 2009:

1. All versions of Assembly Bill 120 (Hayashi-2009);
2. Procedural history of Assembly Bill 120 from the 2009-10 *Assembly Final History*;
3. Analysis of Assembly Bill 120 prepared for the Assembly Committee on Business and Professions;
4. Material from the legislative bill file of the Assembly Committee on Business and Professions on Assembly Bill 120;
5. Material from the legislative bill file of the Assembly Committee on Judiciary on Assembly Bill 120;

6. Two Third Reading analyses of Assembly Bill 120 prepared by the Assembly Committee on Business and Professions;
7. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 120;
8. Two analyses of Assembly Bill 120 prepared for the Senate Committee on Business, Professions and Economic Development;
9. Material from the legislative bill file of the Senate Committee on Business, Professions and Economic Development on Assembly Bill 120;
10. Third Reading analysis of Assembly Bill 120 prepared by the Office of Senate Floor Analyses;
11. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Bill 120 as follows:
 - a. Previously Obtained Material,
 - b. Updated Collection of Material;
12. Material from the legislative bill file of the Republican Office of Policy on Assembly Bill 120;
13. Concurrence in Senate Amendments of Assembly Bill 120 prepared by the Assembly Committee on Business and Professions;
14. Governor's Veto analysis of Assembly Bill 120 prepared by the Assembly Committee on Business and Professions;
15. Post-enrollment documents regarding Assembly Bill 120;
16. Press Release #GAAS:598:09 issued by the Office of the Governor on October 11, 2009, along with attached veto message, to announce that Assembly Bill 120 had been vetoed;
17. Material from the legislative bill file of the Department of Finance on Assembly Bill 120;
18. Material from the legislative bill file of the State and Consumer Services Agency on Assembly Bill 120;
19. Report entitled "Comprehensive Study of Peer Review in California: Final Report," prepared by Lumetra, July 31, 2008;
20. Hearing materials entitled "Is Physician Peer Review A Broken System?" prepared by the Senate Committee on Business, Professions and Economic Development, March 9, 2009;

21. "2008 Peer Review Report," presented to the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business and Professions, October 1, 2008;
22. Report entitled "Hospitals Drop the Ball on Physician Oversight," prepared by Public Citizen, May 27, 2009.

+

Because it is not unusual for more materials to become publicly available after our earlier research of legislation, we re-gathered these file materials, denoting them as "updated collection of material."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 22nd day of October, 2018 at Woodland, California.



ANNA MARIA BERECZKY-ANDERSON

EXHIBIT 9

AMENDED IN ASSEMBLY MARCH 26, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 120

Introduced by Assembly Member Hayashi

January 15, 2009

An act to amend Sections ~~2234, 2761, and 3541~~ of, and to add Section ~~686~~ 809, 809.2, and 809.3 of, and to add Sections 809.04, 809.07, and 809.08 to, the Business and Professions Code, and to amend Section ~~123462~~ of the Health and Safety Code, relating to the healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 120, as amended, Hayashi. ~~Health care providers: reasonable disclosure: reproductive choices. Healing arts: peer review.~~

Existing law provides for the professional review of specified healing arts licentiates through a peer review process conducted by peer review bodies, as defined.

This bill would encourage a peer review body of a health care facility to obtain external peer review, as defined, for the evaluation or investigation of an applicant, privilege holder, or member of the medical staff of the facility in specified circumstances.

This bill would require a peer review body to respond to the request of another peer review body and produce the records requested concerning a licentiate under review. The bill would specify that the records produced pursuant to this provision are not subject to discovery, a subpoena, or a subpoena duces tecum, and are not admissible as evidence in a civil action.

Existing law requires the governing body of acute care hospitals to give great weight to the actions of peer review bodies and authorizes the governing body to direct the peer review body to investigate in

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specified instances. Where the peer review body fails to take action in response to that direction, existing law authorizes the governing body to take action against a licentiate.

This bill would prohibit a member of a medical or professional staff from being required to alter or surrender staff privileges, status, or membership solely due to the termination of a contract between that member and a health care facility. The bill would specify that a peer review body is entitled to review and make recommendations to the governing body of a health care facility regarding the quality implications of the selection, performance evaluation, and any change in the retention or replacement of licensees with whom the facility has a contract and would prohibit the governing body from unreasonably withholding approval of those recommendations, as specified.

Existing law provides various due process rights for licentiates who are the subject of a final proposed disciplinary action of a peer review body, including authorizing a licensee to request a hearing concerning that action. Under existing law, the hearing must be held before either an arbitrator mutually acceptable to the licensee and the peer review body or a panel of unbiased individuals, as specified. Existing law prohibits a hearing officer presiding at a hearing held before a panel from, among other things, gaining direct financial benefit from the outcome.

This bill would give the licensee the choice of having the hearing before a mutually acceptable arbitrator or a panel of unbiased individuals. The bill would require the hearing officer presiding at a hearing before a panel to meet certain requirements and to disclose all actual and potential conflicts. The bill would specify that the hearing officer is entitled to determine the procedure for presenting evidence and argument and would give the hearing officer authority to make all rulings pertaining to law, procedure, or the admissibility of evidence.

Existing law gives parties at the hearing certain rights, including the right to present and rebut evidence. Existing law requires the peer review body to adopt written provisions governing whether a licensee may be represented by an attorney.

This bill would give both parties the right to be represented by an attorney, except as specified.

~~Existing law provides that every person has the right to choose or refuse birth control and that every woman has the right to choose to bear a child or to obtain an abortion. Existing law provides for the licensure and regulation of physicians and surgeons by the Medical~~

~~Board of California, nurse practitioners by the Board of Registered Nursing, and physician assistants by the Physician Assistant Committee of the Medical Board of California. Existing law specifies conduct deemed unprofessional by physicians and surgeons, nurse practitioners, and physician assistants and provides for investigation and discipline of that conduct by the respective licensing boards.~~

~~This bill would make legislative findings and declarations regarding a patient’s right to health care services and information. This bill would provide that a patient is entitled to receive, and a physician and surgeon, nurse practitioner, and physician assistant are obligated to disclose, all information, including all available medical choices, reasonably necessary for the patient to give informed consent with respect to personal reproductive decisions. This bill would provide that failure to fulfill this duty constitutes unprofessional conduct, unless the licensee objects based on ethical, moral, or religious grounds, as specified.~~

~~Because this bill would specify additional requirements under the Medical Practice Act, and the Nursing Practice Act, the violation of which would be a crime, this bill would create a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: *yes-no*. State-mandated local program: *yes-no*.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 809 of the Business and Professions Code
- 2 is amended to read:
- 3 809. (a) The Legislature hereby finds and declares the
- 4 following:
- 5 (1) In 1986, Congress enacted the Health Care Quality
- 6 Improvement Act of 1986 (Chapter 117 (commencing with Section
- 7 11101) Title 42, United States Code), to encourage physicians to
- 8 engage in effective professional peer review, but giving each state
- 9 the opportunity to “opt-out” of some of the provisions of the federal
- 10 act.

1 (2) Because of deficiencies in the federal act and the possible
2 adverse interpretations by the courts of the federal act, it is
3 preferable for California to “opt-out” of the federal act and design
4 its own peer review system.

5 (3) Peer review, fairly conducted, is essential to preserving the
6 highest standards of medical practice.

7 (4) *It is essential that California’s peer review system generate*
8 *a culture of trust and safety so that health care practitioners will*
9 *participate robustly in the process by engaging in critically*
10 *important patient safety activities, such as reporting incidents they*
11 *believe to reflect substandard care or unprofessional conduct and*
12 *servicing on peer review, quality assurance, and other committees*
13 *necessary to protect patients.*

14 (5) *It is the policy of the state that evaluation, corrective action,*
15 *or other forms of peer review only be conducted for patient safety*
16 *and the improvement of quality patient care.*

17 ~~(4)~~

18 (6) Peer review that is not conducted fairly results in harm both
19 to patients and healing arts practitioners by *wrongfully depriving*
20 *patients of their ability to obtain care from their chosen*
21 *practitioner and by depriving practitioners of their ability to care*
22 *for their patients, thereby limiting much needed access to care.*

23 ~~(5)~~

24 (7) Peer review, fairly conducted, will aid the appropriate state
25 licensing boards in their responsibility to regulate and discipline
26 errant healing arts practitioners.

27 ~~(6)~~

28 (8) To protect the health and welfare of the people of California,
29 it is the policy of the State of California to exclude, through the
30 peer review mechanism as provided for by California law, those
31 healing arts practitioners who provide substandard care or who
32 engage in professional misconduct, regardless of the effect of that
33 exclusion on competition.

34 ~~(7)~~

35 (9) It is the intent of the Legislature that peer review of
36 professional health care services be done efficiently, on an ongoing
37 basis, and with an emphasis on early detection of potential quality
38 problems and resolutions through informal educational
39 interventions. *It is further the intent of the Legislature that peer*
40 *review bodies be actively involved in the measurement, assessment,*

1 *and improvement of quality and that there be appropriate oversight*
2 *by the peer review bodies to ensure the timely resolution of issues.*

3 ~~(8)~~

4 (10) Sections 809 to 809.8, inclusive, shall not affect the
5 respective responsibilities of the organized medical staff or the
6 governing body of an acute care hospital with respect to peer
7 review in the acute care hospital setting. It is the intent of the
8 Legislature that written provisions implementing Sections 809 to
9 809.8, inclusive, in the acute care hospital setting shall be included
10 in medical staff bylaws that shall be adopted by a vote of the
11 members of the organized medical staff and shall be subject to
12 governing body approval, which approval shall not be withheld
13 unreasonably.

14 ~~(9)~~

15 (11) (A) The Legislature thus finds and declares that the laws
16 of this state pertaining to the peer review of healing arts
17 practitioners shall apply in lieu of Chapter 117 (commencing with
18 Section 11101) of Title 42 of the United States Code, because the
19 laws of this state provide a more careful articulation of the
20 protections for both those undertaking peer review activity and
21 those subject to review, and better integrate public and private
22 systems of peer review. Therefore, California exercises its right
23 to opt out of specified provisions of the Health Care Quality
24 Improvement Act relating to professional review actions, pursuant
25 to Section 11111(c)(2)(B) of Title 42 of the United States Code.
26 This election shall not affect the availability of any immunity under
27 California law.

28 (B) The Legislature further declares that it is not the intent or
29 purposes of Sections 809 to 809.8, inclusive, to opt out of any
30 mandatory national data bank established pursuant to Subchapter
31 II (commencing with Section 11131) of Chapter 117 of Title 42
32 of the United States Code.

33 (b) For the purpose of this section and Sections 809.1 to 809.8,
34 inclusive, “healing arts practitioner” or “licentiate” means a
35 physician and surgeon, podiatrist, clinical psychologist, marriage
36 and family therapist, clinical social worker, or dentist; and “peer
37 review body” means a peer review body as specified in paragraph
38 (1) of subdivision (a) of Section 805, and includes any designee
39 of the peer review body.



1 *SEC. 2. Section 809.04 is added to the Business and Professions*
2 *Code, to read:*

3 809.04. (a) *It is the public policy of the state that licentiates*
4 *who may be providing substandard care be subject to the peer*
5 *review hearing and reporting process set forth in this article.*

6 (b) *To ensure that the peer review process is not circumvented,*
7 *a member of a medical or professional staff, by contract or*
8 *otherwise, shall not be required to alter or surrender staff*
9 *privileges, status, or membership solely due to the termination of*
10 *a contract between that member and a health care facility.*

11 (c) *The peer review body of a health care facility shall be*
12 *entitled to review and make recommendations to the governing*
13 *body of the facility regarding the quality implications of the*
14 *selection, performance evaluation, and any change in the retention*
15 *or replacement of licentiates with whom the health care facility*
16 *has a contract. The governing body shall not unreasonably*
17 *withhold approval of those recommendations.*

18 (d) *This section shall not impair a governing body's ability to*
19 *take action against a licensee pursuant to Section 809.05.*

20 *SEC. 3. Section 809.07 is added to the Business and Professions*
21 *Code, to read:*

22 809.07. (a) *It is the policy of the state that in certain*
23 *circumstances, external peer review may be necessary to promote*
24 *and protect patient care in order to eliminate perceived bias, obtain*
25 *needed medical expertise, or respond to other particular*
26 *circumstances.*

27 (b) *A peer review body is encouraged to obtain external peer*
28 *review for the evaluation or investigation of an applicant, privilege*
29 *holder, or member of the medical staff in the following*
30 *circumstances:*

31 (1) *Committee or department reviews that could affect an*
32 *individual's membership or privileges do not provide a sufficiently*
33 *clear basis for action or inaction.*

34 (2) *No current medical staff member can provide the necessary*
35 *expertise in the clinical procedure or area under review.*

36 (3) *To promote impartial peer review.*

37 (4) *Upon the reasonable request of the licensee.*

38 (c) *Under no circumstances may any organization external to*
39 *the peer review body that provides quality improvement activities*

1 perform any activities at the health care facility without the
2 concurrence of and input from the peer review body.

3 (d) For purposes of this section, the following definitions apply:

4 (1) "Peer review body" has the meaning provided in paragraph
5 (1) of subdivision (a) of Section 805.

6 (2) "External peer review" means peer review provided by an
7 external objective organization engaged in quality improvement
8 activities that has the ability to perform review by licentiates who
9 are not members of the peer review body.

10 SEC. 4. Section 809.08 is added to the Business and Professions
11 Code, to read:

12 809.08. (a) The Legislature hereby finds and declares that the
13 sharing of information between peer review bodies is essential to
14 protect the public health.

15 (b) A peer review body shall respond to the request of another
16 peer review body and produce the records requested concerning
17 a licentiate under review to the extent not otherwise prohibited by
18 state or federal law. The records produced pursuant to this section
19 shall not be subject to discovery, a subpoena, or a subpoena duces
20 tecum, and shall not be admissible as evidence in a civil action.
21 The peer review body responding to the request shall be entitled
22 to all other confidentiality protections and privileges otherwise
23 provided by law as to the information and records disclosed
24 pursuant to this section.

25 SEC. 5. Section 809.2 of the Business and Professions Code
26 is amended to read:

27 809.2. If a licentiate timely requests a hearing concerning a
28 final proposed action for which a report is required to be filed
29 under Section 805, the following shall apply:

30 (a) The hearing shall be held, ~~as determined by the peer review~~
31 ~~body, before a trier of fact, which shall be an~~ and the licentiate
32 shall have the choice of hearing by either of the following:

33 (1) An arbitrator or arbitrators selected by a process mutually
34 acceptable to the licentiate and the peer review ~~body, or before a~~
35 ~~body.~~

36 (2) A panel of unbiased individuals who shall gain no direct
37 financial benefit from the outcome, who have not acted as an
38 accuser, investigator, factfinder, or initial decisionmaker in the
39 same matter, and which shall include, where feasible, an individual
40 practicing the same specialty as the licentiate.



1 (b) (1) If a hearing officer is selected to preside at a hearing
2 held before a panel, the hearing officer shall gain no direct financial
3 benefit from the outcome, *shall disclose all actual and potential*
4 *conflicts of interest*, shall not act as a prosecuting officer or
5 advocate, and shall not be entitled to vote. *The hearing officer*
6 *shall also meet both of the following requirements:*

7 (A) *Be mutually acceptable to the licentiate and the peer review*
8 *body. If the licentiate and peer review body are unable to agree,*
9 *they shall utilize the services of the American Arbitration*
10 *Association or other mutually agreed upon dispute resolution*
11 *organization.*

12 (B) *Be an attorney licensed to practice law in the State of*
13 *California and qualified to preside over a quasi-judicial hearing.*
14 *Attorneys from a firm utilized by the hospital, the medical staff,*
15 *or the involved licentiate within the preceding two years shall not*
16 *be eligible.*

17 (2) *The hearing officer shall endeavor to ensure that all parties*
18 *maintain proper decorum and have a reasonable opportunity to*
19 *be heard and present all relevant oral and documentary evidence.*
20 *The hearing officer shall be entitled to determine the order of, or*
21 *procedure for, presenting evidence and argument during the*
22 *hearing and shall have the authority and discretion to make all*
23 *rulings on questions pertaining to matters of law, procedure, or*
24 *the admissibility of evidence. The hearing officer shall also take*
25 *all appropriate steps to ensure a timely resolution of the hearing,*
26 *but may not terminate the hearing process.*

27 (c) The licentiate shall have the right to a reasonable opportunity
28 to voir dire the panel members and any hearing officer, and the
29 right to challenge the impartiality of any member or hearing officer.
30 Challenges to the impartiality of any member or hearing officer
31 shall be ruled on by the presiding officer, who shall be the hearing
32 officer if one has been selected.

33 (d) The licentiate shall have the right to inspect and copy at the
34 licentiate's expense any documentary information relevant to the
35 charges which the peer review body has in its possession or under
36 its control, as soon as practicable after the receipt of the licentiate's
37 request for a hearing. The peer review body shall have the right
38 to inspect and copy at the peer review body's expense any
39 documentary information relevant to the charges which the
40 licentiate has in his or her possession or control as soon as

1 practicable after receipt of the peer review body's request. The
2 failure by either party to provide access to this information at least
3 30 days before the hearing shall constitute good cause for a
4 continuance. The right to inspect and copy by either party does
5 not extend to confidential information referring solely to
6 individually identifiable licentiates, other than the licentiate under
7 review. The arbitrator or presiding officer shall consider and rule
8 upon any request for access to information, and may impose any
9 safeguards the protection of the peer review process and justice
10 requires.

11 (e) When ruling upon requests for access to information and
12 determining the relevancy thereof, the arbitrator or presiding officer
13 shall, among other factors, consider the following:

14 (1) Whether the information sought may be introduced to
15 support or defend the charges.

16 (2) The exculpatory or inculpatory nature of the information
17 sought, if any.

18 (3) The burden imposed on the party in possession of the
19 information sought, if access is granted.

20 (4) Any previous requests for access to information submitted
21 or resisted by the parties to the same proceeding.

22 (f) At the request of either side, the parties shall exchange lists
23 of witnesses expected to testify and copies of all documents
24 expected to be introduced at the hearing. Failure to disclose the
25 identity of a witness or produce copies of all documents expected
26 to be produced at least 10 days before the commencement of the
27 hearing shall constitute good cause for a continuance.

28 (g) Continuances shall be granted upon agreement of the parties
29 or by the arbitrator or presiding officer on a showing of good cause.

30 (h) A hearing under this section shall be commenced within 60
31 days after receipt of the request for hearing, and the peer review
32 process shall be completed within a reasonable time, after a
33 licentiate receives notice of a final proposed action or an immediate
34 suspension or restriction of clinical privileges, unless the arbitrator
35 or presiding officer issues a written decision finding that the
36 licentiate failed to comply with subdivisions (d) and (e) in a timely
37 manner, or consented to the delay.

38 *SEC. 6. Section 809.3 of the Business and Professions Code*
39 *is amended to read:*

1 809.3. (a) During a hearing concerning a final proposed action
2 for which reporting is required to be filed under Section 805, both
3 parties shall have all of the following rights:
4 (1) To be provided with all of the information made available
5 to the trier of fact.
6 (2) To have a record made of the proceedings, copies of which
7 may be obtained by the licentiate upon payment of any reasonable
8 charges associated with the preparation thereof.
9 (3) To call, examine, and cross-examine witnesses.
10 (4) To present and rebut evidence determined by the arbitrator
11 or presiding officer to be relevant.
12 (5) To submit a written statement at the close of the hearing.
13 (6) *To be represented by an attorney of the party's choice at*
14 *the party's expense, subject to subdivision (c).*
15 (b) The burden of presenting evidence and proof during the
16 hearing shall be as follows:
17 (1) The peer review body shall have the initial duty to present
18 evidence which supports the charge or recommended action.
19 (2) Initial applicants shall bear the burden of persuading the
20 trier of fact by a preponderance of the evidence of their
21 qualifications by producing information which allows for adequate
22 evaluation and resolution of reasonable doubts concerning their
23 current qualifications for staff privileges, membership, or
24 employment. Initial applicants shall not be permitted to introduce
25 information not produced upon request of the peer review body
26 during the application process, unless the initial applicant
27 establishes that the information could not have been produced
28 previously in the exercise of reasonable diligence.
29 (3) Except as provided above for initial applicants, the peer
30 review body shall bear the burden of persuading the trier of fact
31 by a preponderance of the evidence that the action or
32 recommendation is reasonable and warranted.
33 ~~(c) The peer review body shall adopt written provisions~~
34 ~~governing whether a licentiate shall have the option of being~~
35 ~~represented by an attorney at the licentiate's expense. No peer~~
36 ~~review body shall be represented by an attorney if the licentiate is~~
37 ~~not so represented, except dental professional society peer review~~
38 ~~bodies may be represented by an attorney provided that the peer~~
39 ~~review body grants each licentiate the option of being represented~~

1 by an attorney at the licentiate's expense, even if the licentiate
2 declines to be represented by an attorney.

3 SECTION 1. Section 686 is added to the Business and
4 Professions Code, to read:

5 686. The Legislature hereby finds and declares that a
6 professional or vocational license represents a privilege to practice
7 in California. While the state respects the right of an individual
8 licensee to refuse to perform health care services to which he or
9 she objects on ethical, moral, or religious grounds, there are limits
10 on these rights when they conflict with the superior right of patients
11 to access health care services. Accordingly, the Legislature finds
12 and declares that persons licensed under this division should not
13 abandon a patient or otherwise withhold health care service or
14 information from a patient without providing reasonable
15 accommodation of the patient's right to access health care services
16 and information. For purposes of this section, "reasonable
17 accommodation" shall have the same meaning as applied to that
18 term pursuant to subdivision (f) of Section 12940 of the
19 Government Code.

20 SEC. 2. Section 2234 of the Business and Professions Code is
21 amended to read:

22 2234. The Division of Medical Quality shall take action against
23 any licensee who is charged with unprofessional conduct. In
24 addition to other provisions of this article, unprofessional conduct
25 includes, but is not limited to, the following:

26 (a) Violating or attempting to violate, directly or indirectly,
27 assisting in or abetting the violation of, or conspiring to violate
28 any provision of this chapter.

29 (b) Gross negligence.

30 (c) Repeated negligent acts. To be repeated, there must be two
31 or more negligent acts or omissions. An initial negligent act or
32 omission followed by a separate and distinct departure from the
33 applicable standard of care shall constitute repeated negligent acts.

34 (1) An initial negligent diagnosis followed by an act or omission
35 medically appropriate for that negligent diagnosis of the patient
36 shall constitute a single negligent act.

37 (2) When the standard of care requires a change in the diagnosis,
38 act, or omission that constitutes the negligent act described in
39 paragraph (1), including, but not limited to, a reevaluation of the
40 diagnosis or a change in treatment, and the licensee's conduct

1 ~~departs from the applicable standard of care, each departure~~
 2 ~~constitutes a separate and distinct breach of the standard of care.~~
 3 ~~(d) Incompetence.~~
 4 ~~(e) The commission of any act involving dishonesty or~~
 5 ~~corruption which is substantially related to the qualifications,~~
 6 ~~functions, or duties of a physician and surgeon.~~
 7 ~~(f) Any action or conduct which would have warranted the~~
 8 ~~denial of a certificate.~~
 9 ~~(g) The practice of medicine from this state into another state~~
 10 ~~or country without meeting the legal requirements of that state or~~
 11 ~~country for the practice of medicine. Section 2314 shall not apply~~
 12 ~~to this subdivision. This subdivision shall become operative upon~~
 13 ~~the implementation of the proposed registration program described~~
 14 ~~in Section 2052.5.~~
 15 ~~(h) Failure to fulfill the duty of reasonable disclosure to a patient~~
 16 ~~pursuant to subdivision (c) of Section 123462 of the Health and~~
 17 ~~Safety Code.~~
 18 ~~SEC. 3. Section 2761 of the Business and Professions Code is~~
 19 ~~amended to read:~~
 20 ~~2761. The board may take disciplinary action against a certified~~
 21 ~~or licensed nurse or deny an application for a certificate or license~~
 22 ~~for any of the following:~~
 23 ~~(a) Unprofessional conduct, which includes, but is not limited~~
 24 ~~to, the following:~~
 25 ~~(1) Incompetence, or gross negligence in carrying out usual~~
 26 ~~certified or licensed nursing functions.~~
 27 ~~(2) A conviction of practicing medicine without a license in~~
 28 ~~violation of Chapter 5 (commencing with Section 2000), in which~~
 29 ~~event the record of conviction shall be conclusive evidence thereof.~~
 30 ~~(3) The use of advertising relating to nursing which violates~~
 31 ~~Section 17500.~~
 32 ~~(4) Denial of licensure, revocation, suspension, restriction, or~~
 33 ~~any other disciplinary action against a health care professional~~
 34 ~~license or certificate by another state or territory of the United~~
 35 ~~States, by any other government agency, or by another California~~
 36 ~~health care professional licensing board. A certified copy of the~~
 37 ~~decision or judgment shall be conclusive evidence of that action.~~
 38 ~~(5) Failure of a nurse practitioner to fulfill the duty of reasonable~~
 39 ~~disclosure to a patient pursuant to subdivision (c) of Section 123462~~
 40 ~~of the Health and Safety Code.~~



- 1 ~~(b) Procuring his or her certificate or license by fraud,~~
2 ~~misrepresentation, or mistake.~~
- 3 ~~(c) Procuring, or aiding, or abetting, or attempting, or agreeing,~~
4 ~~or offering to procure or assist at a criminal abortion.~~
- 5 ~~(d) Violating or attempting to violate, directly or indirectly, or~~
6 ~~assisting in or abetting the violating of, or conspiring to violate~~
7 ~~any provision or term of this chapter or regulations adopted~~
8 ~~pursuant to it.~~
- 9 ~~(e) Making or giving any false statement or information in~~
10 ~~connection with the application for issuance of a certificate or~~
11 ~~license.~~
- 12 ~~(f) Conviction of a felony or of any offense substantially related~~
13 ~~to the qualifications, functions, and duties of a registered nurse,~~
14 ~~in which event the record of the conviction shall be conclusive~~
15 ~~evidence thereof.~~
- 16 ~~(g) Impersonating any applicant or acting as proxy for an~~
17 ~~applicant in any examination required under this chapter for the~~
18 ~~issuance of a certificate or license.~~
- 19 ~~(h) Impersonating another certified or licensed practitioner, or~~
20 ~~permitting or allowing another person to use his or her certificate~~
21 ~~or license for the purpose of nursing the sick or afflicted.~~
- 22 ~~(i) Aiding or assisting, or agreeing to aid or assist any person~~
23 ~~or persons, whether a licensed physician or not, in the performance~~
24 ~~of, or arranging for, a violation of any of the provisions of Article~~
25 ~~12 (commencing with Section 2220) of Chapter 5.~~
- 26 ~~(j) Holding oneself out to the public or to any practitioner of~~
27 ~~the healing arts as a "nurse practitioner" or as meeting the standards~~
28 ~~established by the board for a nurse practitioner unless meeting~~
29 ~~the standards established by the board pursuant to Article 8~~
30 ~~(commencing with Section 2834) or holding oneself out to the~~
31 ~~public as being certified by the board as a nurse anesthetist, nurse~~
32 ~~midwife, clinical nurse specialist, or public health nurse unless the~~
33 ~~person is at the time so certified by the board.~~
- 34 ~~(k) Except for good cause, the knowing failure to protect patients~~
35 ~~by failing to follow infection control guidelines of the board,~~
36 ~~thereby risking transmission of blood-borne infectious diseases~~
37 ~~from licensed or certified nurse to patient, from patient to patient,~~
38 ~~and from patient to licensed or certified nurse. In administering~~
39 ~~this subdivision, the board shall consider refereneing the standards,~~
40 ~~regulations, and guidelines of the State Department of Public~~



1 Health developed pursuant to Section 1250.11 of the Health and
 2 Safety Code and the standards, guidelines, and regulations pursuant
 3 to the California Occupational Safety and Health Act of 1973 (Part
 4 1 (commencing with Section 6300), Division 5, Labor Code) for
 5 preventing the transmission of HIV, hepatitis B, and other
 6 blood-borne pathogens in health care settings. As necessary, the
 7 board shall consult with the Medical Board of California, the Board
 8 of Podiatric Medicine, the Dental Board of California, and the
 9 Board of Vocational Nursing and Psychiatric Technicians, to
 10 encourage appropriate consistency in the implementation of this
 11 subdivision:

12 The board shall seek to ensure that licentiates and others
 13 regulated by the board are informed of the responsibility of
 14 licentiates to minimize the risk of transmission of blood-borne
 15 infectious diseases from health care provider to patient, from
 16 patient to patient, and from patient to health care provider, and of
 17 the most recent scientifically recognized safeguards for minimizing
 18 the risks of transmission:

19 SEC. 4. Section 3541 of the Business and Professions Code is
 20 amended to read:

21 3541. The following shall constitute unprofessional conduct
 22 and a violation of this chapter for any person licensed under this
 23 chapter:

24 (a) Violating, attempting to violate, directly or indirectly, or
 25 assisting in or abetting the violation of, or conspiring to violate
 26 any provision or term of this article, the Moscone-Knox
 27 Professional Corporation Act, or any regulations duly adopted
 28 under those laws:

29 (b) Failing to fulfill the duty of reasonable disclosure to a patient
 30 pursuant to subdivision (c) of Section 123462 of the Health and
 31 Safety Code:

32 SEC. 5. Section 123462 of the Health and Safety Code is
 33 amended to read:

34 123462. The Legislature finds and declares that every
 35 individual possesses a fundamental right of privacy with respect
 36 to personal reproductive decisions. Accordingly, it is the public
 37 policy of the State of California that:

38 (a) Every individual has the fundamental right to choose or
 39 refuse birth control:



1 ~~(b) Every woman has the fundamental right to choose to bear~~
2 ~~a child or to choose and to obtain an abortion, except as specifically~~
3 ~~limited by this article.~~

4 ~~(c) The state shall not deny or interfere with a woman's~~
5 ~~fundamental right to choose to bear a child or to choose to obtain~~
6 ~~an abortion, except as specifically permitted by this article.~~

7 ~~(d) Each person who seeks health care treatment, consultation,~~
8 ~~or information pertaining to the person's personal reproductive~~
9 ~~decisions from a physician and surgeon licensed pursuant to~~
10 ~~Chapter 5 (commencing with Section 2000) of Division 2 of the~~
11 ~~Business and Professions Code, a nurse practitioner licensed~~
12 ~~pursuant to Article 8 (commencing with Section 2834) of Chapter~~
13 ~~6 of Division 2 of the Business and Professions Code, or a~~
14 ~~physician assistant licensed pursuant to Chapter 7.7 (commencing~~
15 ~~with Section 3500) of Division 2 of the Business and Professions~~
16 ~~Code shall be entitled to receive all information reasonably~~
17 ~~necessary for the patient to give informed consent in determining~~
18 ~~whether to submit to medical treatment, including disclosure of~~
19 ~~all available medical choices.~~

20 ~~(e) Each physician and surgeon, nurse practitioner, and physician~~
21 ~~assistant described in subdivision (d) has an affirmative duty of~~
22 ~~reasonable disclosure to his or her patient of all available medical~~
23 ~~choices with respect to the patient's personal reproductive~~
24 ~~decisions. Failure of a physician and surgeon, nurse practitioner,~~
25 ~~or physician assistant to fulfill this duty shall constitute~~
26 ~~unprofessional conduct, unless all of the following circumstances~~
27 ~~exists:~~

28 ~~(1) The licensee refuses on ethical, moral, or religious grounds~~
29 ~~to provide disclosure pertaining to an available medical choice.~~

30 ~~(2) The licensee has previously notified his or her employer, in~~
31 ~~writing, of the medical choice or choices of which he or she objects~~
32 ~~to disclosing, and the licensee's employer can, without creating~~
33 ~~undue hardship, provide a reasonable accommodation of the~~
34 ~~licensee's objection. For purposes of this section, "reasonable~~
35 ~~accommodation" and "undue hardship" shall have the same~~
36 ~~meaning as applied to those terms, respectively, pursuant to~~
37 ~~subdivision (f) of Section 12940 of the Government Code.~~

38 ~~(3) The licensee's employer shall have established protocols~~
39 ~~that ensure that the patient has timely access to reasonable~~

1 disclosure of all medical choices pursuant to subdivision (d) despite
2 the licensee's refusal to disclose the specified medical choice.
3 ~~SEC. 6. No reimbursement is required by this act pursuant to~~
4 ~~Section 6 of Article XIII B of the California Constitution because~~
5 ~~the only costs that may be incurred by a local agency or school~~
6 ~~district will be incurred because this act creates a new crime or~~
7 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
8 ~~for a crime or infraction, within the meaning of Section 17556 of~~
9 ~~the Government Code, or changes the definition of a crime within~~
10 ~~the meaning of Section 6 of Article XIII B of the California~~
11 ~~Constitution.~~

O

EXHIBIT 10

AMENDED IN ASSEMBLY MAY 7, 2009
AMENDED IN ASSEMBLY APRIL 13, 2009
AMENDED IN ASSEMBLY MARCH 26, 2009
CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 120

Introduced by Assembly Member Hayashi
(Coauthor: Assembly Member Emmerson)

January 15, 2009

An act to amend Sections 809, 809.2, and 809.3 of, and to add Sections 809.04, 809.07, and 809.08 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 120, as amended, Hayashi. Healing arts: peer review.

Existing law provides for the professional review of specified healing arts licentiates through a peer review process conducted by peer review bodies, as defined.

This bill would encourage a peer review body of a health care facility to obtain external peer review, as defined, for the evaluation or investigation of an applicant, ~~privilege holder~~ *privilegeholder*, or member of the medical staff of the facility in specified circumstances.

This bill would require a peer review body to respond to the request of another peer review body and produce the records *reasonably* requested concerning a licentiate under review, *as specified*. The bill would specify that the records produced pursuant to this provision are not subject to discovery, as specified.

Existing law requires the governing body of acute care hospitals to give great weight to the actions of peer review bodies and authorizes

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the governing body to direct the peer review body to investigate in specified instances. Where the peer review body fails to take action in response to that direction, existing law authorizes the governing body to take action against a licentiate.

This bill would prohibit a member of a medical or professional staff from being required to alter or surrender staff privileges, status, or membership solely due to the termination of a contract between that member and a health care facility, *except as specified*. The bill would specify that a peer review body is entitled to review and make recommendations to the governing body of a health care facility regarding the quality implications of *considerations when the selection, performance evaluation, and or any change in the retention or replacement of licensees with whom the facility has a contract and contract occurs*. ~~The bill would prohibit~~ *require the governing body from unreasonably withholding approval of to give great weight to those recommendations, as specified.*

Existing law provides various due process rights for licentiates who are the subject of a final proposed disciplinary action of a peer review body, including authorizing a licensee to request a hearing concerning that action. Under existing law, the hearing must be held before either an arbitrator mutually acceptable to the licensee and the peer review body or a panel of unbiased individuals, as specified. Existing law prohibits a hearing officer presiding at a hearing held before a panel from, among other things, gaining direct financial benefit from the outcome.

~~This bill would give the licensee the choice of having the hearing before a mutually acceptable arbitrator or a panel of unbiased individuals. The bill would require the hearing officer presiding at a hearing before a panel to meet certain requirements and to disclose all actual and potential conflicts~~ *require the hearing officer to, among other things, be selected by a process that provides a reasonable opportunity for selection of a mutually acceptable hearing officer and would set forth a process that would satisfy that requirement.* The bill would specify that the hearing officer is entitled to determine the procedure for presenting evidence and argument and would give the hearing officer authority to make all rulings pertaining to law, procedure, or the admissibility of evidence. *The bill would authorize the hearing officer to recommend termination of the hearing in certain circumstances.*

Existing law gives parties at the hearing certain rights, including the right to present and rebut evidence. Existing law requires the peer review

body to adopt written provisions governing whether a licensee may be represented by an attorney *and prohibits a peer review body from being represented by an attorney where a licensee is not so represented, except as specified.*

This bill would give both parties the right to be represented by an attorney, ~~except as specified~~ *but would prohibit a peer review body from being represented if the licensee notifies the peer review body within a specified period of time that he or she has elected to not be represented, except as specified.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 809 of the Business and Professions Code
2 is amended to read:

3 809. (a) The Legislature hereby finds and declares the
4 following:

5 (1) In 1986, Congress enacted the Health Care Quality
6 Improvement Act of 1986 (Chapter 117 (commencing with Section
7 11101) ~~Title 42, of Title 42 of the United States Code~~), to encourage
8 physicians to engage in effective professional peer review, but
9 giving each state the opportunity to “opt-out” of some of the
10 provisions of the federal act.

11 (2) Because of deficiencies in the federal act and the possible
12 adverse interpretations by the courts of the federal act, it is
13 preferable for California to “opt-out” of the federal act and design
14 its own peer review system.

15 (3) Peer review, fairly conducted, is essential to preserving the
16 highest standards of medical practice.

17 (4) It is essential that California’s peer review system generate
18 a culture of trust and safety so that health care practitioners will
19 participate robustly in the process by engaging in critically
20 important patient safety activities, such as reporting incidents they
21 believe to reflect substandard care or unprofessional conduct and
22 serving on peer review, quality assurance, and other committees
23 necessary to protect patients.

24 ~~(5) It is the policy of the state that evaluation, corrective action,~~
25 ~~or other forms of peer review only be conducted for patient safety~~
26 ~~and the improvement of quality patient care:~~



1 ~~(6)~~

2 (5) Peer review that is not conducted fairly results in harm both
3 to patients and healing arts practitioners by wrongfully depriving
4 patients of their ability to obtain care from their chosen practitioner
5 and by depriving practitioners of their ability to care for their
6 patients, thereby limiting much needed access to care.

7 ~~(7)~~

8 (6) Peer review, fairly conducted, will aid the appropriate state
9 licensing boards in their responsibility to regulate and discipline
10 errant healing arts practitioners.

11 ~~(8)~~

12 (7) To protect the health and welfare of the people of California,
13 it is the policy of the State of California to exclude, through the
14 peer review mechanism as provided for by California law, those
15 healing arts practitioners who provide substandard care or who
16 engage in professional misconduct, regardless of the effect of that
17 exclusion on competition.

18 ~~(9)~~

19 (8) It is the intent of the Legislature that peer review of
20 professional health care services be done efficiently, on an ongoing
21 basis, and with an emphasis on early detection of potential quality
22 problems and resolutions through informal educational
23 interventions. It is further the intent of the Legislature that peer
24 review bodies be actively involved in the measurement, assessment,
25 and improvement of quality and that there be appropriate oversight
26 by the peer review bodies to ensure the timely resolution of issues.

27 ~~(10)~~

28 (9) Sections 809 to 809.8, inclusive, shall not affect the
29 respective responsibilities of the organized medical staff or the
30 governing body of an acute care hospital with respect to peer
31 review in the acute care hospital setting. It is the intent of the
32 Legislature that written provisions implementing Sections 809 to
33 809.8, inclusive, in the acute care hospital setting shall be included
34 in medical staff bylaws that shall be adopted by a vote of the
35 members of the organized medical staff and shall be subject to
36 governing body approval, which approval shall not be withheld
37 unreasonably.

38 ~~(11)~~

39 (10) (A) The Legislature thus finds and declares that the laws
40 of this state pertaining to the peer review of healing arts

1 practitioners shall apply ~~in lieu of~~ *in addition to* Chapter 117
 2 (commencing with Section 11101) of Title 42 of the United States
 3 Code, because the laws of this state provide a more careful
 4 articulation of the protections for both those undertaking peer
 5 review activity and those subject to review, and better integrate
 6 public and private systems of peer review. Therefore, California
 7 exercises its right to opt out of specified provisions of the Health
 8 Care Quality Improvement Act relating to professional review
 9 actions, pursuant to Section 11111(c)(2)(B) of Title 42 of the
 10 United States Code. This election shall not affect the availability
 11 of any immunity under California law.

12 (B) The Legislature further declares that it is not the intent or
 13 purposes of Sections 809 to 809.8, inclusive, to opt out of any
 14 mandatory national ~~data bank~~ *databank* established pursuant to
 15 Subchapter II (commencing with Section 11131) of Chapter 117
 16 of Title 42 of the United States Code.

17 (b) For the purpose of this section and Sections 809.1 to 809.8,
 18 inclusive, "healing arts practitioner" or "licentiate" means a
 19 physician and surgeon, podiatrist, clinical psychologist, marriage
 20 and family therapist, clinical social worker, or dentist; and "peer
 21 review body" means a peer review body as specified in paragraph
 22 (1) of subdivision (a) of Section 805, and includes any designee
 23 of the peer review body.

24 SEC. 2. Section 809.04 is added to the Business and Professions
 25 Code, to read:

26 809.04. (a) It is the public policy of the state that licentiates
 27 who may be providing substandard care be subject to the peer
 28 review hearing and reporting process set forth in this article.

29 (b) To ensure that the peer review process is not circumvented,
 30 a member of a medical or professional staff, by contract or
 31 otherwise, shall not be required to alter or surrender staff privileges,
 32 status, or membership solely due to the termination of a contract
 33 between that member and a health care facility. *However, with*
 34 *respect to services that may only be provided by members who*
 35 *have, or who are members of a medical group that has, a current*
 36 *exclusive contract for those services, termination of the contract,*
 37 *or termination of the member's employment by the medical group*
 38 *holding the contract, may result in the member's ineligibility to*
 39 *provide the services covered by the contract.*



1 (c) The peer review body of a health care facility shall be entitled
 2 to review and make recommendations to the governing body of
 3 the facility regarding ~~the quality implications of~~ *quality*
 4 *considerations whenever* the selection, performance evaluation,
 5 ~~and or~~ any change in the retention or replacement of licentiates
 6 with whom the health care facility has a contract *occurs*. The
 7 governing body shall ~~not unreasonably withhold approval of~~ *give*
 8 *great weight to* those recommendations.

9 (d) This section shall not impair a governing body's ability to
 10 take action against a licensee pursuant to Section 809.05.

11 SEC. 3. Section 809.07 is added to the Business and Professions
 12 Code, to read:

13 809.07. (a) It is the policy of the state that in certain *limited*
 14 circumstances, external peer review may be necessary to promote
 15 and protect patient care in order to eliminate perceived bias, obtain
 16 needed medical expertise, or respond to other particular
 17 circumstances.

18 (b) A peer review body is encouraged to obtain external peer
 19 review for the evaluation or investigation of an applicant, ~~privilege~~
 20 ~~holder~~ *privilegeholder*, or member of the medical staff in the
 21 following circumstances:

22 (1) Committee or department reviews that could affect a
 23 licensee's membership or privileges do not provide a sufficiently
 24 clear basis for action or inaction.

25 (2) No current medical staff member can provide the necessary
 26 expertise in the clinical procedure or area under review.

27 (3) To promote impartial peer review.

28 ~~(4) Upon the reasonable request of the licensee.~~

29 ~~(c) Under no circumstances may any organization external to~~
 30 ~~the peer review body that provides quality improvement activities~~
 31 ~~perform any activities at the health care facility without the~~
 32 ~~concurrence of and input from the peer review body.~~

33 (d)

34 (c) For purposes of this section, the following definitions apply:

35 (1) "Peer review body" has the meaning provided in paragraph
 36 (1) of subdivision (a) of Section 805.

37 (2) "External peer review" means peer review provided by ~~an~~
 38 ~~external objective organization engaged in quality improvement~~
 39 ~~activities that has the ability to perform review by licensees who~~
 40 ~~are not members of the peer review body.~~ *licensees who are not*

1 *members of the peer review body, who are impartial, and who*
2 *have the necessary expertise in the clinical procedure or area*
3 *under review.*

4 SEC. 4. Section 809.08 is added to the Business and Professions
5 Code, to read:

6 809.08. (a) The Legislature hereby finds and declares that the
7 sharing of information between peer review bodies is essential to
8 protect the public health.

9 (b) ~~Upon receipt of reasonable copying costs, a peer review~~
10 ~~body shall respond to the request of another peer review body and~~
11 ~~produce the records reasonably requested concerning a licentiate~~
12 ~~under review to the extent not otherwise prohibited by state or~~
13 ~~federal law. The records produced pursuant to this section shall~~
14 ~~not be subject to discovery to the extent provided in Section 1157~~
15 ~~of the Evidence Code. The the extent provided in Sections 1156.1~~
16 ~~and 1157 of the Evidence Code and any other applicable provisions~~
17 ~~of law. The peer review body responding to the request shall be~~
18 ~~entitled to all other confidentiality protections and privileges~~
19 ~~otherwise provided by law as to the information and records~~
20 ~~disclosed pursuant to this section.~~

21 SEC. 5. Section 809.2 of the Business and Professions Code
22 is amended to read:

23 809.2. If a licentiate timely requests a hearing concerning a
24 final proposed action for which a report is required to be filed
25 under Section 805, the following shall apply:

26 (a) ~~The hearing shall be held before a trier of fact, and the~~
27 ~~licentiate shall have the choice of hearing by either of the~~
28 ~~following:~~

29 (1) ~~An~~

30 (a) *The hearing shall be held, as determined by the peer review*
31 *body, before a trier of fact, which shall be an arbitrator or*
32 *arbitrators selected by a process mutually acceptable to the*
33 *licentiate and the peer review body.*

34 (2) ~~A body, or before a panel of unbiased individuals who shall~~
35 ~~gain no direct financial benefit from the outcome, who have not~~
36 ~~acted as an accuser, investigator, factfinder, or initial decisionmaker~~
37 ~~in the same matter, and which shall include, where feasible, an~~
38 ~~individual practicing the same specialty as the licentiate.~~

39 (b) (1) If a hearing officer is selected to preside at a hearing
40 held before a panel, the hearing officer shall gain no direct financial

1 benefit from the outcome, shall disclose all actual and potential
2 conflicts of interest *within the last five years reasonably known to*
3 *the hearing officer*, shall not act as a prosecuting officer or
4 advocate, and shall not be entitled to vote. The hearing officer
5 shall also meet both of the following requirements:

6 ~~(A) Be~~

7 ~~(A) (i) Be selected through a process that provides a reasonable~~
8 ~~opportunity for selection of a hearing officer who is mutually~~
9 ~~acceptable to the licentiate and the peer review body. If the~~
10 ~~licentiate and peer review body are unable to agree, they shall~~
11 ~~utilize the services of the American Arbitration Association or~~
12 ~~other mutually agreed upon dispute resolution organization. body.~~
13 *For purposes of this subparagraph, the following process shall be*
14 *deemed to constitute a reasonable opportunity for selection of a*
15 *mutually acceptable hearing officer:*

16 *(I) If the licentiate and the peer review body are unable to agree*
17 *on a hearing officer within 10 business days of the date the peer*
18 *review body receives the request for a hearing, they shall utilize*
19 *the services of a third party selection service, as set forth in the*
20 *applicable bylaws of the peer review body, or if none is specified,*
21 *that is determined by mutual agreement of the parties within 15*
22 *business days of the date the peer review body receives the request*
23 *for a hearing.*

24 *(II) If the licentiate and the peer review body are unable to*
25 *agree on a third party selection service within the period of time*
26 *required under subclause (I), each party shall have five business*
27 *days to provide a list of five names of individuals meeting the*
28 *requirements of subparagraph (B). After receiving this list, each*
29 *party shall have three business days to strike two names from the*
30 *list and to rank the remaining names in order of preference by*
31 *assigning the numeral one to the name with the strongest*
32 *preference. No name shall be left blank. The candidate with the*
33 *lowest combined score whose name has not been stricken by either*
34 *party shall be invited to serve as the hearing officer. In the event*
35 *of a tie, the matter shall be resolved by lot, which means the*
36 *drawing from the names of the two candidates with the lowest*
37 *combined score. If this candidate is not available to serve, the*
38 *other candidate with the lowest combined score shall be asked to*
39 *serve. If neither of these two candidates is able to serve, the peer*
40 *review body may select a hearing officer, who need not be one of*

1 *the individuals remaining on the lists created pursuant to this*
2 *clause.*

3 *(ii) The timeframe within which a hearing is required to occur*
4 *under subdivision (h) shall be tolled for purposes of complying*
5 *with this subparagraph provided that the parties are engaging in*
6 *a good faith attempt to achieve a mutually acceptable selection of*
7 *the hearing officer.*

8 (B) Be an attorney licensed to practice law in the State of
9 ~~California and qualified to preside over a quasi-judicial hearing.~~
10 ~~Attorneys California.~~ *Except as otherwise agreed by the parties,*
11 *attorneys from a firm utilized by the hospital, the medical staff,*
12 *or the involved licentiate within the preceding two years shall not*
13 *be eligible.*

14 (2) The hearing officer shall endeavor to ensure that all parties
15 maintain proper decorum and have a reasonable opportunity to be
16 heard and present all relevant oral and documentary evidence. The
17 hearing officer shall be entitled to determine the order of, or
18 procedure for, presenting evidence and argument during the hearing
19 and shall have the authority and discretion to make all rulings on
20 questions pertaining to matters of law, procedure, or the
21 admissibility of evidence. The hearing officer shall also take all
22 appropriate steps to ensure a timely resolution of the hearing, but
23 may not terminate the hearing process. *However, in the case of*
24 *flagrant noncompliance with the procedural rules governing the*
25 *hearing process or egregious interference with the orderly conduct*
26 *of the hearing, the hearing office may recommend that the hearing*
27 *panel terminate the hearing, provided that this activity is*
28 *authorized by the applicable bylaws of the peer review body.*

29 (c) The licentiate shall have the right to a reasonable opportunity
30 to voir dire the panel members and any hearing officer, and the
31 right to challenge the impartiality of any member or hearing officer.
32 Challenges to the impartiality of any member or hearing officer
33 shall be ruled on by the presiding officer, who shall be the hearing
34 officer if one has been selected.

35 (d) The licentiate shall have the right to inspect and copy at the
36 licentiate's expense any documentary information relevant to the
37 charges which the peer review body has in its possession or under
38 its control, as soon as practicable after the receipt of the licentiate's
39 request for a hearing. The peer review body shall have the right
40 to inspect and copy at the peer review body's expense any



1 documentary information relevant to the charges which the
2 licentiate has in his or her possession or control as soon as
3 practicable after receipt of the peer review body's request. The
4 failure by either party to provide access to this information at least
5 30 days before the hearing shall constitute good cause for a
6 continuance. The right to inspect and copy by either party does
7 not extend to confidential information referring solely to
8 individually identifiable licentiates, other than the licentiate under
9 review. The arbitrator or presiding officer shall consider and rule
10 upon any request for access to information, and may impose any
11 safeguards the protection of the peer review process and justice
12 requires.

13 (e) When ruling upon requests for access to information and
14 determining the relevancy thereof, the arbitrator or presiding officer
15 shall, among other factors, consider the following:

16 (1) Whether the information sought may be introduced to
17 support or defend the charges.

18 (2) The exculpatory or inculpatory nature of the information
19 sought, if any.

20 (3) The burden imposed on the party in possession of the
21 information sought, if access is granted.

22 (4) Any previous requests for access to information submitted
23 or resisted by the parties to the same proceeding.

24 (f) At the request of either side, the parties shall exchange lists
25 of witnesses expected to testify and copies of all documents
26 expected to be introduced at the hearing. Failure to disclose the
27 identity of a witness or produce copies of all documents expected
28 to be produced at least 10 days before the commencement of the
29 hearing shall constitute good cause for a continuance.

30 (g) Continuances shall be granted upon agreement of the parties
31 or by the arbitrator or presiding officer on a showing of good cause.

32 (h) A hearing under this section shall be commenced within 60
33 days after receipt of the request for hearing, and the peer review
34 process shall be completed within a reasonable time, after a
35 licentiate receives notice of a final proposed action or an immediate
36 suspension or restriction of clinical privileges, unless the arbitrator
37 or presiding officer issues a written decision finding that the
38 licentiate failed to comply with subdivisions (d) and (e) in a timely
39 manner, or consented to the delay.

1 SEC. 6. Section 809.3 of the Business and Professions Code
2 is amended to read:

3 809.3. (a) During a hearing concerning a final proposed action
4 for which reporting is required to be filed under Section 805, both
5 parties shall have all of the following rights:

6 (1) To be provided with all of the information made available
7 to the trier of fact.

8 (2) To have a record made of the proceedings, copies of which
9 may be obtained by the licentiate upon payment of any reasonable
10 charges associated with the preparation thereof.

11 (3) To call, examine, and cross-examine witnesses.

12 (4) To present and rebut evidence determined by the arbitrator
13 or presiding officer to be relevant.

14 (5) To submit a written statement at the close of the hearing.

15 (6) To be represented by an attorney of the party's choice at the
16 party's expense, subject to subdivision (c).

17 (b) The burden of presenting evidence and proof during the
18 hearing shall be as follows:

19 (1) The peer review body shall have the initial duty to present
20 evidence which supports the charge or recommended action.

21 (2) Initial applicants shall bear the burden of persuading the
22 trier of fact by a preponderance of the evidence of their
23 qualifications by producing information which allows for adequate
24 evaluation and resolution of reasonable doubts concerning their
25 current qualifications for staff privileges, membership, or
26 employment. Initial applicants shall not be permitted to introduce
27 information not produced upon request of the peer review body
28 during the application process, unless the initial applicant
29 establishes that the information could not have been produced
30 previously in the exercise of reasonable diligence.

31 (3) Except as provided above for initial applicants, the peer
32 review body shall bear the burden of persuading the trier of fact
33 by a preponderance of the evidence that the action or
34 recommendation is reasonable and warranted.

35 ~~(c) No peer review body shall be represented by an attorney if
36 the licentiate is not so represented, except dental professional~~

37 (c) (1) *Except as provided in paragraph (3), a peer review body
38 shall not be represented by an attorney if the licentiate notifies the
39 peer review body in writing no later than 15 days prior to the
40 hearing that he or she has elected to not be represented by an*



1 attorney. Except as otherwise agreed by the parties, this election
2 shall be binding.

3 (2) If the licentiate does not provide the written notice described
4 in paragraph (1) within the required timeframe, the peer review
5 body may be represented by an attorney even if the licentiate later
6 elects to not be represented by an attorney.

7 (3) Dental professional society peer review bodies may be
8 represented by an attorney, even if the licentiate declines to be
9 represented by an attorney.

O



EXHIBIT 11

AMENDED IN ASSEMBLY JUNE 1, 2009
AMENDED IN ASSEMBLY MAY 18, 2009
AMENDED IN ASSEMBLY MAY 7, 2009
AMENDED IN ASSEMBLY APRIL 13, 2009
AMENDED IN ASSEMBLY MARCH 26, 2009
CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 120

**Introduced by Assembly Member Hayashi
(Coauthor: Assembly Member Emmerson)**

January 15, 2009

An act to amend Sections 809, 809.2, and 809.3 of, and to add Sections 809.04, 809.07, and 809.08 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 120, as amended, Hayashi. Healing arts: peer review.

Existing law provides for the professional review of specified healing arts licentiates through a peer review process conducted by peer review bodies, as defined.

This bill would encourage a peer review body to obtain external peer review, as defined, for the evaluation or investigation of an applicant, privilegeholder, or member of the medical staff in specified circumstances.

This bill would require a peer review body to respond to the request of another peer review body and produce the records reasonably requested concerning a licentiate under review, as specified. The bill

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would specify that the records produced pursuant to this provision are not subject to discovery, as specified.

Existing law requires the governing body of acute care hospitals to give great weight to the actions of peer review bodies and authorizes the governing body to direct the peer review body to investigate in specified instances. Where the peer review body fails to take action in response to that direction, existing law authorizes the governing body to take action against a licentiate.

This bill would prohibit a member of a medical or professional staff from being required to alter or surrender staff privileges, status, or membership solely due to the termination of a contract between that member and a health care facility, except as specified. The bill would specify that a peer review body is entitled to review and make recommendations to the governing body of a health care facility regarding quality considerations when the selection, performance evaluation, or any change in the retention or replacement of licensees with whom the facility has a contract occurs. The bill would require the governing body to give great weight to those recommendations.

Existing law provides various due process rights for licentiates who are the subject of a final proposed disciplinary action of a peer review body, including authorizing a licensee to request a hearing concerning that action. Under existing law, the hearing must be held before either an arbitrator selected by a process mutually acceptable to the licensee and the peer review body or a panel of unbiased individuals, as specified. Existing law prohibits a hearing officer presiding at a hearing held before a panel from, among other things, gaining direct financial benefit from the outcome.

This bill would *additionally* require the hearing officer to, ~~among other things, be selected by a process that provides a reasonable opportunity for selection of a mutually acceptable hearing officer and would set forth a process that would satisfy that requirement~~ *be an attorney and to disclose all actual and potential conflicts of interest, as specified.* The bill would specify that the hearing officer is entitled to determine the procedure for presenting evidence and argument and would give the hearing officer authority to make all rulings pertaining to law, procedure, or the admissibility of evidence. The bill would authorize the hearing officer to recommend termination of the hearing in certain circumstances.

Existing law gives parties at the hearing certain rights, including the right to present and rebut evidence. Existing law requires the peer review

body to adopt written provisions governing whether a licensee may be represented by an attorney and prohibits a peer review body from being represented by an attorney where a licensee is not so represented, except as specified.

This bill would give both parties the right to be represented by an attorney but would prohibit a peer review body from being represented if the licensee notifies the peer review body within a specified period of time that he or she has elected to not be represented, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 809 of the Business and Professions Code
2 is amended to read:

3 809. (a) The Legislature hereby finds and declares the
4 following:

5 (1) In 1986, Congress enacted the Health Care Quality
6 Improvement Act of 1986 (Chapter 117 (commencing with Section
7 11101) of Title 42 of the United States Code), to encourage
8 physicians to engage in effective professional peer review, but
9 giving each state the opportunity to “opt-out” of some of the
10 provisions of the federal act.

11 (2) Because of deficiencies in the federal act and the possible
12 adverse interpretations by the courts of the federal act, it is
13 preferable for California to “opt-out” of the federal act and design
14 its own peer review system.

15 (3) Peer review, fairly conducted, is essential to preserving the
16 highest standards of medical practice.

17 (4) It is essential that California’s peer review system generate
18 a culture of trust and safety so that health care practitioners will
19 participate robustly in the process by engaging in critically
20 important patient safety activities, such as reporting incidents they
21 believe to reflect substandard care or unprofessional conduct and
22 serving on peer review, quality assurance, and other committees
23 necessary to protect patients.

24 (5) Peer review that is not conducted fairly results in harm both
25 to patients and healing arts practitioners by wrongfully depriving
26 patients of their ability to obtain care from their chosen practitioner



1 and by depriving practitioners of their ability to care for their
2 patients, thereby limiting much needed access to care.

3 (6) Peer review, fairly conducted, will aid the appropriate state
4 licensing boards in their responsibility to regulate and discipline
5 errant healing arts practitioners.

6 (7) To protect the health and welfare of the people of California,
7 it is the policy of the State of California to exclude, through the
8 peer review mechanism as provided for by California law, those
9 healing arts practitioners who provide substandard care or who
10 engage in professional misconduct, regardless of the effect of that
11 exclusion on competition.

12 (8) It is the intent of the Legislature that peer review of
13 professional health care services be done efficiently, on an ongoing
14 basis, and with an emphasis on early detection of potential quality
15 problems and resolutions through informal educational
16 interventions. It is further the intent of the Legislature that peer
17 review bodies be actively involved in the measurement, assessment,
18 and improvement of quality and that there be appropriate oversight
19 by the peer review bodies to ensure the timely resolution of issues.

20 (9) Sections 809 to 809.8, inclusive, shall not affect the
21 respective responsibilities of the organized medical staff or the
22 governing body of an acute care hospital with respect to peer
23 review in the acute care hospital setting. It is the intent of the
24 Legislature that written provisions implementing Sections 809 to
25 809.8, inclusive, in the acute care hospital setting shall be included
26 in medical staff bylaws that shall be adopted by a vote of the
27 members of the organized medical staff and shall be subject to
28 governing body approval, which approval shall not be withheld
29 unreasonably.

30 (10) (A) The Legislature thus finds and declares that the laws
31 of this state pertaining to the peer review of healing arts
32 practitioners shall apply in addition to Chapter 117 (commencing
33 with Section 11101) of Title 42 of the United States Code, because
34 the laws of this state provide a more careful articulation of the
35 protections for both those undertaking peer review activity and
36 those subject to review, and better integrate public and private
37 systems of peer review. Therefore, California exercises its right
38 to opt out of specified provisions of the Health Care Quality
39 Improvement Act relating to professional review actions, pursuant
40 to Section 11111(c)(2)(B) of Title 42 of the United States Code.



1 This election shall not affect the availability of any immunity under
2 California law.

3 (B) The Legislature further declares that it is not the intent or
4 purposes of Sections 809 to 809.8, inclusive, to opt out of any
5 mandatory national databank established pursuant to Subchapter
6 II (commencing with Section 11131) of Chapter 117 of Title 42
7 of the United States Code.

8 (b) For the purpose of this section and Sections 809.1 to 809.8,
9 inclusive, “healing arts practitioner” or “licentiate” means a
10 physician and surgeon, podiatrist, clinical psychologist, marriage
11 and family therapist, clinical social worker, or dentist; and “peer
12 review body” means a peer review body as specified in paragraph
13 (1) of subdivision (a) of Section 805, and includes any designee
14 of the peer review body.

15 SEC. 2. Section 809.04 is added to the Business and Professions
16 Code, to read:

17 809.04. (a) It is the public policy of the state that licentiates
18 who may be providing substandard care be subject to the peer
19 review hearing and reporting process set forth in this article.

20 (b) To ensure that the peer review process is not circumvented,
21 a member of a medical or professional staff, by contract or
22 otherwise, shall not be required to alter or surrender staff privileges,
23 status, or membership solely due to the termination of a contract
24 between that member and a health care facility. However, with
25 respect to services that may only be provided by members who
26 have, or who are members of a medical group that has, a current
27 exclusive contract for those identified services, termination of the
28 contract, or termination of the member’s employment by the
29 medical group holding the contract, may result in the member’s
30 ineligibility to provide the services covered by the contract.

31 (c) The peer review body of a health care facility shall be entitled
32 to review and make recommendations to the governing body of
33 the facility regarding quality considerations whenever the selection,
34 performance evaluation, or any change in the retention or
35 replacement of licentiates with whom the health care facility has
36 a contract occurs. The governing body shall give great weight to
37 those recommendations.

38 (d) This section shall not impair a governing body’s ability to
39 take action against a licentiate pursuant to Section 809.05.



1 SEC. 3. Section 809.07 is added to the Business and Professions
2 Code, to read:

3 809.07. (a) It is the policy of the state that in certain limited
4 circumstances, external peer review may be necessary to promote
5 and protect patient care in order to eliminate perceived bias, obtain
6 needed medical expertise, or respond to other particular
7 circumstances.

8 (b) A peer review body is encouraged to obtain external peer
9 review for the evaluation or investigation of an applicant,
10 ~~privilegeholder~~ *privilegeholder*, or member of the medical staff in
11 the following circumstances:

12 (1) Committee or department reviews that could affect a
13 licentiate's membership or privileges do not provide a sufficiently
14 clear basis for action or inaction.

15 (2) No current medical staff member can provide the necessary
16 expertise in the clinical procedure or area under review.

17 (3) To promote impartial peer review.

18 (c) For purposes of this section, the following definitions apply:

19 (1) "Peer review body" has the meaning provided in paragraph
20 (1) of subdivision (a) of Section 805.

21 (2) "External peer review" means peer review provided by
22 licentiates who are not members of the peer review body, who are
23 impartial, and who have the necessary expertise in the clinical
24 procedure or area under review.

25 SEC. 4. Section 809.08 is added to the Business and Professions
26 Code, to read:

27 809.08. (a) The Legislature hereby finds and declares that the
28 sharing of information between peer review bodies is essential to
29 protect the public health.

30 (b) Upon receipt of reasonable copying costs, a peer review
31 body shall respond to the request of another peer review body and
32 produce the records reasonably requested concerning a licentiate
33 under review to the extent not otherwise prohibited by state or
34 federal law. The records produced pursuant to this section shall
35 not be subject to discovery to the extent provided in Sections
36 1156.1 and 1157 of the Evidence Code and any other applicable
37 provisions of law. The peer review body responding to the request
38 shall be entitled to all confidentiality protections and privileges
39 provided by law as to the information and records disclosed
40 pursuant to this section.



1 SEC. 5. Section 809.2 of the Business and Professions Code
2 is amended to read:

3 809.2. If a licentiate timely requests a hearing concerning a
4 final proposed action for which a report is required to be filed
5 under Section 805, the following shall apply:

6 (a) The hearing shall be held, as determined by the peer review
7 body, before a trier of fact, which shall be an arbitrator or
8 arbitrators selected by a process mutually acceptable to the
9 licentiate and the peer-review

10 ~~body review body~~, or before a panel of unbiased individuals who
11 shall gain no direct financial benefit from the outcome, who have
12 not acted as an accuser, investigator, factfinder, or initial
13 decisionmaker in the same matter, and which shall include, where
14 feasible, an individual practicing the same specialty as the
15 licentiate.

16 (b) (1) If a hearing officer is selected to preside at a hearing
17 held before a panel, the hearing officer shall gain no direct financial
18 benefit from the outcome, shall disclose all actual and potential
19 conflicts of interest within the last five years reasonably known to
20 the hearing officer, shall not act as a prosecuting officer or
21 advocate, and shall not be entitled to vote. The hearing officer
22 shall also meet both of the following requirements:

23 ~~(A) (i) Be selected through a process that provides a reasonable
24 opportunity for selection of a hearing officer who is mutually
25 acceptable to the licentiate and the peer review body. Without
26 limiting the foregoing, for purposes of this subparagraph, the
27 following process shall be deemed to constitute a reasonable
28 opportunity for selection of a mutually acceptable hearing officer:~~

29 ~~(I) If the licentiate and the peer review body are unable to agree
30 on a hearing officer within 10 business days of the date the peer
31 review body receives the request for a hearing, they shall utilize
32 the services of a third party selection service, as set forth in the
33 healthcare facility's medical staff bylaws, or if none is specified,
34 that is determined by mutual agreement of the parties within 15
35 business days of the date the peer review body receives the request
36 for a hearing.~~

37 ~~(II) If the licentiate and the peer review body are unable to agree
38 on a third party selection service within the period of time required
39 under subclause (I), each party shall have five business days to
40 provide a list of five names of individuals meeting the requirements~~

1 of subparagraph (B). After receiving this list, each party shall have
2 three business days to strike up to two names from the list and to
3 rank the remaining names in order of preference by assigning the
4 numeral one to the name with the strongest preference. No name
5 shall be left blank. The candidate with the lowest combined score
6 whose name has not been stricken by either party shall be invited
7 to serve as the hearing officer. In the event of a tie, the matter shall
8 be resolved by lot, which means the drawing from the names of
9 the two candidates with the lowest combined score. If this
10 candidate is not available to serve, the other candidate with the
11 lowest combined score shall be asked to serve. If neither of these
12 two candidates is able to serve, the peer review body may select
13 a hearing officer, who need not be one of the individuals remaining
14 on the lists created pursuant to this clause.

15 (ii) The timeframe within which a hearing is to be commenced
16 under subdivision (h) shall be tolled for purposes of complying
17 with this subparagraph provided that the parties are engaging in a
18 good faith attempt to achieve a mutually acceptable selection of
19 the hearing officer.

20 (B) ~~Be~~ *be* an attorney licensed to practice law in the State of
21 California. Except as otherwise agreed by the parties, attorneys
22 from a firm utilized by the hospital, the medical staff, or the
23 involved licentiate within the preceding two years shall not be
24 eligible.

25 (2) The hearing officer shall endeavor to ensure that all parties
26 maintain proper decorum and have a reasonable opportunity to be
27 heard and present all relevant oral and documentary evidence. The
28 hearing officer shall be entitled to determine the order of, or
29 procedure for, presenting evidence and argument during the hearing
30 and shall have the authority and discretion to make all rulings on
31 questions pertaining to matters of law, procedure, or the
32 admissibility of evidence. The hearing officer shall also take all
33 appropriate steps to ensure a timely resolution of the hearing, but
34 may not terminate the hearing process. However, in the case of
35 flagrant noncompliance with the procedural rules governing the
36 hearing process or egregious interference with the orderly conduct
37 of the hearing, the hearing officer may recommend that the hearing
38 panel terminate the hearing, provided that this activity is authorized
39 by the applicable bylaws of the medical staff.

1 (c) The licentiate shall have the right to a reasonable opportunity
2 to voir dire the panel members and any hearing officer, and the
3 right to challenge the impartiality of any member or hearing officer.
4 Challenges to the impartiality of any member or hearing officer
5 shall be ruled on by the presiding officer, who shall be the hearing
6 officer if one has been selected.

7 (d) The licentiate shall have the right to inspect and copy at the
8 licentiate's expense any documentary information relevant to the
9 charges which the peer review body has in its possession or under
10 its control, as soon as practicable after the receipt of the licentiate's
11 request for a hearing. The peer review body shall have the right
12 to inspect and copy at the peer review body's expense any
13 documentary information relevant to the charges which the
14 licentiate has in his or her possession or control as soon as
15 practicable after receipt of the peer review body's request. The
16 failure by either party to provide access to this information at least
17 30 days before the hearing shall constitute good cause for a
18 continuance. The right to inspect and copy by either party does
19 not extend to confidential information referring solely to
20 individually identifiable licentiates, other than the licentiate under
21 review. The arbitrator or presiding officer shall consider and rule
22 upon any request for access to information, and may impose any
23 safeguards the protection of the peer review process and justice
24 requires.

25 (e) When ruling upon requests for access to information and
26 determining the relevancy thereof, the arbitrator or presiding officer
27 shall, among other factors, consider the following:

28 (1) Whether the information sought may be introduced to
29 support or defend the charges.

30 (2) The exculpatory or inculpatory nature of the information
31 sought, if any.

32 (3) The burden imposed on the party in possession of the
33 information sought, if access is granted.

34 (4) Any previous requests for access to information submitted
35 or resisted by the parties to the same proceeding.

36 (f) At the request of either side, the parties shall exchange lists
37 of witnesses expected to testify and copies of all documents
38 expected to be introduced at the hearing. Failure to disclose the
39 identity of a witness or produce copies of all documents expected



1 to be produced at least 10 days before the commencement of the
2 hearing shall constitute good cause for a continuance.

3 (g) Continuances shall be granted upon agreement of the parties
4 or by the arbitrator or presiding officer on a showing of good cause.

5 (h) A hearing under this section shall be commenced within 60
6 days after receipt of the request for hearing, and the peer review
7 process shall be completed within a reasonable time, after a
8 licentiate receives notice of a final proposed action or an immediate
9 suspension or restriction of clinical privileges, unless the arbitrator
10 or presiding officer issues a written decision finding that the
11 licentiate failed to comply with subdivisions (d) and (e) in a timely
12 manner, or consented to the delay.

13 SEC. 6. Section 809.3 of the Business and Professions Code
14 is amended to read:

15 809.3. (a) During a hearing concerning a final proposed action
16 for which reporting is required to be filed under Section 805, both
17 parties shall have all of the following rights:

18 (1) To be provided with all of the information made available
19 to the trier of fact.

20 (2) To have a record made of the proceedings, copies of which
21 may be obtained by the licentiate upon payment of any reasonable
22 charges associated with the preparation thereof.

23 (3) To call, examine, and cross-examine witnesses.

24 (4) To present and rebut evidence determined by the arbitrator
25 or presiding officer to be relevant.

26 (5) To submit a written statement at the close of the hearing.

27 (6) To be represented by an attorney of the party's choice at the
28 party's expense, subject to subdivision (c).

29 (b) The burden of presenting evidence and proof during the
30 hearing shall be as follows:

31 (1) The peer review body shall have the initial duty to present
32 evidence which supports the charge or recommended action.

33 (2) Initial applicants shall bear the burden of persuading the
34 trier of fact by a preponderance of the evidence of their
35 qualifications by producing information which allows for adequate
36 evaluation and resolution of reasonable doubts concerning their
37 current qualifications for staff privileges, membership, or
38 employment. Initial applicants shall not be permitted to introduce
39 information not produced upon request of the peer review body
40 during the application process, unless the initial applicant



1 establishes that the information could not have been produced
2 previously in the exercise of reasonable diligence.

3 (3) Except as provided above for initial applicants, the peer
4 review body shall bear the burden of persuading the trier of fact
5 by a preponderance of the evidence that the action or
6 recommendation is reasonable and warranted.

7 (c) (1) Except as provided in paragraph (3), a peer review body
8 shall not be represented by an attorney if the licentiate notifies the
9 peer review body in writing no later than 15 days prior to the
10 hearing that he or she has elected to not be represented by an
11 attorney. Except as otherwise agreed by the parties, this election
12 shall be binding.

13 (2) If the licentiate does not provide the written notice described
14 in paragraph (1) within the required timeframe, the peer review
15 body may be represented by an attorney even if the licentiate later
16 elects to not be represented by an attorney.

17 (3) Dental professional society peer review bodies may be
18 represented by an attorney, even if the licentiate declines to be
19 represented by an attorney.

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EXHIBIT 12

AMENDED IN SENATE JUNE 22, 2009
AMENDED IN ASSEMBLY JUNE 1, 2009
AMENDED IN ASSEMBLY MAY 18, 2009
AMENDED IN ASSEMBLY MAY 7, 2009
AMENDED IN ASSEMBLY APRIL 13, 2009
AMENDED IN ASSEMBLY MARCH 26, 2009
CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 120

**Introduced by Assembly Member Hayashi
(Coauthor: Assembly Member Emmerson)**

January 15, 2009

An act to amend Sections 809, 809.2, and 809.3 of, and to add Sections 809.04, 809.07, and 809.08 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 120, as amended, Hayashi. Healing arts: peer review.

Existing law provides for the professional review of specified healing arts licentiates through a peer review process conducted by peer review bodies, as defined.

This bill would encourage a peer review body to obtain external peer review, as defined, for the evaluation or investigation of an applicant, privilegeholder, or member of the medical staff in specified circumstances.

This bill would require a peer review body to respond to the request of another peer review body and produce the records reasonably

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requested concerning a licentiate under review, as specified. The bill would specify that the records produced pursuant to this provision are not subject to discovery, as specified, *and may only be used for peer review purposes.*

Existing law requires the governing body of acute care hospitals to give great weight to the actions of peer review bodies and authorizes the governing body to direct the peer review body to investigate in specified instances. Where the peer review body fails to take action in response to that direction, existing law authorizes the governing body to take action against a licentiate.

This bill would prohibit a member of a medical or professional staff from being required to alter or surrender staff privileges, status, or membership solely due to the termination of a contract between that member and a health care facility, except as specified. The bill would specify that a peer review body is entitled to review and make *timely* recommendations to the governing body of a health care facility, *and its designee, if applicable,* regarding quality considerations *relating to clinical services* when the selection, performance evaluation, or any change in the retention or replacement of licensees with whom the facility has a contract occurs. The bill would require the governing body to give great weight to those recommendations.

Existing law provides various due process rights for licentiates who are the subject of a final proposed disciplinary action of a peer review body, including authorizing a licensee to request a hearing concerning that action. Under existing law, the hearing must be held before either an arbitrator selected by a process mutually acceptable to the licensee and the peer review body or a panel of unbiased individuals, as specified. Existing law prohibits a hearing officer presiding at a hearing held before a panel from, among other things, gaining direct financial benefit from the outcome.

This bill would additionally require the hearing officer to be an attorney *licensed in California, except as specified,* and to disclose all actual and potential conflicts of interest, as specified. The bill would specify that the hearing officer is entitled to determine the procedure for presenting evidence and argument and would give the hearing officer authority to make all rulings pertaining to law, procedure, or the admissibility of evidence. The bill would authorize the hearing officer to recommend termination of the hearing in certain circumstances.

Existing law gives parties at the hearing certain rights, including the right to present and rebut evidence. Existing law requires the peer review

body to adopt written provisions governing whether a licensee may be represented by an attorney and prohibits a peer review body from being represented by an attorney where a licensee is not so represented, except as specified.

This bill would give both parties the right to be represented by an attorney but would prohibit a peer review body from being represented if the licensee notifies the peer review body within a specified period of time that he or she has elected to not be represented, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 809 of the Business and Professions Code
2 is amended to read:

3 809. (a) The Legislature hereby finds and declares the
4 following:

5 (1) In 1986, Congress enacted the Health Care Quality
6 Improvement Act of 1986 (Chapter 117 (commencing with Section
7 11101) of Title 42 of the United States Code), to encourage
8 physicians to engage in effective professional peer review, but
9 giving each state the opportunity to “opt-out” of some of the
10 provisions of the federal act.

11 (2) Because of deficiencies in the federal act and the possible
12 adverse interpretations by the courts of the federal act, it is
13 preferable for California to “opt-out” of the federal act and design
14 its own peer review system.

15 (3) Peer review, fairly conducted, is essential to preserving the
16 highest standards of medical practice.

17 (4) It is essential that California’s peer review system generate
18 a culture of trust and safety so that health care practitioners will
19 participate robustly in the process by engaging in critically
20 important patient safety activities, such as reporting incidents they
21 believe to reflect substandard care or unprofessional conduct and
22 serving on peer review, quality assurance, and other committees
23 necessary to protect patients.

24 (5) Peer review that is not conducted fairly results in harm both
25 to patients and healing arts practitioners by wrongfully depriving
26 patients of their ability to obtain care from their chosen practitioner

1 and by depriving practitioners of their ability to care for their
2 patients, thereby limiting much needed access to care.

3 (6) Peer review, fairly conducted, will aid the appropriate state
4 licensing boards in their responsibility to regulate and discipline
5 errant healing arts practitioners.

6 (7) To protect the health and welfare of the people of California,
7 it is the policy of the State of California to exclude, through the
8 peer review mechanism as provided for by California law, those
9 healing arts practitioners who provide substandard care or who
10 engage in professional misconduct, regardless of the effect of that
11 exclusion on competition.

12 (8) It is the intent of the Legislature that peer review of
13 professional health care services be done efficiently, on an ongoing
14 basis, and with an emphasis on early detection of potential quality
15 problems and resolutions through informal educational
16 interventions. It is further the intent of the Legislature that peer
17 review bodies be actively involved in the measurement, assessment,
18 and improvement of quality and that there be appropriate oversight
19 by the peer review bodies to ensure the timely resolution of issues.

20 (9) Sections 809 to 809.8, inclusive, shall not affect the
21 respective responsibilities of the organized medical staff or the
22 governing body of an acute care hospital with respect to peer
23 review in the acute care hospital setting. It is the intent of the
24 Legislature that written provisions implementing Sections 809 to
25 809.8, inclusive, in the acute care hospital setting shall be included
26 in medical staff bylaws that shall be adopted by a vote of the
27 members of the organized medical staff and shall be subject to
28 governing body approval, which approval shall not be withheld
29 unreasonably.

30 (10) (A) The Legislature thus finds and declares that the laws
31 of this state pertaining to the peer review of healing arts
32 practitioners shall apply in addition to Chapter 117 (commencing
33 with Section 11101) of Title 42 of the United States Code, because
34 the laws of this state provide a more careful articulation of the
35 protections for both those undertaking peer review activity and
36 those subject to review, and better integrate public and private
37 systems of peer review. Therefore, California exercises its right
38 to opt out of specified provisions of the Health Care Quality
39 Improvement Act relating to professional review actions, pursuant
40 to Section 11111(c)(2)(B) of Title 42 of the United States Code.



1 This election shall not affect the availability of any immunity under
2 California law.

3 (B) The Legislature further declares that it is not the intent or
4 purposes of Sections 809 to 809.8, inclusive, to opt out of any
5 mandatory national databank established pursuant to Subchapter
6 II (commencing with Section 11131) of Chapter 117 of Title 42
7 of the United States Code.

8 (b) For the purpose of this section and Sections 809.1 to 809.8,
9 inclusive, “healing arts practitioner” or “licentiate” means a
10 physician and surgeon, podiatrist, clinical psychologist, marriage
11 and family therapist, clinical social worker, or dentist; and “peer
12 review body” means a peer review body as specified in paragraph
13 (1) of subdivision (a) of Section 805, and includes any designee
14 of the peer review body.

15 SEC. 2. Section 809.04 is added to the Business and Professions
16 Code, to read:

17 809.04. (a) It is the public policy of the state that licentiates
18 who may be providing substandard care be subject to the peer
19 review hearing and reporting process set forth in this article.

20 (b) To ensure that the peer review process is not circumvented,
21 a member of a medical or professional staff, by contract or
22 otherwise, shall not be required to alter or surrender staff privileges,
23 status, or membership solely due to the termination of a contract
24 between that member and a health care facility. However, with
25 respect to services that may only be provided by members who
26 have, or who are members of a medical group that has, a current
27 exclusive contract for those identified services, termination of the
28 contract, or termination of the member’s employment by the
29 medical group holding the contract, may result in the member’s
30 ineligibility to provide the services covered by the contract.

31 (c) The peer review body of a health care facility shall be entitled
32 to review and make *timely* recommendations to the governing body
33 of the facility *and its designee, if applicable*, regarding quality
34 considerations *relating to clinical services* whenever the selection,
35 performance evaluation, or any change in the retention or
36 replacement of licentiates with whom the health care facility has
37 a contract occurs. The governing body shall give great weight to
38 those recommendations.

39 (d) This section shall not impair a governing body’s ability to
40 take action against a licentiate pursuant to Section 809.05.



1 SEC. 3. Section 809.07 is added to the Business and Professions
2 Code, to read:

3 809.07. (a) It is the policy of the state that in certain limited
4 circumstances, external peer review may be necessary to promote
5 and protect patient care in order to eliminate perceived bias, obtain
6 needed medical expertise, or respond to other particular
7 circumstances.

8 (b) A peer review body is encouraged to obtain external peer
9 review for the evaluation or investigation of an applicant,
10 privilegeholder, or member of the medical staff in the following
11 circumstances:

12 (1) Committee or department reviews that could affect a
13 licentiate's membership or privileges do not provide a sufficiently
14 clear basis for action or inaction.

15 (2) No current medical staff member can provide the necessary
16 expertise in the clinical procedure or area under review.

17 (3) To promote impartial peer review.

18 (c) For purposes of this section, the following definitions apply:

19 (1) "Peer review body" has the meaning provided in paragraph
20 (1) of subdivision (a) of Section 805.

21 (2) "External peer review" means peer review provided by
22 licentiates who ~~are not members of the peer review body do not~~
23 *practice in the same health care facility as the licentiate under*
24 *review, who are impartial, and who have the necessary expertise*
25 *in the clinical procedure or area under review.*

26 SEC. 4. Section 809.08 is added to the Business and Professions
27 Code, to read:

28 809.08. (a) The Legislature hereby finds and declares that the
29 sharing of information between peer review bodies is essential to
30 protect the public health.

31 (b) Upon receipt of reasonable copying *and processing* costs,
32 a peer review body shall respond to the request of another peer
33 review body and produce the records reasonably requested
34 concerning a licentiate under review to the extent not otherwise
35 prohibited by state or federal law. ~~The records produced pursuant~~
36 ~~to this section~~ *The responding peer review body shall have the*
37 *discretion to decide whether to produce minutes from peer review*
38 *body meetings. The records produced by a peer review body*
39 *pursuant to this section shall be used solely for peer review*
40 *purposes and shall not be subject to discovery to the extent*

1 provided in Sections 1156.1 and 1157 of the Evidence Code and
 2 any other applicable provisions of law. The peer review body
 3 responding to the request shall be entitled to all confidentiality
 4 protections and privileges provided by law as to the information
 5 and records disclosed pursuant to this section. *The licentiate under*
 6 *review by the peer review body requesting records pursuant to*
 7 *this section shall, upon request, release the responding peer review*
 8 *body, its members, and the health care entity for which the*
 9 *responding peer review body conducts peer review, from liability*
 10 *for the disclosure of records, and the contents thereof, in*
 11 *compliance with this section. If the licentiate does not provide a*
 12 *reasonable release that is acceptable to the responding peer review*
 13 *body, the responding peer review body shall not be obligated to*
 14 *produce records pursuant to this section.*

15 SEC. 5. Section 809.2 of the Business and Professions Code
 16 is amended to read:

17 809.2. If a licentiate timely requests a hearing concerning a
 18 final proposed action for which a report is required to be filed
 19 under Section 805, the following shall apply:

20 (a) The hearing shall be held, as determined by the peer review
 21 body, before a trier of fact, which shall be an arbitrator or
 22 arbitrators selected by a process mutually acceptable to the
 23 licentiate and the peer review body, or before a panel of unbiased
 24 individuals who shall gain no direct financial benefit from the
 25 outcome, who have not acted as an accuser, investigator, factfinder,
 26 or initial decisionmaker in the same matter, and which shall
 27 include, where feasible, an individual practicing the same specialty
 28 as the licentiate.

29 (b) (1) If a hearing officer is selected to preside at a hearing
 30 held before a panel, the hearing officer shall gain no direct financial
 31 benefit from the outcome, shall disclose all actual and potential
 32 conflicts of interest within the last five years reasonably known to
 33 the hearing officer, shall not act as a prosecuting officer or
 34 advocate, and shall not be entitled to vote. ~~The hearing officer~~
 35 ~~shall also~~

36 (2) *The hearing officer shall be an attorney licensed to practice*
 37 *law in the State of California. Except This paragraph shall not*
 38 *apply to a hearing held before a panel of a dental professional*
 39 *society peer review body.*

1 (3) *Except* as otherwise agreed by the parties, ~~attorneys an~~
2 *attorney* from a firm utilized by the hospital, the medical staff, or
3 the involved licentiate within the preceding two years shall not be
4 *eligible to serve as a hearing officer.*

5 (2)

6 (4) The hearing officer shall endeavor to ensure that all parties
7 maintain proper decorum and have a reasonable opportunity to be
8 heard and present all relevant oral and documentary evidence. The
9 hearing officer shall be entitled to determine the order of, or
10 procedure for, presenting evidence and argument during the hearing
11 and shall have the authority and discretion to make all rulings on
12 questions pertaining to matters of law, procedure, or the
13 admissibility of evidence. The hearing officer shall also take all
14 appropriate steps to ensure a timely resolution of the hearing, but
15 may not terminate the hearing process. However, in the case of
16 flagrant noncompliance with the procedural rules governing the
17 hearing process or egregious interference with the orderly conduct
18 of the hearing, the hearing officer may recommend that the hearing
19 panel terminate the hearing, provided that this activity is authorized
20 by the applicable bylaws of the ~~medical staff~~ *peer review body.*

21 (c) The licentiate shall have the right to a reasonable opportunity
22 to voir dire the panel members and any hearing officer, and the
23 right to challenge the impartiality of any member or hearing officer.
24 Challenges to the impartiality of any member or hearing officer
25 shall be ruled on by the presiding officer, who shall be the hearing
26 officer if one has been selected.

27 (d) The licentiate shall have the right to inspect and copy at the
28 licentiate's expense any documentary information relevant to the
29 charges which the peer review body has in its possession or under
30 its control, as soon as practicable after the receipt of the licentiate's
31 request for a hearing. The peer review body shall have the right
32 to inspect and copy at the peer review body's expense any
33 documentary information relevant to the charges which the
34 licentiate has in his or her possession or control as soon as
35 practicable after receipt of the peer review body's request. The
36 failure by either party to provide access to this information at least
37 30 days before the hearing shall constitute good cause for a
38 continuance. The right to inspect and copy by either party does
39 not extend to confidential information referring solely to
40 individually identifiable licentiates, other than the licentiate under

1 review. The arbitrator or presiding officer shall consider and rule
2 upon any request for access to information, and may impose any
3 safeguards the protection of the peer review process and justice
4 requires.

5 (e) When ruling upon requests for access to information and
6 determining the relevancy thereof, the arbitrator or presiding officer
7 shall, among other factors, consider the following:

8 (1) Whether the information sought may be introduced to
9 support or defend the charges.

10 (2) The exculpatory or inculpatory nature of the information
11 sought, if any.

12 (3) The burden imposed on the party in possession of the
13 information sought, if access is granted.

14 (4) Any previous requests for access to information submitted
15 or resisted by the parties to the same proceeding.

16 (f) At the request of either side, the parties shall exchange lists
17 of witnesses expected to testify and copies of all documents
18 expected to be introduced at the hearing. Failure to disclose the
19 identity of a witness or produce copies of all documents expected
20 to be produced at least 10 days before the commencement of the
21 hearing shall constitute good cause for a continuance.

22 (g) Continuances shall be granted upon agreement of the parties
23 or by the arbitrator or presiding officer on a showing of good cause.

24 (h) A hearing under this section shall be commenced within 60
25 days after receipt of the request for hearing, and the peer review
26 process shall be completed within a reasonable time, after a
27 licentiate receives notice of a final proposed action or an immediate
28 suspension or restriction of clinical privileges, unless the arbitrator
29 or presiding officer issues a written decision finding that the
30 licentiate failed to comply with subdivisions (d) and (e) in a timely
31 manner, or consented to the delay.

32 SEC. 6. Section 809.3 of the Business and Professions Code
33 is amended to read:

34 809.3. (a) During a hearing concerning a final proposed action
35 for which reporting is required to be filed under Section 805, both
36 parties shall have all of the following rights:

37 (1) To be provided with all of the information made available
38 to the trier of fact.

1 (2) To have a record made of the proceedings, copies of which
2 may be obtained by the licentiate upon payment of any reasonable
3 charges associated with the preparation thereof.

4 (3) To call, examine, and cross-examine witnesses.

5 (4) To present and rebut evidence determined by the arbitrator
6 or presiding officer to be relevant.

7 (5) To submit a written statement at the close of the hearing.

8 (6) To be represented by an attorney of the party's choice at the
9 party's expense, subject to subdivision (c).

10 (b) The burden of presenting evidence and proof during the
11 hearing shall be as follows:

12 (1) The peer review body shall have the initial duty to present
13 evidence which supports the charge or recommended action.

14 (2) Initial applicants shall bear the burden of persuading the
15 trier of fact by a preponderance of the evidence of their
16 qualifications by producing information which allows for adequate
17 evaluation and resolution of reasonable doubts concerning their
18 current qualifications for staff privileges, membership, or
19 employment. Initial applicants shall not be permitted to introduce
20 information not produced upon request of the peer review body
21 during the application process, unless the initial applicant
22 establishes that the information could not have been produced
23 previously in the exercise of reasonable diligence.

24 (3) Except as provided above for initial applicants, the peer
25 review body shall bear the burden of persuading the trier of fact
26 by a preponderance of the evidence that the action or
27 recommendation is reasonable and warranted.

28 (c) (1) Except as provided in paragraph (3), a peer review body
29 shall not be represented by an attorney if the licentiate notifies the
30 peer review body in writing no later than 15 days prior to the
31 hearing that he or she has elected to not be represented by an
32 attorney. Except as otherwise agreed by the parties, this election
33 shall be binding.

34 (2) If the licentiate does not provide the written notice described
35 in paragraph (1) within the required timeframe, the peer review
36 body may be represented by an attorney even if the licentiate later
37 elects to not be represented by an attorney.



1 (3) Dental professional society peer review bodies may be
2 represented by an attorney, even if the licentiate declines to be
3 represented by an attorney.

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EXHIBIT 13

CMA California Medical Association
Physicians dedicated to the health of Californians

May 6, 2009

Honorable Mary Hayashi
Chair, Assembly Business & Professions Committee
State Capitol, Room 3013
Sacramento, CA 95814

MAY 6 2009

Re: AB 120 (Hayashi)
CMA Position: SPONSOR

Dear Assemblywoman Hayashi,

The California Medical Association is pleased to sponsor your Assembly Bill 120. This bill will improve the peer review system in California to ensure that quality health care is being provided to patients. Currently, the peer review system works very well in most facilities, but it can be open to manipulation and unreasonable delay in others. This bill will create an environment more conducive to peer review through increased fairness and transparency so that physicians and surgeons are continuously monitored and assessed to improve the quality of care that is provided to patients.

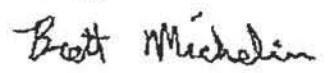
AB 120 will limit the ability of physicians to avoid peer review when hospitals terminate contracts because quality of care concerns have been raised. This will prevent physicians from simply being able to move to the next hospital, potentially placing patients in danger, without undergoing peer review. It will also require the sharing of peer review information between legitimate peer review bodies to avoid duplication and to ensure that physicians in need of quality improvement receive it.

Further, the bill allows for peer review to be done external to the facility where the physician practices. This provision is appropriately limited to circumstances where peer review is ineffective, nonexistent, or biased. By allowing this limited external review, it is more likely that unnecessary delay will be eliminated and fairness will be added to the system, thus protecting patients.

The bill also eliminates delay and guarantees fairness in panel hearings by specifying the qualifications and powers of hearing officers and sets up a process for mutual agreement on who may serve as the hearing officer. The bill requires that hearing officers be free from conflicts of interest and sufficiently qualified to lead these quasi-judicial hearings. The bill specifies the powers of the hearing officers to maintain decorum and a timely hearing process. Additionally, the bill allows physicians to be fairly represented in this hearing process.

Again, the California Medical Association is pleased to sponsor your AB 120. Significant work continues to take place as the CMA attempts to address concerns that have been raised. However, the peer review process is an important control measure that continuously monitors and assesses care that is being provided by physicians to improve quality. If you have any questions regarding this bill please feel free to contact me at (916) 444-5532.

Sincerely,



Brett Michelin

cc: Members, Assembly Business and Professions Committee
Consultant, Assembly Business and Professions Committee Consultant
Ted Blanchard, Assembly Republican Caucus Consultant

LEGISLATIVE INTENT SERVICE (800) 666-1917

EXHIBIT 14

DECLARATION OF ELIZABETH SHIH

I, ELIZABETH SHIH, hereby declare as follows:

1. I am the Corporate Secretary of Dignity Health. I have served in that role since 2012. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would testify competently to such facts under oath.

2. My responsibilities as Corporate Secretary include serving as the custodian of records for Dignity Health's corporate bylaws.

3. A true and correct copy of the Amended and Restated Bylaws of Dignity Health, dated January 17, 2012, is attached hereto.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this declaration was executed on August 4, 2020 in San Francisco, California.



Elizabeth Shih

AMENDED and RESTATED
BYLAWS
OF
DIGNITY HEALTH

ARTICLE I

NAME; PRINCIPAL OFFICE; DEFINITIONS

- 1.1 Name. The name of this Corporation shall be Dignity Health (the "Corporation").
- 1.2 Principal Office. The principal office for the transaction of the business of this Corporation shall be at a location determined from time to time by the board of directors of this Corporation (hereafter, "Board," and each individual member of the Board, "Director").
- 1.3 Definitions. Capitalized terms used in the body of these bylaws but not defined are defined in Exhibit A of these bylaws.

ARTICLE II

PURPOSE

This Corporation is organized as a California public benefit Corporation and the Corporation's primary purpose is to provide health care services and related support functions. This Corporation operates, directly or through subsidiaries or affiliates, both Catholic sponsored health care services as well as health care services that are not Catholic sponsored, working together to provide a continuum of compassionate, high quality care to its various local communities. Such collaboration enables responsible stewardship of health care resources and helps provide access to care to a wide range of persons, including persons who are poor and disenfranchised.

ARTICLE III

HEALING MINISTRY

- 3.1 Healing Ministry. This Corporation, pursuant to the legacy of the Sponsors, as identified in these bylaws, is committed to continuing a healing ministry based on the life and works of Jesus in the provision of healthcare services in the communities it serves (the "healing ministry").
- 3.2 Expression of Ministry. This Corporation shall follow the mission and values of the healing ministry, which are intended to apply to all of its activities and operations. The mission of this Corporation is to deliver compassionate, high-quality, affordable health care; serve and advocate for those sisters and brothers who are poor and disenfranchised; and partner

with others in its communities to improve the quality of life. In carrying out the healing ministry, this Corporation shall at all times embrace the values of dignity, collaboration, justice, stewardship, and excellence.

3.3 Ethical and Religious Directives; Statement of Common Values. In striving to fulfill its healing ministry, this Corporation's Health Facilities shall follow the Statement of Common Values, as amended from time to time. In striving to fulfill the Catholic healthcare mission of the Catholic Sponsored Health Facilities, such Catholic Sponsored Health Facilities are bound by the Ethical and Religious Directives for Catholic Health Care Services, as approved and amended by the United States Conference of Catholic Bishops from time to time and applied or promulgated by the local Bishop. The Corporation and the Health Facilities which are not Catholic Sponsored are not subject to the Ethical and Religious Directives for Catholic Health Care Services or to the ecclesial authority of the Roman Catholic Church.

ARTICLE IV

SPONSORS

The Sponsors of this Corporation's Catholic Sponsored Health Facilities are: (i) the Sisters of Mercy of the Americas West Midwest Community, a religious institute of the Roman Catholic Church (the "West Midwest Community"); (ii) the Sisters of St. Dominic of the Congregation of the Most Holy Rosary of Adrian, Michigan, a religious institute of the Roman Catholic Church (the "Adrian Dominican Sisters"); (iii) the Sisters of the Third Order of St. Dominic, Congregation of the Most Holy Name, a religious institute of the Roman Catholic Church (the "Dominican Sisters of San Rafael"); (iv) the Congregation of the Sisters of Charity of the Incarnate Word, Houston, Texas, a religious institute of the Roman Catholic Church (the "Incarnate Word Sisters"); (v) the Dominican Sisters of St. Catherine of Siena, Tron, NM, a religious institute of the Roman Catholic Church (the "Tron Dominicans"); and (vi) the Sisters of St. Francis of Penance and Christian Charity of Redwood City, California, a religious institute of the Roman Catholic Church (the "Redwood City Franciscans") (each a "Sponsor" and, collectively, the "Sponsors").

ARTICLE V

MEMBERSHIP

The Corporation shall not have any voting or non-voting members. All rights which would otherwise vest to the members under the provisions of the California Nonprofit Corporation Law relating to nonprofit public benefit corporations shall vest in the directors. Any action which would otherwise require approval by a majority of all members or approval by the members shall require approval of the Board of Directors.

ARTICLE VI

GOVERNANCE MATRIX

6.1 Rights Reserved to Sponsors. The Sponsors and the Sponsorship Council are hereby granted the specific reserved rights set forth in the Governance Matrix ("Matrix") attached hereto as Exhibit A (which is hereby incorporated by reference and made a part of these bylaws) with respect to certain corporate actions of this Corporation and its Subsidiaries. As provided in the Matrix, the exercise of Sponsor and the Sponsorship Council reserved rights may require the written consent of the Sponsor(s) or the Sponsorship Council before any such actions may be taken or implemented by this Corporation and its Subsidiaries.

6.2 No Action Without Approval. Neither the Board nor any officer or employee of this Corporation, or any Subsidiary, shall take any action requiring approval under these bylaws without first having secured such approvals. In the exercise of their approval rights, the Sponsors, or the Sponsorship Council, or any other persons or entities with approval rights under the Matrix, may grant or withhold approval in whole or in part; or, after consultation with the Board and the president of the organization seeking approval (whether this Corporation or one of its Subsidiaries), the Sponsors, or the Sponsorship Council, or any other persons or entities with approval rights under the Matrix, may recommend, in their complete discretion, such other or different actions as they may deem appropriate. Any approval required of the Sponsors or the Sponsorship Council shall be effective only if delivered to the office of the General Counsel as a written consent. For these purposes, written consent shall mean a writing: (a) expressly stating the approving body's approval of the matter (including any limitations related thereto, as applicable); (b) the date of such approval; (c) the name and position of the person executing the approval; (d) a statement that the person executing the approval is authorized to communicate such approval; and (e) executed by the person who: (i) in the case of a Sponsor, is the head of the governance body of the Sponsor (e.g., General Superior, President, Prioress, Prioress General, or Provincial Minister), or a duly appointed secretary or other duly appointed designee; or, (ii) in the case of the Sponsorship Council, is the chair, or a duly appointed secretary or other duly appointed designee. A written consent may be transmitted by mail, delivery service or by electronic means (such as PDF), and a copy shall be deemed an original for these purposes.

ARTICLE VII

BOARD OF DIRECTORS

7.1 Powers. Subject to the reserved rights set forth in the Matrix, the activities and affairs of this Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board.

7.2 Number. The number of Directors of this Corporation shall be not less than 9 nor more than 13, with the exact number of Directors to be fixed by resolution of the Board from time to time. At all times, not less than 2 Director positions shall be reserved for women religious of the Sponsors, who shall serve in an individual capacity and not as a representative of a Sponsor or Sponsors.

7.3 Ex Officio Director. The President/Chief Executive Officer of this Corporation shall serve on the Board as an ex officio Director with full voting rights for as long as he or she holds the office of President/Chief Executive Officer.

7.4 Nomination and Election of Directors. Except as otherwise provided herein, the Executive Committee shall nominate individuals to serve as Directors. In reviewing potential candidates for nomination as Directors, the Executive Committee shall consider the need for diversity in expertise and experience of the Board, the individual's ability and willingness to commit to carrying out the mission and goals of this Corporation as well as criteria and qualifications for Board membership that may be defined in policies and procedures adopted from time to time by the Board. The names of individuals nominated by the Executive Committee shall be submitted to the Board for election by the Board at its annual meeting. If the Board does not elect a particular nominee, the Executive Committee shall nominate a different individual to replace the nominee who was not elected until the nominee is elected by the Board or until the Board determines to leave a vacancy on the Board.

7.5 Term of Directors.

(a) Length of Term. Each Director's term shall begin on July 1 of the first year for which he or she is elected, or the date of election if the Director is filling a vacancy, and continues until the last day of June in the last year for which he or she is elected or until his or her replacement is elected and takes office, whichever is sooner.

(b) Permissible Number of Consecutive Years. Except as otherwise provided in Section 7.3, any Director elected to the Board for the first time or after having been off the Board for the Hiatus Period (defined below) shall serve for a term of one year. Thereafter, a Director will be eligible for election for up to three consecutive 3 year terms; provided, however, that at the time of the Director's election, the Board may fix any such term for less than 3 years, to allow for the staggering of terms or to permit a Director to serve the maximum number of consecutive years allowed hereunder. No Director may serve more than a maximum of 10 consecutive years on the Board; provided, however, that he or she will again be eligible for election under the provisions hereof 2 years ("Hiatus Period") after the conclusion of such a 10 year period.

7.6 Director and Board Review.

(a) Executive Committee Review. At the end of each Director's term, and before he or she may be nominated for an additional term, his or her Board service will be reviewed by the Executive Committee.

(b) Performance Review. The Board will review its own performance as a Board, and will take such action to improve or correct the Board's performance as the results of the review indicate. The Board may establish its own policies and procedures for the periodic review of individual Director's performances, in addition to the Executive Committee review referred to in subsection (a) above.

7.7 Vacancies. Any vacancy occurring on the Board shall be filled by the nomination and election process set forth in Section 7.4 above.

7.8 Removal. Any Director or Directors, other than the President/Chief Executive Officer serving as an ex officio Director, may be removed at any time with or without cause by a majority of the Board of Directors. The Board may declare vacant the office of a Director: (i) who has been declared of unsound mind by a final order of court, or been convicted of a felony, or been found by a final order or judgment of any court to have breached any duty under Sections 5230 to 5239 of the California Nonprofit Corporation Law; (ii) who has failed, without excuse, to attend three consecutive Board meetings; (iii) who fails to exercise the highest standards of ethical and moral conduct in carrying out his or her duties for this Corporation; or (iv) who fails to act, in all respects, in the best interest of this Corporation and fully support its mission and vision.

7.9 Annual Meeting. The annual meeting of the Board shall be held in September of each year, at such time and place as the Chairperson may determine.

7.10 Regular Meeting. Regular meetings of the Board, if scheduled by resolution of the Board, shall not require prior notice.

7.11 Special Meetings. Special meetings of the Board for any purpose whatsoever may be called at any time by the Chairperson, by any 2 Directors, or by the President/Chief Executive Officer. Notice of any special meeting of the Board shall be sufficient if placed in first class mail 4 days prior to the meeting or delivered personally or by telephone, facsimile, or electronic mail to each Director no less than 48 hours prior to the meeting.

7.12 Quorum. A majority of the authorized number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board.

7.13 Voting. Unless the vote of a greater number is required by these bylaws, the Articles of Incorporation of this Corporation, or the California Nonprofit Corporation Law, the following will constitute the act of the Board: if a quorum is present, the affirmative vote of at least a majority of the Directors present; or if a quorum was initially present but enough Directors then withdrew to leave less than a quorum, the affirmative vote of at least a majority of the original quorum.

7.14 Adjourned Meetings. A majority of Directors present at a meeting, whether or not constituting a quorum, may adjourn any meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than 24 hours, in which case notice of the time and place shall be given before the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

7.15 Action Without Meeting by Written Consent. Any action required or permitted to be taken by the Board may be taken without a meeting if all Directors shall consent in writing to such action. The written consent shall be filed with the minutes of the proceedings of the Board. Action by written consent shall have the same force and effect as the unanimous vote of the Board at a duly called and constituted meeting.

7.16 Telephonic and Electronic Communication Meetings. Directors may participate in a meeting through use of conference telephone, electronic video screen

communication or electronic transmission by and to the Corporation. Participation in a meeting through use of conference telephone or electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting as long as all Directors participating in the meeting are able to hear one another. Participation in a meeting through use of electronic transmission by and to the Corporation, other than conference telephone and electronic video screen communication, pursuant to this subdivision constitutes presence in person at that meeting if both of the following apply:

(a) Each Director participating in the meeting can communicate with all of the other members concurrently.

(b) Each Director is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the Corporation.

Meetings so held shall constitute the valid action of the Board provided that the other requirements of this Article VII are met with respect to the meeting.

ARTICLE VIII

OFFICERS

8.1 Corporate Officers. The Corporate Officers shall be: a Chairperson of the Board ("Chairperson"); a Vice Chairperson of the Board ("Vice Chairperson"); a President/Chief Executive Officer; a Chief Financial Officer; a Chief Administrative Officer; a General Counsel; a Chief Operating Officer; a Secretary; and such other Assistant Secretaries and officers as may be designated by the Board from time to time, based upon the advice and counsel of the President/Chief Executive Officer.

8.2 Appointment of Corporate Officers.

(a) Chairperson; Vice Chairperson; Secretary. The Executive Committee shall nominate individuals to serve as the Chairperson, Vice Chairperson, and Secretary, pursuant to a process developed and conducted by the Executive Committee. The Board shall subsequently appoint the Chairperson, the Vice Chairperson, and the Secretary.

(b) President/Chief Executive Officer. A search committee, appointed by the Executive Committee, and which may, but need not be, the Executive Committee, shall nominate the President/Chief Executive Officer for appointment by the Board. If the Board does not approve a nominee, the search committee shall nominate a different individual to replace the nominee who was not approved until the nominee is approved by the Board.

(c) Chief Financial Officer; Chief Administrative Officer; General Counsel; Chief Operating Officer; Assistant Secretaries. The President/Chief Executive Officer is authorized to appoint the Chief Financial Officer, the Chief Administrative Officer, the General Counsel, the Chief Operating Officer, and all Assistant Secretaries, and shall provide notice to the Board of such appointments as soon as reasonably possible after such appointments are made.

8.3 Terms of Office. The term of the office of the Chairperson, the Vice Chairperson, and the Secretary shall be one year and commence with their appointment at the Board's annual meeting. An individual may serve as the Chairperson, Vice Chairperson and Secretary for up to 3 consecutive one year terms. Individuals appointed as President/Chief Executive Officer, Chief Financial Officer, Chief Administrative Officer, General Counsel, Chief Operating Officer, and Assistant Secretary shall serve for an indefinite term, subject to the provisions of Sections 8.4 and 8.5 below.

8.4 Removal. The Board may remove any of the officers of this Corporation, and may delegate to the President/Chief Executive Officer the authority to remove the General Counsel, whenever in the Board's judgment the best interests of this Corporation will be served by such delegation; provided, however, that removal of the President/Chief Executive Officer, General Counsel, or Secretary shall be without prejudice to his or her contract rights, if any. Upon removal from office by the President/Chief Executive Officer pursuant to a delegation of authority under this Section, the General Counsel shall, in the exercise of his or her ethical obligations, continue to serve as the legal advisor to the Board until such service is terminated by the Board. The President/Chief Executive Officer, in his or her discretion, shall have the authority to remove the Chief Operating Officer, any Assistant Secretary, the Chief Financial Officer, the Chief Administrative Officer, or any other officer appointed under Section 8.3 of these bylaws; provided, however, that removal of the Chief Operating Officer, any Assistant Secretary, the Chief Financial Officer, the Chief Administrative Officer, or any other officer appointed under Section 8.3 of these bylaws shall be without prejudice to his or her contract rights, if any.

8.5 Vacancies in Corporate Offices. A vacancy in the corporate office of Chairperson, Vice Chairperson, or Secretary may be filled by the Board for the unexpired portion of the term of such corporate office. A vacancy in the corporate office of President/Chief Executive Officer may be filled by the Board, based upon the recommendations of a search committee in accordance with Section 8.2(b) above. A vacancy in the corporate office of Chief Operating Officer, Chief Financial Officer, Chief Administrative Officer, General Counsel, or Assistant Secretary may be filled by the President/Chief Executive Officer.

8.6 Powers and Duties.

(a) Chairperson. The Chairperson shall direct the business of the Board and shall preside at all meetings of the Board. The Chairperson shall have such other powers and duties as may be prescribed by the Board or these bylaws.

(b) Vice Chairperson. In the absence or disability of the Chairperson, the Vice Chairperson shall perform all the duties of the Chairperson, and when so acting shall have all of the powers of, and be subject to all the restrictions upon, the Chairperson. The Vice Chairperson shall have such other powers and perform such other duties as may be prescribed from time to time by the Board or the Chairperson.

(c) Secretary; Assistant Secretary. The Secretary shall: (i) keep the minutes of all meetings of the Board, (ii) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law, (iii) have charge of all the records of the

Board and of the seal of this Corporation, (iv) see that the execution of the foregoing on behalf of this Corporation under its seal is duly authorized, and (v) in general, perform all of the duties incident to the office of Secretary, subject to the control of the Board. The Assistant Secretaries shall perform the above duties at the direction of, or in the absence of, the Secretary.

(d) President/Chief Executive Officer. The President/Chief Executive Officer shall be the chief executive officer of this Corporation. Subject to these bylaws, corporate policy, and control by the Board, the President/Chief Executive Officer shall exercise executive supervision and control over the general business and affairs of this Corporation and shall perform such other duties as may be prescribed from time to time by the Board, but at no time shall this supervision and control directly facilitate procedures that are contrary to Catholic teaching.

(e) Chief Operating Officer. The Chief Operating Officer shall exercise executive supervision and control over the affairs of the this Corporation, as prescribed from time to time by the President/Chief Executive Officer.

(f) Chief Financial Officer. The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and comprehensive books and records of the assets of this Corporation and of its transactions. Such books and records shall be open to inspection by any Director at all reasonable times. In addition, the Chief Financial Officer shall have charge of the funds and liquid assets of this Corporation, including those funds administered by the self insurance programs and trusts, and shall deposit and/or invest such funds and liquid assets in accordance with the overall mission, policies and plans of this Corporation and in accordance with the directives of the President/Chief Executive Officer and the Board. The Chief Financial Officer shall be responsible for all necessary and appropriate reporting and accounting, including the management of independent auditors.

(g) Chief Administrative Officer. The Chief Administrative Officer shall exercise administrative coordination of the affairs of this Corporation, as prescribed from time to time by the President/Chief Executive Officer.

(h) General Counsel. The General Counsel shall serve as legal advisor to the Board, the Sponsorship Council and the management of this Corporation (through the President/Chief Executive Officer), and as principal legal officer of this Corporation. He or she shall have responsibility for directing the affairs of this Corporation's legal department, which provides legal services to this Corporation, and its Subsidiaries. The General Counsel shall serve as legal advisor to this Corporation's insurance and self-insurance programs and shall have primary responsibility for the selection, evaluation and retention decisions affecting the use of outside legal counsel.

8.7 Presidents of the Subsidiaries. Except as provided in the bylaws of a Subsidiary, each president of a Subsidiary shall be elected by the board of directors of such Subsidiary, pursuant to its bylaws, and shall be approved by the Chief Operating Officer and the Board.

8.8 Other Officers. The President/Chief Executive Officer shall appoint such other officers with such titles as the President/Chief Executive Officer deems necessary from time to time. Such officers shall serve at the discretion of the President/Chief Executive Officer and shall have such powers and perform such duties as may be delegated to them by the President/Chief Executive Officer.

8.9 Multiple Offices. Any number of offices may be held by the same person, except that the Secretary and the Chief Financial Officer may not serve concurrently as the President/Chief Executive Officer or as the Chairperson.

8.10 Duty to Support Mission. Each Corporate Officer and Vice President of this Corporation shall adhere to the highest standards of ethical and moral conduct in carrying out his or her duties for this Corporation, and shall act, in all respects, in the best interest of this Corporation. Each Corporate Officer and Vice President shall support the healing ministry as established in accordance with the provisions of these bylaws. Failure of any Corporate Officer or Vice President to adhere to such standards may be grounds for his or her removal or termination in accordance with these bylaws.

ARTICLE IX

MEDICAL STAFF

9.1 Organization and Governance. The Board shall ensure that the physicians, dentists, podiatrists and such other practitioners as may be granted medical staff membership and clinical privileges (each a "Practitioner") at hospitals licensed to this Corporation shall be and continue to be organized into one or more medical staffs (each, a "Medical Staff"), in accordance with law. The Medical Staffs shall be responsible to a Hospital Community Board (established pursuant to Article XI), which shall exercise its oversight responsibilities in coordination with the Quality Committee (as defined in Section 10.3(a)). Each such Medical Staff shall operate in accordance with Medical Staff bylaws established in conformance with the provisions of the Hospital Community Board Bylaws and approved by the Hospital Community Board.

9.2 Conflicts. Any conflict between Medical Staff bylaws and these bylaws or applicable Hospital Community Board Bylaws shall be resolved in favor of these bylaws or the applicable Hospital Community Board Bylaws, and where necessary or applicable the Medical Staff bylaws shall be revised to conform if approved by the applicable Medical Staff governance body; provided, however, that if the Medical Staff governance body does not approve, the conflict shall be solved through a conflict management process jointly approved by the applicable Medical Staff governance body and this board or, if only the Hospital Community Board Bylaws are in conflict with the Medical Staff bylaws, the Hospital Community Board.

ARTICLE X

COMMITTEES APPOINTED BY THE BOARD

10.1 Types of Committees.

(a) Board Delegated Powers Committees. The Board, by resolution adopted by a majority of the authorized number of Directors, at a meeting at which a quorum is present, may designate and appoint one or more committees, each consisting of 2 or more Directors, to serve at the pleasure of the Board. The Board may delegate the full power and authority of the Board to any such committee (a "Board Delegated Powers Committee") provided that any such committee to which the power and authority of the Board is delegated shall be composed solely of Directors and shall not have any of the following powers, which shall not be exercised by or delegated to any committee:

(1) the approval of any act for which the California Nonprofit Corporation Law requires the approval of a member of the Corporation;

(2) the filling of vacancies on the Board or any committee having the authority of the Board;

(3) the fixing of compensation of Directors for service on the Board or any committee;

(4) the amendment or repeal of these bylaws or the adoption of new bylaws;

(5) the amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;

(6) the expenditure of corporate funds to support a nominee for Director after there are more people nominated for Director than can be elected;

(7) the approval of any self-dealing transaction, except as permitted under the California Nonprofit Corporation Law; or

(8) the exercise of any other power, the exercise of which is prohibited under the California Nonprofit Corporation Law.

(b) Board General Committees ("General Committees"). The Board may create other committees that shall not exercise the authority of the Board, but shall make recommendations to the Board. All of the members of such Committees may, but need not be, Directors.

(c) Board Alteration of Committees. Except with respect to Section 10.3(f), the Board may alter, at its discretion, the purpose or composition of any committees created under this Article X, to include creating new standing or ad hoc committees, reallocating

functions between committees, or removing functions from committees. Nothing in these bylaws shall be construed to limit the Board's discretion in this regard.

10.2 Standing Board Delegated Powers Committees.

(a) Executive Committee. The Executive Committee shall be established as a Board Delegated Powers Committee pursuant to Section 10.1(a) and shall consist of the Chairperson (who shall chair the Executive Committee), Vice Chairperson, Secretary of the Board, the President/Chief Executive Officer, and no less than one and no more than two committee chairs. In addition, the Executive Committee shall at all times include at least one Director who is a woman religious of a Sponsor. The Chairperson of the Board shall serve as the Chairperson of the Executive Committee. Except as limited by Section 10.1(a), the Executive Committee shall have and exercise the authority of the Board only in the intervals between meetings of the Board, subject to such limitations imposed by resolutions of the Board, the Articles of Incorporation of this Corporation, these bylaws, or applicable law. The Executive Committee shall report any actions it has taken pursuant to such authority to the full Board at the Board's next meeting and minutes of the Executive Committee shall be distributed to all Directors. The Executive Committee shall conduct the annual performance review of the President/Chief Executive Officer and shall serve as a nominating committee, as set forth in Section 7.4. In addition, the Executive Committee shall be responsible for the following functions: planning for the orientation and continuing education of Directors in collaboration with the office of the President/Chief Executive Officer; overseeing the reappointment process for Directors; assuring breadth and diversity of expertise and experience in the composition of the Board; in collaboration with the Chairperson of the Board, developing a survey instrument and process for a periodic evaluation of Board effectiveness, the results of which shall be reported to the Chairperson of the Board; and conducting periodic review of individual Director performance.

(b) Human Resources and Compensation Committee. The Human Resources and Compensation Committee shall be established as a Board Delegated Powers Committee pursuant to Section 10.1(a) and shall consist of those Directors appointed to the Committee from time to time by the Board. The Human Resources and Compensation Committee shall exercise the full authority of the Board with respect to reviewing and approving the compensation and benefits of the President/Chief Executive Officer and his/her direct reports, as defined in corporate policies adopted by the Board from time to time, as well as reviewing and approving aggregate compensation and benefits philosophy and plans for employees of this Corporation and its Subsidiaries. In addition, the Human Resources and Compensation Committee shall review and approve the total work force strategy of this Corporation and its Subsidiaries, including recruitment, retention, labor relations, diversity and workplace environment.

10.3 Standing General Committees.

(a) Quality Committee. The Quality Committee shall be established as a General Committee pursuant to Section 10.1(b), and shall consist of at least 2 Directors, one of whom shall be the chairperson of the Quality Committee, and such other persons as are appointed from time to time by the Board. The Quality Committee shall be responsible for:

(1) the evaluation and resolution of operational and patient care quality issues which impact hospital facilities operated by this Corporation;

(2) approving policies and procedures with respect to quality improvement, clinical process improvement, patient quality of care initiatives, and other quality issues related to hospital operations;

(3) establishing and maintaining systems for monitoring compliance with hospital policies and procedures;

(4) monitoring the activities of Institutional Review Boards established and maintained by hospitals operated by this Corporation, including applying for and holding a Federal-wide Assurance issued by the Office of Human Research Protections, a division of the Department of Health and Human Services; and

(5) making recommendations to the Board regarding the quality of healthcare at the hospitals and other healthcare facilities licensed to or operated by this Corporation and its Subsidiaries.

In order to carry out its responsibilities, it may be necessary for the Quality Committee to have access, from time to time, to certain information related to medical staff quality evaluation and improvement activities carried out within the hospitals and other healthcare facilities licensed to or operated by this Corporation or its Subsidiaries. The Quality Committee shall receive reports appropriate and necessary to assist in identifying needs and setting priorities. The reports received by the Quality Committee shall be treated as information which is protected from "discovery" (i.e., protected from the formal exchange of evidentiary information between parties to an adversary proceeding) in accordance with applicable laws. Any information reviewed by the Quality Committee shall be strictly protected from careless dissemination, be and remain confidential and shall not be utilized for any other purpose but to enhance and monitor the quality of care at the hospitals and other healthcare facilities licensed to or operated by this Corporation. The Quality Committee shall constitute a peer review body under Section 805 of the California Business and Professions Code and similar statutes in other states in which this Corporation operates. The Quality Committee shall have policies and procedures for gathering and disseminating information which assures protection from discovery of documentation/information generated by itself and other quality and peer review bodies operating within this Corporation.

(b) Finance Committee. The Finance Committee shall be established as a General Committee pursuant to Section 10.1(b), shall consist of at least 4 committee members appointed by the Board, and shall include at least 2 Directors, one of whom shall be the chairperson of the Finance Committee. The Finance Committee shall be responsible for making recommendations to the Board regarding:

(1) Review and approve fiscal policy and standards;

(2) Approval and continuous monitoring and evaluation of a capital development plan for this Corporation and its Subsidiaries;

(3) Oversight of this Corporation's debt, and review and approval of capital and operating budgets of this Corporation and the Subsidiaries over which this Corporation has budgetary implementation or approval powers; and

(4) Review of the fiscal performance of this Corporation and the Subsidiaries over which this Corporation has budgetary implementation or approval powers for conformance with the, mission, vision, goals and objectives of this Corporation.

The Finance Committee shall take those steps which are necessary and desirable to implement approved policies and procedures within the scope of authority delegated to it by the Board.

(c) Audit and Compliance Committee. The Audit and Compliance Committee shall be established as a General Committee pursuant to Section 10.1(b) and shall consist of at least 2 Directors, one of whom shall be the chairperson of the Audit and Compliance Committee, and such other persons as are appointed from time to time by the Board. None of the members of the Audit and Compliance Committee shall be employees of this Corporation, and the Chairperson of the Finance Committee shall be ineligible to sit on the Audit and Compliance Committee. The Audit and Compliance Committee shall:

(1) Report to, and make recommendations to, the Board regarding implementation and operation of compliance activities within this Corporation and its Subsidiaries, including this Corporation's and its Subsidiaries' corporate integrity plans and codes of conduct;

(2) Recommend to the Board the selection of independent auditors to conduct the annual audit of this Corporation's and its Subsidiaries' books and records (the "Auditors");

(3) Review and forward to the Board the annual financial management letter of the Auditors, with comments of the Audit and Compliance Committee, if any;

(4) Review the Auditors' performance of the annual audit;

(5) Review the results and scope of the annual audit;

(6) Review and provide oversight of this Corporation's compliance policies and procedures, including adoption of necessary and appropriate compliance policies and procedures, or mechanisms by which such policies and procedures shall be adopted by management; and

(7) Obtain and review reports, from time to time, from this Corporation's corporate compliance officer regarding this Corporation's compliance activities, and from this Corporation's executive responsible for internal audit regarding this Corporation's internal audit activities, and from the Auditors out of the presence of management.

The corporate compliance officer and executive responsible for internal audit shall report to the Audit and Compliance Committee, but shall in any event operate under the administrative oversight of the Chief Financial Officer and the President/Chief Executive Officer.

(d) Planning and Strategy Committee. The Planning and Strategy Committee shall be established as a General Committee pursuant to Section 10.1(b) and shall consist of at least 2 Directors in addition to those persons appointed from time to time by the Board. The Planning and Strategy Committee shall be responsible for making recommendations to the Board regarding:

- (1) Formulation of planning policy and standards for this Corporation and its Subsidiaries;
- (2) Development and continuous monitoring and evaluation of a strategic plan for this Corporation and its Subsidiaries; and
- (3) Review of annual and long-range plans of this Corporation and its Subsidiaries for conformance with the vision, mission, goals and objectives of this Corporation.

(e) Investment Committee. The Investment Committee shall be established as a General Committee pursuant to Section 10.1(b) and shall consist of at least two Directors and such other persons as are appointed from time to time by the Board. The chairperson of the Investment Committee shall be a Director who is also a member of the Finance Committee. Consistent with applicable legal and fiduciary standards and policies established by the Board from time to time, the Investment Committee shall be responsible for overseeing and monitoring the investments of this Corporation, however held, including pension funds and investments this Corporation may manage under arrangements with its subsidiaries and affiliates, and shall be responsible for making reports and recommendations to the Board regarding:

- (1) Periodic performance of the portfolio, not less than biannually;
- (2) Performance of investment advisors, fund managers and related consultants;
- (3) Asset allocation among types and classes of investment, including re-balancing of the portfolio;
- (4) The relative levels and relationship of risk and potential return presented by the portfolio, and options for the adjustment thereof;
- (5) Comparison of portfolio performance to market and index norms for past periods, and where available and applicable, comparison or evaluation in the context of other benchmarks or information sources related to portfolio performance; and

(6) Corporate accountability and community economic initiatives program.

(f) Mission Integrity Committee.

(1) Purpose. The general purpose of the Mission Integrity Committee shall be to provide advice and guidance to the Corporation's senior management and Board concerning the operation of the Corporation, through its Catholic Sponsored Health Facilities, its Health Facilities which are not Catholic Sponsored and its Subsidiaries and affiliates, with respect to the healing ministry:

(2) Membership. There shall be a Mission Integrity Committee comprised of 7 persons, at least 2 of whom shall be Directors, with 4 to be appointed by the Board and 3 to be appointed by the Sponsorship Council.

(3) Policies and Procedure. Except as otherwise provided in these bylaws or in the Matrix, the organizational structure, meeting schedule and all matters related to the policies and procedures of the Mission Integrity Committee shall be determined by the Mission Integrity Committee.

(4) Powers and Responsibilities.

(i) The Mission Integrity Committee shall advise management and the Board, but shall not exercise any authority of the Board.

(ii) The Mission Integrity Committee shall be responsible for:

a. The evaluation and resolution of management, operational, and patient care issues that impact conformance with the mission and values of the healing ministry in the operations of this Corporation and the Health Facilities operated by this Corporation;

b. Approving policies and procedures with respect to implementation and conformance to the mission and values of the healing ministry;

c. Establishing and maintaining systems for monitoring compliance with the mission and values of the healing ministry;

d. Operational integrity of the Statement of Common Values;

e. Operational integrity of mission integration standards;

f. Pastoral care and education programs; and

g. Ministry leadership formation programs.

(iii) The Mission Integrity Committee shall have the power and responsibility to review and monitor the Systems*:

- a. Labor practices; and
- b. Pension administration.

(iv) The Mission Integrity Committee, in consultation with the Sponsorship Council, shall review the Corporation's Annual Mission Integration Report, prior to its submission to the Board, and may make recommendations for consideration by the Board based on such review.

(v) The Mission Integrity Committee may propose revisions to the Statement of Common Values or its mode of implementation. Any such proposal by the Mission Integrity Committee shall first be provided to and reviewed with the Sponsorship Council, and the Sponsorship Council shall have the sole power to veto any such changes before they are presented to the Board for final approval. Following the next meeting of the Sponsorship Council, provided the Sponsorship Council has not voted to veto or postpone such proposal, the Mission Integrity Committee may request approval of the Board at the Board's next regularly scheduled meeting. The Board must, in its discretion, approve all such changes before they become final. If approved by the Board, such proposal shall be implemented.

(vi) The Mission Integrity Committee shall implement and oversee Board Formation Programs for directors, and may include executives of the Corporation and members of Subsidiary boards, Hospital Community Boards and fundraising foundation boards. Such Board Formation Programs shall be designed to educate about the healing ministry and the mission, culture and charism of the Sponsors.

(5) Advice to Management and Board. The Mission Integrity Committee shall meet at least annually with senior management and Board representatives, as selected by the President/Chief Executive Officer in consultation with the chair of the Mission Integrity Committee, with the purpose of providing advice and guidance regarding the subject matter referred to in Section 10.3(f)(4).

10.4 Subcommittees.

(a) Creation of Subcommittees. Each committee may establish one or more subcommittees composed of those committee members and other individuals deemed appropriate by the committee, appointed by the committee, and having such rights and duties as shall be delegated to the subcommittee by the committee; provided, however, that no subcommittee shall exercise the power and authority of the Board.

(b) Community Economic Initiatives Subcommittee. The Investment Committee may establish a subcommittee with responsibility for making reports and recommendations to the Investment Committee regarding the overall administration of community economic initiatives, to include: reviewing the performance of community economic initiatives, reviewing applications submitted in connection with community economic initiatives,

and reviewing individual projects of the community economic initiatives program. The Community Economic Initiatives Subcommittee, if established, shall consist of those members of the Investment Committee, and such other individuals reflective of the diversity of the communities in which this Corporation and its subsidiaries conduct activities, who are appointed from time to time by the chairperson of the Investment Committee.

10.5 Appointment. The chairperson, vice chairperson, and members of any Board Delegated Powers Committee or General Committee shall be nominated by the Chairperson and appointed by the Board by a majority vote of Directors then in office.

10.6 Women Religious Serving as Committee Members. Women religious may be appointed to serve as members of committees, in accordance with the provisions of this Article X, from time-to-time.

10.7 Committee Chairs. Excepting the Mission Integrity Committee, the Chairperson of any Board Delegated Powers Committee or General Committee shall be a Director.

10.8 Term of Office. The chairperson and each member of any Board Delegated Powers Committee or General Committee shall serve until the next annual meeting of the Board, or until such committee is sooner terminated, or until he or she is removed by the Board, resigns, or otherwise ceases to qualify as a chairperson or member of the committee. Individuals who are not also a Director may not continue to serve on General Committees once they have served on one or more committees for five consecutive one-year terms. Individuals whose term as a Director has ended may continue to serve on General Committees for no more than 2 additional years. The Board may permit individuals to serve on a General Committee for longer than the foregoing term limits if, in its discretion, it finds that the implementation of the term limit will create a hardship for the committee. Individuals whose term(s) have ended due to the implementation of these term limits may again be appointed to serve as members of General Committees after a hiatus of 2 years. These term limits shall also apply in the case of subcommittees.

10.9 Vacancies. Vacancies on any Board Committee may be filled for the unexpired portion of the term by a majority vote of the Directors then in office.

10.10 Removal of Members of Committees. The Board may remove at any time, with or without cause, the chairperson or any member of any committee, except the ex-officio members of the Executive Committee specified by position in Section 10.2(a).

10.11 Quorum and Actions. A majority of members of a committee shall constitute a quorum and any transaction of a committee shall require a majority vote of the committee members present at a meeting at which a quorum is present. Except as otherwise provided in these bylaws, each member of a committee, including the person presiding at the meeting, shall be entitled to one vote.

10.12 Meetings and Action of Committees. Meetings and actions of any committee created under this Article X shall be governed by, held, and taken under the provisions of these bylaws concerning meetings and other Board actions, except that the time for

general meetings of committees, or for the calling of special meetings of committees, may be set either by the Board or, if no action is taken by the Board, by the committee. Minutes of each committee meeting shall be kept and filed with this Corporation's corporate records. The Board may adopt rules for the governance of any committee as long as the rules are consistent with these bylaws. If the Board has not adopted rules, the committee may do so.

ARTICLE XI

HOSPITAL COMMUNITY BOARDS

11.1 Establishment. This Corporation shall establish one or more Hospital Community Boards related to hospitals owned and operated by this Corporation (the "Hospital Community Boards"). All Hospital Community Boards shall be operated substantially in the manner described in, and shall have the responsibilities generally as described in, the forms of Hospital Community Board Bylaws attached to these bylaws as Exhibits B1 and B2 (the "Hospital Community Board Bylaws"). Any change in the form of the Hospital Community Board Bylaws to be applicable to a specific Hospital Community Board shall be approved by this Board. The Board shall make all appointments to the Hospital Community Boards.

11.2 Women Religious on Hospital Community Boards. Each Hospital Community Board related to Catholic Sponsored Health Facilities shall have at least one woman religious on the Hospital Community Board, as and to the extent provided in such Hospital Community Board Bylaws.

11.3 Authority.

(a) Policies and Procedures. The Hospital Community Board shall have final authority to approve all hospital policies and procedures for hospital services at the hospitals that the Hospital Community Board supports (the "Local Hospital"), where such approval is required of a governing body by law, regulation or accrediting body. This Board may elect to exercise such approval rights by notice to the Hospital Community Board and, in such case, the referenced policies and procedures shall be deemed approved by the Hospital Community Board.

(b) Quality Assessment, Performance Improvement, Patient Safety and Utilization Management Activities. The Hospital Community Board shall be responsible for assuring that health care services provided at the Local Hospital are of high quality, safe, effective, efficient and consistent with community standards. The Hospital Community Board shall be responsible for ongoing quality assessment, performance improvement, patient safety and utilization management activities of the Local Hospital, for assuring that quality and patient safety issues are addressed and resolved appropriately, and for assuring that quality assessment, performance improvement, patient safety and utilization management activities are consistent with the standards, policies and procedures established by the Board and the Quality Committee. The Hospital Community Board shall assure that the Medical Staff participates in the measurement, assessment and improvement of clinical and non-clinical processes affecting patient care at the Local Hospital and takes a leadership role where the clinical processes are the primary responsibility of physicians.

(c) Medical Staff Matters. The Hospital Community Board shall have final authority regarding medical staff matters delegated to it by this Board pursuant to Article IX of these bylaws and as set forth in the Hospital Community Board Bylaws.

ARTICLE XII

SPONSORSHIP COUNCIL

12.1 Purpose. The general purpose of the Sponsorship Council shall be to (a) oversee and, as applicable, act upon issues of Catholic identity with respect to the Catholic Sponsored Health Facilities, including oversight of mission integration, ministry leadership education and formation, and chapels and religious symbols and artifacts in Catholic-Sponsored Health Facilities; and (b) inform the healing ministry of the Corporation, including both Catholic Sponsored Health Facilities and Health Facilities which are not Catholic Sponsored, on matters of mission integration, ministry leadership formation and dedicated sacred space by representation on the Mission Integrity Committee, as set forth below.

12.2 Membership. Subject to Section 12.3 below, there shall be a Sponsorship Council comprised of six members appointed as follows:

(a) One member of the Sisters of Mercy of the Americas West Midwest Community, as appointed by the President of the West Midwest Community or a governance body of the West Midwest Community delegated such authority by the Community Leadership Team.

(b) The Prioress of the Adrian Dominican Sisters or her designee, who shall be a member of the Adrian Dominican Sisters.

(c) The Prioress General of the Dominican Sisters of San Rafael or her designee who shall be a member of the Dominican Sisters of San Rafael.

(d) The General Superior of the Incarnate Word Sisters or her designee who shall be a member of the Incarnate Word Sisters.

(e) The Prioress of the Taos Dominicans or her designee who shall be a member of the Taos Dominicans.

(f) The Provincial Minister of the Redwood City Franciscans or her designee who shall be a member of the Redwood City Franciscans.

12.3 Change of Composition.

(a) Except as provided in subsections (b) and (c) below, the rights of the Sponsors to compose the Sponsorship Council, as provided in Section 12.2, shall be within the sole discretion of the Sponsors.

(b) Notwithstanding subsection (a) above, at any time a Sponsor may change its appointee or designee sitting on the Sponsorship Council by giving written notice to all the members of the Sponsorship Council and the Chief Administrative Officer.

(c) Notwithstanding subsection (a) above, at any time a Sponsor, acting as a Sponsor, may withdraw from participation in the Sponsorship Council by giving written notice to all the members of the Sponsorship Council and the Chief Administrative Officer. Thereafter, such Sponsor shall have no rights to participate in or appoint to the Sponsorship Council. After the withdrawal of a Sponsor as a participant in the Sponsorship Council, and not withstanding any other provisions of these bylaws, the bylaws shall be amended by the Board to exclude such Sponsor from inclusion in Section 12.2 above and such revision shall not require the approval of the Sponsorship Council or the other Sponsors. Such withdrawal from Sponsorship Council participation shall be without prejudice to any other rights such Sponsor may have in the Articles of Incorporation, these bylaws, or the Matrix.

12.4 Voting. Except as otherwise provided in these bylaws or in the Matrix, the Sponsorship Council shall act based on a majority vote of all of its members, and without a minimum quorum requirement.

12.5 Policies and Procedure. Except as otherwise provided in these bylaws or in the Matrix, the organizational structure, meeting schedule and all matters related to the policies and procedures of the Sponsorship Council shall be determined by the Sponsorship Council.

12.6 Powers and Responsibilities. The Sponsorship Council shall have the powers and responsibilities as set forth herein and in the Matrix.

12.7 Appointment of Mission Integrity Committee. The Sponsorship Council shall appoint 3 of the 7 members of the Mission Integrity Committee.

ARTICLE XIII

DISSOLUTION OF THIS CORPORATION

13.1 Vote to Dissolve. Consistent with the Articles of Incorporation and subject to any approval rights contained in the Matrix, this Corporation may elect to commence a process to voluntarily wind up and dissolve upon approval of the Board.

13.2 Plan of Dissolution. After an affirmative vote to dissolve this Corporation, a plan of dissolution shall be prepared for approval pursuant to this Section 13.2. The plan of dissolution shall include an outline of dissolution steps, a proposed timetable and a plan of distribution of assets. The plan of dissolution shall be in accordance with applicable law and shall include adequate provision for the payments of debts and liabilities and compliance with valid conditions applicable to this Corporation requiring return, transfer or conveyance of assets. This Corporation shall wind up and dissolve upon approval of the plan of dissolution consistent with these bylaws, including any and all approval rights provided for in the Matrix.

(a) All of the identifiable assets of each Catholic Sponsored Health Facilities (including real property, equipment, supplies, licenses, working capital, cash, investments, apportioned debt, apportioned pension and benefit plan assets and liabilities, and apportioned insurance trust assets and liabilities) shall be returned to the control of the facility's Sponsor or such Sponsor's designee, provided that the Sponsor or its designee is then exempt from taxation under Section 501(c)(3) of the Code and, if the Sponsor or its designee are not exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future United States revenue or tax laws (the "Code") and, if the Sponsor or its designee is not exempt under Section 501(c)(3) of the Code, to one or more organizations that are organized and operated exclusively for charitable or religious purposes meeting the requirements for exemption provided under Section 214 of the California Revenue and Taxation Code and that are exempt from taxation under Section 501(c)(3) of the Code. In lieu of accepting assets or designating an entity for disposition, or dissolution of the Corporation a Sponsor, by notice to the Corporation in accord with Section 6.2 hereof, may decline participation in the disposition process as outlined above, and thereupon, such Sponsor's related assets shall be disposed of in accordance with Section 13.2 (b) below.

(b) All of the remaining assets shall be transferred to one or more organizations that are organized and operated exclusively for charitable or religious purposes meeting the requirements for exemption provided under Section 214 of the California Revenue and Taxation Code and that are exempt from taxation under Section 501(c)(3) of the Code.

ARTICLE XIV

RECORDS AND REPORTS

14.1 Maintenance of Articles and Bylaws. This Corporation shall keep at its principal executive office a copy of its articles of incorporation and these bylaws, as amended to date.

14.2 Maintenance of Other Corporate Records. Minutes of proceedings of the Board or committees shall be kept in written or typed form, and the accounting books and records shall be kept either in written or typed form or in any other form capable of being converted into written, typed or printed form.

14.3 Annual Report. This Corporation shall provide to all of its Directors, within 120 days after the close of its fiscal year, a report which shall include, but not be limited to, the following information in reasonable detail:

(a) The manner in which this Corporation's healing ministry is being implemented by the Corporation.

(b) The assets and liabilities, including the trust funds, of this Corporation as of the end of the fiscal year.

(c) The principal changes in assets and liabilities, including trust funds, during the fiscal year.

(d) The revenue or receipts of this Corporation, both unrestricted and restricted to particular purposes, for the fiscal year.

(e) The expenses or disbursements of this Corporation, for both general and restricted purposes, during the fiscal year.

(f) Any information required by Section 6322 of the California Nonprofit Corporation Law relating to interested persons and to indemnification.

The report shall be accompanied by an independent accountant's report or, if no such report, by the certificate of an authorized corporate officer stating that it was prepared without audit from the books and records of this Corporation.

14.4 Auditor's Report. An audited financial statement of this Corporation shall be prepared annually by the Auditors.

14.5 Report to Sponsors/Sponsorship Council. This Corporation shall provide to each of the Sponsors of the Catholic Sponsored Health Facilities, within 120 days after the close of its fiscal year, a report which shall include the following information:

(a) An unaudited annual financial report for each Sponsor's Catholic Sponsored Health Facilities.

(b) A report on the insurance coverage maintained for each Sponsor's Catholic Sponsored Health Facilities.

(c) A copy of the Corporation's audited annual report, which shall also be provided to the Sponsorship Council.

(d) An inventory of Stable Patrimony for each of the Sponsor's Catholic Sponsored Health Facilities.

14.6 Confidentiality. Except as otherwise publicly disclosed, or in order to appropriately conduct this Corporation's business, the records and reports of this Corporation shall be held in confidence by those persons with access to them.

ARTICLE XV

INDEMNIFICATION

15.1 Indemnification of Officers, Directors, Sponsorship Council Committee Members and Members of Hospital Community Boards. This Corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding by reason of the fact that such person is or was a Director, Officer, Sponsorship Council Member, Committee Member of this Corporation and members of Hospital Community Boards, to the full extent allowed under and subject to the requirements of Section 5238 of the California Nonprofit Corporation Law relating to the power of a Corporation to indemnify any such person. The

amount of such indemnity shall be as much as the Board or the court, if application is made to it, determines and finds to be reasonable.

15.2 Indemnification of Employees and Other Agents. Nothing herein contained shall limit the right of this Corporation, in the specific case and as provided in Section 5238 of the California Nonprofit Corporation Law, to indemnify employees and other agents who are made parties, or who are threatened to be made parties, to any proceeding by reason of the fact that such person is or was an employee or other agent of this Corporation.

15.3 Indemnification - Service on Other Corporations. This Corporation shall have, and may exercise by the adoption of appropriate resolution, the power of indemnification for any person who is or was a Director, Officer, employee, Sponsorship Council member, Committee member, or other agent of this Corporation who is or was serving at the request of this Corporation as a member, director, officer, employee or agent of another foreign or domestic Corporation, partnership, joint venture, trust or other enterprise, to the full extent allowed under the provisions of Section 5238 of the California Nonprofit Corporation Law relating to the power of a Corporation to indemnify any such person. The amount of such indemnity shall be as much as the Board or the court, if application has been made to it, determines and finds to be reasonable.

15.4 Obligation to Indemnify. Any of the foregoing to the contrary notwithstanding, to the extent that any Director, Officer, Sponsorship Council member, Committee member, employee or other agent of this Corporation is successful on the merits in defense of any proceeding, claim, issue or matter referred to in Section 5238(b) or (c) of the California Nonprofit Corporation Law, he or she shall be indemnified by this Corporation against expenses actually and reasonably incurred in connection therewith.

15.5 Indemnification-Excess. The indemnity provided herein shall be in excess of all valid and collectible insurance or indemnity policies.

ARTICLE XVI

MISCELLANEOUS

16.1 Review and Revision. These bylaws shall be reviewed periodically for compliance with applicable law and this Corporation's Articles of Incorporation.

16.2 Amendments to the Articles of Incorporation and Bylaws. No amendment or change to Article V (Non-Member Rights of Approval) or Article VII (Dissolution) of the Articles of Incorporation shall be effective unless and until approved by the Sponsorship Council and approved in compliance with any applicable provisions in the Matrix. No bylaw amendment or change to Article III (Healing Ministry); Article IV (Sponsors); Article VI (Governance Matrix), and any Matrix Actions requiring the approval of the Sponsorship Council or the Sponsors; Section 10.3(f) (Mission Integrity Committee); Section 11.2 (Women Religious on Hospital Community Boards); Article XII (Sponsorship Council); Section 13.2 (Dissolution); Section 14.5 (Report to Sponsors/Sponsorship Council); or this Section 16.2 (Amendments to the

Articles of Incorporation and Bylaws) shall be effective unless and until approved by the Sponsorship Council and approved in compliance with any applicable provisions in the Matrix.

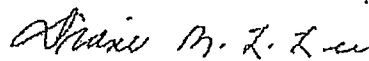
16.3 Notices. Any notices required to be given under these bylaws shall be in writing addressed to the address indicated, in the corporate records of this Corporation.

16.4 Statement of Common Values. The Statement of Common Values, dated effective January 17, 2012 attached hereto as Exhibit C, shall be the Statement of Common Values referred to herein, until and unless revised in accordance with these bylaws. Terms used in the Statement of Common Values (such as abortion, euthanasia, assisted suicide) are to be defined in a manner consistent with Catholic moral teachings.

CERTIFICATE OF SECRETARY
OF
DIGNITY HEALTH

I, the undersigned, certify as follows: (1) that I am presently the elected and acting Assistant Secretary of Dignity Health, (2) that the foregoing amended and restated bylaws were approved at a duly convened meeting of the Board of Directors on October 31, 2011; (3) that the foregoing amended and restated bylaws were approved by unanimous written consent without a meeting by the then-existing Corporate Members as of November 21, 2011, and (4) that such bylaws are effective as of January 17, 2012.

Executed on this 17th day of January, 2012 at San Francisco, California.



Diane M. L. Lee,
Assistant Secretary

Exhibit A

DIGNITY HEALTH GOVERNANCE MATRIX

Bylaws Exhibit A

GOVERNANCE MATRIX

USE AND APPLICATION OF GOVERNANCE MATRIX

Ai. SCOPE OF ATTACHMENT

A1.01 Governance Matrix. This document is the description of the governance rights and process applicable to certain actions taken within the System. These consist of certain rights to initiate action as well as certain intermediate and final approval rights with respect to actions taken or recommended by bodies within the System (the "Reserved Rights").

A1.02 Use. This Governance Matrix is intended to be used as an attachment to various corporate organizational and governance documents. It is to be used as the formal and specific description of the Reserved Rights, and may be incorporated by reference into such documents.

A1.03 System Organization. As a matter of membership and Reserved Rights, the System consists of the following elements:

- (a) the Corporation, acting through its Board, and acting as a corporate member of any Subsidiary, or as a shareholder, as applicable; and
- (b) the Subsidiaries, acting through their boards of directors, including acting as a corporate member of other Subsidiaries or as a shareholder, as applicable.

Aii. APPLICATION

A2.01 Incorporation by Reference. This Governance Matrix is incorporated in and part of the Bylaws as provided in Article VI of the Bylaws, and, where indicated, may be incorporated into the governance documents of other organizations in the System.

A2.02 Approval Sequence. Generally, the exercise of Reserved Rights is intended to occur in the following approval sequence:

- (a) action by the board of directors of a Subsidiary, if applicable;
- (b) action by the board of directors of any Subsidiary's immediate parent corporation that is not the Corporation, if applicable;
- (c) action by the board of directors of the Corporation;
- (d) to the extent applicable, action by Sponsorship Council; or action by a Sponsor through its duly authorized governing body, if required by this Matrix;

Notwithstanding this intended sequence, actions may be taken out of sequence where otherwise expressly provided in the Bylaws or Matrix, or where appropriate or necessary, provided that its action is contingent upon the action of all of the other approved bodies in the Matrix.

A2.03 Non-Application to Certain Entities. Where a "N/A" is used in this Matrix it means that the particular action does not apply to the listed entity.

AIII. RIGHTS

A3.01 Attachment. This Matrix is intended to state the Reserved Rights described herein with reference to the bodies which may exercise them. Any conflict between the Matrix and a written narrative description of the same right or rights in any document to which this is attached shall be resolved in favor of the narrations in such document. Any conflict in defined terms between the Matrix and another document to which it is attached shall be resolved in favor of the Matrix.

AIV. AMENDMENTS

A4.01 Amendment Process. This Governance Matrix may only be amended or revoked in accordance with the approvals required for amendment of the Bylaws as set out in the Bylaws and in this Matrix.

GOVERNANCE MATRIX

ACTIONS	Subsidiary ⁽¹⁾	Corporation Board ⁽²⁾	Sponsorship Council ⁽³⁾	Sponsors ⁽⁴⁾
1. Substantive Change to Statement of Common Values				
A. Corporation/Health Facility which is not Catholic Sponsored ⁽⁵⁾	—	Approve ⁽¹¹⁾	Veto Power ⁽¹¹⁾	—
2. Substantive Changes to Application of Ethical and Religious Directives for Catholic Healthcare Services ⁽⁶⁾				
A. Corporation ⁽⁷⁾	N/A	N/A	N/A	N/A
B. Catholic Sponsored Health Facility ⁽⁸⁾	—	—	Approve ⁽¹²⁾	—
C. Health Facility which is not Catholic Sponsored ⁽⁹⁾	N/A	N/A	N/A	N/A
D. Other Subsidiary ⁽¹⁰⁾	N/A	N/A	N/A	N/A
3. Long Range and Strategic Plans				
A. Corporation	—	Approve	—	—
B. Subsidiary	Approve	Approve	—	—
4. Creation of New Corporation				
A. Corporation	—	Approve	—	—
B. Subsidiary	Approve	Approve	—	—
5. Merger or Consolidation				
A. Corporation	—	Approve	—	— ⁽¹³⁾
B. Other Subsidiary	Approve	Approve	—	—
6. Acquisitions and Capital Expenditures, including Operating and Capital Leases (in accord with applicable Board approved policy)				
A. Corporation	—	Approve	—	—
B. Subsidiary	Approve	Approve	—	—

GOVERNANCE MATRIX

ACTIONS	Subsidiary ⁽¹⁾	Corporation Board ⁽²⁾	Sponsorship Council ⁽³⁾	Sponsors ⁽⁴⁾
7. Sale, Lease or Disposition of All or Substantially All Assets of				
A. Corporation	—	Approve	—	— ⁽³⁾
B. Other Subsidiary	Approve	Approve	—	—
8. Sale, Lease or Disposition of Property Subject to the Norms of Church Law ⁽²⁻⁴⁾				
A. Catholic Sponsored Health Facility	—	Approve	—	Approve ^(1,4)
9. Mortgage or Encumbrance ^(1,4) of Property Subject to the Norms of Church Law				
A. Catholic Sponsored Health Facility	—	Approve	—	Approve ^(1,4)
10. Dissolution				
A. Corporation	—	Approve	—	— ^(1,4)
B. Other Subsidiary	Approve	Approve	—	—
11. Joint Venture (Creation, Participation or Material Change by) ^(1,3) (in accord with applicable Board approved policy)				
A. Corporation	—	Approve	—	—
B. Subsidiary	Approve	Approve	—	—
12. Amendment to Articles of Incorporation				
A. Corporation	—	Approve	—	—
B. Subsidiary	Approve	Approve	—	—
13. Amendment to Bylaws				
A. Corporation	—	Approve	—	—
B. Subsidiary	Approve	Approve	—	—

GOVERNANCE MATRIX

ACTIONS	Subsidiary ⁽¹⁾	Corporation Board ⁽²⁾	Sponsorship Council ⁽³⁾	Sponsors ⁽⁴⁾
14. Amendment to Sponsorship Provisions ⁽¹⁵⁾ A. Corporation	—	Approve	Approve ⁽¹²⁾	—
15. Borrowings, Guaranties, Loans, Encumbrances (except those subject to #9 above) (in accord with applicable Board approved policy) A. Corporation	—	Approve	—	—
B. Subsidiary	Approve	Approve	—	—
16. Capital Asset Sales (except those subject to #7 and #8 above) (in accord with applicable Board approved policy) A. Corporation	—	Approve	—	—
B. Subsidiary	Approve	Approve	—	—
17. Consolidated Budget and Amendments A. Corporation (including Subsidiaries)		Approve		
18. Individual Corporation Budget and Amendments A. Corporation	—	Approve	—	—
B. Subsidiary	Approve	Approve	—	—
19. Selection or Removal of Auditors A. Corporation (including Subsidiaries)	—	Approve	—	—

GOVERNANCE MATRIX

ACTIONS	Subsidiary ⁽¹⁾	Corporation Board ⁽²⁾	Sponsorship Council ⁽³⁾	Sponsors ⁽⁴⁾
20. Closure of a Catholic Sponsored Health Facility	—	Approve	Approve ^(1,2)	—
21. Change of Name of a Catholic Sponsored Health Facility	—	Approve	Approve ^(1,2)	—
22. Acquisition or Construction of a new acute care Health Facility that will Constitute Property Subject to the Norms of Church Law to be sponsored by one of existing Sponsors.	—	Approve	—	Approve ^(1,4)
23. Resignation as Sponsor ^(2,3)	—	—	—	Approve ^(1,3)
24. Withdrawal of Catholic Sponsored Health Facility from System ⁽²⁾	—	Approve	—	Approve ^(1,3)
25. Alienation ^(2,3) of a Catholic Sponsored Health Facility which will remain part of the System	—	—	—	Approve ^(1,4)
26. Appointment or termination of a Chief Executive Officer ^(2,3)				
A. Subsidiary	—	Act	—	—

GOVERNANCE MATRIX

Notes to Governance Matrix

1. "Subsidiary" means an organization in which the Corporation holds, directly or indirectly, greater than fifty percent (50%) of the voting rights as evidenced by membership powers, securities or other rights conferring certain approval or decision-making authority on the Corporation.
2. "Corporation Board" means the board of directors of the corporation as described in Article VII of the Bylaws.
3. "Sponsorship Council" means the body described in Article XII of the Bylaws.
4. The "Sponsors" affiliated with the System are as designated in Article IV of the Bylaws.
5. "Health Facility" means an acute care hospital or other licensed health care provider.
6. Ethical and Religious Directives for Catholic Healthcare Services, as approved and amended by the U.S. Conference of Catholic Bishops from time to time, prohibit certain procedures and practices which the Roman Catholic Church deems to be intrinsically evil. Each Catholic Sponsored Health Facility shall be operated consistent with the Ethical and Religious Directives for Catholic Healthcare Services.
7. "Corporation" means Dignity Health, the California nonprofit public benefit corporation which is the owner and operator of those Health Facilities and other organizations which make up the System, including the Subsidiary nonprofit corporations.
8. "Catholic Sponsored Health Facility" means any Health Facility which is Property Subject to the Norms of Church Law, and where such Health Facility (or a predecessor facility) was contributed to the System by a Sponsor (or a Sponsor predecessor).
9. "Health Facility which is not Catholic Sponsored" means a Health Facility owned by or affiliated with the Corporation that is not a Catholic Sponsored Health Facility.
10. "Other Subsidiary" means a Subsidiary that does not operate a Catholic Sponsored Health Facility.
11. Approval or veto in accord with the process described in Bylaw section 10.3(f)-(v).
12. Majority vote of the Sponsorship Council, communicated by written consent, as defined in Bylaw Section 6.2.
13. A merger of the corporation or a "substantially all" sale/lease/disposition regarding the Corporation, its property or assets, does not require Sponsor approval; provided however, that the Sponsor and Sponsorship Council rights, as protected by the Sponsorship Provisions may not be altered as a result, unless an amendment to the relevant provision(s) in the Articles of Incorporation, Bylaws or this Matrix has been duly approved, to the extent required by this Matrix.
14. Approval of the individual Sponsor of any Catholic Sponsored Health Facility (as defined above) acting through its duly authorized governing body, but only with regard to its individually sponsored facilities, and only if the action in question affects a Catholic Sponsored Health Facility that is directly sponsored as identified below. Such approval must be evidenced by written consent, as defined in Bylaw Section 6.2.

GOVERNANCE MATRIX

Notes to Governance Matrix

Sponsor

SISTERS OF MERCY OF THE AMERICAS:
WEST MIDWEST COMMUNITY

THE SISTERS OF ST. DOMINIC, CONGREGATION OF THE
MOST HOLY ROSARY, ADRIAN, MICHIGAN.

THE SISTERS OF THE THIRD ORDER OF ST. DOMINIC,
CONGREGATION OF THE MOST HOLY NAME, SAN
RAPHAEL, CALIFORNIA.

CONGREGATION OF THE SISTERS OF CHARITY OF THE
INCARNATE WORD, HOUSTON, TEXAS.

THE CONGREGATION OF THE DOMINICAN SISTERS OF ST.
CATHERINE OF SIENA, TAOS, NEW MEXICO.

THE SISTERS OF ST. FRANCIS OF PENANCE AND CHRISTIAN
CHARITY, ST. FRANCIS PROVINCE, REDWOOD CITY,
CALIFORNIA.

Sponsored Facilities

Mercy Medical Center Redding
St. Elizabeth Community Hospital [Red Bluff]
Mercy Medical Center Mt. Shasta
Mercy General Hospital [Sacramento]
Mercy Hospital Folsom
Mercy San Juan Medical Center [Carmichael]
St. Joseph's Hospital and Medical Center [Phoenix]
St. Mary's Medical Center [San Francisco]
Mercy Hospital [Bakersfield]
Mercy Southwest Hospital [Bakersfield]
St. John's Regional Medical Center [Oxnard]
St. John's Pleasant Valley Hospital [Camarillo]

Dominican Hospital [Santa Cruz]
St. Rose Dominican Hospital Rose de Lima Campus [Henderson]
St. Rose Dominican Hospital Siena Campus [Henderson]
St. Rose Dominican Hospital San Martin Campus [Las Vegas]

St. Joseph's Medical Center of Stockton
St. Joseph's Behavioral Health Center [Stockton]
St. Mary's Regional Medical Center [Reno]

St. Bernardine Medical Center [San Bernardino]
St. Mary Medical Center [Long Beach]

Mercy Medical Center Merced

Marian Medical Center [Santa Maria]

15. "Mortgage" or "Encumbrance" for these purposes shall be defined to apply only to an encumbrance of "Stable Patrimony" (e.g., mortgage of real property) and shall not include a security interest in "Gross Revenue" or on individual items of equipment.

16. While the Sponsors are not required to approve a dissolution of the Corporation, the Bylaws expressly provide for reversion of their "Stable Patrimony" and related operational assets on dissolution. See Article XIII of the Bylaws.

GOVERNANCE MATRIX

Notes to Governance Matrix

17. "Joint Ventures" are defined to include any ownership interest in a partnership, corporation, or limited liability company which is less than wholly owned or controlled by the Corporation or a Subsidiary, except for such an interest acquired solely as a passive investment pursuant to the Corporation's Investment Policy. General partnership interests shall always be treated as joint ventures.
18. "Sponsorship Provisions" are those provisions that specifically cannot be amended without the approval of the Sponsors or Sponsorship Council as provided in Section 16.2 of the Bylaws.
19. The Sponsor-facility linkage concept set out in footnote 14 applies in this circumstance as it does in footnote 14, with only the affected Sponsor required to approve. However, since this action contemplates a new facility that will be linked with the designated Sponsor, the approval applies to the new facility not yet listed in footnote 14, and requires only the Sponsor to be linked with such new facility to approve the action.
20. "Resignation as Sponsor" is expressly limited to a decision by a Sponsor to no longer be listed as a Sponsor in Article IV of the Bylaws and does not include the withdrawal of any Catholic Sponsored Health Facility from the System. Such resignation as a Sponsor requires 90 days notice to the Board and the Sponsorship Council from the resigning Sponsor, and requires only the action of the resigning Sponsor; provided, however, that such action will result in a loss of the Sponsor's reserved rights with respect to its Catholic Sponsored Health Facility or facilities, and therefore may require the Sponsor's action to alienate²² the facility or facilities.
21. The "System" means, collectively, the affiliated group of corporations comprised of the Corporation, the Subsidiaries and the Joint Ventures, and including all of the Health Facilities.
22. "Alienation" means the transfer or conveyance of temporal goods pursuant to the Norms of Church Law of the Roman Catholic Church. The canons require authorization for the transfer of church property, over a certain value, that is part of the Stable Patrimony of a juridic person.
23. "Chief Executive Officer" means the senior executive officer of a corporation, regardless of title.
24. "Property Subject to the Norms of Church Law" means land, buildings and designated funds which are under the Canonical stewardship of a sponsoring religious institute, province or regional community. Some of these properties have been specifically designated by the Sponsors as "Stable Patrimony," and as such, become subject to the Church law on alienation of temporal goods. Other properties are not subject to the norms on alienation, but to those of administration. For purposes of this definition, property which has been so designated is considered to be the "Stable Patrimony" of a religious institute, province, or regional community for purposes of the Law of the Roman Catholic Church *even if civil title is held by the Corporation or an organization controlled by the Corporation.*
25. Other defined terms used herein are as defined in the Corporation's Articles of Incorporation or Bylaws.

EXHIBIT 15

DECLARATION OF TERESA DIAZ

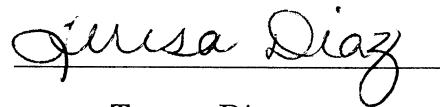
I, TERESA DIAZ, hereby declare as follows:

1. I am an Executive Coordinator at Dignity Health. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would testify competently to such facts under oath.

2. In my capacity as Executive Coordinator, I purchased on-line and downloaded a copy of the California Medical Association 2020 Annotated Model Medical Staff Bylaws from the California Medical Association on-line store, at https://www.cmadocs.org/store/info/productcd/MODEL_BYLAWS/t/model-medical-staff-bylaws.

3. A true and correct copy of excerpts of those Model Bylaws is attached hereto.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this declaration was executed on August 4, 2020 in Glendale, California.



Teresa Diaz



2020
Annotated Model
Medical Staff Bylaws

California Medical Association

2020 Annotated Model Medical Staff Bylaws

In the text of the bylaw provisions, ~~strikeouts~~ (denoting deleted text) and underlines (denoting new text) reflect revisions, if any, approved by the CMA Board of Trustees as of October 2019. New footnotes or portions thereof are highlighted and underlined.

Introduction to the 2020 CMA Model Medical Staff Bylaws

The Annotated CMA Model Medical Staff Bylaws are intended to provide information relevant to particular bylaws provisions, including citations to state and federal laws and regulations where appropriate. The annotations are provided for reference only and are not intended as legal advice. Medical staffs having legal questions regarding the necessity for or potential impact of a particular bylaws provision are encouraged to consult with legal counsel who has expertise in medical staff affairs. OMSS members may contact CMA for referrals to legal counsel specializing in medical staff and bylaws issues.

Medical staffs throughout California depend on these Model Bylaws. They are not intended to be “one size fits all” and are most helpful as guidance and templates that should be adopted, in whole or with modifications, based on the individual needs of particular medical staffs. CMA also recommends consulting with medical staff legal counsel to assess the appropriateness of any particular provision in the Bylaws.

PERSONS WISHING TO NOTIFY CMA OF ERRORS IN THIS PUBLICATION, PROVIDE COMMENTS, CRITICISM OR SUGGESTIONS ARE ENCOURAGED TO CONTACT CMA AT MEDSTAFFHELP@CMADOCS.ORG.

Numerous annotations cite the Joint Commission's *Hospital Accreditation Standards*. Citations reflect language in Emergency Management (EM), Medical Staff (MS), Organization Performance (PI), and Leadership (LD) chapters inclusive of Standards, Rationales and Elements of Performance (EP).

The annotations also reference the state peer review statutes beginning at California Business & Professions Code §809. Compliance with these fair hearing statutes is required of all but state and county hospitals, and health facilities run by the University of California or others that serve as primary teaching facilities for medical schools. (The exempt facilities are still required to provide due process rights compatible with state and federal constitutional requirements, plus any other rights guaranteed by statutes, union agreements, or other sources of fair hearing requirements.)

In 2017, 2018 and 2019 CMA's governing bodies with authority over the substance of these CMA Model Medical Staff Bylaws (“Model Bylaws”) (i.e., the House of Delegates and Board of Trustees) introduced no amendments to the body of the Model Bylaws. All changes in the 2020 version instead reflect important new laws, court precedents, policy and best practices.

CMA's Annotated Model Medical Staff Bylaws are available in electronic or hard copy format for a fee. CMA Organized Medical Staff Section (OMSS)-member medical staffs

receive a free copy in electronic format, sent directly to the OMSS physician representative. Hardcopies for the OMSS-member medical staff's Bylaws Committee and/or the MEC are available on request. Applicable county tax and shipping is added to all orders. To order, call CMA at (800) 786-4282, e-mail medstaffhelp@cmadocs.org or visit our online bookstore at cmadocs.org/store.

provide a list of five names. Each party may strike up to two names to which the party objects and shall rank the remaining names in order of preference with "1" being the strongest preference. No name shall be left blank. The person with the lowest combined rank whose name has not been stricken by either party shall be invited to serve as the hearing officer. In the event this process does not result in the selection of a hearing officer, the matter shall be resolved by lot.¹⁷⁰

- (f) It shall be the duty of the member and the medical executive committee or its designee to exercise reasonable diligence in notifying the chair of the judicial review committee of any pending or anticipated procedural disputes as far in advance of the scheduled hearing as possible, in order that decisions concerning such matters may be made in advance of the hearing. Objections to any prehearing decisions may be succinctly made at the hearing.

7.4-2 Representation

The hearings provided for in these bylaws are for the purpose of intraprofessional resolution of matters bearing on professional conduct, professional competency, or character.

The member shall be entitled to representation by legal counsel in any phase of the hearing, if the member so chooses, and shall receive notice of the right to obtain representation by an attorney at law. In the absence of legal counsel, the member shall be entitled to be accompanied by and represented at the hearing by an individual of the member's choosing who is not also an attorney at law, and the medical executive committee shall appoint a representative who is not an attorney to present its action or recommendation, the materials in support thereof, examine witnesses, and respond to appropriate questions. The medical executive committee shall not be represented by an attorney at law if the member is not so represented.¹⁷¹

7.4-3 The Hearing Officer

The medical executive committee shall appoint a hearing officer to preside at the hearing. The hearing officer shall be an attorney at law qualified to preside over a quasi-judicial hearing, but attorneys from a firm regularly utilized by the hospital, the medical staff or the involved medical staff member or applicant

¹⁷⁰ Subsection (e) of section 7.4-1 was updated to clarify the procedure for challenges to the partiality of JRC members in accordance with CMA House of Delegates 2011, Report F-3-11.

¹⁷¹ California Business & Professions Code §809.3(c) requires peer review bodies to adopt provisions governing whether a licentiate has the option of legal representation at the licentiate's expense, but precludes the peer review body from being represented by an attorney if the licentiate is not so represented. 42 U.S.C. §11112(b)(3)(C), on the other hand, provides for the right to representation by an attorney or other individual of the physician's or dentist's choice.

for membership, for legal advice regarding their affairs and activities shall not be eligible to serve as hearing officer. The hearing officer shall gain no direct financial benefit from the outcome and must not act as a prosecuting officer or as an advocate.¹⁷² The hearing officer shall preside over the voir dire process and may question panel members directly, and shall make all rulings regarding service by the proposed hearing panel members or the hearing officer. The hearing officer shall endeavor to assure that all participants in the hearing have a reasonable opportunity to be heard and to present relevant oral and documentary evidence in an efficient and expeditious manner, and that proper decorum is maintained. The hearing officer shall be entitled to determine the order of or procedure for presenting evidence and argument during the hearing and shall have the authority and discretion to make all rulings on questions which pertain to matters of law, procedure or the admissibility of evidence.

The hearing officer's authority shall include, but not be limited to, making rulings with respect to requests and objections pertaining to the production of documents, requests for continuances, designation and exchange of proposed evidence, evidentiary disputes, witness issues including disputes regarding expert witnesses, and setting reasonable schedules for timing and/or completion of all matters related to the hearing.

At the commencement of the hearing, the hearing officer may also apprise the judicial review committee of its right to terminate the hearing due to the member's failure to cooperate with the hearing process, but shall not independently make that determination or otherwise recommend such a termination at any other time.¹⁷³ Except as provided above, if the hearing

¹⁷² See discussion of *El-Attar* at footnote 148, *supra*.

The California Society of Healthcare Attorneys (CSHA) offers a hearing officer training program designed to provide participants in peer review hearings with easy access to information as to the identities and qualifications of potential hearing officers. With the issue of impartial hearing officers being raised increasingly, CSHA has established a hearing officer program that helps attorneys identify candidates for potential selection. The program consists of:

- (1) Maintaining a list of attorneys (with links to each participant's resume) who meet certain qualifications for presiding over peer review hearings; and
- (2) Providing training programs and resource materials for attorneys who wish to be listed as a participant in the hearing officer program.

For more information, see www.csha.info/.

¹⁷³ The California Supreme Court, agreeing with the Amicus Curiae brief filed by CMA concluded that hearing officers lack the authority to dismiss a case and therefore prevent a peer review body from reviewing a physician's appeal. See *Mileikowsky, M.D. v. West Hills Hospital* (2009) 45 Cal.4th 1259. While the court did state that the bylaws could create a simplified procedure that would allow a medical staff to adopt a hearing officer's recommendation that the proceedings be dismissed for a physician's failure to cooperate, CMA did not adopt that suggestion on the grounds that the hearing officer could

officer determines that either side in a hearing is not proceeding in an efficient and expeditious manner, the hearing officer may take such discretionary action as seems warranted by the circumstances, including, but not limited to, limiting the scope of examination and cross-examination and setting fair and reasonable time limits on either side's presentation of its case.

If requested by the judicial review committee, the hearing officer may participate in the deliberations of such committee and be a legal advisor to it, but the hearing officer shall not be entitled to vote.

In all matters, the hearing officer shall act reasonably under the circumstances and in compliance with applicable legal principles. In making rulings, the hearing officer shall endeavor to promote a less formal, rather than more formal, hearing process and also to promote the swiftest possible resolution of the matter, consistent with the standards of fairness set forth in these bylaws. When no attorney is accompanying any party to the proceedings, the hearing officer shall have authority to interpose any objections and to initiate rulings necessary to ensure a fair and efficient process.¹⁷⁴

7.4-4 Record of the Hearing

A shorthand reporter shall be present to make a record of the hearing proceedings, and the pre-hearing proceedings if deemed appropriate by the hearing officer. The cost of attendance of the shorthand reporter shall be borne by the hospital, but the cost of the transcript, if any, shall be borne by the party requesting it.¹⁷⁵ The judicial review committee may, but shall not be required to, order that oral evidence shall be taken only on oath administered by any person lawfully authorized to administer such oath.

potentially wield inappropriate control over the judicial review committee.

With respect to the issue of the hearing officer's powers, the court noted that no law expressly confers authority on hearing officers to issue terminating sanctions, and rejected the hospital's contention that such authority was implicit in Business & Professions Code §809.2(d) which authorizes a hearing officer to (a) continue a hearing where a party has failed to produce information, or (b) impose safeguards concerning the release of documents with individually identifiable licentiates. The court found that it was "dubious" that the Legislature intended that the law confer on hearing officers power other than beyond "granting or denying continuances."

¹⁷⁴ A hearing officer has no part in the decisionmaking process and therefore has no power to terminate a hearing as a sanction and therefore prevent the peer review body from hearing the case. See *Mileikowsky v. West Hills Med. Center* (2009) 45 Cal.4th 1259. For more information on this decision, see CMA ON-CALL document #5206, "Peer Review - Fair Hearing Requirements."

¹⁷⁵ California Business & Professions Code §809.3(a)(2) requires a record of the proceedings be made available to the member upon payment of reasonable preparation charges. 42 U.S.C. §11112(b)(3)(C)(ii) provides for the same right. A shorthand reporter-created record is recommended for its accuracy and thoroughness.

EXHIBIT 16

Case No. C085906

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

SUNDAR NATARAJAN, M.D.

Petitioner and Appellant

vs.

DIGNITY HEALTH DBA ST. JOSEPH'S MEDICAL CENTER

Respondent.

Appeal from the Superior Court for the State of California,
County of San Joaquin, Case No. STK-CV-UWM-20164821
Hon. Barbara A. Kronlund

**APPELLANT'S OPPOSITION TO RESPONDENT'S
SECOND MOTION FOR JUDICIAL NOTICE**

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Attorneys for Petitioner and Appellant
SUNDAR NATARAJAN, M.D.

MEMORANDUM OF POINTS AND AUTHORITIES
IN OPPOSITION TO REQUEST FOR JUDICIAL NOTICE

I. INTRODUCTION

Respondent Dignity Health (“Dignity”) seeks judicial notice of excerpts of the legislative history of Business and Professions Code Section 809 (“Section 809”) and Assembly Bill 120 (2009) pursuant to Evidence Code §§ 451, 452 and 459. The mandatory judicial notice provisions of Evidence Code § 451 plainly do not apply to the documents at issue. Admission of documents pursuant to Evidence Code § 452 is discretionary. (*People v. Preslie* (1977) 70 Cal. App. 3d 486, 492-493.) Judicial notice pursuant to Evidence Code § 459 is likewise discretionary, when based on documents admissible based on Section 452. (Evidence Code § 459, subd. (a).) Although legislative history can and should be judicially noticed in an appropriate case, in this case the Court should exercise its discretion to deny judicial notice, because Dignity’s motion is extremely untimely and the legislative history in these documents is irrelevant and unnecessary to the resolution of this appeal.

Admission of excerpts of legislative history at the very end of the briefing would be unfair to Dr. Natarajan, who would have no opportunity to respond to arguments based on this last second addition to the appellate record.

II. DIGNITY’S MOTION FOR JUDICIAL NOTICE IS UNTIMELY.

In its Motion, Dignity correctly states that it did not request judicial notice of any of the documents at issue in the trial court. (Dignity Motion for Judicial Notice (“MJN”), pp. 4-5.) It provides no explanation why these documents, if they are indeed relevant, were not presented to the trial court. Dignity argues that the materials are now relevant to address the amicus brief of the California Medical Association. However, the question of how the language of Business & Professions Code § 809.2 (“Section 809.2”) should be interpreted was squarely before the trial court and repeatedly addressed in the trial court briefing. (8 CT 2109, 2111, 2131, 2234-2236; 9 CT 2505.) If the materials at issue in this motion are relevant to that question, they should have been presented to the trial court. “Reviewing courts generally do not take judicial notice of evidence not presented to the trial court.” (*Hahn v. Diaz-Barba* (2011) 194 Cal. App. 4th 1177, 1193-1194.)

Furthermore, Dignity provides no explanation of why these materials were not presented earlier in this appeal, when Dr. Natarajan would have been able to respond to arguments based on them. Dignity had very experienced appellate counsel briefing the case in the trial court, the same attorneys briefing this appeal. (8 CT 2093.) Dignity was certainly aware

from the outset of this appeal that it was resting its case on its interpretation of Section 809.2 and the argument that the common law of *Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017 and *Yaqub v. Salinas Valley Memorial Healthcare System* (2005) 122 Cal.App.4th 474 should not be used to interpret that statute. Given that knowledge, Dignity should have requested judicial notice of the documents at issue at the beginning of this appeal, since they were outside both the administrative record and the trial court record. At the very least, Dignity should have requested judicial notice of these materials by the time it filed its Opposition Brief. If it had done so, Dr. Natarajan would have at least been able to address arguments based on those documents in his reply.

Dignity's decision not to seek judicial notice of the legislative history of Section 809 earlier in this appeal was intentional. Dr. Natarajan served his reply brief on November 13, 2018. The next day, November 14, 2018, Dignity served a Request for Judicial Notice that did not include the legislative history at issue here. Its Opposition Brief explains why. On p. 29 of that Brief, Dignity states, “[t]he legislative history of section 809 et seq. (including section 809.2) does not specifically discuss the ‘direct financial benefit’ language or its origin.” Thus, it is indisputable that Dignity's counsel had reviewed the legislative history by the time of the Opposition Brief, which was filed on August 29, 2018. In November,

2018, it chose not to request judicial notice of that material, after having effectively informed the Court in its Opposition that the legislative history provided no useful information for the interpretation of Section 809.2.¹

At the end of all the briefing, Dignity now asks for selected legislative history to be placed in the record. It makes new arguments based on those materials that Dr. Natarajan has no opportunity to meet. Its motion is extremely and inexcusably untimely and therefore should be denied.

III. THE MATERIALS AT ISSUE ARE IRRELEVANT BECAUSE THEY PROVIDE NO USEFUL INFORMATION ABOUT THE LEGISLATIVE INTENT BEHIND THE LANGUAGE OF SECTION 809.2.

Dignity's observation in the Opposition Brief that the legislative history does not discuss the language or origin of Section 809.2 is correct. Dignity chose not to request judicial notice of the legislative history of Section 809 earlier in this case because it sheds no light on what the Legislature intended to accomplish through the enactment of Section 809.2. There is no discussion in any of the documents at issue about why the particular language of Section 809.2 was chosen; any alternative language proposed; the meaning of "direct" in Section 809.2, subd. (b); or the

¹ It was, of course, improper for Dignity to discuss material outside the record in its brief, even to discuss its irrelevance.

relationship between subdivisions (b) and (c) of the statute. The excerpts from the legislative history of Section 809 are therefore irrelevant to the resolution of this appeal. Only relevant evidence should be admitted through a request for judicial notice. (*Ragland v. U.S. Bank National Assn.*, (2012) 209 Cal. App. 4th 182, 194.)

**IV. DIGNITY CITES AND THEN DISREGARDS THE LAW
LIMITING JUDICIAL NOTICE.**

Exhibits 5, 6 and 12 are letters by the California Medical Association (CMA) regarding Section 809 et seq. or AB 120. In its motion, Dignity recognized that letters by an organization about a proposed law are not legislative history admissible by way of judicial notice. (Dignity motion, p. 5, citing *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 38.) It then proceeds to request their admission anyway, based on the theory that they are relevant to the CMA's intentions "to provide procedural protections and ensure fairness to physicians." (Dignity Motion, pp. 4-5.) Legally, this theory makes no sense. If a document outside the record does not meet the criteria for admission by judicial notice, a party is not permitted to augment the record simply because it found some document that might be arguably relevant to one of its theories. Dignity's argument is not only procedurally improper, it

is also substantively without merit. The CMA's motivation is not an issue in this case, so documents shedding light on that subject are irrelevant.

As a practical matter of law and politics, Dignity's theory also makes no sense. The fact that the CMA sponsored Section 809 in 1988, and then apparently realized in 2009 that it needed to reform the law because it was operating unfairly, does not support Dignity's arguments that Section 809.2 effectively only prohibits bribes and explicit bonuses for a favorable hearing outcome, and that the common law does not apply when interpreting Section 809.2. The fact that the CMA failed in its efforts to make peer review more fair does not mean that the courts should look the other way when there is obvious procedural unfairness. There is no doubt that it is difficult to reform peer review law in the face of opposition from the hospital industry. That is only more reason that the courts should ensure that physicians are not subject to unfair damage to their careers because they are economic competitors to hospital systems or because they are whistleblowers.

V. CONCLUSION

Dignity's Motion for Judicial Notice is untimely and seeks to introduce irrelevant material that will not assist the Court in its determination of this matter. It should therefore be denied.

Dated: February 19, 2018 Respectfully submitted,

LAW OFFICES OF STEPHEN D. SCHEAR
JUSTICE FIRST

/Stephen D. Schear/

Stephen D. Schear

Jenny C. Huang

Attorneys for Petitioner

Sundar Natarajan, M.D.

EXHIBIT 17

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

SUNDAR NATARAJAN,
Plaintiff and Appellant,


v.

DIGNITY HEALTH,
Defendant and Respondent.

C085906
San Joaquin County
No. STKCVUWM20164821

BY THE COURT:

Respondent Dignity Health's motion for judicial notice, filed November 14, 2018, is denied. The court generally does not take judicial notice of evidence that was not before the trial court. (*City of Petaluma v. Cohen* (2015) 238 Cal.App.4th 1430, 1438, fn. 7).


HULL, Acting P.J.

cc: See Mailing List

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

MAILING LIST

Re: Natarajan v. Dignity Health
C085906
San Joaquin County Super. Ct. No. STKCVUWM20164821

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EXHIBIT 18

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

SUNDAR NATARAJAN,
Plaintiff and Appellant,

v.

DIGNITY HEALTH,
Defendant and Respondent.

C085906
San Joaquin County
No. STKCVUWM20164821

BY THE COURT:

Respondent Dignity Health's "Motion for Judicial Notice in Support of its Answer to Brief of Amicus Curiae California Medical Association," filed February 6, 2019, is denied. Respondent's "Application for Leave to File Reply in Support of Motion for Judicial Notice in Support of its Answer to Brief of Amicus Curiae California Medical Association," filed February 26, 2019, is also denied. While some of the materials attached to respondent's motion for judicial notice include legislative history (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26), the 12 exhibits detailed in the motion are not necessary to resolution of the issues before the Court. The material attached to the request will be disregarded.


HULL, Acting P.J.

cc: See Mailing List

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

MAILING LIST

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STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **NATARAJAN v. DIGNITY HEALTH**

Case Number: **S259364**

Lower Court Case Number: **C085906**

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/s/Joanna McCallum

Signature

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