

The Regents of the University of California

COMMITTEE ON HEALTH SERVICES

November 20, 1997

The Committee on Health Services met on the above date at Sunset Commons, Los Angeles campus.

Members present: Regents Atkinson, Brophy, Clark, Davies, Gonzales, Khachigian, Leach, Preuss, and Sayles

In attendance: Regents Connerly, Davis, Johnson, Levin, McClymond, Montoya, Nakashima, and Ochoa, Regents-designate Miura and Willmon, Faculty Representatives Dorr and Weiss, Secretary Trivette, General Counsel Holst, Assistant Treasurer Stanton, Provost King, Senior Vice President Kennedy, Vice Presidents Darling, Gomes, Gurtner, and Hopper, Chancellors Berdahl, Carnesale, Debas, Dynes, Greenwood, Orbach, Vanderhoef, and Yang, Executive Vice Chancellor Golub representing Chancellor Wilkening, and Recording Secretary Bryan

The meeting convened at 8:30 a.m. in Closed Session with Committee Chair Davies presiding.

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The Committee went into Open Session at 8:35 a.m.

1. **COMPENSATION PLAN FOR STAFF PHYSICIANS**

The President recommended that the Committee approve a Compensation Plan for Staff Physicians, as set forth in the Attachment, and delegate authority for implementation of the Plan to the President, including review and approval of salary actions within the approved grade structure. Because of continuing competitive market pressures the Plan would initially be implemented at UCSF, with possible extension to other campuses based upon review and approval of the President.

It was recalled that the Compensation Plan for Staff Physicians is designed to provide the necessary compensation structure and programmatic flexibility for University locations to compete effectively with other organizations in recruiting and retaining these employees critical to the health care mission of the University.

To meet patient care demands at UCSF clinical facilities, UCSF uses Staff Physicians to augment the services provided by Faculty Physicians who carry out a full range of academic responsibilities.

The Medical School Clinical Compensation Plan provides an appropriate vehicle for compensating physicians who carry out full-time academic responsibilities; however, the University's current salary structure for staff professionals does not accommodate market salaries for Staff Physicians who are either part-time or who have no teaching responsibilities.

The UCSF Stanford Health Care merger does not affect the positions addressed in this proposal, which reflects the ongoing need for Staff Physicians at UCSF sites such as San Francisco General Hospital, the Veterans Administration Hospital, and the UCSF School of Medicine. For example, UCSF has a continuing need for seasoned Emergency Room (ER) Staff Physicians. ER Staff Physicians currently are eligible for salaries up to the maximum of Grade VII of the Management and Senior Professional (MSP) Salary Structure. The 1997-1998 MSP salary range for Grade VII is \$86,300 (minimum) -- \$115,200 (midpoint) -- \$144,100 (maximum). Based on market data from the Hay Group, a nationally recognized consulting firm, the median base salary for Emergency Room Physicians in California in 1996 was \$184,600. This salary level is significantly above the \$144,100 that UCSF can offer at Grade VII. To address this critical staffing need, this Plan provides a cost-effective, market-sensitive compensation structure -- one that enables UCSF to attract and retain qualified Staff Physicians for its clinical facilities in an increasingly competitive labor market.

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

2. **APPROVAL OF LIMITED LIABILITY COMPANY, MEDICAL CENTER, LOS ANGELES CAMPUS**

The President recommended that The Regents authorize the President, in consultation with the General Counsel and the Vice President for Clinical Services Development, to:

- A. Approve and execute an agreement to establish a limited liability company to be called the UCLA/Cedars-Sinai Liver Transplant Program, LLC (the "LLC"), with the members of the company being The Regents and Cedars-Sinai Medical Center (Cedars-Sinai), with each holding a 50 percent interest in the company.
- B. Approve capital contributions by the University not to exceed \$250,000 in cash, to be funded from the reserves of the UCLA Medical Center.
- C. Approve and execute an Assistance Agreement with Cedars-Sinai, under which UCLA Medical Center will provide certain clinical personnel to Cedars-Sinai for the Liver Transplant Program.
- D. Approve and execute an agreement with the LLC and Cedars-Sinai, under which the LLC will be authorized to conduct joint marketing, administration, and risk-sharing activities on behalf of The Regents and Cedars-Sinai.

- E. Approve and execute any other agreements necessary in connection with the above and oversee administration of the University's interest in the LLC.

The Committee was informed that the Los Angeles campus proposes to establish a limited liability company to administer a joint venture between the UCLA Medical Center and Cedars-Sinai Medical Center for the purpose of delivering liver transplant services under managed care contracts. The UCLA/Cedars-Sinai Liver Transplant Program will be a long-term cooperative relationship for joint contracting and marketing with health plans and payors seeking special arrangements for liver transplants for their patients. The joint contracting organization would be established as a California limited liability company to take advantage of management flexibility and tax efficiency of this type of organization. The company would function in accordance with the terms of a Limited Liability Company Operating Agreement and a Joint Venture Agreement to be executed by the parties.

The principal functions of the LLC will be to administer risk pools between the two organizations and negotiate managed care contracts for liver transplantation. Fees and charges for services provided to a beneficiary covered by non-managed care contract payors such as Medicare, Medi-Cal, and private payors will not be subject to administration by the LLC. All revenue accruing to UCLA Medical Center will flow to the medical center or to the applicable UCLA faculty practice plan. No revenue will flow to any individual, other than previously approved UC compensation.

The parties would also enter into an Assistance Agreement wherein the UCLA Medical Center would provide clinical personnel (consisting of a transplant surgeon and a transplant pharmacist) to Cedars-Sinai for adult liver transplant services, with Cedars-Sinai reimbursing the UCLA Medical Center and the UCLA School of Medicine for costs associated with these personnel. In addition, Cedars-Sinai will provide annual funding of \$500,000 to the UCLA School of Medicine, as well as support for research activities of Dr. Ronald Busuttil, under the terms and conditions specified in the Assistance Agreement. All research carried out by Dr. Busuttil and other UCLA faculty will be subject to all existing University policies, and all benefits will accrue to the UCLA Medical Center or School of Medicine.

Rationale for Program Development

Clinical programs such as liver transplantation, which provide very technologically and medically advanced medical services to a very small number of patients each year, are greatly challenged by the growth of managed health care plans in California. Most of the health plans operating in California have designated so-called "centers of excellence" for most transplant services, and the plans limit the number of organizations with which they will contract and direct all of their patients requiring transplants to these designated centers. In exchange for the imprimatur of the health plan, and because of the anticipated volume, these organizations demand fixed, single-price

payment schemes from the transplant centers. These rates place the risk of the complexity of the patient's condition and the resource use for each patient upon the transplant center. In the past two years, more importantly, the health plans have been demanding lower case prices as a condition of a transplant program's participation in the centers of excellence. Further, in the greater Los Angeles area, new liver transplant programs have been established during the past two years, increasing capacity and heightening the price competition among the transplant centers. In this environment, transplant centers such as UCLA and Cedars Sinai must become more efficient and effective to thrive and even to survive. The purpose of the LLC is to put in place a management and marketing structure that will enable the currently established UCLA liver transplant program to survive and continue to provide state-of-the-art care, education, and research in the region's highly competitive transplant market, with minimal risk to the UCLA Medical Center and School of Medicine. The proposed joint contracting organization, together with joint administration of the programs, would accomplish the following:

- Provide the opportunity for cost efficiencies in the maintenance of the liver transplant programs at UCLA and Cedars-Sinai;
- Provide opportunities to maintain and grow the attendant research programs for liver transplantation through attraction of more patients to participate in research; and
- Provide additional funds from Cedars-Sinai to support program development.

Organization and Operation of the Limited Liability Company

The liver transplant programs at UCLA and Cedars-Sinai will operate as legally independent entities, separately licensed. Neither party shall assume any liability or responsibility for activities of the other, except for funds at risk, described below. The joint contracting organization will be structured as a California limited liability company; each of the two participating organizations will be members and will be represented in the management of the LLC. The LLC will have two executive officers, a chief executive officer (CEO) and a chief financial officer (CFO), as well as a chief medical officer (CMO) and a contracting officer. The positions of CEO and CFO will rotate annually between representatives of UCLA and Cedars-Sinai. The CMO will initially be Dr. Ronald Busuttil of UCLA, and the contracting officer will be Francine Chapman, Associate Director of External Relations for the UCLA Medical Center. The CMO will have sole responsibility for decisions related to clinical services. All other decisions will be made jointly by the CEO and CFO, with the CMO casting the deciding vote in the event of a disagreement between the CEO and the CFO. The officers of the LLC will not receive additional compensation for their services, and the LLC will reimburse UCLA Medical Center and Cedars Sinai for the costs associated with the services provided by these individuals.

UCLA and Cedars-Sinai will each have certain reserve powers over the operation of the LLC. The initial capitalization of the company is estimated to be \$500,000, with the UCLA Medical Center and Cedars-Sinai each contributing 50 percent of this amount, or \$250,000.

The LLC will insure that the transplant services are rendered in a manner which complies with anti-trust requirements. In order to avoid anti-trust issues, the transplant services must be provided in accordance with standards of increased efficiency, lower costs, greater access by indigent patients, and provision of community services. Twenty percent of the funds received for liver transplant services from contracted managed care plans will be held by the LLC pending verification of compliance with these standards. The LLC will strive to achieve economies in program operation through innovation in protocols for patient care management, streamlining of overhead expenses and reduced organ procurement costs.

Regent Clark observed that Dr. Busuttil is the world's foremost liver transplant surgeon. He believed the proposal was a very worthwhile endeavor.

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

3. **APPROVAL OF DISSOLUTION OF CHARTWELL WEST PARTNERSHIP AND SALE OF UCSF OWNERSHIP INTEREST TO CHARTWELL HOME THERAPIES, SAN FRANCISCO CAMPUS**

The President recommended that he, in consultation with the General Counsel and Vice President of Clinical Services Development, be authorized to:

- A. Approve and execute documents required for dissolution of the partnership between The Regents, on behalf of the University of California, San Francisco (UCSF), and Chartwell Home Therapies (Chartwell), a wholly-owned subsidiary of Nations Healthcare, Inc., said dissolution to take place on the following terms:
 - (1) In exchange for the Regents' interest in the partnership, Nations Healthcare, Inc. guarantees that Chartwell will pay UCSF one million dollars (\$1,000,000) in eight quarterly payments over a two-year period, with each of the first four payments to equal two hundred thousand dollars (\$200,000) and each of the remaining four payments to equal fifty thousand dollars (\$50,000), and will assume all of the partnership's obligations and liabilities.
 - (2) UCSF will not compete in the "Map Area" (a term defined as the San Francisco Bay Area) with Chartwell for a period of two years after the closing date of the transaction; however, any existing activities of

Stanford Health Systems (including the Lucile Salter Packard Children's Hospital) which compete with Chartwell shall be permissible. Chartwell shall retain all rights to the name "Chartwell West." UCSF shall not be permitted to offer employment to any of the employees of Chartwell West for a period of two years following the closing of this transaction.

- (3) UCSF shall fully indemnify Chartwell for any claims in connection with or arising out of UCSF's actions or omissions prior to the consummation of this transaction. Chartwell shall fully indemnify UCSF for any claims in connection with or arising out of Chartwell's actions or omissions (both prior to and after the consummation of this transaction). Both parties will be required to maintain insurance in commercially reasonable amounts.

Nations Healthcare, Inc. shall fully indemnify UCSF for any claims in connection with or arising out of any reimbursement activity conducted by Nations Healthcare, Inc. on behalf of Chartwell West on and after January 1, 1997, prohibited under the Federal Medicare and Medicaid Anti-Kickback Statute, 42 U.S.C. & 1320a-7b, or the regulations promulgated thereunder, or related State or local fraud and abuse statutes or regulations.

- (4) UCSF School of Pharmacy and Chartwell will enter into a separate agreement whereby Chartwell will pay annually \$30,000 to UCSF School of Pharmacy in exchange for the services of pharmacy students who will rotate through a site designated by Chartwell. The duration of this separate agreement shall be indefinite, with a 90-day termination right by either party.
- (5) UCSF will return to Chartwell all information deemed confidential by Chartwell, including profit and loss statements, annual audits, and patient records.
- (6) Chartwell will not use the UCSF name in Chartwell marketing literature without the prior written consent of UCSF.
- (7) The agreement will bind Chartwell's successors and assignees.

- B. Terminate the Management Services Agreement between Chartwell Management Services, a subsidiary of Chartwell Home Therapies, and UCSF.
- C. Approve and execute all necessary ancillary documents and any modifications, addenda, or amendments to the subject documents which do not substantially alter the basic terms outlined above or increase the University's risk significantly.

It was recalled that in July 1994, The Regents, on behalf of the San Francisco campus, entered into a partnership with Chartwell Home Therapies (CHT) for the purpose of operating a home infusion therapy program. The new program (Chartwell West) replaced the home infusion therapy program (Home Therapy Services) previously operated by the UCSF Department of Clinical Pharmacy, School of Pharmacy.

Home Therapy Services (established in 1981) provided opportunities for health care delivery research; provided training opportunities for pharmacists, pharmacy residents, and students; provided an environment to explore and develop new clinical pharmacy practice models; and provided clinical services to underserved or underinsured patient populations (e.g., Medi-Cal or indigent patients). In the early 1990s, reimbursement for home infusion therapy services was dramatically reduced, forcing home infusion providers to implement survival strategies to remain competitive. The Department of Clinical Pharmacy analyzed the new market and concluded that Home Therapy Services would not be financially viable in the long term. It was determined that a partner was needed with a nationwide provider to avoid having to close Home Therapy Services and to be able to continue home infusion therapy as an integral part of the UCSF School of Pharmacy's clinical teaching and research program. Chartwell Home Therapies was selected as the partner because it had a demonstrated history of successful relationships with academic medical centers and demonstrated capacity to provide a full range of management services to support home infusion therapy programs at lower cost than individual institutions could achieve.

Chartwell West has provided the Department of Clinical Pharmacy with research and training opportunities, and it has provided clinical services to underserved or underinsured patients of the Medical Center. However, Chartwell West has not achieved the financial stability and viability originally sought.

Future Training and Research Opportunities

When Chartwell West was created, Chartwell West hired most of the existing employees of Home Therapy Services. Some of these current Chartwell West employees have non-salary faculty appointments in the School of Pharmacy, which are expected to continue. Chartwell West and the School of Pharmacy have collaborated on the development of new practice models. These collaborations will also continue after the dissolution. A term of the dissolution agreement requires Chartwell to provide funding for a clinical rotation for School of Pharmacy students and residents. Additionally, there will be training and research opportunities with the home infusion therapy programs at Stanford and Lucile Packard Children's Hospitals.

Recommendation to Dissolve Chartwell West

The San Francisco campus recommends dissolution of the partnership. If the dissolution and sale of the University's 50 percent interest in Chartwell West is

approved now, the San Francisco campus will receive a net return on its investment of approximately \$830,000. The San Francisco campus is recommending that The Regents accept the offer because of changes in the home infusion market and disagreements with Chartwell regarding financial management of Chartwell.

Changes in the Home Infusion Market

In the three years of the partnership, the home infusion market within the San Francisco geography has changed demonstrably. The following market changes affected the partnership's access to patients, contracts, and financial stability:

- **Changes in Reimbursement:** In Northern California, the financing of health care has changed from a fee-for-service to a flat rate for an episode of care. Hospitals are asked to accept global rates for the provision of hospital services. In order to maintain financial viability within this environment, hospitals are utilizing home care services more, largely because home care services are more cost effective than hospital care. However, home care services can no longer charge the usual and customary amounts for care of these patients. This is especially true for home care services affiliated with hospitals, such as Chartwell West.
- **Competition:** Large national corporations such as Apria and Coram heavily penetrated the Northern California home infusion market. These companies accept financial risk for the provision of home infusion services. Also, physician groups, such as independent practice associations, are now accepting financial risk for the provision of ambulatory infusion services. National home infusion companies aggressively contract with physician groups for ambulatory infusion services. For example, the Brown and Toland Group has negotiated a "carve-out" financial at-risk agreement with Apria for the provision of ambulatory infusion services for the patients of the Brown and Toland physicians. Chartwell West previously provided ambulatory infusion services for the UC patients on a fee-for-service basis. The loss of this business for Chartwell West is approximately \$150,000 per month in net revenue (list price minus contractual).
- **Changes in HIV Disease Management:** In the past two years, management of patients suffering with the human immunodeficiency virus (HIV) has dramatically changed. With the advent of new anti-retroviral medications and the combination treatment regimen, the disease transformed from an acute illness to a chronic one. Acute HIV patients comprise the largest patient population of Chartwell West for home infusion services. Many of these patients no longer require infusion therapy but are on oral anti-retroviral therapy and obtain their prescriptions from a pharmacy rather than a home infusion company. The loss of this business for the Chartwell West partnership is approximately \$25,000 - \$30,000 per month in net revenue.

Effect on Financials

The effect of all the aforementioned changes is a significant drop in business for the partnership. For the third partnership year, a net operating loss is projected. The cumulative net loss for the first three years of operations is estimated to be \$3,171. This is in sharp contrast to the original projections that assumed net income in the millions.

The management of Chartwell West has aggressively reduced operating expenses by 20 percent starting in March of 1997. However, the reduction in expenses cannot accommodate the larger drop in revenue.

Accounts Receivable

From the beginning of the partnership, UCSF has not been pleased with the management services provided by Chartwell Home Therapies. Primarily, CHT has not been able to provide adequate reimbursement services. The amount of Accounts Receivable older than 120 days and older than 240 days has been much larger than it should. Errors with Medi-Cal billing and inadequate follow-up on all accounts have resulted in large write-offs. At the end of the first year of operations, an adjustment of \$1,219,000 was made because the contractual and bad debt reserves were insufficient, resulting in an operational net loss. Another adjustment is expected at the end of this year.

Partners

In 1996, the firm of Welsh, Carson, Anderson and Stowe (WCAS) purchased a majority interest of Chartwell Home Therapies. WCAS also purchased a majority interest in Nations Healthcare. Nations Healthcare was a national home infusion and home nursing company based in Atlanta, Georgia. In January 1997, WCAS merged the two home infusion companies to form Nations Healthcare, Incorporated (NHC). Under the NHC corporate umbrella, there exist wholly owned Nations Healthcare branches, wholly owned Chartwell Home Therapies branches, and Chartwell partnerships with academic medical centers.

The UC/Chartwell partnership (Chartwell West) is competing with a Nations Healthcare branch within the San Francisco market. WCAS would like to merge these two competing branches under the same corporation. By doing so, the branches can reduce duplication within the crowded San Francisco market. In this endeavor, NHC, through Chartwell Home Therapies, has offered to purchase UCSF's interest in the UC/Chartwell partnership.

UCSF Contributions to Chartwell West Compared with the Offer

To form Chartwell West, CHT contributed \$1,685,383 of cash and \$1,634,355 of intangible assets purchased from UCSF. CHT purchased the intangible assets by giving UCSF a 4.25 percent limited partnership share in Chartwell Home Therapies. UCSF contributed the remaining intangible assets of Home Therapy Services valued at \$1,634,355, cash of \$1,350,000, and inventory of \$335,383.

When WCAS purchased a majority interest in CHT, WCAS bought UCSF's 4.25 percent limited partnership share for \$1,502,510 and 50,751 shares of Common Stock in CHT (now 10,150 shares of Nations Healthcare, Inc. Non-Voting Common Stock).

CHT has offered to purchase UCSF's interest in Chartwell West for \$1,000,000. Valuation Research Corporation was hired by UCSF to prepare an independent valuation of Chartwell West. The valuation, completed on October 30, 1997, estimated the Fair Market Value of Chartwell West to be \$1,860,000 and UCSF's 50 percent ownership to be \$930,000. Therefore, \$1,000,000 is a reasonable offer.

The CHT offer is for \$1,000,000 to be paid over eight quarters. When all payments are received, the San Francisco campus will have \$1,036,521. The Internal Rate of Return on the cash flows described is 19 percent. If UCSF had invested in the University's Short Term Investment Pool instead of investing in Chartwell West over the last three years, the interest earned would have been approximately \$205,000 as of October 31, 1997. (The interest rates for the University's Short Term Investment Pool ranged from 5.5 percent to 6.15 percent over the last three years.) In summary, the San Francisco campus will ultimately receive \$1,036,521 from the Chartwell West partnership, and the interest foregone is approximately \$205,000. Therefore, the San Francisco campus will have made approximately \$830,000 more from the investment in Chartwell West than from a similar investment in the University's Short Term Investment Pool.

When the partnership was established in 1994, the UCSF Medical Center was a partner with the School of Pharmacy and contributed cash to the partnership. Now the School of Pharmacy and UCSF Stanford Health Care hold UCSF's ownership in Chartwell West. Based on a previous agreement between the School of Pharmacy and UCSF Medical Center, now UCSF Stanford Health Care, the \$1,000,000 proceeds from the sale will be divided as follows: UCSF Stanford Health Care will receive \$150,000 and the School of Pharmacy will receive \$850,000.

UCSF Stanford Health Care

The new organization will have two home infusion operations. One currently exists at Stanford and one at Lucile Salter Packard Children's Hospital. There is ongoing work to evaluate the feasibility of consolidating the two operations into one. The resulting organization will be part of UCSF Stanford Health Care, so the School of Pharmacy will have long-term opportunities for training and research collaborations.

Vice President Gurtner noted that the opportunity to sever the relationship will produce a positive result for the School of Pharmacy. He believed Chartwell's offer was reasonable given the current market status.

Regent Montoya was concerned that only one company was used to value the University's ownership interest in the project. Mr. Gurtner questioned the cost of obtaining further evaluations. He believed that the independent evaluation that was obtained reflects a prudent market view of the situation. Angela Hawkins, Associate Dean of UCSF School of Pharmacy, reported that two companies were asked to bid, but as they had similar backgrounds and it was felt they would use the same method, only one was chosen.

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

4. **UPDATE ON UCSF-STANFORD MERGER PROCESS**

Vice President Gurtner reported that this was the first effort to formalize a reporting process from UCSF-Stanford Health Care to the Regents. He distributed a set of minutes from the September 12 meeting of the UCSF-Stanford Health Care Board, the operating budget summary of key assumptions, and the first operating budget of the new organization. The Board's first public meeting will occur in January. He assumed that at each meeting of The Regents he would provide an update as to the business of the newly formed enterprise.

Mr. Gurtner pointed out that an examination of the operating budget figures will disclose where changes are being attempted that the consolidation would make possible. He noted that the deal was made final on November 1. Employees were transferred as of that date, and the organization is fully operational.

Regent Leach, a member of the UCSF-Stanford Health Care Board, reported that chief officers are in place. The new entity has approximately \$350 million of cash contributed by the two organizations. Its finance committee will recommend at its next meeting that the Treasurer's Office of the University of California and the Stanford Management Corporation, which is the equivalent, be responsible for managing that money. He reported that he serves as vice chairman of the board and chairman of the executive committee and that Regent Davies serves as chairman of the audit committee. Regent Davies noted that the atmosphere at the first meeting was very positive.

5. **UPDATE ON UCSD HEALTH CARE DELIVERY NETWORK, SAN DIEGO CAMPUS**

This item was withdrawn.

6. COMPLIANCE COMMITTEE ANNUAL REPORT

A. *Establishment of Universitywide Compliance Committee*

It was recalled that the Health Care Financing Administration (HCFA) established new regulations in July of 1996 to guide the Medicare billing practices of teaching physicians. In anticipation of these federal initiatives, Vice President William H. Gurtner, in consultation with the Office of the General Counsel, established the Universitywide Compliance Committee (Committee) in late March 1996. The Committee, chaired by Vice President Gurtner, continues to meet on a regular basis. The Committee's charge is as follows:

- Oversee the flow of information between campuses and the Office of the Inspector General (OIG) as it relates to the Physicians at Teaching Hospitals (PATH) audit;
- Ensure a Universitywide coordinated effort in responding to the auditors and federal agents;
- Develop a set of Universitywide guidelines that will provide the policy basis for the implementation of campus-specific compliance plans;
- Provide a forum for discussion of ongoing issues related to compliance with these new regulations and the creation of a proactive plan for ensuring that physicians, staff, and administration are in compliance with the July 1996 regulations; and
- Report annually to The Regents on the status of the Committee and campuses' compliance activities.

B. *Compliance Progress to Date*

(1) PATH Audit Response

In the spring of 1996, the Office of the Inspector General, Department of Health and Human Services notified UC medical centers of its plans to conduct a review of the Medicare billing practices of physician's pay plans to determine "whether Medicare reimbursements for physician services provided to Medicare beneficiaries were reasonable, allowable, and documented in accordance with Medicare regulations" (Correspondence dated June 1, 1996 from Department of Health and Human Services). The PATH initiative is a nationwide review of the bills teaching physicians submitted to the government for medical services provided to Medicare patients between 1990 and 1995. The

audits focus primarily on two issues: whether a teaching physician adequately documented his/her involvement in the care of a Medicare patient when a resident participated in the delivery of service and whether the appropriate level of services was billed to Medicare for the care provided. All five University of California Schools of Medicine and Medical Centers have received notification from the OIG that they will be audited under PATH.

Campus representatives, the Office of the General Counsel, and the Office of Clinical Services Development have worked closely with OIG and the Department of Justice (DOJ) to respond to those agencies' requests for data and to define the parameters of any PATH audit that the campuses agree to undertake.

(2) Association of American Medical Colleges (AAMC) Complaint

An area of concern to the entire academic medical community is the belief that the audits of U.S. teaching physicians have been conducted in an inconsistent, inappropriate fashion. The AAMC and the American Medical Association (AMA) filed a legal complaint on October 29, 1997 in the U.S. District Court seeking relief from the unjust federal investigations of teaching physician Medicare billing practices by OIG and DOJ. As authorized by Regents' action in January 1997, the University of California has joined in the complaint against the U.S. government. The Office of the General Counsel has provided The Regents with a summary of the complaint in a letter dated October 30, 1997.

Participation in the complaint does not preclude participation in PATH.

(3) Implementation of Systemwide Compliance Guidelines

At the October 1996 meeting of the Board of Regents, the Committee provided The Regents with a copy of the Systemwide Compliance Guidelines (Guidelines) for professional billing. Although the principles addressed in the Guidelines are administrative in nature, it was important for the faculty at the Schools of Medicine to understand the potential impact of the federal regulations on the University's mission and the level of administrative activity necessary to ensure compliance. Where appropriate and to clarify the intent of the Guidelines, we incorporated faculty recommendations into the document, which was distributed to all Chancellors in September 1997. In the development of the Guidelines and the supporting Campus Compliance Plans, the Committee followed several key principles:

- The Guidelines do not mandate changes in teaching activities or medical school curricula. Faculty can continue to teach as they have always done; they just cannot bill for those teaching activities that do not meet the federal Medicare requirements for Professional Part B billing.
- The Guidelines are prospective in nature and do not apply to retroactive (prior to July 1996) billing activities that may be addressed by federal audits.
- The purpose of the Guidelines is to provide clarification of billing procedures and, as such, they are administrative in nature.

C. *Campus Compliance Programs*

Each campus has developed campus-specific Compliance Programs (Programs) in response to the parameters established in the Guidelines. Based on a review of campus Professional Fee Billing Compliance Annual Reports FY 1996-97, submitted to Vice President Gurtner in August 1997, the following is a summary analysis of the major compliance benchmarks and highlights from individual campus activities.

- (1) Academic Involvement: At all campuses there has been extensive involvement of faculty and academic committees in the development and review of the campus Programs.
- (2) Legal Oversight: Both the Office of the General Counsel and outside counsel (McDermott, Will, and Emery) have provided ongoing legal representation, consultation, and review in the development of the Programs.
- (3) Audit Involvement: The University Auditor and campus audit departments have provided continuous input and support in the development of audit functions relative to the campus Programs.
- (4) Universitywide Leadership: Since the establishment of the Committee in the Spring of 1996, there has been active and collaborative participation by all campuses on the Committee. The chancellors and School of Medicine deans recognized the significance of a Universitywide effort to develop consistent compliance guidelines and have taken a leadership role in ensuring that senior managers from each campus have participated on the Committee. Although the Committee was initially established to respond to Medicare billing compliance, the

Committee's responsibilities include broader compliance issues relative to the academic and research missions.

- (5) Compliance Officer: The deans of the Schools of Medicine, in consultations with the chancellors, have each appointed a Compliance Officer responsible for the functions defined in the Guidelines and established a Compliance Office to provide support for these activities.

The initial set-up costs for these programs range from \$500,000 to \$1,000,000, including consultant and attorney fees.

- (6) Compliance Committee: Each campus has established a Compliance Committee as recommended in the Guidelines. These committees have been meeting regularly.

- (7) Educational Programs and Materials: Each campus has developed detailed, explicit educational programs and materials that have been used to provide training for faculty, residents, and billing professionals relative to the Guidelines' expectations and the specific Medicare Professional Part B Professional Billing regulations.

- (8) Campus Compliance Plan: Each campus is at a different stage of the process for development, review, and implementation of the Campus Compliance Plan and department specific plans. It is anticipated that all plans will be fully implemented by January 1998, at which time Vice President Gurtner will provide a campus-specific update.

- (9) Campus-Specific Highlights

- ***UC Davis***. The UC Davis Compliance Office requires that all faculty attend educational programs; the educational policy specifies that professional fee bills for new faculty will not be processed by the Professional Billing Department until such time as the billing compliance education has been completed. The abstracting process for in-patient billing has been expanded to ensure that all supporting clinical documentation meets a set of pre-defined, base-line requirements for billing compliance. Faculty are notified of any deficiencies and must correct them before the processing of the professional charge will be completed.
- ***UC Irvine***. In July of 1996 the UCI College of Medicine established a compliance program, appointed both a compliance officer and deputy compliance officer, establishing a clear line of authority and delegation for the compliance office through

Chancellor Wilkening and Dean Cesario. The campus efforts are notable for the fact that as early as July 1996 the College of Medicine began a comprehensive educational program to educate and inform practicing faculty physicians about the revised Medicare billing guidelines, and as of December 1996, 100 percent of the clinical faculty had completed and documented mandatory educational sessions. In addition, since January 1997, there have been monthly reviews of a 33 percent sample of Medicare billings of each department. Corrective action has been taken where indicated.

- ***UC Los Angeles.*** To provide a proactive response to the July 1996 regulations, the UCLA faculty formed two working groups, the Blue Group and Gold Group. The Blue Group's efforts led to the production of the "UCLA Policies and Procedures for Teaching Physician Billing Compliance," which now governs the conduct of the UCLA compliance program. The Committee also used this document in the development of the Guidelines. The Gold Group developed seven principles for ensuring compliance with the UCLA policies and procedures. These principles now guide the operation (including the compliance audits) of the UCLA program.
- ***UC San Diego.*** In spite of involvement in three government audits, the UC San Diego campus proceeded with implementation of a compliance program with full support from the Dean's Office. Highlights of the past year's activities include: 100 percent physician participation in compliance education; implementation of certified procedural coding (CPC) training for staff involved in professional fee billing; review and updates to all medical group abstracts as needed, with a broad base line assessment of billing and documentation procedures; and implementation of a communication system and network through the Medical Group practice managers. In addition, the Compliance Officer developed a resource library for billing staff and a system for review of all clinical fellows requesting privileges for billing.
- ***UC San Francisco.*** At the San Francisco Campus, Compliance Officer Ray Buck has developed an extensive list of reference materials that have provided a model for all campuses. In addition, the Compliance Office has developed a web page on a UCSF intra-net web site. Faculty and staff are able to access both the Universitywide and UCSF compliance policies, billing information, CPT codes, and the Health Care Financing Agency

web site through this mechanism. All faculty underwent mandatory educational sessions in the summer of 1996, and educational programs continue at the department level. Billing staff at both the Parnassus and San Francisco General Hospital sites have also been trained.

D. *Ongoing Compliance Activities*

- (1) Response to Campus Professional Fee Billing Annual Reports: Each campus Compliance Officer will submit an annual report to the Vice President of Clinical Services Development.

The Office of Clinical Services Development is currently providing feedback to each of the campuses as relates to the first annual report for FY 96-97. Within the next six months, each campus will be asked to provide an update to the Office of Clinical Services Development as to the progress on recommendations specific to their Reports and to those general areas discussed below.

- (2) Compliance Committee Activities for 1998: While all campuses have responded diligently to the requirements of the Guidelines by putting in place those written policies and procedures, the essential next step for establishing an ongoing, effective mechanism for ensuring compliance is to implement ongoing feedback loops at several levels:

- Compliance Officer _ Campus Administration: Campus administration, specifically the Office of the School of Medicine Dean, shall establish a mechanism and timetable for ongoing reporting and evaluation with the Compliance Officer.
- Audit and Billing _ Compliance Officer: The Compliance Officer, in consultation with the Compliance Committee, shall establish a timeline to ensure periodic review of departmental level documentation of billing compliance, review of physician evaluation and management coding, and audit of abstracting activities.
- Campus _ Office of Clinical Services Development: The Vice President for Clinical Services Development, in consultation with the Office of the General Counsel and the Committee, shall review the current annual report process to ensure that it provides for adequate feedback and monitoring of campus compliance activities.

- Office of Clinical Services Development _ President: The President, in consultation with the Board of Regents, shall ensure that there is a regular process of reporting to The Regents for review and oversight of all Universitywide professional fee billing compliance.

In early 1998, the Vice President for Clinical Services Development will report to The Regents on the establishment of these feedback mechanisms.

- (3) Hospital Compliance Program: Although compliance activities pertinent to the University's medical centers were not within the initial charge to the Committee, the Committee has recognized the need for a parallel structure to address hospital compliance issues. After considerable input and discussion, the Committee supported the establishment of the following:
- Current, ongoing methods of monitoring hospital compliance with pertinent state and federal laws and regulations will be recognized;
 - A companion Hospital Compliance Program will be established that would take into account current campus methods of monitoring compliance; and
 - Guidelines will be developed to bring these campus efforts together under institutionally-based policies, procedures, and monitoring.

Ms. Maria Faer, Director of Clinical Policy, noted that Vice President Gurtner had reported to The Regents from time to time the activities of his committee in relation to the implementation of systemwide guidelines on compliance and the campus' responses to the Physicians at Teaching Hospitals Audit. She reported that the 1996-97 compliance objectives that were established by the systemwide committee have been met, including the implementation of the systemwide guidelines and the development of campus-specific programs and reports. Based on those annual reports, the 1997-98 compliance objectives were established. The first is the establishment of ongoing feedback mechanisms at all levels of the compliance process. A companion hospital compliance program will be developed. Another objective is to provide support and coordination for the ongoing PATH audit process.

Ray Buck, Compliance Officer at the UCSF campus, presented a brief description of the complexity of the billing process and details about the UCSF program. He reported that PATH audits will examine the accuracy of coding records based on their documentation. A compliance plan is a formal, ongoing set of policies and procedures by which an organization seeks to ensure lawful behavior by its employees and agents.

The benefits of the plan at UCSF will be early identification of problem areas, reduced exposure to civil and criminal liability, enhanced employee awareness of unacceptable contact, and improved business standards. Each campus has a chief compliance officer.

Ms. Faer stressed key facts about UCSF's compliance efforts to date. The PATH audit is a retrospective process that will examine Medicare billing activities before 1996, when the new regulations were implemented. The systemwide compliance guidelines that are now in place for the campuses are prospective; they were developed to ensure compliance with post-1996 regulations. She emphasized that the new billing policy does not mandate changes in the way in which residents are taught. It does clarify for faculty and billing staff when they can and cannot bill according to Medicare regulations.

Ms. Faer reiterated that professional fee billing is a complex and subjective process. The regulations prior to 1996 are ambiguous and inconsistent nationally and within the University. UC compliance programs ensure compliance with the new regulations and provide support for faculty and staff in their efforts to comply with those regulations.

Regent Davies noted that, based on the University's degree of exposure, the initiative is very important. Faculty Representative Weiss agreed. She asked what could be done to involve the faculty and departments in the processes and engender in them a sense of having influence. She believed they need to become a more central part of the effort. Mr. Gurtner responded that the program is campus-specific and allows, at the direction of the dean and the compliance committee, an opportunity for departments to work with the issues. He noted, however, that the purpose is not to debate policy but to comply with federal law. Ms. Faer believed that during the next two years the feedback mechanisms that will be put in place will address the concerns expressed by faculty.

Regent Gonzales asked how often Medicare reviews campus procedures. Mr. Buck responded that, because Medicare has a post-payment audit system, requests for medical records to support payments are common. Medicare then evaluates the coding used.

Regent Johnson asked about the extent of the University's liability with regard to PATH audits. Mr. Gurtner responded that the University is in negotiation for PATH audits at all of its medical centers. At present, the University has joined a suit challenging the process. He believed the University's exposure is significant.

7. ACTIVITY AND FINANCIAL STATUS REPORTS ON HOSPITALS AND CLINICS

Vice President Gurtner commented that the system is stable at the moment and is meeting its budget projections. He reported that negotiations are going on

with the State relative to two pieces of State funding tied to medical education that will provide the University with an as yet undetermined amount of extra money. Mr. Gurtner expressed confidence that the negotiations will result in significant funds being allocated to the University.

The meeting adjourned at 9:35 a.m.

Attest:

Secretary

Proposed Compensation Plan for Staff Physicians

The Compensation Plan for Staff Physicians is designed to provide the necessary compensation structure and programmatic flexibility for University locations to compete effectively with other organizations in recruiting and retaining these employees critical to the health care mission of the University.

In today's competitive labor market, a market-based approach to compensation is required to attract and retain highly qualified Staff Physicians. The Staff Physicians Compensation Plan is designed to address this important business need by providing competitive salaries for Staff Physicians while balancing the University's need to insure prudent management of overall costs.

To achieve these multiple objectives, the Staff Physicians Compensation Plan is composed of three key elements: base pay, non-base pay, and incentive pay. To ensure internal and systemwide pay equity between Staff Physicians and Faculty Physicians, the Staff Physicians Compensation Plan is modeled after the Medical School Clinical Compensation Plan.

Each component of the Staff Physician Compensation Plan is described below. The example of an emergency room Staff Physician is used to demonstrate the application of each component of the Staff Physician Compensation Plan to business needs.

1. Base Pay

Base pay is the only salary component that is considered "covered compensation" for University of California Retirement Plan (UCRP) benefit purposes. To maintain appropriate alignment with Faculty Physicians, it is proposed that the current University-wide Management and Senior Professional (MSP) Salary Structure be used as the framework to establish base pay for Staff Physicians. Base pay would have a maximum level equal to the maximum of MSP Grade VII on the Management and Senior Professional Salary Structure (currently \$144,100). See Attachment A.

2. Non-Base Pay

The non-base pay component is designed to bridge the gap between "covered" base pay described above and the market driven compensation levels that the University must meet to attract and retain the Staff Physicians required to meet on-going staffing needs. This component is similar to the "y" (negotiable) factor in the Medical School Clinical Compensation Plan. The unique feature of this salary attribute is that the resulting pay is negotiated on a pre-determined schedule and will fall within the proposed Staff Physicians salary structure.

Non-base pay levels will be determined locally based on budget conditions, as well as pre-determined market and clinical specialty compensation factors. Specific market-based criteria, clinical specialty requirements, and operating considerations will be detailed in the campus implementation plan to be approved by the President.

Emergency Room Staff Physician example:

As stated above, the non-base pay component is designed to bridge the gap between the Management and Senior Professional Salary Structure base compensation and external market compensation levels.

Specific factors that will be considered to determine the appropriate non-base compensation for an Emergency Room Staff Physician include:

Market Data: The 1996 Hay Report on Physicians' Total Compensation Survey indicates that median base pay for Emergency Room Physicians in California is \$184,600 annually.

Clinical Specialty: If a distinct specialty is required, adjustments in the compensation levels may be required. For example, in a statewide survey, the median base salary for Dermatologists in California is \$200,000 annually; for Orthopedic Surgeons the median base salary is \$262,600 annually. Compensation levels need to be competitive for Staff Physicians in these specialty areas.

Clinical and Administrative Responsibilities: Staff Physicians may be assigned additional clinical, supervisory, or administrative duties, resulting in adjustment in compensation to recognize these additional duties.

The ceiling for combined base pay and the non-base component will fall within the parameters of a new five-grade compensation structure. This new structure will have a minimum level of \$63,000 and a maximum level of \$215,600. See Attachment B.

Criteria to be applied in determining placement within the proposed salary structure include the following:

- Documented local market survey data
- Educational requirements for the position
- Clinical specialty
- Years of experience
- Special certification required
- Clinical/Administrative job duties and responsibilities

The titles eligible for inclusion in this plan are noted in Attachment C.

3. Incentive Pay

Incentive compensation is an increasingly important part of the total compensation package for physicians in California. In 1996, incentive compensation as a percentage of total salary for California physicians ranged from less than 5 percent to over 23 percent. More than half (59 percent) of survey participants reported by Hay management consultants include incentive pay in compensation plans for physicians.

To enhance the University's ability to recruit, retain, and motivate Staff Physicians, a non-base-building incentive pay component is included in the compensation plan for Staff Physicians. The plan is designed to provide incentive awards ranging from 0 percent to 20 percent of eligible base salaries. Consistent with requirements pertaining to Medicare, and State and federal tax laws, incentive compensation shall not be paid on the basis of the number or level of patient referrals to University clinical facilities.

Performance-based criteria will be used to determine individual and team contributions. Annually, a detailed report will be submitted to the Office of the President identifying the performance-based criteria upon which decisions regarding eligibility and award amounts are based. Factors used to determine individual incentive awards may include:

- Utilization management (maintaining fiscal viability and cost effectiveness of patient care)
- Productivity (individual and organization-wide)
- Scope of practice
- Utilization of resources
- Quality of care provided
- Patient satisfaction
- Physician communications (internal and external)

Emergency Room Staff Physician example:

Incentive Compensation is designed to recognize specific performance that is above and beyond the normal expectations of the job. The 1996 Hay Report on Physicians' Total Compensation Survey indicates that Incentive Pay for Emergency Room Physicians in California averages 8.8 percent of base pay.

For UCSF Emergency Room Staff Physicians, specific goals and performance measures will be developed at the beginning of the evaluation period. Incentive Plan compensation, if any, will be based on the degree of achievement of these pre-determined performance goals and associated performance measures.

Eligibility for the Staff Physicians Compensation Plan

All individuals participating in the Staff Physicians Compensation Plan shall be staff employees of the University of California.

The objective of this compensation plan is to effectively position the University in the labor market to attract and retain the skill-set mix required to meet our clinical staffing needs. Where necessary to meet operational scheduling requirements, employees may be paid on an hourly basis and retain professional exemption status under the Fair Labor Standards Act.

Oversight and Reporting Requirements

Prior to implementation, UCSF will submit for approval by the President an implementation plan detailing the administration of this plan. The Office of the President will conduct an annual review of the plan management. UCSF, as the initial implementing location, will submit to the Office of the President an annual report on compensation actions for individuals covered by the plan, including base pay, non-base pay, incentives and related local market and organizational supporting data.

As part of campus oversight responsibilities, limitations on outside earnings, for full-time appointments in particular, will be established consistent with the requirements for the Medical School Clinical Compensation (MSCC) Plan for clinical faculty.

Additionally, the appropriate notice requirements under the Higher Education Employer-Employee Relations Act (HEERA) will be carried out prior to implementation.

Attachment A

Management and Senior Professional
 1997-1998 Salary Grade Ranges
 Effective November 1, 1997

GRADE	25TH PERCENTILE		75TH PERCENTILE	
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
GS-12	\$10,300	\$12,750	\$12,200	\$15,100
GS-11	\$9,700	\$12,050	\$11,400	\$13,900
GS-10	\$9,100	\$11,350	\$10,700	\$13,100
GS-9	\$8,500	\$10,650	\$10,050	\$12,300
GS-8	\$7,900	\$9,950	\$9,400	\$11,500
GS-7	\$7,300	\$9,250	\$8,750	\$10,700
GS-6	\$6,700	\$8,550	\$8,100	\$9,900
GS-5	\$6,100	\$7,850	\$7,400	\$9,100

Attachment B

Proposed Staff Physicians Salary Structure

The Staff Physicians Salary Structure represents a combination of the base-pay component and the non-base pay component of the Staff Physicians Compensation Plan. As illustrated below, this new structure for 1997-98 will have a minimum level of \$63,000 and a maximum level of \$215,600 annually. (Annual adjustments in the structure as approved by the President will be reported to the Board.) Criteria that will be used to determine placement within the proposed salary structure will include such factors as market survey data, educational requirements for the position, clinical specialty, years of experience, special certification required, clinical/administrative job duties and responsibilities, and other relevant factors.

<u>Grade</u>	<u>Minimum</u>	<u>Midpoint</u>	<u>Maximum</u>
SP/6	\$126,800	\$171,200	\$215,600
SP/5	\$110,300	\$148,900	\$187,500
SP/4	\$ 95,900	\$129,500	\$163,000
SP/3	\$ 83,400	\$112,600	\$141,800
SP/2	\$ 72,500	\$ 97,900	\$123,300
SP/1	\$ 63,000	\$ 85,100	\$107,300

Market Survey

Salary levels established utilizing this plan are supported by market data and reflect competitive compensation levels for Staff Physicians in the external labor market.

The *1996 Physicians' Total Compensation Survey* by Hay Management Consultants, a nationally recognized compensation consulting firm, reflects the compensation practices and pay levels of more than 100 organizations (including teaching hospitals) covering 20,000 physicians across the United States.

Overall survey results indicate that median annual salary levels for most of the clinical specialties utilized by the University exceed the maximum of the current staff salary structure (Grade VII maximum \$144,100). The California data sample indicates that within some clinical specialties, the salaries of physicians are in excess of \$200,000. Examples of these clinical specialties include: anesthesiology, dermatology, internal medicine, neurology, obstetrics/gynecology, psychiatry, and orthopedics, for which the median annual salaries range from \$143,000 to over \$200,000.

Survey results also suggest that incentive compensation is an important component of total physician compensation. The *1996 Physicians' Total Compensation Survey* indicates that over half (59%) of the survey participants report having incentive compensation programs for some or all of their physicians. The 1996 survey data reflect that the average incentive compensation as a percent of base salary for physicians ranged from 5% to 23% as an average maximum award opportunity.

Staff Physicians Compensation Plan Participants:

**Titles Eligible for Staff Physicians
Compensation Plan**

UCSF relies on over 250 Staff Physicians to meet patient care demands at its clinical facilities. It is important to note that over 98% of these Staff Physicians work for UCSF on a part-time basis. The sum of their individual contributions is equivalent to 83 full time positions (FTE).

Below is a list of the University titles eligible for participation in this plan.

	<u>Title Name</u>	<u>Title</u>
Director	0767	Medical Service
Diplomat	0768	Senior Physician
	0769	Senior Physician
Diplomat	0770	Associate Physician
	0771	Associate Physician
	0772	Assistant Physician
	0778	Consulting Physician

