

The Regents of the University of California

COMMITTEE ON HEALTH SERVICES

May 14, 1998

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

Members present: Regents Atkinson, Clark, Davies, Khachigian, Leach, and Ochoa

In attendance: Regents Chandler, Connerly, Johnson, Lee, Levin, McClymond, Nakashima, and Soderquist, Regents-designate Espinoza, Miura, and Willmon, Faculty Representatives Dorr and Weiss, Secretary Trivette, Treasurer Small, Provost King, Vice Presidents Broome, Darling, Hershman, and Hopper, Chancellors Carnesale, Dynes, Greenwood, Orbach, Vanderhoef, and Wilkening, Vice Chancellor Bainton representing Chancellor Debas, Laboratory Director Tarter, and Recording Secretary Bryan

The meeting convened at 3:40 p.m. with Committee Chair Davies presiding.

1. **AMENDMENT OF UCSF-STANFORD HEALTH CARE ARTICLES OF INCORPORATION CONCERNING THE NAME, AND AMENDMENT OF THE BYLAWS CONCERNING ORGANIZED MEDICAL STAFF**

The President recommended that The Regents approve the following changes to the articles of incorporation and bylaws of UCSF-Stanford Health Care, to be effective April 10, 1998:

deletions shown by strikeout, additions by shading

**ARTICLES OF INCORPORATION
OF
~~UCSF-STANFORD~~ UCSF STANFORD HEALTH CARE**

ARTICLE ONE:

The name of the corporation is ~~UCSF-Stanford Health Care~~ UCSF Stanford Health Care.

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**BYLAWS
OF
~~UCSF-STANFORD~~ UCSF STANFORD HEALTH CARE**

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ARTICLE X

MEDICAL STAFFSection 1. Organization

The Board of Directors shall organize the physicians and other persons granted clinical privileges at each facility (the "Facility") licensed to this corporation into one or more medical staffs (the "Medical Staff") under medical staff bylaws approved by the Board of Directors. The medical staffs shall be responsible to the Board of Directors for the adequacy and quality of medical care rendered to patients at the Facility. Membership on the Medical Staff and the clinical privileges of each member shall be granted by the Board of Directors in accordance with the Bylaws of UCSF, Stanford Health Care and the Bylaws, Rules and Regulations, and Policies (herein collectively called "Medical Staff Bylaws") of the Medical Staff.

Section 2. Medical Board

(a) The Medical Board or Executive Medical Board of the Facility is applicable to the Medical Board of each Facility. The Executive Committee of the Medical Staff shall be a subcommittee of the Medical Board. The Medical Board shall be composed of members of the Medical Staff as follows:

(i) The Medical Board shall have a representative of each of the following:

- (1) the Chairman of the Medical Staff
- (2) the Chairman of the Medical Staff
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(b) The Medical Board shall have the following powers:

- (1) the Medical Board shall have the following powers:

individuals responsible for the assessment, treatment, and/or diagnosis are competent in their ability to obtain information and interpret information in terms of the patient's needs, in their knowledge of growth and development, and in an understanding of the range of treatment needed by such patients.

(xi) mechanisms to assure the provision of one level of patient care at the Facility;

(xii) controls that are designed to ensure the achievement and maintenance of high standards of professional ethical practices, including provision that all members of the Medical Staff be required to demonstrate their ability to perform surgical and/or other procedures competently and to the satisfaction of an appropriate committee or committees of the staff, at the time of original application for appointment to the staff and at least every two years thereafter; and

(xiii) a requirement that the Medical Staff and the staffs of the services shall implement the activities and mechanisms established in the Medical Staff Bylaws for monitoring and evaluating the quality of patient care, for identifying and resolving problems, and for identifying opportunities to improve patient care, and for reporting to the Board of Directors on such matters through the Chief of Staff.

Section 2. Medical Care.

The Medical Staff and its committees and sub-staffs shall be responsible for:

- (i) the qualification of the staff providing patient care;
- (ii) the quality assurance, performance improvement and patient safety programs;
- (iii) the medical record and coding, reimbursement and billing programs;
- (iv) the continuing medical education of staff, including continuing medical education for the Board of Directors.

ARTICLE ~~XI~~ X DISSOLUTION

The corporation may be dissolved consistent with the provisions of the Articles of Incorporation and pursuant to Section 6510 of the Nonprofit Public Benefit Corporation Law of California as amended from time to time.

ARTICLE ~~XII~~ XI AMENDMENTS

These Bylaws may be altered, amended or repealed at any annual or special meeting of the Members, notice of which shall specify the subject matter of the proposed alteration, amendment or repeal or the sections to be affected thereby, by vote of the Members.

It was recalled that both the California Administrative Code and the Accreditation Manual of the Joint Commission on Accreditation of Health Care Organizations

(JCAHO) require the governing body to have an established relationship with the medical staff set forth in the bylaws. Title 22, California Administrative Code section 70701, sets forth the requirements of California law, including the adoption by the governing body of written bylaws which deal with the appointment and reappointment of members of the medical staff and other licentiates and provide for formal organization of the medical staff with appropriate officers and bylaws of the medical staff itself. In addition, the bylaws are to provide for self-government by the medical staff, including periodic meetings at which the medical staff will review and analyze their clinical experience. The amendments to the bylaws of UCSF Stanford Health Care, which require member approval, provide for the establishment of a medical staff at UCSF Stanford Health Care facilities, provide for the establishment of medical staffs at each location, and provide for review and approval of medical staff bylaws by the board of UCSF Stanford Health Care. The addition of provisions regarding the medical staff to the bylaws necessitates the renumbering of Article X, Dissolution and Article XI, Amendments.

In addition, the articles of incorporation are being amended to delete the hyphen between UCSF and Stanford in the corporate name.

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

2. **CREATION OF A LIMITED LIABILITY CORPORATION TO MERGE BONE MARROW TRANSPLANTATION ACTIVITIES AT UCSD AND SHARP HEALTHCARE, MEDICAL CENTER, SAN DIEGO 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. Authorize establishment of a limited liability company, the members of which will be the University of California and Sharp HealthCare, a California not-for-profit corporation, for the purpose of jointly operating a Bone Marrow Transplantation Program.
- B. Execute documents necessary to establish the limited liability company and such additional documents as shall be necessary or appropriate in connection with its operation and University participation therein.

It was recalled that the School of Medicine and Medical Center at UCSD has established a successful Bone Marrow Transplantation (BMT) Program that cares for approximately sixty patients annually with hematological and other malignancies and other diagnoses. The program is central to various clinical research projects, to translational studies which examine the clinical potential of laboratory research

findings, and to other projects, such as supporting activities in the Boehringer Mannheim LLC. Sharp HealthCare has not carried out BMT in its facilities, but rather, its attending medical staff have referred patients to a number of programs, including City of Hope, UCSD, and others in San Diego and elsewhere. Sharp HealthCare now wishes to initiate such therapy at Sharp Memorial Hospital. Because this is a high-cost, low-volume, research-related medical service, both organizations recognize the value of a collaborative program and the necessity to avoid costly duplication. An integrated program operating initially at both Thornton Hospital and Sharp Memorial is contemplated. Staff and support facilities will be shared. This consolidation will be mutually advantageous, as described below:

- Consolidation of an increased number of patients in a coordinated program will establish a stronger clinical program with improved outcomes a likely result of the higher volume, facilitate more research with more rapid progress because of higher patient volume, improve the financial performance for both institutions by spreading administrative and infrastructure costs over a larger patient base, and attract a more capable professional staff to a program with higher patient volumes.
- Sharp HealthCare will avoid the start-up expenses of creating a new program and will have immediate access to contracts and review body approval. For a new program the delays may be one year or more.
- Patients now leaving San Diego for care will have their families near them during this difficult therapy.
- Training and research programs in the School of Medicine will be enhanced.
- Senior clinical staff will be employed as faculty at UCSD and will pursue research and education as well as clinical activity.
- This relationship could set the stage for broader collaboration between the two health care systems.

Contemplated Relationship of the Limited Liability Company (LLC)

UCSD Healthcare, in consultation with the Offices of the General Counsel and Clinical Services Development, proposes to establish the UCSD/Sharp HealthCare Bone Marrow Transplantation Program as an LLC to be equally owned by the University and the San Diego Hospital Corporation (dba Sharp HealthCare). Under California law, this structure will permit limited owner liability.

- The LLC will provide administrative, managerial, contractual negotiations, marketing, and other services in support of the BMT Program operating at

UCSD and Sharp Hospitals, using employees leased to the LLC from both UCSD and Sharp.

- The clinical services will be provided at UCSD and Sharp Hospitals under their respective licenses.
- The revenues received for BMT services will be administered through a single Program Account used to pay administrative and facilities costs, as well as professional fees for patients cared for under a unified contract rate. Where professional charges can be submitted to a third party, the physicians will bill and collect separately. All revenue associated with UCSD faculty will continue to accumulate to the Faculty Practice Plan.
- Hospital services will be provided to the LLC according to an established schedule with equal (per diem) payments for inpatient services at either site.
- Periodically, the distributable margin available in the Program Account will be paid to the joint venture partners according to the following formula:

During the first two years of the venture, in acknowledgment of the fact that UCSD brings an existing patient volume to the venture, UCSD will receive a greater portion of the distributable margin. If the total number of patients treated in the Program is up to 86 annually, UCSD will receive 65 percent and Sharp 35 percent. As patient volumes increase, payments will be distributed according to a proportionate formula. If more than 115 patients are treated annually or after the first two years of the venture, the margin will be distributed 50:50.

The distributable margin equals the total funds received into the Program Account for patient care services less the expenses consisting of the following: payment for BMT hospital services; payment for physician services for administrative duties, for patient care under full-risk managed care, and other full-service contracts and salary guarantees for the BMT physician team; LLC administration; BMT cell processing charged at cost; and other operating expenses approved in the annual budget by the LLC Board.

- In recognition of the prior investments made by UCSD in establishing the Program, Sharp HealthCare will pay UCSD \$300,000 plus 50 percent of the appraised value of the Bone Marrow Cell Processing Laboratory, up to \$125,000.

- The LLC will be governed by a seven-member Board of Directors of three voting representatives each from UCSD and Sharp HealthCare and the Program Medical Director, who will serve as a non-voting member of the Board. The Board Chair and Vice Chair will be appointed by their respective institutions and rotate annually. The Board will approve decisions by majority vote. In the case of a tie vote, the Chief Executive Officers of Sharp Healthcare and the UCSD Clinical Enterprise will meet to negotiate resolution.
- Clinical protocols will be determined by a nine-member Physician Advisory Committee composed of the Program Medical Director, the UCSD and the Sharp Clinical Directors, and six other physicians, three selected from the medical staffs of each of the participating institutions. The Program Medical Director and Clinical Directors will be UCSD faculty. The Program Medical Director will report, as well, to the Board of the LLC.
- The Operating Agreement between the two partners will call for restriction against either partner entering into another venture or affiliation competitive with the LLC; penalties for recruitment by either party of key personnel; and penalties for termination of the relationship prior to conclusion of its first five year term, except by mutual agreement. Further, if the LLC is terminated, UCSD has the unilateral right to acquire the BMT Laboratory assets at fair market value.
- The following agreements will be used to form the LLC and govern the relationship: Articles of Organization, Operating Agreement, and job descriptions for the Program Medical Director, site-specific Clinical Directors, and Administrator. The LLC will have an authorized life of five years, automatically renewed unless either partner gives notice of termination twelve months prior to the anniversary date of the Operating Agreement.

Rationale for Entering into a Joint Venture

UCSD has made major investments in its BMT Program and related activities. Initially, high levels of patient care reimbursement made this a very productive program. With the growth of managed care and the proliferation of "centers of excellence" for transplant services, reimbursement is declining. If Sharp begins an independent program at Sharp Memorial Hospital, it would jeopardize UCSD's present volume, because ten percent to twenty percent of current patients come from within the Sharp System. In addition, it would introduce additional capacity in an already crowded market.

Advantage of Sharp Healthcare as a Partner

Physicians aligned with Sharp HealthCare have the second highest managed care enrollment in San Diego County (behind Kaiser Permanente). Adding this population to the current UCSD volume will provide a more stable patient base to support the clinical and educational objectives of UCSD. The Program will be in a position to draw patients from an even wider area because of its enhanced credibility.

Contemplated Financial Performance

Sharp Healthcare has approximately 350,000 covered lives under its managed care contracts with various health plans. Physicians affiliated with Sharp care for approximately 40 percent of the patients in San Diego. UCSD estimates that the Sharp managed care population alone will contribute at least 35 new patients annually to the joint program. On this basis, patient volumes should grow from UCSD's current base of 63 (which includes 10 to 15 Sharp aligned patients) to 80 in Year 1, 95 in Year 2, and 120 in Year 3. Until the joint program reaches a total volume of 115 patients, UCSD will receive a disproportionately higher percentage of LLC income. This level is expected to be reached in the third year.

Revenues per patient day in the LLC are projected to remain at levels similar to those currently achieved under UCSD's program. A more conservative case was also analyzed, which assumes a decline in revenues due to market pressures. Under both projections, the LLC remains profitable.

Medical Expenses are projected to equal approximately one-half of net revenues. Administrative expenses for medical direction, marketing, contracting, and finance/accounting services are projected at five percent of net revenues, or about \$400,000. Most, if not all, of the administrative support will be supplied by the LLC partners' leasing support services to the LLC.

The same fixed payment per patient day, set to approximate direct costs, will be made to the LLC hospitals. In this way, there will be no financial incentive for the LLC or referring physicians to direct the care of BMT patients to one of the LLC partners over the other.

Based on patient volume assumptions described above, which are conservative, UCSD's financial performance under the LLC will be slightly worse in Year 1 and Year 2 than current results. However, the performance would exceed what is projected as the base case, which assumes 14 patient referrals from Sharp are moved to a new stand-alone program.

Mitigation of Potential Risks to UCSD

The agreements have been drawn to minimize risks to UCSD. The major risk is dissolution of the relationship after Sharp HealthCare gains a position to pursue a program on its own. Protections have been negotiated with Sharp to limit this risk. Should the relationship be dissolved without the approval of UCSD, Sharp HealthCare will pay substantial penalties. Likewise, Sharp will pay UCSD if it recruits BMT personnel.

The LLC will assume the contract negotiating role. The unified program should be in a stronger position to negotiate favorable rates than would either partner separately. Since both institutions will be paid the same amount for services on an established schedule, there will be no reciprocal risk for the costs of delivering patient care. The LLC will make periodic distributions of its margin, which should minimize any cash flow issues.

The ability of UCSD to sustain its program independently would be at greater risk if Bone Marrow Transplant capacity in San Diego were to increase, leading to diminished patient volume at UCSD.

Conclusion

The creation of the Joint Bone Marrow Transplantation Program, through the establishment of a limited liability company, will support the teaching, research, clinical, and public service goals of the University. This collaboration is responsive to strong community pressure in San Diego to consolidate high-cost clinical services. The BMT Program will accelerate research developments by making available a larger number of patients for clinical and translational research studies. Clinical skills will be disseminated into the community by exposing a larger number of community practices to state-of-the-art clinical care for patients with an expanding list of malignant and non-malignant diseases. The risks described above appear to be fully manageable and should not affect the University in a material way. UCSD has traded a portion of future returns to its independent program for the advantage of access to a larger portion of the available patient pool and for the potential of this agreement to set the stage for future joint ventures in other areas.

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

3. **ACTIVITY AND FINANCIAL STATUS REPORT ON HOSPITALS AND CLINICS**

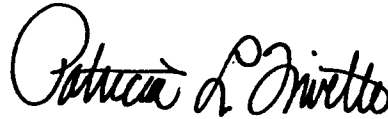
Regent Clark expressed serious concerns about the fact that the financial status reports indicate that currently there is no return on the University's investment in

the San Diego and Irvine medical centers. He asked what corrective actions are contemplated. President Atkinson suggested that Vice President Gurtner visit Mr. Clark to discuss the issues about which he had questions. The President stated that he was not concerned in the short term about the viability of the two medical centers, but he acknowledged that long-term issues need addressing. He noted that there are some promising ideas being discussed that would be reported to the Committee at its June meeting.

Regent Clark then asked whether figures were available for UCSF Stanford Health Care and whether the two hospitals were reported separately. Regent Leach responded that the information is being generated and will be available during the coming month.

The meeting adjourned at 3:50 p.m.

Attest:

A handwritten signature in black ink, appearing to read "Patricia L. Miretto". The signature is written in a cursive, flowing style.

Secretary