RICHARD B. KATSKEE*
AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE
1310 L Street NW, Suite 200
Washington, DC 20005
Tel: (202) 466-3234; Fax: (202) 466-3234
katskee@au.org

GENEVIEVE SCOTT*
CENTER FOR REPRODUCTIVE RIGHTS
199 Water Street, 22nd Floor
New York, NY 10038
Tel: (917) 637-3605; Fax: (917) 637-3666
gscott@reprorights.org

JAMIE A. GLIKSBERG*
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
105 West Adams, 26th Floor
Chicago, IL 60603-6208
Tel: (312) 663-4413; Fax: (312) 663-4307
jgliksberg@lambdalegal.org

JAMES R. WILLIAMS (SBN 271253)
GRETA S. HANSEN (SBN 251471)
LAURA S. TRICE (SBN 284837)
MARY E. HANNA-WEIR (SBN 320011)
SUSAN P. GREENBERG (SBN 318055)
H. LUKE EDWARDS (SBN 313756)
OFFICE OF THE COUNTY COUNSEL, COUNTY OF SANTA CLARA
70 West Hedding Street, East Wing, 9th Fl.
San José, CA 95110-1770
Tel: (408) 299-5900; Fax: (408) 292-7240
mary.hanna-weir@cco.sccgov.org

LEE H. RUBIN (SBN 141331)
MAYER BROWN LLP
Two Palo Alto Square, Suite 300
3000 El Camino Real
Palo Alto, CA 94306-2112
Tel: (650) 331-2000; Fax: (650) 331-2060
lrubin@mayerbrown.com

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COUNTY OF SANTA CLARA, TRUST WOMEN SEATTLE, LOS ANGELES LGBT CENTER, WHITMAN-WALKER CLINIC, INC. d/b/a WHITMAN-WALKER HEALTH, BRADBURY-SULLIVAN LGBT COMMUNITY CENTER, CENTER ON HALSTED, HARTFORD GYN CENTER, MAZZONI CENTER, MEDICAL STUDENTS FOR CHOICE, AGLP: THE ASSOCIATION OF LGBTQ+ PSYCHIATRISTS, AMERICAN ASSOCIATION OF PHYSICIANS FOR HUMAN RIGHTS d/b/a GLMA: HEALTH PROFESSIONALS ADVANCING LGBTQ EQUALITY, COLLEEN MCNICHOLAS, ROBERT BOLAN, WARD CARPENTER, SARAH HENN, and RANDY PUMPHREY,

Plaintiffs,

vs.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES and ALEX M. AZAR, II, in his official capacity as SECRETARY OF HEALTH AND HUMAN SERVICES,

Defendants.

No. 19-cv-2916 NC

DECLARATION OF PAUL E. LORENZ IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, PAUL E. LORENZ, declare as follows:

1. I am a resident of the State of California. I submit this declaration in support of the County of Santa Clara's ("County"), and its co-plaintiffs', Motion for Preliminary Injunction. I have personal knowledge of the facts set forth in this declaration. If called as a witness, I could and would testify competently to the matters set forth herein.

2. I am the Chief Executive Officer of the hospitals and clinics owned and operated by the County of Santa Clara ("County"), which includes Santa Clara Valley Medical Center ("Valley Medical Center"), O'Connor Hospital, and St. Louise Hospital. I have held this position since March 2019, and I have served as Chief Executive Officer of Valley Medical Center since November 2012. Prior to my current role with the County of Santa Clara, I served as the Chief Deputy Director of the Ventura County Health Care Agency for the County of Ventura. I have served in public healthcare for over 27 years.

3. The County of Santa Clara has owned and operated Valley Medical Center for more than one hundred years. On March 1, 2019, the County assumed ownership and operations of O'Connor Hospital, St. Louise Hospital, and De Paul Health Center. The County acquired these facilities after their prior owner, the nonprofit Verity Health System, filed for bankruptcy. The County's acquisition of these facilities was driven by its commitment to ensuring access to healthcare for all people within the County and, in particular, for vulnerable populations.

4. The County, through the County of Santa Clara Health System, operates Santa Clara Valley Medical Center, O'Connor Hospital, and St. Louise Hospital on a consolidated hospital license with a single consolidated medical staff.

Background the County's Health System, Including Valley Medical Center

5. The County of Santa Clara Health System is the only public safety-net healthcare provider in Santa Clara County, and the second largest such provider in the State of California. Generally, safety-net providers have a primary mission to care for the indigent population as well as individuals who are uninsured, underinsured, or covered by Medicaid, which is the federal healthcare insurance program for low-income individuals. Because of this primary mission, safety-net providers are by their nature extremely dependent on federal funding.

6. The County's Health System is a fully integrated and comprehensive public healthcare delivery system that includes three hospitals and a network of clinics, which provide a full range of health services, including emergency and urgent care, ambulatory care, behavioral health services, comprehensive adult and pediatric specialty services, the highest-level neonatal intensive pediatric care unit, women's and reproductive health services, and other critical healthcare services. Valley Medical Center, for example, which was the County's sole hospital and network of clinics before the Count acquired O'Connor Hospital, St. Louise Hospital, and De Paul Health Center, includes a tertiary-level acute-care hospital with 731 licensed beds, as well as numerous primary and specialty care clinics. Valley Medical Center's hospital is a Level 1 Adult Trauma Center and Level 2 Pediatric Trauma Center. As described by the American Trauma Society, a Level I Trauma Center is capable of providing total care for every aspect of injury – from prevention through rehabilitation and a Level 2 Trauma Center is able to initiate definitive care for all injured patients. Valley Medical Center has over 6,000 employees, including an estimated 1,202 physicians and advance practice providers. Valley Medical Center trains approximately 170 medical residents and fellows each year as a graduate medical education provider and teaching institution.

7. The County's Health System also operates a Gender Health Center that provides (1) resources and psychological support for people of all ages, including children, teens, and young adults, who seek to understand and explore their gender identity; (2) medical care, including hormone treatments; and (3) primary care, including HIV and STI testing. Patient services at the Gender Health Center include standard primary care and acute care, as well as specialized care for the psychological and physical elements of gender transition. The County also operates a family-planning clinic, which provides contraception and abortion services, and it operates a clinic dedicated to serving the needs of LGBT patients.

8. The County's Health System provides the vast majority of the health-care services available to poor and underserved patients in the County. In fiscal year 2017, there were more than 800,000 outpatient visits to Valley Medical Center's primary care clinics, express care clinics, specialty clinics, and emergency department, and over 120,000 days of inpatient stays in

the hospital. Patients who are uninsured, or reliant on California's Medicaid program (Medi-Cal) or Medicare, the federal insurance program for elderly and disabled individuals, were responsible for approximately 88% of outpatient visits and approximately 85% of inpatient days. In 2018, Valley Medical Center's hospital had an average daily census of 363 patients admitted to inpatient care and handled 3,087 births and 88,856 emergency department visits.

9. O'Connor Hospital, located in San José, provides emergency medical services, urgent care services, primary care, hospital care, and reproductive-health services. O'Connor Hospital operates a nationally recognized acute care hospital with 334 licensed acute beds; 24 licensed skilled nursing (SNF) beds; an estimated 681 physicians and advance practice providers and 1,446 employees. The hospital handled an estimated 51,948 emergency visits, 4,311 surgical cases, and 1,631 births in 2018. O'Connor Hospital is the home of one of the only family medicine residency programs in the Bay Area. In addition, the hospital has clinical specialties, including but not limited to, cancer, cardiology and cardiac rehabilitation, maternal child health services, orthopedics and joint replacement, rehabilitation and sports therapy, spine care and pain management, stroke prevention and treatment, and wound care.

10. St. Louise Regional Hospital, located in the City of Gilroy, provides a wide range of high-quality inpatient and outpatient medical care. St. Louise Regional Hospital operates the only acute care hospital in the southern, rural part of the County, specializing in maternal child health services, emergency services, women's health, breast cancer care, imaging, surgical and specialty procedures, and wound care. The hospital operates 72 licensed, acute beds, 21 licensed skilled nursing (SNF) beds, and employees an estimated 262 physicians and advance practice providers and 500 employees.

The County Health System's Religious and Moral Exemption Policy

11. Valley Medical Center has a policy allowing its current and prospective medical staff members and employees to request in writing not to participate in certain patient care that conflicts with the staff member's cultural values, ethics, or religious beliefs, which is in the process of being made applicable to the County's newly acquired hospitals and clinics as well. A copy of that policy is attached as **Exhibit A**. The policy as implemented applies to employees

who participate in direct medical care, including doctors and nurses. Once an exemption is requested, the appropriate manager or director determines whether the request can be granted in light of staffing levels and other relevant circumstances. If the request is granted, the staff member's tasks, activities, and duties may be redistributed to ensure appropriate patient care. The policy requires staff to continue participating in patient care until their objection is reviewed and an accommodation is made, a process that can take up to two weeks. The policy makes clear that exemptions will not result in disciplinary or recriminatory action. However, a manager or director may decline to accept an employee or medical staff member for permanent assignment when the employee/medical staff member has requested not to participate in an aspect of care that is commonly performed in that assignment. The policy makes clear that patient care may not be adversely affected by the granting of an exemption and that medical emergencies take precedence over personal beliefs.

12. The collective bargaining agreement between the County and the Registered Nurses Professional Association, which represents nurses employed by the County, incorporates similar provisions regarding religious and ethical objections to participating in care. The County's collective bargaining agreements with County hospital and clinic employees who do not directly provide medical care, such as clerical workers, do not address or contemplate religious or ethical objections.

13. The County Health System views this policy as appropriately addressing the healthcare needs of patients, including patients' rights to be treated in a nondiscriminatory manner; our need to plan in advance to ensure appropriate staffing; and the cultural values and ethical and religious beliefs of our employees. Without prior notice and the ability to plan assignments around religious objections, including during the initial hiring process, the County would be unable to appropriately staff many of its operations.

14. Valley Medical Center also has a policy, which is most relevant to end-of-life care, that allows physicians to decline to participate in medically ineffective care or to decline to participate in an individual healthcare decision or instruction that is against the physician's conscience. This policy is also in the process of being made applicable to the County's newly

acquired hospitals and clinic. The policy, which is attached as **Exhibit B**, requires that the provider communicate their objection to the patient, or the person authorized to make health-care decisions for the patient (the patient's proxy); provide assistance to transfer the patient to another provider whose views are more consistent with the patient's; and continue providing care until the transfer can be accomplished. The policy encourages open communication and joint decision-making where possible and does not permit a physician to object to assisting the patient with a transfer to another provider. The County's Health System views this policy as an appropriate effort to ensure that patients, or their proxies, can exercise their rights to self-determination and informed consent while also ensuring that physicians who have an objection to carrying out the desires of a patient or their proxy are not required to participate in health-care instructions or care to which they object.

15. As a safety-net provider, the County's Health System serves vulnerable patients from a variety of backgrounds, including LGBTQ patients. Were an employee to refuse to assist or treat a patient on the basis of the patient's sexual orientation or gender identity, it could imperil patient health, harm that patient's trust in our hospitals, and undermine the County's mission to provide healthcare to vulnerable populations.

16. Further, it is critical to the operation of the Gender Health Clinic that the County be able to require providers and employees not to discriminate against patients. The Gender Health Clinic is a safe space for people of all ages to understand and explore their gender identity, and an accepting place for youth and their families to receive information and care throughout this process. The Clinic's mission and ability to provide the standard of care necessary for the community would be imperiled if the County were required to allow employees who object to providing care to transgender patients on moral or religious grounds to serve in that setting.

17. Similarly, the County provides contraceptive care and abortion procedures in ambulatory, inpatient, and emergency settings. Our current policy requiring advance notice of religious or moral objections to providing such care, and permitting transfer of tasks and assignments when necessary to accommodate an objection, allows the system to appropriately

staff clinics and hospital units that provide these services so that patients may receive necessary care.

18. The hospitals, particularly in our emergency departments and operating rooms, require a religious objector to assist in patient care in the event of an emergency, until a non-objecting staff member is available to relieve them. If an objector were to refuse to assist in patient care during an emergency, this could lead to delays in care and worse medical outcomes, including potentially fatalities. Our facilities also rely on their ability to require advance notice of all religious, cultural, or ethical objections to providing patient care in order to plan and maintain appropriate staffing.

19. If the County could not require all staff to provide care in an emergency and could only require notice of religious objections once a year, we would face serious obstacles to satisfying our obligations to provide emergency services under the federal Emergency Medical Treatment & Labor Act (EMTALA) and to comply with nondiscrimination laws. To satisfy these legal obligations, our hospitals might have to increase staff dramatically to ensure that each role in our system was at a minimum doubly staffed. The additional staff would be necessary to account for the possibility that any staff member, without notice, could refuse to provide care and refuse to refer or provide information to a patient, even in an emergency situation. Even with doubling staffing, a cost that we could not afford, our hospitals might not be able to anticipate every provider's objection and so would remain at risk of noncompliance despite expending tremendous resources.

20. As CEO of three hospitals and numerous clinics that serve nearly two million people, I am responsible, together with my team, for managing staffing, budgeting, and ensuring that the County's health facilities operate in compliance with federal, state, and local laws and regulations. To carry out these responsibilities, I and my team must have certainty about the County's legal obligations as a recipient of federal funding. For example, it is vital to our operations and to patient care that we know whether we can require—and therefore rely on—employees to assist patients in the event of an emergency, or whether the federal government is eliminating or limiting the obligation of a religious objector to assist a patient in an emergency

situation. Without clarity on this subject and others, we cannot adequately plan or budget, and we will not know what we must do in order to be able to certify our compliance with our federal grant and funding obligations.

21. I have reviewed and am familiar with the model text for the "Notice of Rights under Federal Conscience and Anti-Discrimination Laws" in the rule published by the U.S. Department of Health and Human Services, "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority" (the Rule). I am concerned about the effects on patient care that would result from the model text, if displayed in locations accessible to patients, which tells providers they "have the right to decline to participate in, refer for, undergo, or pay for certain healthcare-related treatments, research, or services . . . which violate your conscience, religious beliefs, or moral convictions under Federal law." The model text might encourage or suggest that it is permissible for a provider, for example, to refuse to treat a transgender patient who comes to the emergency room seeking care for a broken arm based on the provider's "moral convictions," even though such refusal of service would violate federal non-discrimination law and EMTALA. And, if the notice is seen by a patient, it would discourage open communication with the provider, for fear that services will be denied.

Impact of Loss of Federal Funding

22. The County's Health System is extremely dependent on federal funding, most of which it receives directly or indirectly through the Department of Health and Human Services (HHS), with such funding accounting for more than two-thirds of the overall budget for the system in a typical fiscal year. For example, in fiscal year 2016, Valley Medical Center received approximately $1 billion dollars in direct federal funding or funding that is contingent upon federal revenue streams from HHS, primarily from Medicare and Medicaid programs. This funding covered approximately 70% of Valley Medical Center's expenses for fiscal year 2016. Specifically, Valley Medical Center received and relies upon several types of federal payments, including: (1) Medicare payments; (2) Medi-Cal payments; (3) Medicaid waiver payments, which fund demonstration projects designed to improve and expand overall coverage and improve health outcomes for low-income individuals; (4) homeless health-care grants, which fund access

to quality primary health-care services for homeless and other vulnerable individuals; and (5) disproportionate-share payments and supplemental reimbursements paid to qualifying hospitals that serve a large number of Medicaid and uninsured patients.

23. The County's health system already operates at a significant deficit because of the volume of uncompensated costs it incurs in serving uninsured and under-insured patients. For example, during Fiscal Year 2017-18, Valley Medical Center received approximately $131.8 million in subsidies from the County's General Fund so it could continue to provide critical healthcare services to uninsured and under-insured patients. The County's recently acquired hospitals and additional clinic were purchased through a bankruptcy proceeding, and while the County hopes to run those hospitals in a cost-neutral manner, those hospitals may also face financial shortfalls that the County will have to cover, furthering stretching the County's fiscal resources. The impact of any loss in federal funding would not be limited to services traditionally funded by federal dollars. A withdrawal of federal funding for the County would require a countywide realignment of funding and priorities, and money that is currently allocated from the County's General Fund to support programs that do not receive federal funding could be diverted to address the loss of federal funding.

24. Without federal funding, the County Health System's ability to provide a broad range of quality services to thousands of patients—including infants and children, those with chronic diseases, and the elderly—would be greatly diminished, or even potentially eliminated. If the County's services had to be significantly curtailed, our patients would face increased health-care costs and reduced access to care, we could be forced to lay off many County employees, and the overall wellbeing of our community would suffer.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 4, 2019

Respectfully submitted,

PAUL E. LORENZ

EXHIBIT A

SANTA CLARA VALLEY MEDICAL CENTER Hospital & Clinics

Administrative Policies and Procedures **VMC #132.01**

August 9, 2017

TO:	SCVMC Employees
FROM:	Paul E. Lorenz Chief Executive Officer, SCVMC
SUBJECT:	**Non-Participation in Certain Patient Care**
REFERENCE:	TJC RI.1.10.7 Health and Safety Code §123420 "Refusal to Participate in Abortion" 42 USCS § 300a-7 (b)

PURPOSE:

SCVMC recognizes and understands that situations may arise in which the prescribed course of treatment or care for a patient may conflict with an individual's cultural values, ethics or religious beliefs. Therefore, SCVMC has established a mechanism whereby an individual may request not to participate in such treatment or care. There have been minor changes in the policy. SCVMC Nursing Standard NP-6 is deleted since this policy covers the employee rights.

POLICY:

Santa Clara Valley Medical Center (SCVMC) employees are provided a mechanism to request not to participate in certain patient care, including treatment that conflicts with the staff member's cultural values, ethics or religious beliefs. Patient care may not be adversely affected by the granting of such a request for exemption. Exemptions shall not result in disciplinary or recriminatory action.

Areas in which employees may request not to participate include, but are not limited to, abortion, sterilization, emergency contraception, withdrawal of life sustaining treatment, or procurement of organs for transplants.

An employee's request not to participate in an area such as contagious diseases, unless medically contraindicated, will not be considered.

PROCEDURE:

Responsible Party	**Action**
Department Manager, Cost Center Manager, Medical Director	Informs prospective employees about policies on patient care that may influence their decision regarding their employment in a specific unit.
Human Resources	Considers prospective employee for other position vacancies for which they might be qualified for, if such prospective employee objects to participating in certain patient care under this policy. Ensures that new employees are informed that SCVHHS provides a mechanism whereby an employee may request not to participate in a prescribed course of treatment or patient care. Acts as resource to managers requesting SCVMC information on employees' request not to participate in certain patient care or treatments

PROCEDURE: (continued)

Responsible Party	**Action**
Employee/Medical Staff Member	Notifies supervisor of request not to participate in direct patient care or treatment that may conflict with his/her cultural values, ethics or religious beliefs by completing the "Request to Not Participate in Direct Patient Care or Treatment. (Attachment 1)
	NOTE: The request will be considered after a completed form is submitted. Please allow two weeks for processing of the request.
	Understands that medical emergencies take precedence over personal beliefs.
	In the absence of an approved request, must accept assignments. If the request is approved, accepts assignment in an emergency until arrangements are made to provide relief.
Department Director/Cost Center Manager/Medical Director	Evaluates request and determines whether such request can legitimately and appropriately be granted, taking into consideration all circumstances, including staffing levels. If granted, will arrange to redistribute tasks, activities and duties to other qualified individuals as needed to ensure appropriate quality care for patient.
	Notifies employee/medical staff member of disposition of request. Files original request in the manager's file and forwards a copy to Human Resources and to the employee/medical staff member-making request.
	In a medical emergency, assigns staff to provide patient care. Identifies and assigns relief as soon as possible.
	May refuse to accept staff for permanent assignment who request not to participate in a particular aspect of care or treatment commonly performed in the manager's area of responsibility.

Attachments:

1 Request to Not Participate in Direct Patient Care or Treatment

Issued: 05/29/97
Revised: 10/03/05, 7/11/12, 12/16/13, 08/09/17 Signature approval on file.

Attachment 1
Policy VMC #132.01

Request to Not Participate in Direct Patient Care or Treatment

I, ______________________________ am an employee, medical staff member or prospective employee or medical staff member of Santa Clara Valley Medical Center (SCVMC). I request that during the course of my employment or membership that I am not assigned to participate in

____
specific procedure/treatment

because ____

____
cultural values, ethics or religious beliefs in conflict with such participation

I understand that this request will be considered and that SCVMC will determine whether these are sufficient grounds for granting this request. This determination may take two weeks.

SCVMC is obligated to treat medical emergencies. I understand that medical emergencies take precedence over my personal beliefs. If this request is granted, I will participate in medical emergencies until a qualified substitute is provided.

______________________________ ____________________
Signature Date

Approved Denied ____________________
Date

____
Authorized Signature

Distribution:

Original: Manager's File
Copy: Employee/Medical Staff Member
Personnel File

EXHIBIT B

Administrative Policies and Procedures Manual

VMC #301.45

May 8, 2015

TO: SCVMC Employees

FROM: Paul E. Lorenz
Chief Executive Officer, SCVMC

SUBJECT: **Medically Ineffective Interventions, Requests Concerning**

REFERENCE: California Probate Code § 4734-4736
VMC #305.3, Life Support Measures/Do Not Resuscitate
American Medical Association (AMA) Policy E-2.035, Futile Care
AMA Policy E-2.037, Medical Futility in End-of-Life Care
SCVMC Bioethics Committee Bylaws
CMA Document #0403, Responding to Requests for Non-Beneficial Treatment, January 2011

BACKGROUND:

Under California law, a health care provider or institution "may decline to comply with an individual health care instruction or health care decision that requires medically ineffective interventions or health care contrary to generally accepted health care standards." (Cal. Probate Code § 4735.)

If a health care provider or institution so declines to comply with an individual health care instruction, or health care decision, the health care provider or institution "shall do all of the following: (1) promptly inform the patient, if possible, and any person then authorized to make health care decisions for the patient, (2) unless the patient or person then authorized to make health
care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision, and (3) provide continuing care to the patient until a transfer can be accomplished or until it appears that a transfer cannot be accomplished. In all cases, appropriate pain relief and other palliative care must be continued." (Cal. Probate Code § 4736.)

"Modern medical technology has made possible the artificial prolongation of human life beyond natural limits. In the interest of protecting individual autonomy, this prolongation of the process of dying for a person for whom continued health care does not improve the prognosis for recovery may violate patient dignity and cause unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the person." (California Probate Code section 4650)

Under California law, a health care provider may decline to comply with an individual health care instruction or decision "for reasons of conscience." (Cal. Probate Code § 4734.)

There is no legally accepted definition of "medically ineffective" or "futile" intervention. However, the California Medical Association has defined medically ineffective or non-beneficial treatment as "any treatment or study that, in a physician's professional judgment, produces effects that cannot reasonably be expected to be experienced by the patient as beneficial or to accomplish that patient's expressed and recognized medical goals, or has no realistic chance of returning the patient to a level of health that permits survival outside of the acute care setting." (CMA Document #0403, Responding to Requests for Non-Beneficial Treatment, January 2011)

It is generally accepted that a patient or proxy should not be given a treatment simply because they demand it, and that denials of interventions may be justified by reliance on openly stated ethical principles and accepted standards of care. This policy and procedure uses a *process* based approach to assist in fair and satisfactory decision making about what constitutes medical ineffective interventions or care contrary to generally accepted health care standards.

GUIDING PRINCIPLES:

The question of whether an intervention is medically ineffective or contrary to generally accepted health care standards will often depend on the efficacy of treatment ("quantitative factors"). In addition, there may be value judgments involved ("qualitative factors"), such as whether accomplishing a particular physiologic goal would result in a satisfactory quality of life. These judgments must give consideration to patient or proxy beliefs and assessments of worthwhile outcome. Additionally, these judgments must take into account the physician's treatment purpose, which includes doing no harm and ceasing interventions having no benefit to the patient or to others with legitimate interests.

Earnest attempts should be made in advance to deliberate over and negotiate prior understandings between patient, proxy, and physician on what constitutes medically ineffective interventions or care contrary to generally accepted health care standards, and what falls within acceptable limits for physician, patient, proxy and family. Joint decision-making should occur between patient or proxy and physician to the maximum extent possible. Attempts should be made to negotiate disagreements, if they arise, and reach resolution within all parties' acceptable limits. Physicians should, at each step of the process, consider obtaining the assistance of consultants such as the Palliative Care team, clergy or the Bioethics Committee, who may be able to clarify the values and goals of the involved parties and improve the patient's or proxy's understanding of the treatment options.

If the disagreement about an appropriate plan of care rests between members of the healthcare treatment team, refer to "Lack of consensus between members of the health care team," below.

POLICY:

If a physician declines or plans to decline to comply with a patient's or proxy's health care instruction or decision which the physician has concluded requires medically ineffective interventions or health care contrary to generally accepted health care standards, or compliance with such health care instruction or decision is against the physician's conscience, the physician will promptly inform the patient and follow the procedures set forth below. A patient or proxy may request a review of the physician's decision or proposed decision not to comply with the patient's or proxy's individual health care instruction or decision.

PROCEDURE:

Responsible Party	**Action**
Physician	A. Lack of consensus between physician and patient/proxy:

1. If, after discussions with the patient or proxy regarding diagnosis, prognosis and recommendations, and considering the reasons for the patient's or proxy's preferences, there is a lack of consensus, the physician will:
   (a) promptly inform the patient or proxy that the physician plans to decline to comply with the patient's or proxy's health care instructions,
   (b) document why the intervention(s) is considered medically ineffective or contrary to generally accepted health care standards,

PROCEDURE: (continued)

Responsible Party	Action
	(c) discuss the treatment plan with the healthcare treatment team, including representatives from each of the healthcare disciplines involved in the patient's care, (d) immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution whose view is more consistent with the patient's, and continue to provide the same level of care to the patient until a transfer can be accomplished. Reasonable efforts may include requesting Case Management to assist with transfers to external facilities in accordance with relevant VMC policies. (e) if the patient cannot be transferred, inform the patient or proxy that, if they request, the physician's decision can be reviewed by the Medical Director or MAOC and may be reviewed by the Bioethics Committee as appropriate. The physician will forward such requests, on behalf of the patient, to the Medical Director or to the MAOC. (f) after approval from the Medical Director or MAOC and documentation in the medical record, the physician may then proceed with withdrawing or withholding the requested intervention(s). (g) at all times, continue appropriate pain relief and other palliative care. 1. At any time, the physician may request assistance from Spiritual Care, Social Services, the VMC Medical Director, or the Bioethics Committee. Requests for Bioethics Committee review will be made as provided in the Bioethics Committee Bylaws (attached). B. Lack of consensus between members of the healthcare team regarding treatment plan: 1. The primary team shall coordinate a meeting of at least one responsible party from each of the contributing healthcare disciplines involved in the patient's care, in order to reach a group consensus. 2. If necessary, consider a Palliative Care consult to assist with the above meeting and consensus building. 3. If still unable to reach consensus, any team member may request a case review with the Bioethics Committee or Medical Director (or MAOC). 4. Document in the medical record all efforts made, whether or not consensus is reached, along with reasons for primary team's decisions regarding ultimate plan of care. 5. In the event that consensus still cannot be reached, the primary treatment team has the final decision regarding the plan of care. However, when there is no consensus regarding life-sustaining treatment decisions, the Medical Director or MAOC must be notified about the final plan of care decisions.
Patient/Proxy	A patient or their proxy may request the physician, the Social Services Department, or the Customer Service Department, for a review of the physician's decision to decline to comply with an individual health care instruction or health care decision.
Social Services Dept./Customer Service Department	Receives patient's/proxy's concern and contacts the Medical Director/MAOC, or refers the case to the Bioethics Committee.

PROCEDURE: (continued)

Responsible Party	**Action**
VMC Medical Director or MAOC	Reviews case when requested.
	Refers the matter to the Medical Ethics Committee for a case review when appropriate.
	Issues a final decision and notifies the primary attending physician of the decision. Also notifies the patient or proxy if previously in communication with them directly.
	Transfers the patient's care to another physician if the primary physician disagrees with the decision and care plan. (No physician will be required to perform or withhold care, when he or she believes it is medically or ethically inappropriate or against his or her conscience.)

Attachments:

1 Bioethics Committee Bylaws and Ethics Consultation Procedure

Issued: 10/04/04
Revised: 08/09/07, 07/13/09, 07/06/12 Signature approval on file.

ETHICS CONSULTATION PROCEDURE
SANTA CLARA VALLEY MEDICAL CENTER

1. An Ethics consultation is requested by a medical or hospital staff member, a patient, member of the patient's family or other interested party.

2. Ethics consultation is called in to either the Co-Chairs or any members of the Medical Ethics committee.

3. The Committee member will forward the consultation request to the assigned consult physician for that week (Refer to Ethics Committee consult physician assignment).

4. Consult physician will review patient's medical record to clarify the clinical ethical question or concern. Further clarification can be done with the person(s) directly involved with the patient's care. These can include (but are not limited) to the Attending Physician(s), Nursing Staff, Therapists, Social Workers, and Chaplain. Discussion with the patient, and/or patient's family, interested party, and/or surrogate decision-makers may also be appropriate.

5. Consult physician will fill out the Medical Ethics Case Consultation Form and schedule a date and time for case conference. The case conference announcement will be distributed to Medical Ethics committee members. Patient's primary care team and any other hospital staff who are intimately involved in the ethical questions raised will be invited along with patient and any family member or interested party.

6. Patient's primary team will present the case and ethical question. Family or any interested party, if present, may also speak. Ethics committee members may ask primary team and family members questions as appropriate.

7. Non-members of Ethics Committee will be excused and Ethics Committee will discuss the case and possible committee's recommendations. Committee discussion will be documented and stored in the Committee's file.

8. The Medical Ethics committee's recommendations will be forwarded to the patient's attending physician and discussed with the initiator of consult by the consult physician. A consult note will also be placed in the patient's chart. The content of the note will be discussed and agreed by the committee members prior to being written in the chart. The committee's recommendations are only advisory.

9. The case conference will be discussed in the next monthly Medical Ethics committee meeting. The committee chair may follow up on the patient's case as indicated.

10. Consultation during evenings, weekends or holidays is not available at this time.