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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

SUN HEALTHCARE GROUP, INC.; CARE ENTERPRISES, INC.; SUNBRIDGE HEALTHCARE CORPORATION; CARE ENTERPRISES WEST, INC.; REGENCY HEALTH SERVICES, INC.; SUNBRIDGE STOCKTON REHABILITATION CENTER, INC.; SUNBRIDGE CARE ENTERPRISES WEST, INC.; SUNBRIDGE HARBOR VIEW REHABILITATION, INC.; SUNBRIDGE MEADOWBROOK REHABILITATION, INC.; SUNBRIDGE SHANDIN HILLS REHABILITATION, INC.; SUNBRIDGE HALLMARK HEALTH SERVICES, INC.; SUNBRIDGE PARADISE REHABILITATION CENTER, INC.; SUNBRIDGE BRITTANY REHABILITATION CENTER, INC.; SUNBRIDGE CARMICHAEL REHABILITATION CENTER, INC.; and SUNBRIDGE BRASWELL ENTERPRISES, INC.,

Defendants.

Case No.:

SUPERSEDING PERMANENT INJUNCTION AND FINAL JUDGMENT

1 Plaintiff, the PEOPLE OF THE STATE OF CALIFORNIA, by and through their  
2 attorneys, Bill Lockyer, Attorney General of the State of California, Mark L. Zahner, Senior  
3 Assistant Attorney General, Alan B. Robison, Supervising Deputy Attorney General, and Claude  
4 W. Vanderwold, Deputy Attorney General, and Defendants, SUN HEALTHCARE GROUP,  
5 INC.; CARE ENTERPRISES INC.; SUNBRIDGE HEALTHCARE CORPORATION; CARE  
6 ENTERPRISES WEST, INC.; REGENCY HEALTH SERVICE, INC.; SUNBRIDGE  
7 STOCKTON REHABILITATION CENTER, INC.; SUNBRIDGE CARE ENTERPRISES  
8 WEST, INC.; SUNBRIDGE HARBOR VIEW REHABILITATION, INC.; SUNBRIDGE  
9 MEADOWBROOK REHABILITATION, INC.; SUNBRIDGE SHANDIN HILLS  
10 REHABILITATION, INC.; SUNBRIDGE HALLMARK HEALTH SERVICES, INC.;  
11 SUNBRIDGE PARADISE REHABILITATION CENTER, INC.; SUNBRIDGE BRITTANY  
12 REHABILITATION CENTER, INC.; SUNBRIDGE CARMICHAEL REHABILITATION  
13 CENTER, INC.; and SUNBRIDGE BRASWELL ENTERPRISES, INC., (collectively, “Sun” or  
14 “Defendants”), by and through their attorneys, Manatt, Phelps & Phillips, LLP, by John F.  
15 Libby, and Kelly, Lytton & Vann, LLP, by Peter D. Kelly, have stipulated that this Superseding  
16 Permanent Injunction and Final Judgment (hereafter “PIFJ”) may be entered in the above-  
17 referenced action. This PIFJ supersedes the Permanent Injunction and Final Judgment filed on  
18 October 3, 2001, in the Superior Court of the State of California, for the County of San Mateo,  
19 case number 418519.

20 **I.**

21 **DEFINITIONS**

22 1. **Affiliate/s**: An affiliate of a person or entity, or a person or entity “affiliated” with a  
23 specified person or entity means:

24 a. Any person or entity directly or indirectly owning, controlling, or holding with  
25 power to vote twenty (20) per centum or more of the outstanding voting securities of such other  
26 person or entity;

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1           b. Any person or entity, twenty (20) per centum or more of whose outstanding  
2 voting securities are directly or indirectly owned, controlled, or held with power to vote, by such  
3 other person or entity; or

4           c. Any person or entity directly or indirectly controlling, controlled by, or under  
5 common control with, such other person or entity.

6       2.     **Control:** The term “control” (including the terms “controlling,” “controlled by,” and  
7 “under common control with”) means the possession, direct or indirect, of the power to direct or  
8 cause the direction of the management and policies of a person or entity, whether through  
9 ownership of voting shares, by contract, or otherwise.

10    3.     **Subsidiary:** The terms “subsidiary” or “subsidiaries” of a specified person or entity is an  
11 affiliate controlled by such person or entity directly or indirectly through one or more  
12 intermediaries.

13    4.     **Covered Persons:** As used herein, Covered Persons include each of the named  
14 Defendants, their subsidiaries and affiliates, and their respective officers, directors, employees,  
15 partners, agents, representatives, subsidiaries, transferees, assigns, successors, contractors, and  
16 subcontractors, consistent with the limitations set forth in the PIFJ. “Covered Persons” does not  
17 include private caregivers hired by any resident or the family or friends of any resident to  
18 provide care to a resident of one of Defendants’ California skilled nursing facilities.

19    5.     **Defendants:** As used herein Defendants shall include the named Defendants, and each  
20 of them separately, as well as any corporation, limited liability company, partnership, or any  
21 other legal entity or organization which any of the named Defendants (or any of each named  
22 Defendant’s subsidiaries or affiliates) controls and which directly or indirectly controls any  
23 California skilled nursing facilities.

24    6.     **QAA Committee:** As used herein, QAA Committee means a Quality Assurance and  
25 Assessment Committee pursuant to applicable law.

26    7.     **Effective Date:** As used herein, is the date of the filing of this PIFJ.

27    8.     **Effective Period:** As used herein, is the period of time the injunctive provisions of this  
28 PIFJ are in effect, beginning on the date of the filing of this PIFJ.

1 9. **Facility** or **Skilled Nursing Facility**: As used herein, means each and every facility  
2 licensed as a skilled nursing facility and located in California that is now or hereafter owned,  
3 licensed, operated, managed, directed, administered, or controlled by any of the Defendants, their  
4 subsidiaries or affiliates either currently or at any time during the Effective Period of the PIFJ,  
5 including Special Treatment Program behavioral units licensed as skilled nursing facilities.

6 10. **Resident** and **Patient**: As used herein, are used interchangeably, and any reference to  
7 one includes the other.

8 11. **Communication System**: As used herein means any electronic system, call bells, lights,  
9 or any other system or means used by residents to call for or attract the attention of the staff of  
10 the skilled nursing facility.

11 12. **Licensed** or **Certified Staff**: As used herein, includes registered nurses, licensed  
12 vocational nurses, certified nursing assistants, and any other staff providing care, treatment, or  
13 services directly to the residents, who are required by the State of California to be licensed or  
14 certified. Licensed or Certified Staff does not include private caregivers hired by any resident or  
15 the family or friends of any resident to provide care to a resident of one of Defendants'  
16 California skilled nursing facilities.

17 13. **Monitor** and **Monitoring**: As used herein, means to watch, observe, check for, and/or  
18 keep track of compliance with the applicable provisions of this PIFJ to which the required  
19 monitoring relates, including reviewing records when necessary. The monitoring required by  
20 this PIFJ need not be constant and/or continuous, but may be periodic with a reasonable  
21 frequency sufficient to achieve the goal(s) for which the monitoring is required.

22 14. **Patient Care Staff**: As used herein, means any staff in a skilled nursing facility in  
23 California having responsibility for the direct care of a resident. This includes the following:  
24 licensed staff; certified nurse assistants; restorative aides; rehabilitation aides; patient feeders;  
25 wound care staff; anyone under any title who provides care to a resident; and any staff who are  
26 making assessments (including, but not limited to, Minimum Data Set assessments) of residents.  
27 "Patient care staff" does not include private caregivers hired by any resident or the family or

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1 friends of any resident to provide care to a resident of one of Defendants' California skilled  
2 nursing facilities.

3 15. **Pressure Ulcer:** As used herein, is synonymous with decubitus ulcer or pressure sore.

4 As used herein, a pressure ulcer is any lesion caused by unrelieved pressure that results in  
5 damage to the underlying tissue(s). Although friction and shear are not primary causes of  
6 pressure ulcers, friction and shear are important contributing factors to the development of  
7 pressure ulcers. Stages of pressure ulcers are defined as follows:

8 a. "Stage I" – An observable, pressure-related alteration of intact skin, whose  
9 indicators as compared to an adjacent or opposite area on the body may include changes in one  
10 or more of the following parameters: skin temperature (warmth or coolness); tissue consistency  
11 (firm or boggy); sensation (pain, itching); and/or a defined area of persistent redness in lightly  
12 pigmented skin, whereas in darker skin tones, the ulcer may appear with persistent red, blue, or  
13 purple hues.

14 b. "Stage II" – Partial thickness skin loss involving epidermis, dermis, or both. The  
15 ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater.

16 c. "Stage III" – Full thickness skin loss involving damage to, or necrosis of,  
17 subcutaneous tissue that may extend down to, but not through, underlying fascia. The ulcer  
18 presents clinically as a deep crater with or without undermining of adjacent tissue.

19 d. "Stage IV" – Full thickness skin loss with extensive destruction, tissue necrosis,  
20 or damage to muscle, bone, or supporting structures (e.g., tendon, joint capsule). Undermining  
21 and sinus tracts also may be associated with Stage IV pressure ulcers. If eschar and necrotic  
22 tissue are covering and preventing adequate staging of a pressure ulcer, the pressure ulcer shall  
23 be considered a Stage IV.

24 16. **BMFEA:** As used herein, means Bureau of Medi-Cal Fraud and Elder Abuse of the  
25 Office of the Attorney General of the State of California.

26 17. **OSHPD:** As used herein, means Office of Statewide Health Planning and Development.

27 18. **Physical Restraints:** As used herein, are any manual method, mechanical or physical  
28 devices, material or equipment attached or adjacent to the resident's body that the individual

1 cannot remove easily, which restricts freedom of purposeful or voluntary movement or normal  
2 access to one's body.

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4 **II.**

5 **GENERAL PROVISIONS**

6 19. Nothing in this PIFJ, nor any act performed, nor any document executed pursuant to this  
7 PIFJ, shall constitute a finding of any violation of any statutory, regulatory, common law, or  
8 equitable duty, claim, or principle.

9 20. Venue lies in the County of San Diego because at least some of the acts and/or omissions  
10 by the Defendants as alleged are claimed to have occurred within the County of San Diego, State  
11 of California.

12 21. This PIFJ supersedes the PIFJ in San Mateo County Superior Court case number 418519  
13 ("San Mateo PIFJ"). Upon entry of this PIFJ the People will file a dismissal of the San Mateo  
14 Superior Court action. The venue for enforcement of any violation of this PIFJ shall lie in the  
15 County of San Diego, in the County of Sacramento, or in a county where one or more alleged  
16 violations of this PIFJ occurs. Jurisdiction for any other purpose is retained in this Court.

17 22. The injunctive provisions of this PIFJ are entered into pursuant to California Business  
18 and Professions Code section 17203.

19 23. This PIFJ shall only apply to the skilled nursing facilities in California that are owned,  
20 licensed, operated, managed, directed, administered, or controlled, now or hereafter, by one or  
21 more of the Defendants, their respective subsidiaries or affiliates. This PIFJ shall not apply to  
22 skilled nursing facilities in California that were once, but are no longer, owned, licensed,  
23 operated, managed, directed, administered, or controlled by one or more of the Defendants, their  
24 respective subsidiaries or affiliates.

25 24. The terms and conditions of this PIFJ shall not apply with respect to any facility in  
26 California which is located on real property owned by any of the Defendants, provided, however,  
27 that (a) such facility is wholly owned, licensed, operated, managed, directed, administered, or  
28 controlled by an entity which is neither a subsidiary nor an affiliate of any Defendants; (b) the

1 Defendants' sole income from the operation of such facility is rental or mortgage income from  
2 the real property on which the facility is situated, excluding buildings and improvements; and  
3 (c) Defendants, their subsidiaries and affiliates maintain no service or operational contracts with  
4 such facilities or their owners, management or other personnel.

5 25. This PIFJ is applicable to and binding upon each of the Defendants, their subsidiaries,  
6 and affiliates and each of their partners, directors, officers, employees, agents, representatives,  
7 subsidiaries, transferees, assigns, successors, contractors, and subcontractors; provided, however,  
8 that any such transferee, assign or successor shall not be subject to this PIFJ if such transferee,  
9 assign or successor qualifies as a "bona-fide third party purchaser" as set forth in paragraph 26  
10 below. With respect to such contractors and subcontractors, the provisions of this PIFJ apply  
11 only to care or treatment of residents, or services performed by such contractors and  
12 subcontractors at any skilled nursing facility in California owned, licensed, operated, managed,  
13 directed, administered, or controlled by any of the Defendants or any of their subsidiaries or  
14 affiliates.

15 26. If any of the Defendants sell, transfer, assign or convey in any manner any right, title or  
16 interest in any California skilled nursing facility, currently or in the future, owned or controlled  
17 by them or any of their subsidiaries or affiliates, or if any Defendants or any of their subsidiaries  
18 or affiliates, shall change its name or the name by which any of them does business or by which  
19 a skilled nursing facility does business, then such Defendant, its subsidiary or affiliate, as the  
20 case may be, shall provide notice of such sale, transfer, assignment, or conveyance or change to  
21 the Bureau of Medi-Cal Fraud and Elder Abuse ("BMFEA") within thirty (30) days after the  
22 effective date of such sale, transfer, assignment, conveyance or name change. Such notice shall  
23 include the name, address, and telephone number of the new owner or new name; the effective  
24 date; and pertinent terms of such sale, transfer, assignment, or conveyance. In the event that  
25 such sale, transfer, assignment, or conveyance of the controlling equity interest in a California  
26 skilled nursing facility shall be made for fair market value in an arms length transaction to an  
27 entity that is neither a subsidiary nor an affiliate of any of the Defendants or their respective  
28 subsidiaries or affiliates, such party shall be deemed a "bona-fide third party purchaser." After

1 the effective date of such sale, transfer, assignment or conveyance, such bona-fide third party  
2 purchaser shall not be subject to the terms and conditions of this PIFJ. Provided, however, that if  
3 any Defendant or any of its subsidiaries or affiliates shall retain or at any time shall reacquire,  
4 directly or indirectly, any interest in such facility that causes such facility to fall within the  
5 definition of “affiliate” contained in this PIFJ, such facility shall continue to be bound by the  
6 terms and conditions of this PIFJ. Defendants shall comply with all rules and regulations of the  
7 California Department of Health Services (“DHS”) with respect to change of ownership of any  
8 skilled nursing facility. For purposes of the PIFJ, a purchaser with knowledge of the existence of  
9 this PIFJ shall not, for that reason alone, be deemed not to be a “bona-fide purchaser.”

10 27. Plaintiff agrees to release the Defendants and their officers, directors, and employees  
11 from any further civil liability that the People may be able to assert pursuant to California  
12 Business and Professions Code section 17200 *et seq.*, only for conduct regarding quality of  
13 patient care arising on or prior to the Effective Date at any of Defendants’ skilled nursing  
14 facilities located within the State of California. Plaintiff also agrees to release Defendants and  
15 their officers, directors, and employees from any civil false claims pursuant to California  
16 Government Code section 12651 *et seq.*, and fraud (both statutory and common law), whether  
17 based upon alleged tort or any other legal or equitable theory of recovery, whether based upon  
18 statute or common law or otherwise, known or unknown for conduct, acts, and omissions arising  
19 out of or in connection with, quality of patient care on or prior to the Effective Date at any of  
20 Defendants’ skilled nursing facilities located within the State of California. Furthermore,  
21 Plaintiff agrees to release the Defendants and their officers, directors, and employees from civil  
22 liability arising from California Department of Health Services’ (DHS) deficiencies or citations  
23 issued before the Effective Date. These releases do not cover the following:

- 24 a. Any type of conduct occurring after the Effective Date;
- 25 b. Criminal conduct occurring at any time;
- 26 c. Liability to the California Department of Health Services, the California  
27 Franchise Tax Board, the Centers for Medicare and Medicaid Services, or the Office of the

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1 Inspector General for conduct occurring at any time that would give rise to administrative fines,  
2 penalties, or other relief that may be sought by such agencies;

3 d. The liability of any contractor or subcontractor at any time;

4 e. Any future enforcement proceedings based upon alleged violations occurring after  
5 the Effective Date of the PIFJ.

6 28. Only the parties to this PIFJ may rely upon or enforce this PIFJ.

7 29. Nothing in this PIFJ shall preclude Defendants from contesting any citation or deficiency  
8 or from challenging any present or future statute, regulation, or other requirement that is or  
9 becomes covered by or related to this PIFJ.

10 30. In Part IV of this PIFJ – “INJUNCTIVE RELIEF – COMPLIANCE WITH STATUTES  
11 AND REGULATIONS” – with respect to any reference to state or federal statutes or regulations  
12 to be complied with, the actual language of the statutes and regulations, rather than the  
13 description of the statutes and regulations contained within Part IV, shall control. The  
14 Defendants shall comply with such statutes and regulations and any revisions of such statutes or  
15 regulations effective subsequent to the Effective Date of the PIFJ; i.e., the conduct of Defendants  
16 shall be governed by the language of the statutes and regulations in effect at the time of such  
17 conduct. If any revisions to existing statutes or regulations result in the statutes or regulations or  
18 their subdivisions being renumbered, then the statutes or regulations or subdivisions as  
19 renumbered shall continue to be complied with by the Defendants.

20 **III.**

21 **TERM OF INJUNCTIVE RELIEF**

22 31. The obligations imposed by this PIFJ on Defendants shall become permanent, unless  
23 modified pursuant to the provisions of Part VIII – “MODIFICATION OF INJUNCTIVE  
24 RELIEF.”

25 **IV.**

26 **INJUNCTIVE RELIEF – COMPLIANCE WITH STATUTES AND REGULATIONS**

27 32. Pursuant to California Business and Professions Code section 17203, all Covered  
28 Persons, while engaged in the conduct of any business activity involving or related to any

1 California skilled nursing facility owned, licensed, operated, managed, directed, administered, or  
2 controlled by any of the Defendants, are enjoined and restrained from engaging in or performing  
3 directly or indirectly any act that is in violation of any federal or state statute or regulation  
4 governing the operation of a California skilled nursing facility with respect to the quality and  
5 delivery of care or the physical environment in which such care is provided to patients of such  
6 skilled nursing facility.

7 **V.**

8 **INJUNCTIVE RELIEF – PROPHYLACTIC MEASURES**

9 33. Pursuant to California Business and Professions Code section 17203, all Covered  
10 Persons, while engaged in the conduct of any business activity involving or related to any facility  
11 owned, licensed, operated, managed, directed, administered, or controlled by any of the  
12 Defendants, are ordered to comply with the following injunctive relief during the Effective  
13 Period:

14 **A. Compliance Program**

15 **1) Corporate Integrity Agreement**

16 34. The CORPORATE INTEGRITY AGREEMENT BETWEEN THE OFFICE OF THE  
17 INSPECTOR GENERAL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES  
18 AND SUN HEALTHCARE GROUP, INC. dated July 12, 2001 (“CIA”), a true and correct copy  
19 of which is attached hereto as Exhibit A, is incorporated by reference as if fully set forth herein.  
20 For the purposes of this PIFJ, Defendants stand in the place of Sun Healthcare Group, Inc.  
21 (“Sun”) in the CIA, and Plaintiff stands in the place of the Office of the Inspector General  
22 (“OIG”) of the United States Department of Health and Human Services in the CIA. The CIA  
23 shall terminate as to Plaintiff when it terminates as to the OIG. Plaintiff may enforce any and all  
24 provisions of the CIA against Defendants, only as to Defendants’ facilities located in California,  
25 through California Business and Professions Code section 17200, *et seq.* For any provision of  
26 the CIA enforced by the OIG as to a California facility, Plaintiff shall not bring an independent  
27 action, but instead Defendants shall pay to Plaintiff the same amount of stipulated penalties as is  
28 paid to the OIG. Concerning reports, documents, and communications required by the CIA,

1 Defendants shall convey to Plaintiff copies of all said items Sun conveys to the OIG concerning  
2 California facilities, at the same time the originals are conveyed to the OIG.

3 **2) California Compliance Officer**

4 35. There shall be created and maintained the position of California Compliance Officer, who  
5 shall have responsibility over all California skilled nursing facilities licensed, operated, managed,  
6 directed, administered, or controlled by Defendants, and whose responsibility will be to ensure  
7 that:

8 a. Policies and procedures are maintained or developed and implemented that are  
9 designed to promote each skilled nursing facility's full compliance with all applicable statutes,  
10 regulations, policies, and this PIFJ;

11 b. Each skilled nursing facility has a system in place to respond to state, federal,  
12 internal, and external reports of quality of care issues and such system functions adequately;

13 c. Policies and procedures are adapted and implemented that are designed to ensure  
14 that each individual who is cared for at one of Defendants' California skilled nursing facilities  
15 receives at least the minimum level of care required by law; and

16 d. Services provided are evaluated on a regular basis and appropriate  
17 recommendations are made where necessary to ensure each California skilled nursing facility  
18 meets professional standards of quality.

19 In the event a new California Compliance Officer is appointed during the Effective Period,  
20 Defendants shall notify the BMFEA, in writing, within fifteen (15) days of such a change.

21 36. Defendants shall perform quality reviews as necessary to ensure that this PIFJ is being  
22 implemented and complied with, and to ensure that Defendants are meeting their obligations  
23 under state and federal regulations and statutes applicable to skilled nursing facilities in  
24 California, which directly or indirectly affect the quality of care being provided to the residents  
25 of such facilities, as required by applicable law.

26 **3) Facility Compliance Officer**

27 37. Defendants shall appoint a Facility Compliance Officer at each of the skilled nursing  
28 facilities in California licensed, operated, managed, directed, administered, or controlled by

1 Defendants. Each Facility Compliance Officer shall be responsible for implementing policies  
2 and procedures designed to promote conduct that is in full compliance with the requirements set  
3 forth in this PIFJ and with the requirements of the state and federal regulations and statutes  
4 applicable to California skilled nursing facilities. Defendants shall notify the BMFEA of the  
5 names of each Facility Compliance Officer, in writing, within thirty (30) days of the initial  
6 appointment of the Facility Compliance Officer. Each Facility Compliance Officer for each  
7 skilled nursing facility in California shall be a member of facility management who is directly  
8 involved in the oversight of patient care operations at the skilled nursing facility. Each Facility  
9 Compliance Officer shall be responsible for monitoring the patient care operations, and any other  
10 operations or activities engaged in by Defendants that are addressed in this PIFJ, to further the  
11 compliance objective as well as any reporting obligations created under this PIFJ. Each Facility  
12 Compliance Officer shall also ensure that quality of care issues are appropriately identified,  
13 addressed, and corrected. In the event a new Facility Compliance Officer is appointed during the  
14 Effective Period, upon the request of BMFEA, Defendants shall notify the BMFEA, in writing,  
15 within thirty (30) days of such a change.

16 **4) Confidential Disclosure Program**

17 38. Defendants operate a Confidential Disclosure Program, which involves toll-free  
18 telephone hotlines. The Confidential Disclosure Program enables Covered Persons and other  
19 individuals to disclose, to a Compliance Officer or some other person who is not in the  
20 disclosing individual's chain of command, any identified issues or questions associated with  
21 Defendants' policies, practices or procedures with respect to a federal health care program,  
22 believed by the individual to be inappropriate. Defendants shall continue to publicize the  
23 existence of the hotlines (e.g., in training, e-mail, Intranet, newsletters to employees).

24 39. The Confidential Disclosure Program shall emphasize a non-retribution, non-retaliation  
25 policy, and include a reporting mechanism for anonymous, confidential communication. Upon  
26 receipt of a disclosure, the California Compliance Officer or his/her temporary designee shall  
27 gather the information in such a way as to elicit all relevant information from the disclosing  
28 individual. The California Compliance Officer or his/her temporary designee shall make a

1 preliminary good faith inquiry into the allegations set forth in every disclosure to ensure that he  
2 or she has obtained all of the information necessary to determine whether a further review should  
3 be conducted. For any disclosure that is sufficiently specific so that the California Compliance  
4 Officer or his/her temporary designee reasonably determines further review is warranted, the  
5 California Compliance Officer or his/her temporary designee shall conduct such further review  
6 of the allegations and ensure that appropriate follow-up is conducted and that any inappropriate  
7 or improper practice identified is appropriately addressed.

8 40. The California Compliance Officer or his/her temporary designee shall continue to be  
9 responsible for a confidential disclosure log, which shall continue to include a record and  
10 summary of each allegation received, the status of the respective investigations, and any  
11 corrective action taken in response to the investigation. In its Annual Reports, Defendants shall  
12 provide the confidential disclosure log for all calls related to patient care, patient quality  
13 management concerns, and patient care and services at any California skilled nursing facility.  
14 Defendants shall maintain and make available to the BMFEA upon request any other documents  
15 related to confidential disclosures (including their investigation and resolution) for at least two  
16 years after the reporting year in which the matter was resolved.

17 **5) Criminal Background Checks**

18 41. Defendants shall conduct criminal background checks of potential employees.  
19 Defendants shall ensure that they: (a) comply with all federal and state requirements regarding  
20 criminal background checks for potential employees; and (b) perform and complete a timely  
21 criminal background check on all individuals offered employment in a position that involves  
22 direct care of patients (and the offer of employment must be conditioned upon the results of the  
23 check). For the purposes of this PIFJ, a timely criminal background check means a check  
24 completed within thirty (30) days of the offer of employment to the individual. To the extent any  
25 agency of any state has performed a criminal background check, Defendants may rely upon the  
26 results of such criminal background check.

27 42. Each skilled nursing facility in California shall ask its job applicants on the application  
28 for employment whether he/she has ever been convicted of any offense involving the abuse,

1 neglect, endangerment, or mistreatment of an elder or dependent adult, or any offense involving  
2 theft or embezzlement from an elder or dependent adult.

3 43. Before hiring or contracting with any certified nursing assistant, each California skilled  
4 nursing facility shall first contact the State nurses aide registry to inquire whether such individual  
5 has ever had a finding entered into the State nurses aide registry concerning his/her abuse,  
6 neglect, or mistreatment of residents, or misappropriation of their property, and each skilled  
7 nursing facility shall not hire such individual if such a finding has been entered into the State  
8 nurses aide registry.

9 **B. Written Standards**

10 **1) Code of Conduct**

11 44. Defendants' Code of Conduct shall in all material respects remain in effect.

12 45. To the extent not already done, all Covered Persons, and Covered Persons hired or  
13 contracted within ninety (90) days of the Effective Date, shall be given a copy of the Code of  
14 Conduct, except registry personnel; all subsequently hired or contracted Covered Persons, except  
15 registry personnel, shall receive a copy of the Code of Conduct as part of their orientation, but in  
16 no event no more than thirty (30) days after the date they are hired, appointed, or contracted.  
17 Each such Covered Person, except registry personnel, shall certify, in writing, within thirty (30)  
18 days after receiving a copy of the Code of Conduct, that he/she has received, read, understood,  
19 and will abide by the Code of Conduct. If the Covered Person was given a copy of the Code of  
20 Conduct before the Effective Date and has certified, in writing, that he/she received a copy of the  
21 Code of Conduct, that shall constitute compliance with the provisions of this paragraph. A copy  
22 of the Covered Person's certification shall be kept in his/her personnel file. Defendants shall  
23 make adherence to the Code of Conduct an element in evaluating the performance of employees  
24 working at Defendants' skilled nursing facilities in California.

25 **2) Policies and Procedures**

26 46. Defendants shall assess and update as necessary at least annually on a rotational basis,  
27 and more frequently if appropriate, their written policies and procedures confirming their  
28 commitment to promoting full compliance with state and federal regulations and statutes

1 applicable to California skilled nursing facilities which directly or indirectly affect the quality of  
2 care being provided to the residents of such facilities. The policies and procedures shall be  
3 available to the BMFEA upon request. Defendants shall ensure that the relevant portions of its  
4 policies and procedures are available to the appropriate Covered Persons within thirty (30) days  
5 of being implemented. Defendants shall ensure that, at a minimum, they have adequate policies  
6 and procedures that specifically address:

7 a. Measures designed to ensure that Defendants comply with Cal. Code Regs. tit. 22,  
8 Titles XVIII and XIX of the Social Security Act, 42 U.S.C. sections 1395-1395ggg and 1396-  
9 1396v, and all regulations promulgated pursuant to these statutes, including but not limited to 42  
10 C.F.R. Parts 424, 482, and 483, and any other state or local statutes or regulations that address  
11 quality of care in skilled nursing facilities;

12 b. Measures designed to promote at least minimally, sufficient staffing as required  
13 by applicable statutes, regulations, and this PIFJ;

14 c. Measures designed to ensure that staffing needs are decided first and foremost  
15 upon achieving the level of care for facility residents required by state and federal regulations  
16 and statutes applicable to skilled nursing facilities, including, but not limited to, Cal. Code Regs.,  
17 tit. 22 and 42 C.F.R. section 483.30 (skilled nursing facilities);

18 d. Measures designed to inform Covered Persons of the staffing requirements of  
19 state and federal regulations and statutes that directly or indirectly affect the quality of care being  
20 provided to the residents of such skilled nursing facilities;

21 e. Measures designed to promote compliance with the completion of assessments as  
22 required by applicable statutes, regulations and this PIFJ;

23 f. Measures designed to promote adherence to the compliance and quality of care  
24 standards set forth in applicable statutes, regulations and this PIFJ;

25 g. Measures designed to ensure that compliance issues are identified internally (e.g.  
26 through reports of abuse or neglect, reports to supervisors, complaints, quality reviews, CHSRSA  
27 quality indicators, staff turnover data, or internal surveys) or externally (e.g., consultants) and are  
28 promptly and appropriately investigated and, if the investigation substantiates compliance issues,

1 that Defendants implement effective and timely corrective action plans and monitor compliance  
2 with such plans;

3 h. Non-retaliation policies and procedures for employees or other Covered Persons  
4 to make disclosures or otherwise report on compliance issues; and

5 i. Measures designed to ensure cooperation with the BMFEA, which shall have  
6 access to Defendants' skilled nursing facilities, and any and all business records, business  
7 material, and patient records that pertain to quality of care in accordance with this PIFJ.

8 **C. Residents' Rights, Dignity, and Privacy**

9 47. All notifications and consultations required by 42 C.F.R. section 483.10(b)(11) shall be  
10 promptly and accurately charted in the residents' medical records.

11 48. A Licensed Nurse shall monitor significant resident changes to ensure that proper  
12 notification is given and residents' rights respected pursuant to 42 C.F.R. section 483.10(b)(11).

13 49. Each skilled nursing facility shall provide access to a telephone for private conversations  
14 by residents, for use by residents under reasonable conditions.

15 50. Each skilled nursing facility shall provide a meeting area for family and resident group  
16 meetings, for use by residents under reasonable conditions.

17 51. Personal care and medical treatment shall be provided in a private space.

18 52. New residents shall be informed at the time of their admission of their right to privacy,  
19 the location(s) available for private meetings with family or friends, and the location(s) of  
20 telephones where privacy and quiet can be maintained.

21 53. The Administrator and the Director of Nursing shall monitor resident care along with the  
22 QAA Committee, to ensure that the residents are receiving care in a manner and environment  
23 which will help to maintain or enhance each resident's dignity, privacy, and respect in full  
24 recognition of their individuality.

25 54. Grooming and personal hygiene shall include care of the skin, shampooing and grooming  
26 of hair, oral hygiene, shaving or beard trimming, and cleaning and cutting of fingernails and  
27 toenails, and each resident shall be free of offensive odors.

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1 55. Residents shall be showered or bathed a minimum of twice a week, unless against  
2 medical advice or a resident refuses to be showered or bathed. Any refusals to shower or bathe  
3 shall be reported to the supervisory nurse, and the shower or bath shall be offered later and/or  
4 rescheduled in case the resident changes his or her mind about wanting a shower or bath, or  
5 would prefer a shower or bath at a different time. The medical advice and/or the refusal and/or  
6 reschedule shall be charted.

7 56. The maintenance staff shall make at least monthly rounds to ensure that Communication  
8 Systems are functional. The Administrator shall monitor the Communication System to ensure  
9 that it is functional. A temporary malfunction of the Communication System shall not constitute  
10 a violation of this PIFJ if Defendants did not have reason to know the Communication System  
11 had been malfunctioning, and once the Defendants knew or should have known the  
12 Communication System was malfunctioning the Defendants acted promptly and reasonably to  
13 make the Communication System functional again as soon as possible.

14 57. The Administrator or temporary designee shall monitor grievances by residents or their  
15 families to ensure proper and timely care is being given to the residents, and to ensure that  
16 appropriate resolutions of such grievances are being achieved.

17 **D. Restraints**

18 58. Each skilled nursing facility shall have policies and procedures regarding the use of  
19 physical restraints, which promote compliance with 42 C.F.R. section 483.13(a).

20 59. Each skilled nursing facility's interdisciplinary team shall assess a perceived need for  
21 restraints for all residents other than those who are admitted to any skilled nursing facility with a  
22 prior restraint order. Other approaches such as appropriate lighting, reduced clutter, safety  
23 reminders, staff supervision, and the manner of staff interaction with the resident and others shall  
24 be considered before physical restraints are used.

25 60. The use of restraints, or a change in the use of restraints, shall be allowed only by an  
26 appropriate order of a physician indicating the reason and duration, and by approval of the  
27 resident, the resident's legal representative, or an interested family member after risks and  
28 benefits are explained.

1 61. Use of restraints shall be time limited in accordance with applicable law. Use of  
2 restraints shall be regularly reviewed and evaluated by the skilled nursing facility's  
3 interdisciplinary team at least quarterly, including consideration of the proper use, reduction, or  
4 elimination of restraints, and the least restrictive alternatives.

5 62. Physical and chemical restraints shall be used only pursuant to accepted professional  
6 standards and in accordance with applicable state and federal statutes and regulations, and they  
7 shall never be used as punishment or for the convenience of staff. Defendants shall assess,  
8 document, and ensure that any restraints used, whether chemical or physical, are the least  
9 restrictive restraints appropriate for the resident and the situation consistent with the orders of the  
10 resident's physician. Before a resident may be restrained, the facility shall determine the  
11 presence of a specific medical symptom that would require the use of restraints and how the  
12 restraints would treat the medical symptom. Medical symptoms that warrant the use of restraints  
13 must be documented in the resident's care plan medical record, and in ongoing assessments.

14 63. Residents shall be released from any physical restraints in accordance with care plan, and  
15 residents shall continue to be assessed periodically as to whether they need to remain in  
16 restraints. All residents who are restrained shall be appropriately repositioned and provided with  
17 adequate supervision, hydration, and bowel and bladder elimination while in restraints in  
18 accordance with care plan.

19 64. The Director of Nursing or his/her licensed designee shall monitor resident restraint  
20 methods, orders, and consents to ensure proper utilization and to protect the residents' right to be  
21 free from physical restraints not required to treat the residents' medical symptoms.

22 **E. Prevention of Resident Abuse and Neglect**

23 65. Each skilled nursing facility shall have policies and procedures regarding investigation,  
24 reporting, and protection of residents from verbal abuse, sexual abuse, physical abuse and  
25 neglect, mental abuse and neglect, corporal punishment, and involuntary seclusion, which  
26 promote compliance with 42 C.F.R. section 483.13(b) and Cal. Code Regs., tit. 22, sections  
27 72527(a)(9) and 72315(b).

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1 66. Any staff person at a skilled nursing facility who is reasonably suspected by the  
2 Administrator or Director of Nursing of the facility of abuse or neglect shall be placed on  
3 administrative leave during the investigative period to ensure the protection of residents (unless  
4 such person is terminated by the skilled nursing facility).

5 67. Abuse of a resident by another resident shall be investigated by the Administrator,  
6 Director of Nursing, and/or their licensed designee, and shall be reviewed by the  
7 interdisciplinary team to determine if care plan changes, interventions, and in-service training are  
8 needed to ensure the safety of all residents.

9 68. All known, observed, or reasonably suspected abuse and neglect shall be promptly  
10 investigated by the Administrator, and/or Director of Nursing, and/or their licensed designee, and  
11 shall be reported as required by law to the local ombudsman or the local law enforcement agency  
12 by telephone immediately or as soon as practically possible, but not to exceed twenty-four (24)  
13 hours, and by written report within two (2) working days.

14 69. The Director of Nursing or his/her licensed designee in conjunction with the  
15 interdisciplinary team shall monitor residents with histories of exhibiting behaviors that cause  
16 injury to themselves or others, and shall take precautions which are reasonable under the  
17 circumstances to help prevent any such injuries from occurring. Residents shall be protected to  
18 the extent reasonably possible from being victimized by other aggressive residents.

19 70. The Administrator or his/her licensed designee shall monitor all incidents of alleged  
20 abuse or neglect, and shall ensure that notification to authorities is made as required by law and  
21 appropriate investigative measures are taken.

22 71. All residents shall be properly assessed to ensure that appropriate intervention strategies  
23 are implemented to help prevent occurrences of resident-to-resident abuse.

24 **F. Resident Care**

25 72. All residents shall be screened by appropriate Covered Persons to determine if therapy,  
26 treatment, or adaptive equipment is needed by a resident to maintain his or her ability to bathe,  
27 dress, groom, transfer, ambulate, toilet, or eat, or to use speech, language, or other functional  
28 communication systems.

1 73. Each skilled nursing facility shall ensure that residents requiring assistance with  
2 ambulation are provided with such assistance as needed, in an effort to maintain the resident's  
3 ability to ambulate to the extent medically and reasonably possible.

4 **G. Medically-Related Social Services**

5 74. The Social Services Designee shall participate in the interdisciplinary care plan meetings  
6 for the purpose of annual and quarterly assessments and initiation and updating of care plans.

7 The Social Services Designee shall participate in such meetings to the extent that the assessments  
8 or care plans require social services implications.

9 **H. Housekeeping and Maintenance**

10 75. The Administrator shall conduct rounds at least quarterly to ensure that housekeeping and  
11 maintenance services are providing a sanitary, orderly, and comfortable interior.

12 **I. Assessments of Residents**

13 76. The designated registered nurse (MDS Coordinator) shall monitor resident assessments to  
14 ensure their appropriateness and timely review.

15 77. The interdisciplinary team shall conduct reviews of each resident's assessment at least  
16 quarterly to ensure the resident's care plan reflects the resident's needs.

17 78. A licensed nurse shall assess each resident promptly after a significant change in the  
18 resident's physical or mental condition.

19 79. The interdisciplinary team shall promptly participate in a revised MDS assessment of a  
20 resident upon a significant change in the resident's physical or mental condition, as defined in  
21 the Resident Assessment Instrument Manual.

22 80. Each significant change in a resident's physical or mental condition shall be charted,  
23 promptly reported to a family member or legal representative, and promptly reported to a  
24 physician and the next shift's patient care staff, and ongoing assessment shall be done as  
25 necessary.

26 81. The interdisciplinary team shall participate in the initial (no later than fourteen (14) days  
27 after admission) and annual MDS assessments of each resident's functional capacity.

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1 82. Each skilled nursing facility shall ensure that there is a timely, complete, and accurate  
2 MDS and a current, complete, and accurate interdisciplinary care plan in the chart of each  
3 resident. Each skilled nursing facility shall conduct, at the time of each resident's admission and  
4 periodically thereafter (at least annually and promptly after a significant change in the resident's  
5 physical or mental condition), a comprehensive, accurate, and standardized assessment of each  
6 resident's functional capacity with input by all relevant disciplines.

7 83. The designated registered nurse (MDS Coordinator) conducting the assessment shall sign  
8 the assessment document as being properly completed. Other individual team members of the  
9 interdisciplinary team who complete a portion of the assessment shall sign and certify the  
10 accuracy of that portion of the assessment they completed.

11 **J. Care Planning**

12 84. A comprehensive care plan must be prepared by an interdisciplinary team at each  
13 California skilled nursing facility that includes the attending physician, a licensed registered  
14 nurse, a licensed vocational nurse with responsibility for the resident, the Social Services  
15 Designee, the staff member in charge of resident's activities, and other appropriate staff in  
16 disciplines as determined by the resident's needs, and, to the extent practicable, the participation  
17 of the resident, the resident's family, or the resident's legal representative.

18 85. Each skilled nursing facility shall ensure that staff members provide all residents with  
19 appropriate basic care services that meet the residents' individual needs. Among other things,  
20 each skilled nursing facility shall ensure that all residents are turned and positioned properly,  
21 receive proper oral care, receive restorative care, and are bathed as scheduled. Each skilled  
22 nursing facility shall care for the residents in a manner and in an environment that promotes  
23 maintenance or enhancement of each resident's quality of life.

24 86. Each skilled nursing facility shall ensure that within seven (7) days after the completion  
25 of the comprehensive assessment, Defendants' interdisciplinary teams develop a comprehensive  
26 care plan for each resident that includes measurable objectives and timetables to meet a resident's  
27 medical, nursing, mental, and psychological needs that are identified in the comprehensive  
28 assessment. The care plan shall describe the services that are to be furnished to attain or

1 maintain the resident's highest practicable physical, mental and psycho-social well-being and  
2 must meet professional standards of quality. Each skilled nursing facility shall ensure that each  
3 resident's comprehensive care plan is implemented in a timely manner by appropriate and  
4 adequately trained staff.

5 **K. Professional Standards**

6 87. All residents shall receive adequate and appropriate nursing care, and licensed nurses  
7 shall perform their responsibilities in keeping with accepted professional standards of care by  
8 adequately identifying health care problems, notifying physicians of health care problems,  
9 monitoring and intervening to ameliorate such problems, and keeping appropriate records of  
10 resident's health care status.

11 88. Patient care staff shall routinely perform ongoing monitoring of serious medical  
12 conditions of resident, including such basic procedures as taking vital signs (including pain  
13 assessment when appropriate), measuring weights, and monitoring intake and output of fluids; all  
14 of these functions are to occur at appropriate intervals based upon the resident's clinical  
15 condition.

16 89. Patient care staff shall follow physicians' orders or document fully why a physician's  
17 order was not expressly followed.

18 **L. Pressure Ulcers and Skin Conditions**

19 90. No later than one hundred eighty (180) days after the Effective Date, Defendants shall  
20 conduct an in-service training program for all of their currently employed certified nursing  
21 assistants regarding providing preventative care in relation to pressure ulcers (a.k.a. decubitus  
22 ulcers or pressure sores) including: (a) observation and monitoring of skin for conditions such as  
23 rashes, skin tears, bruises, reddened areas, blisters, and breaks in the skin; (b) timely and  
24 accurately reporting such observations; (c) promptly reporting such observations to the  
25 supervisory nurse; (d) appropriate turning and positioning of residents in accordance with their  
26 care plan; (e) turning and positioning of residents at least every two (2) hours according to the  
27 care plan; (f) following a prescribed and supervised turning schedule; and (g) utilizing proper

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1 pressure-relieving devices. This training will be part of the facility orientation training for newly  
2 hired certified nursing assistants.

3 91. No later than one hundred twenty (120) days after the Effective Date, Defendants shall  
4 conduct an in-service training program for all of their currently employed licensed nurses  
5 regarding providing treatment and preventative care in relation to pressure ulcers (a.k.a.  
6 decubitus ulcers or pressure sores) including: (a) identification of risk, cause, and breakdowns;  
7 (b) treatment alternatives; (c) observation, assessment, and monitoring of skin for conditions  
8 such as rashes, skin tears, bruises, reddened areas, blisters, and breaks in the skin; (d) timely and  
9 accurately charting such observations and assessments; (e) promptly reporting such observations  
10 to the charge nurse; (f) appropriate turning and positioning of residents in accordance with their  
11 care plan; (g) turning and positioning of residents at least every two (2) hours according to the  
12 care plan; (h) following a prescribed and supervised turning schedule; and (i) utilizing proper  
13 pressure-relieving devices. This training will be part of the facility orientation training for newly  
14 hired licensed nurses.

15 92. Each skilled nursing facility shall ensure that each resident is provided with adequate skin  
16 care, nutrition, hydration, turning, positioning, application of pressure reduction or relief devices,  
17 and clean and dry bed linens, to decrease the likelihood of skin breakdown.

18 93. Each non-ambulatory resident who has pressure ulcers, or whose medical or other  
19 condition(s) makes such resident potentially at risk for developing pressure ulcers, shall be  
20 turned and positioned at least every two (2) hours, or more often if medically indicated; however,  
21 such a resident need not be turned and positioned if against medical advice and is so documented  
22 in the patient's chart.

23 94. Each skilled nursing facility shall have available and utilize proper pressure-relieving  
24 devices, including, but not limited to, pressure pads, specialized mattresses, pillows, heel  
25 protectors, and foot cradles. For purposes of this paragraph, such devices need not be used if  
26 they require a physician's order for their use unless such order has been obtained.

27 95. The skilled nursing facility's QAA Committee shall evaluate monthly the causes of  
28 occurrences of skin tears, bruises, and pressure ulcers, including identifying trends in causation,

1 and shall develop a plan for the reduction of such occurrences, to the extent such occurrences can  
2 be reasonably reduced. This information will be reported to and reviewed by the regional QAA  
3 Committee.

4 96. A licensed registered nurse shall determine the number of residents needing assistance  
5 with turning and positioning and the degree of assistance needed. The Director of Nursing shall  
6 determine the number of nursing assistants needed to accomplish the turning and positioning  
7 schedules. The Administrator shall ensure adequate staff is available on each shift to accomplish  
8 the turning and positioning schedules.

9 97. Each resident shall be assessed upon admission to the skilled nursing facility for existing  
10 pressure ulcers or for being at risk for developing pressure ulcers. The care plan for each  
11 resident who has pressure ulcers or who is at risk for developing pressure ulcers shall include a  
12 risk and causation assessment to develop preventive measures so as to avoid bruises, skin tears,  
13 and pressure ulcers.

14 98. Each pressure ulcer, bruise and skin tear shall be investigated. Each pressure ulcer,  
15 bruise, or skin tear shall be assessed and documented by a licensed registered nurse to determine  
16 risk and causal factors, and to develop a care plan to help prevent any further deterioration of  
17 bruises, skin tears, or pressure ulcers from occurring.

18 99. Each skin tear, bruise, and pressure ulcer shall be promptly reported to the resident's  
19 legal representative or family member, and to the resident's doctor in accordance with applicable  
20 law.

21 100. Each skin tear, bruise, and pressure ulcer shall be treated as ordered to promote healing  
22 and to prevent infection, and appropriate precautions shall be taken to prevent new occurrences  
23 of such conditions.

24 101. Progress in the healing of skin tears and pressure ulcers shall be monitored, and the lack  
25 of improvement or worsening over a reasonable period of time shall be promptly reported to the  
26 resident's physician and to the resident's family member or legal representative.

27 102. The Administrator and the Director of Nursing shall review care being given by the  
28 patient care staff to residents with skin tears or pressure ulcers. In so doing, if the Administrator

1 and/or the Director of Nursing believe that counseling of and/or disciplinary action against the  
2 patient care staff is necessary in order to foster improvement of such care and eliminate resident  
3 care problems, the Administrator and/or Director of Nursing shall ensure that such counseling or  
4 disciplinary action is timely given.

5 103. Accurate color photographs shall be promptly taken of Stage III and Stage IV pressure  
6 ulcers preexisting on newly admitted residents, of any new Stage III and Stage IV pressure ulcers  
7 that develop after a resident's admission, and of any significant changes (such as a change in the  
8 stage) concerning any Stage III and Stage IV pressure ulcer regardless of whether the pressure  
9 ulcer developed before or after the resident's admission to the facility. In addition, accurate  
10 color photographs shall be taken of all Stage III and Stage IV pressure ulcers no less often than  
11 once per week, even if there are no changes concerning the pressure ulcers. The color  
12 photographs shall be placed in the patient charts, with the date, time, and photographer noted for  
13 each photograph. Photographs taken pursuant to this paragraph shall be non-digital. Defendants  
14 shall have a protocol for taking the required non-digital photographs consistent with accepted  
15 standards. The protocol shall include explicit criteria that standardize the equipment, aperture  
16 settings, distance from the wound and field of view, as well as a means for patient  
17 identification/ulcer location, date and time marking, and a sample measure in the frame of the  
18 photograph. Implementation of this protocol shall include in-service training with demonstrated  
19 competencies and periodic studies of consistency. Notwithstanding the requirements of this  
20 section, photographs will not be required if the resident or the resident's family member or legal  
21 representative independently objects and refuses to have such photographs taken, and such  
22 objection and refusal, and by whom, are noted in the resident's chart.

23 104. The color photography required in paragraph 103 shall not in any way take the place of  
24 written documentation of the pressure ulcer according to professional standards. An evaluation  
25 of the pressure ulcer shall be documented with each dressing change or at least weekly and more  
26 often when indicated by wound complications or changes in wound characteristics. At a  
27 minimum, documentation shall include:

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- 1 a. The date observed;
- 2 b. Location;
- 3 c. Stage;
- 4 d. Size (perpendicular measurements of the greatest extent of length and width of the  
5 ulceration);
- 6 e. Depth;
- 7 f. The presence, location and extent of any undermining or tunneling/sinus tract;
- 8 g. Exudate, if present, including type (such as purulent/serous), color, odor, and  
9 approximate amount;
- 10 h. Pain, if present, including nature and frequency (e.g., whether episodic or  
11 continuous);
- 12 i. Wound bed, including color and type of tissue/character including evidence of  
13 healing (e.g., granulation tissue), or necrosis (slough or eschar); and
- 14 j. Description of wound edges and surrounding tissue (e.g., rolled edges, redness,  
15 hardness/induration, maceration) as appropriate.

16 **M. Clinical Nurse Specialist Certified in Wound Care (“Consultant”)**

17 105. Defendants shall employ an independent third-party field-based clinical nurse specialist  
18 certified in wound care (the “Consultant”), to assist in and assess compliance with the terms of  
19 this PIFJ regarding pressure ulcers and skin conditions, and to assist in improving Defendants’  
20 skin management practices. The Consultant shall be chosen by BMFEA after good faith  
21 consultation with Defendants. The Consultant’s appointment shall be for an initial term of  
22 eighteen (18) months, subject to extension at the option of Defendants after good faith  
23 consultation with BMFEA. If the Consultant resigns, or is removed for any reason by the  
24 BMFEA prior to the termination of his/her term of appointment, BMFEA, after good faith  
25 consultation with the Defendants, shall appoint another consultant with the same functions and  
26 authorities.  
27  
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1 106. The Consultant shall 1) visit Defendants' California skilled nursing facilities (the  
2 "Facilities") to provide on-site process, program and clinical consultation to caregivers regarding  
3 the Facilities' pressure ulcer and skin condition care programs; 2) at the conclusion of each  
4 Facility visit, meet with Facility clinical staff to discuss observations and recommendations that  
5 have been identified and make suggestions related to how the Facility can address these  
6 observations and recommendation findings; 3) communicate, as requested, with each operational  
7 level and the California Compliance Officer any of such observations and recommendations; 4)  
8 provide advice concerning Defendants' skin management program; and 5) provide, or direct,  
9 skin management education for all levels of clinicians and management in California, as  
10 requested. The Consultant will independently determine the best operational plan and schedule  
11 for discharging his/her duties.  
12

13  
14 107. The Consultant, in connection with his or her duties hereunder, shall have unfettered  
15 access, at any time, to all current residents of the Facilities, their medical records, and records in  
16 the possession or control of Defendants and their staff and employees, subject to applicable law.  
17 The Consultant shall not remove any such records from a Facility or other location, but will be  
18 permitted to make copies thereof, subject to applicable law. At all times the Consultant shall  
19 attempt to coordinate his/her activities with relevant Sun personnel in order to minimize  
20 unnecessary disruption of the day-to-day operations of the Facilities. The Consultant shall  
21 advise Defendants' management and staff as to procedures which, in the Consultant's view, may  
22 optimize skin management outcomes. The Consultant shall be free to confer and correspond  
23 with the parties on an *ex parte* basis regarding any subject.  
24  
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26 108. The total annual consulting fee for the Consultant shall not exceed \$115,000.00 without  
27 prior approval of the parties. The Consultant shall be compensated at the budgeted hourly rate  
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1 for performance of the consulting activities set forth herein. In addition to the hourly consultant  
2 fee, the Consultant shall be reimbursed for traveling expenses and per diem expenses per the  
3 standard Sun policy for reimbursing such expenses of independent consultants. The Consultant  
4 may retain independent consultants, as needed, to meet his/her obligations, provided that the  
5 Consultant does not exceed the proposed annual consulting fee budget without prior approval of  
6 the parties. The Consultant may request the assistance of the BMFEA in furthering his/her work.  
7 Failure to pay the Consultant within thirty (30) calendar days of submission of his/her invoice,  
8 shall constitute breach of this PIFJ.  
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11 109. The Consultant shall visit the Facilities as often as he/she deems appropriate. The  
12 Consultant shall present a report within fifteen (15) calendar days of a visit to a Facility to  
13 Defendants and the BMFEA. Upon receipt of a Consultant's report, Defendants will have an  
14 opportunity to submit a response, with the assistance of the Consultant, as requested, to address  
15 any concerns raised by the Consultant and actions taken by Defendants in response to such  
16 concerns. Such response, if any, shall be submitted to the BMFEA within fifteen (15) business  
17 days of receipt by Defendants of the Consultant's report. At the request of either party, they can  
18 meet promptly to discuss any issues or concerns raised by the Consultant. Defendants are not  
19 bound by the Consultant's observations and recommendations but must address them in good  
20 faith. Nothing in this PIFJ shall prevent the BMFEA or Defendants from calling the Consultant  
21 as a witness or from submitting the Consultant's written observations and recommendations in  
22 any proceeding. Except as provided in the preceding sentence, the BMFEA, the Consultant and  
23 Defendants shall treat all reports, and all observations and recommendations of the Consultant,  
24 as confidential and not disclose the same to any other party unless the Consultant is  
25 communicating directly with a resident's personal healthcare provider concerning the resident's  
26 care needs. In the event that Defendants wish to call the Consultant as a witness in any  
27 proceeding, Defendants will compensate the Consultant for his/her appearance.

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1 110. During any period (i) prior to the initial hire date of the Consultant and (ii) when the  
2 Consultant is employed by the Defendants in accordance with this PIFJ, the provisions of this  
3 PIFJ relating to color photography, as set out in paragraph 103 of the PIFJ, shall be of no force  
4 and effect. If, at any time after the initial hire date of the Consultant and during the effectiveness  
5 of this PIFJ, Defendants elect not to extend the appointment of the Consultant, or if the  
6 Consultant fails to agree to fair compensation, then the color photograph provisions shall become  
7 effective as provided in this PIFJ for the duration of the term of this PIFJ. Notwithstanding this  
8 provision, in the event that the Consultant's appointment is not being extended by Defendants  
9 after eighteen (18) months, and the Consultant reports to the BMFEA that Defendants are in full  
10 compliance with the terms of this PIFJ regarding pressure ulcer care and skin care management,  
11 and the Consultant recommends that the color photograph provisions of paragraph 103 not be  
12 implemented, then the BMFEA will, in good faith, consider not requiring implementation of  
13 paragraph 103 unless there exists strong and convincing evidence that BMFEA ought not to  
14 accept the Consultant's recommendation.  
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18 **N. Accident Prevention**

19 111. Patient care staff, administrative staff, and maintenance staff shall monitor the skilled  
20 nursing facility to ensure that the environment is as clutter-free and hazard-free as is possible.

21 112. Resident shall be assessed for fall risk and an appropriate plan of care shall be developed.

22 113. Assistance devices shall be used as appropriate and shall be part of the care plan.

23 114. After a resident has fallen, a licensed nurse shall assess the resident post-fall and shall  
24 report such fall to the licensed nurses of the next shift(s) and chart the circumstances and  
25 condition of the resident.

26 115. A family member or a legal representative and the resident's physician shall be promptly  
27 notified of a resident's fall, and treatment shall be promptly provided as ordered by the  
28 physician.

1 116. There shall be ongoing assessment of the resident's physical status, and also of the  
2 resident's cognitive status if the head was involved in the fall or accident, during each shift for at  
3 least seventy-two (72) hours after a fall or accident, with appropriate charting.

4 117. Each fall or accident shall be investigated and the plan of care altered as needed to ensure  
5 the resident's safety.

6 118. Unusual occurrences that threaten the welfare, safety, or health of patients shall be  
7 reported by the skilled nursing facility in accordance with applicable law to the Department of  
8 Health Services.

9 119. The skilled nursing facility shall investigate accidents to identify trends and develop a  
10 plan for continuous improvement. All incidents, accidents, and unusual occurrences shall be  
11 reviewed at each QAA Committee meeting to be held at least monthly. The QAA Committee  
12 shall review trends and recommended further training or corrective action as needed.

13 120. Each skilled nursing facility shall monitor incident reports to ensure that intervention  
14 measures identified by the resident's plan of care are being used and are adequate.

15 **O. Nutrition and Dietary Concerns**

16 121. Each skilled nursing facility shall ensure that each resident's nutritional intake is  
17 adequate and monitored, such that weights and intake are routinely and accurately recorded; that  
18 residents receive appropriate diets and adequate amounts of food; that residents are provided  
19 with proper mealtime assistance and supervision and with appropriate eating assistive devices  
20 and adaptive requirement where necessary; that residents with unplanned, more than 5% weight  
21 gains or losses in one month have their conditions promptly reported by licensed nurses to the  
22 resident's physicians, family member or legal representative, and are provided with reasonable  
23 follow-up until the situation is appropriately addressed and remedied to the extent reasonably  
24 and medically possible; that each resident receives food prepared by methods that conserve  
25 nutritive value, flavor, and appearance; that food is palatable, attractive, and at the proper  
26 temperature, and prepared in a form designed to meet individual needs; and that substitutes of  
27 similar nutritive value are available to residents who refuse food served; that the dietary services

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1 manager or a registered dietician shall review resident dietary status and make recommendations  
2 for changes to the resident's plan of care.

3 122. Each skilled nursing facility shall ensure that residents have adequate fluid intake needed  
4 to maintain proper hydration and health, and shall identify risk factors for dehydration. When a  
5 resident is dehydrated, the skilled nursing facility shall take steps to immediately address the  
6 dehydration.

7 123. Each skilled nursing facility, by means of qualified professional staff, shall on a regular  
8 and consistent basis accurately calculate each resident's appropriate body weight range, compare  
9 the current body weight to the resident's appropriate body weight range in order to determine the  
10 appropriate healthy weight range for the resident, and will clearly document such findings in the  
11 resident's chart.

12 124. The Dietary Services Manager or a Registered Dietician shall assess each resident for  
13 food preferences and special needs and develop a plan in conjunction with the physician to  
14 ensure that appropriate body weight and protein levels are maintained.

15 125. Substitute food shall be offered when meals are refused. Bed time snacks shall be  
16 provided to residents in the evening unless contraindicated and in-between snacks shall be  
17 provided to residents as required by their diet orders. All refusals to eat shall be reported to the  
18 supervisory nurse. The supervisory nurse shall assess the amount eaten in the weekly summary  
19 charting.

20 126. Each skilled nursing facility shall provide a sufficient number of qualified, trained staff to  
21 ensure that each resident in need of assistance or supervision in eating receives this service at all  
22 meals and snacks.

23 127. Each skilled nursing facility shall identify and timely provide appropriate clinical  
24 responses to all "nutritionally at risk" and "nutritionally compromised" residents at the earliest  
25 possible time.

26 128. Each skilled nursing facility shall utilize an interdisciplinary approach to properly assess  
27 and appropriately treat residents with swallowing problems and residents who are unable to eat  
28 orally in accordance with accepted professional procedures; to this end Defendants shall provide

1 adequate care for those residents at risk of aspiration, take any appropriate steps to ameliorate the  
2 individual's aspiration risk, and develop and implement an individualized feeding and  
3 positioning plan for each resident identified as at risk of aspiration, and shall train staff in how to  
4 properly implement the feeding and positioning plans, and to regularly monitor residents who are  
5 at risk of aspirating to ensure that the staff is continually taking whatever assessment, diagnostic,  
6 supervision, and treatment steps are necessary to ameliorate the resident's risk.

7 129. The Dietary Services Manager or a Registered Dietician shall interview each resident  
8 initially and at least quarterly to determine the needs and preferences. Training or adaptive  
9 equipment shall be provided in accordance with identified needs, based upon patient assessment,  
10 to encourage independence in eating.

11 130. All residents, unless against medical advice and is so documented in the patient's chart,  
12 shall be appropriately hydrated. Fluids shall be offered at frequent intervals and water shall be  
13 fresh, clean, with appropriate drinking devices, and within reach as appropriate. Intake of fluids  
14 shall be monitored as needed by patient care staff.

15 **P. Medication Administration**

16 131. The Director of Nursing shall determine training or in-service needs of the patient care  
17 staff, and/or to take other actions as needed, with respect to medication administration. The  
18 skilled nursing facility shall provide such training within a reasonable amount of time after  
19 having identified the need for such training in addition to any other training otherwise required.  
20 The skilled nursing facility shall take such other actions within a reasonable amount of time after  
21 having identified the need for such other actions.

22 132. The consulting pharmacist, at least monthly, shall review medications for unnecessary  
23 drugs and in collaboration with the resident's physician ensure that:

- 24 a. Drugs shall not be used in excessive doses (including duplicate drug therapy);
- 25 b. Drugs shall not be used for excessive duration;
- 26 c. Drugs shall not be used without adequate monitoring;
- 27 d. Drugs shall not be used without adequate indications for their use;

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1 e. Drugs shall not be used in the presence of adverse consequences that indicate the  
2 dose should be reduced or discontinued; and

3 f. Drug orders shall indicate dosage, frequency, and duration; and indications for  
4 use.

5 133. Licensed nurses shall monitor residents receiving medications for side effects and  
6 promptly notify the resident's physician and the resident's family member or legal representative  
7 of material adverse consequences and material side effects, and chart their assessments.

8 134. Each skilled nursing facility shall monitor and alter resident behavioral problems and  
9 monitor the resident drug regimen to eliminate unnecessary drugs.

10 135. The Director of Nursing shall monitor the administration of medications to ensure a  
11 medication error rate of less than 5%, and to ensure that residents are free of any significant  
12 medication errors.

13 136. The pharmacy consultant shall conduct reviews at least once a month to ensure that drugs  
14 used in the skilled nursing facility are labeled in accordance with currently accepted professional  
15 principles, include the appropriate accessory and cautionary instructions, and include the  
16 expiration date when applicable.

17 137. The storage of drugs and locking of drug storage compartments, and access to keys  
18 required by 42 C.F.R. section 483.60(e) shall be arranged by the Administrator and the Director  
19 of Nursing, monitored by the Director of Nursing, and supervised by the Administrator.

20 138. Medications shall be administered in a timely manner consistent with accepted nursing  
21 practice, and the necessary supervision and training shall be provided to minimize medication  
22 errors; and if a medication error occurs, each skilled nursing facility shall promptly investigate  
23 the error, properly document it, and take appropriate corrective action.

24 **Q. Sanitation and Infection Control**

25 139. The Dietary Services Manager or the Food Services Supervisor shall monitor the food  
26 storage, preparation, distribution, and service areas to ensure they are kept in a sanitary  
27 condition.

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1 140. The Dietary Services Manager shall cooperate with the administrator in developing  
2 standards, measurable objectives, and timetables for improvement if necessary in the delivery of  
3 food under sanitary conditions. This study shall be reviewed at the monthly QAA Committee  
4 meetings.

5 141. All food items in the facility's refrigerator shall be labeled and dated.

6 142. All items washed in an open sink shall be sanitized in accordance with Title 22 of the  
7 California Administrative Code.

8 143. A licensed nurse shall maintain the infection control program, report findings to the  
9 Director of Nursing at least monthly and more often as needed, and to the QAA Committee  
10 quarterly. The Administrator shall be informed of any significant findings.

11 144. The nurse with infection control duties shall participate in the QAA Committee process  
12 as necessary, which shall include measurable goals and defined timetables to ensure reduction of  
13 incidents of infection.

14 145. Infectious outbreaks, communicable diseases, parasitic diseases, or epidemics in any  
15 California skilled nursing facility shall be reported to the Department of Health Services  
16 consistent with Title 22 of the California Administrative Code.

17 146. Universal precautions for infection control, such as protective gloves being made  
18 available to staff to wear as appropriate while providing hands-on care to residents, shall be  
19 employed by each skilled nursing facility.

20 147. Written policies and procedures governing an infection control program shall be  
21 developed and maintained. These policies and procedures shall be reviewed by the QAA  
22 Committee to ensure they are kept properly updated.

23 148. The Director of Nursing or his/her licensed designees shall monitor the infection control  
24 program to ensure proper infection control is maintained.

25 149. The supervisory nurses shall monitor the handling, storage, and transport of linens so as  
26 to ensure that such handling, storage, and transport is being done in such a manner so as to  
27 prevent the spread of infection.

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1 150. Each skilled nursing facility shall require staff to wash their hands after each direct  
2 resident contact for which hand washing is indicated by accepted professional practice.

3 151. Each skilled nursing facility shall require staff to follow standard infection control  
4 procedures, and to maintain techniques and conditions at treatment sites on residents as indicated  
5 by accepted professional practice.

6 152. The maintenance of staff or other staff responsible for the dumpster(s)/garbage can(s)  
7 area shall check such area at least daily for overflow and correction, and to ensure that the lids  
8 are being kept down on the outside dumpster(s) and/or garbage can(s).

9 153. The Administrator shall inspect the garbage and refuse area at least weekly to ensure  
10 proper disposal is being done.

11 **R. Clinical Records**

12 154. No later than one hundred twenty (120) days after the Effective Date, Defendants shall  
13 conduct an in-service training program for all of their currently employed licensed nurses  
14 regarding clinical documentation standards applicable to licensed nurses, including, but not  
15 limited to, the following:

16 a. Proper wound documentation including, but not limited to, timely and accurately  
17 recording the length, width, depth, stage, color, drainage, and odor;

18 b. Prompt and accurate charting in residents' records;

19 c. The prohibition against charting measurements or other notations in residents'  
20 records or elsewhere prior to the time that the measurements or observations in question are  
21 actually taken or made; and

22 d. Prohibition against miscoding or describing pressure ulcers as something other  
23 than a pressure ulcer.

24 155. Medical records maintained for each resident shall comport with accepted professional  
25 standards, and include current information with respect to the individual's care, medical  
26 treatment, and activities. Each skilled nursing facility shall maintain clinical records on each  
27 resident in accordance with accepted professional standards and practices that are complete,  
28 accurately documented, readily accessible, and systematically organized.

1 156. Patient care staff shall accurately code and describe pressure ulcers, and shall refrain  
2 from miscoding or describing pressure ulcers as something other than pressure ulcers.

3 157. Professional staff employed by the skilled nursing facility, including physicians,  
4 psychiatrists (if any), therapists, and nurses, as well as all other patient care staff, shall make  
5 timely and appropriate notes in the residents' records detailing the residents' progress, status,  
6 condition, and detailing the steps needed to fully meet the residents' needs. All patient care staff  
7 shall utilize such records in making care, medical treatment, and training decisions, in  
8 accordance with accepted medical standards.

9 158. The Medical Records Designee, or other staff member designated by the Administrator,  
10 shall monitor to ensure that a clinical record is kept for each resident that is complete and  
11 accurate.

12 159. Various types of measurements, observations, and calculations recorded from time to  
13 time in various residents' medical charts or elsewhere, which may include, but are not limited to,  
14 heart rate, blood pressure, temperature, body weight, food consumption, fluid intake, fluid  
15 output, and caloric intake, shall not be recorded in the residents' medical charts or elsewhere  
16 prior to the time that such measurements, observations, or calculations are actually taken or  
17 made.

18 **S. Diabetes**

19 160. Licensed nurses shall provide adequate and acceptable health care to residents with  
20 diabetes, including, but not limited to:

- 21 a. Properly evaluating blood sugars;
- 22 b. Providing appropriate treatment to diabetic residents when necessary;
- 23 c. Promptly notifying a supervising registered nurse and/or physician when  
24 necessary to meet a diabetic resident's needs;
- 25 d. Following physicians' express orders with respect to the care and treatment of  
26 diabetic residents (including promptly informing the physician of any significant changes in a  
27 resident's blood sugar level); and

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1 e. Promptly and accurately recording in residents' charts any measurements taken  
2 with respect to the residents' blood sugar levels.

3 **T. Elimination and Incontinence (Bowel and Bladder)**

4 161. Residents requiring assistance shall be assisted to the bathroom and allowed and  
5 encouraged to participate in bowel and bladder training programs to maintain normal  
6 functioning, to the greatest degree possible consistent with the residents' interests, assessments,  
7 and plans of care.

8 162. Each skilled nursing facility shall provide incontinent residents with appropriate  
9 incontinence care, including appropriate perineal care provided with each incontinence episode,  
10 in accordance with all applicable state and federal statutes and regulations.

11 163. All incontinent residents shall be assessed for participation in a bowel and bladder  
12 retraining program.

13 164. Residents shall not be catheterized unless the resident's clinical condition demonstrates  
14 that catheterization is necessary based on an observation by a licensed nurse and pursuant to a  
15 physician's order. The skilled nursing facility shall make a comprehensive assessment of each  
16 resident's needs based on an MDS in a timely and complete manner.

17 **U. Mental Health Needs**

18 165. Any clinically significant mood or mental status changes shall be reported to the  
19 supervisory nurse, physician, and Social Service Designee and promptly charted.

20 **V. Cardiopulmonary Resuscitation (CPR)**

21 166. Defendants shall insure that all of their employed licensed nurses recognize the need for  
22 CPR and understand the procedure for doing CPR.

23 **W. Gastrostomy Tubes (aka G-Tubes)**

24 167. G-tube insertion or re-insertion shall be done only by qualified and competent licensed  
25 registered nurses with demonstrated competency to perform such procedure.

26 **X. Wanderers**

27 168. Each skilled nursing facility's Administrator and Director of Nursing must receive  
28 specific training on the issue of the prevention of accidents and injuries to patients who are

1 known to be habitual wanderers or exit seekers. Upon the completion of this training, the skilled  
2 nursing facility's Administrator and Director of Nursing must together inspect their facility for  
3 any entrances or exits that pose a reasonably foreseeable danger to exit seekers or wanderers.  
4 The Administrator and Director of Nursing will then be responsible for having in place sufficient  
5 means to reasonably guard against exit seekers and wanderers leaving the facility without the  
6 knowledge of the facility's staff and receiving great bodily injury or death as a direct result.

7 **Y. Staffing**

8 169. Each skilled nursing facility shall be in full compliance at all times with all state and  
9 federal regulatory and statutory requirements regarding the minimum number of nursing staff  
10 and other patient care staff required to be present at each skilled nursing facility, including, but  
11 not limited to, 42 C.F.R. section 483.30 and Cal. Code Regs., tit. 22, sections 72329 and  
12 72501(g). Maintaining only the minimum level of nursing staff or other patient care staff as  
13 required by applicable state or federal regulations or statutes shall not necessarily constitute  
14 compliance with this PIFJ, if it would be reasonable to maintain a higher ratio of such staff to  
15 resident due to the care needs of the residents or other factors which would reasonably support  
16 the necessity of such additional staff.

17 170. If any skilled nursing facilities are licensed for one hundred (100) or more beds, each  
18 such skilled nursing facility shall have at least one (1) Registered Nurse present twenty-four (24)  
19 hours a day, seven (7) days a week, awake and on duty, in the facility at all times, in addition to  
20 the Director of Nursing. The Director of Nursing and the Registered Nurse required to be on  
21 duty shall not be the same person performing both functions at the same time.

22 171. If any skilled nursing facilities are licensed for sixty (60) to ninety-nine (99) beds, each  
23 such skilled nursing facility shall have at least one (1) Registered Nurse or Licensed Vocational  
24 Nurse present twenty-four (24) hours a day, seven (7) days a week, awake and on duty, in the  
25 facility at all times, in addition to the Director of Nursing. The Director of Nursing and the  
26 Registered Nurse required to be on duty shall not be the same person performing both functions  
27 at the same time.

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1 172. If any skilled nursing facilities are licensed for fifty-nine (59) or fewer beds, each such  
2 skilled nursing facility shall have at least one (1) Registered Nurse or Licensed Vocational Nurse  
3 present twenty-four (24) hours a day, seven (7) days a week, awake and on duty, in the facility at  
4 all times.

5 173. Stipulated Future Restitution:

6 a. Except for Special Treatment Program behavioral units (herein “STPs”), each of  
7 Defendants’ California skilled nursing facilities, shall each year employ sufficient nursing staff  
8 to provide at least a minimum daily average of three point two (3.2) hours of “direct nursing  
9 care” per patient day (herein “3.2 NHPPD”).

10 b. Starting with the year 2006 data, and each year thereafter, the BMFEA will calculate  
11 the yearly daily average of direct nursing care hours for each of Defendants’ facilities, by (1)  
12 utilizing the reports entitled “Long-term Care Facility Integrated Disclosure and Medi-Cal Cost  
13 Report Facsimile” (herein OSHPD reports) submitted by Defendant under penalty of perjury to  
14 the Office of Statewide Health Planning and Development (OSHPD), and by (2) utilizing  
15 “specified information” conveyed by or obtained from the Defendant. Such “specified  
16 information” shall consist of a) “hours” and “salaries and wages” for MDS coordinators, and b)  
17 “hours” and “salaries and wages” for directors of nursing (DONS) in facilities with fewer than  
18 sixty (60) beds. Defendants must also convey the data upon which these figures are based.  
19 Defendants shall calculate these figures using the same method it uses to calculate the  
20 “productive hours” and “salaries and wages” columns of the “routine services” section on page  
21 SIDR 3 of 3 of their OSHPD reports. Defendants shall convey the “specified information” for  
22 each facility, and underlying data, within thirty (30) days of Defendants submitting their OSHPD  
23 report under penalty of perjury for that facility.

24 c. In any given year, if the yearly daily average for direct nursing care hours for a  
25 facility, except for STPs, is below 3.2 NHPPD, Defendants shall pay a stipulated restitution  
26 amount to the Medi-Cal program for each facility that did not at least meet the 3.2 NHPPD  
27 average.

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1 d. To determine whether Defendants have complied with this requirement, the BMFEA  
2 will utilize the “specified information” described above and the direct nursing care information  
3 reported by Defendants under penalty of perjury in their OSHPD reports, on the “Geriatric Nurse  
4 Practitioners,” “Registered Nurses,” “Licensed Vocational Nurses,” “Nurse Assistants (aides and  
5 orderlies),” and “Temporary (registry) Nursing Services” lines on SIDR page 3 of 3 of the  
6 OSHPD reports. (Information on the “Other Salaries and Wages,” “Technicians and  
7 Specialists,” and “Supervisors and Management” lines will not be used.) This determination will  
8 be conveyed to Defendant Sun Healthcare Group, Inc. by the BMFEA.

9 e. For each facility not in compliance with the 3.2 NHPPD requirement, Defendant Sun  
10 Healthcare Group, Inc. shall pay a stipulated restitution amount. The formula for calculating the  
11 stipulated restitution amount is attached as Exhibit B. The BMFEA will notify Defendant Sun  
12 Healthcare Group, Inc. of the stipulated restitution amount for each facility and the total amount  
13 of stipulated restitution for each year. Defendants shall deliver a single restitution check each  
14 year in accordance with paragraph 212 of this PIFJ.

15 f. This stipulated restitution paragraph utilizing 3.2 NHPPD is based upon the statutory  
16 and regulatory language, and upon the California Department of Health Services policy and  
17 procedure manual on calculating the minimum NHPPD, existing as of the Effective Date of this  
18 PIFJ. If, during the term of this PIFJ, such statutes or regulations are changed so as to increase  
19 the minimum NHPPD above 3.2, or such policy and procedure manual is changed on how the  
20 NHPPD may be calculated, any such changes in the statutes, regulations, or policy and procedure  
21 manual shall govern this paragraph, and the formula used to calculate the stipulated restitution  
22 shall automatically be revised so as to be in accord with any such changes.

23 g. Notwithstanding stipulated restitution in this paragraph, Defendants may also be  
24 subject to civil penalties for failing to provide at least a minimum of 3.2 NHPPD at each of their  
25 facilities, except for STPs.

26 174. Except at Special Treatment Program behavioral units (herein “STPs”), Defendants shall  
27 each year employ sufficient registered nurses for direct patient care so that the averages of  
28 Defendants’ California skilled nursing facilities according to bed count size will at least equal the

1 BMFEA 2002 state profile group averages according to bed count size for direct care registered  
2 nurses (herein "State RN Averages"). The BMFEA 2002 State Profile Group bed count sizes are  
3 as follows: between 1 and 59; between 60 and 99; and 100 and greater. The State RN Averages  
4 are based upon the 2002 OSHPD data collected from Medicaid certified, free-standing skilled  
5 nursing facilities, excluding STPs. The State RN Averages are as follows: 0.284 for bed count  
6 between 1 and 59; 0.282 for bed count between 60 and 99; 0.340 for bed count of 100 and  
7 greater. To determine whether Defendants have complied with the requirement of this  
8 paragraph, starting with the year 2006 data, and each year thereafter, the yearly registered nurse  
9 hour averages of Defendants' facilities will be calculated by the BMFEA from Defendants'  
10 OSHPD cost reports that are submitted under penalty of perjury. These calculations will be  
11 made using only the information provided on the "Registered Nurses" line on SIDR page 3 of 3  
12 of the OSHPD reports. (Information on the "Other Salaries and Wages," "Technicians and  
13 Specialists," and "Supervisors and Management" lines will not be used.) This determination will  
14 be conveyed to Defendant Sun Healthcare Group, Inc. by the BMFEA. In any given year, if  
15 Defendants do not comply with the "State RN Averages," Defendant Sun Healthcare Group, Inc.  
16 shall pay a stipulated civil penalty for that year. The formula for calculating the stipulated civil  
17 penalty amount is attached as Exhibit C. The BMFEA will notify the Defendant Sun Healthcare  
18 Group, Inc. of the stipulated civil penalty amount for each bed count size group and the total  
19 amount of stipulated civil penalties for each year for violation of this paragraph. The civil  
20 penalty shall be paid in accordance with paragraph 211 of this PIFJ.

21 **Z. Training**

22 175. As provided in the Plan of Correction for each A or AA citation, Defendants shall verify  
23 that in-service training program(s) were conducted for the specific California skilled nursing  
24 facility subject to the citation addressing the issues set forth in each such citation.

25 176. Each person providing any in-service training or other training required by this PIFJ must  
26 be knowledgeable about the subject area covered by such training, so as to be able to  
27 communicate the information necessary to be taught and learned during such training.

28 ///

1 177. Defendants shall make all information and documentation regarding required training  
2 sessions conducted at California skilled nursing facilities available to the BMFEA upon request.

3 178. Defendants shall notify the BMFEA, upon request by the BMFEA, of the date, time,  
4 location, subject matter, and instructor(s) of any upcoming required training sessions.

5 179. The BMFEA's employees, agents, or representatives shall be allowed to attend any  
6 required training sessions conducted by any skilled nursing facility in order to monitor  
7 compliance with this PIFJ.  
8

9 180. Clinical demonstrations concerning the subject matter being taught during any training  
10 sessions required by this PIFJ shall be conducted whenever reasonably possible.

11 181. All persons trained pursuant to the requirements of this PIFJ shall be evaluated through  
12 means such as testing, monitoring, demonstrating competency, or supervision to confirm that  
13 each person trained understands the topic taught, and is properly implementing the practices,  
14 policies, procedures, or techniques that were taught. If it becomes evident to the instructor or  
15 supervisor that the person trained does not understand the topic taught, and/or is not properly  
16 implementing the practices, policies, or techniques that were taught, then further training shall be  
17 conducted for such a person, including one-on-one training, if necessary, until such time that the  
18 person being trained does in fact understand the topic taught, and is implementing the practices,  
19 policies, procedures, or techniques that were taught. Any person who is not able to demonstrate  
20 that he or she understands the topic taught, or who is not able to demonstrate that he or she is  
21 properly implementing the practices, policies, procedures, or techniques that were taught, shall  
22 not be allowed to engage in direct patient care involving any of such practices, policies,  
23 procedures, or techniques without the direct supervision by a competent supervisor. Such  
24 practices, policies, procedures, or techniques shall not be performed even with the direct  
25 supervision by a competent supervisor if the attempted implementation of such practices,  
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1 policies, procedures, or techniques by the person being trained creates a reasonable possibility of  
2 injury or harm to the resident being cared for if such implementation is not done properly.

3 **AA. Medical Directors**

4 182. Each skilled nursing facility in California shall encourage its Medical Director(s) to  
5 regularly attend continuing medical education programs that address geriatrics, including, but not  
6 limited to, medical therapies utilized in wound care, nutrition, and diabetic care for long-term  
7 care residents.

8  
9 183. Defendants shall employ all practicable means available to have their Medical Directors  
10 in California be members in good standing with the American Medical Directors Association  
11 (AMDA) and to abide by the AMDA Code of Ethics relevant to skilled nursing facilities.

12 Therefore, Defendants' skilled nursing facility Medical Directors in California shall be members  
13 in good standing with AMDA and agree to abide by the AMDA Code of Ethics relevant to  
14 skilled nursing facilities, unless Defendants can demonstrate that a membership cannot be  
15 maintained despite the Defendants' best efforts and good faith. Defendants shall be solely  
16 responsible for paying any reasonable costs, fee, or expenses associated with their skilled nursing  
17 facility Medical Directors in California meeting the requirements of the paragraph.

18  
19 184. Each skilled nursing facility in California shall encourage its Medical Director to have  
20 the CMD certification from AMDA. Therefore, Defendants' skilled nursing facility Medical  
21 Directors in California shall have the AMDA CMD certification unless a certification cannot be  
22 maintained despite the Defendants' best efforts and good faith. Defendants shall be solely  
23 responsible for paying any reasonable costs, fees, or expenses associated with their skilled  
24 nursing facility Medical Directors in California meeting the requirements of this paragraph.

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1 185. The Medical Director for each skilled nursing facility in California shall be provided with  
2 copies of this PIFJ and the Code of Conduct within thirty (30) days after each becomes available,  
3 and the Medical Director shall sign a receipt stating he or she has received such items. If the  
4 Code of Conduct was given to the Medical Director before the Effective Date, that shall  
5 constitute compliance with the provisions of this paragraph. If for some reason a Medical  
6 Director refuses to sign such a receipt, then the staff person providing the items to such Medical  
7 Director shall sign the receipt with a note stating that the Medical Director refused to sign, and  
8 that the items were in fact provided to the Medical Director. The same procedures shall apply to  
9 any material revisions of such items.  
10  
11

12 186. Each skilled nursing facility shall have a written contract with its Medical Director that  
13 clearly defines his or her duties and responsibilities, including requiring his or her review of  
14 relevant policies and attendance at quarterly QAA meetings.  
15

16 **BB. New Business Units or Locations**

17 187. In the event that any of the Defendants become licensed to operate any additional skilled  
18 nursing facility within the State of California after the Effective Date, such Defendant shall  
19 notify the BMFEA of this fact within thirty (30) days after becoming licensed. This notification  
20 shall include the type of facility, location of the new facility, phone number, fax number, federal  
21 health care program provider number(s) (if any), and the corresponding payor(s) (contractor  
22 specific) that has issued each provider number. All Covered Persons at such locations shall be  
23 subject to the requirements in this PIFJ that apply to new Covered Persons (e.g., completing  
24 certifications and undergoing training). In the case of additional skilled nursing facilities in  
25 California, the obligations of this PIFJ shall apply only to services or activities occurring after  
26 the Effective Date of the acquisition or establishment of the additional skilled nursing facility.  
27  
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1 Defendants shall use their best efforts to implement the requirements of this PIFJ in any  
2 additional skilled nursing facilities as soon as practicable, although the use of any such “best  
3 efforts” shall not necessarily be a defense to violations of this PIFJ which arise in such additional  
4 skilled nursing facilities in California.  
5

6 **CC. Notifications and Submission of Reports**

7 188. Within one hundred and eighty (180) days after the Effective Date, Defendants shall  
8 submit a written report to the BMFEA summarizing the status of their implementation of the  
9 requirements of the PIFJ. This obligation is in addition to any other reports or documentation  
10 specifically required elsewhere herein to be provided to the BMFEA. This Implementation  
11 Report shall include:  
12

13 a. The name, address, phone number, and position description of the individual who  
14 has been appointed as the California Compliance Officer;  
15

16 b. A summary of the policies and procedures required by this PIFJ; provided,  
17 however, that Defendants may satisfy this obligation by referring to any manuals or written  
18 policies or procedures previously provided to the BMFEA or which may in the future be  
19 provided to the BMFEA;  
20

21 c. A description of the training programs required by this PIFJ, including a  
22 description of the targeted audiences and a schedule of when the training sessions were held and  
23 are to be held; and

24 d. A certification by the California Compliance Officer that to the best of his or her  
25 knowledge:  
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- (1) the policies and procedures required herein were previously developed or have been developed, have been or are being implemented, and have been made available to all appropriate Covered Persons;
- (2) all Covered Persons have completed the Code of Conduct certification required herein;
- (3) all Covered Persons have completed or are scheduled to complete the training and execute the certification required herein; and
- (4) such certification may also include, if necessary, an explanation of any identified or known noncompliance.

189. During the duration of the Effective Period, Defendants shall submit to the BMFEA an Annual Report with respect to the status and findings of Defendants' compliance activities over the one-year period covered by each Annual Report. Each Annual Report shall include:

a. Any change in the identity or position description of the individual who serves as the California Compliance Officer; or any change in the quality of care infrastructure;

b. A certification by the California Compliance Officer that to the best of his or her knowledge;

- (1) all Covered Persons have completed the Code of Conduct certification require herein;
- (2) all Covered Persons have completed the training required herein;
- (3) Defendants previously had or now have effectively implemented all prophylactic actions related to matters identified under this PIFJ or quality reviews, and

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1 (4) such certification may also include, if necessary, an explanation of identified  
2 or known noncompliance;

3 c. A summary describing any ongoing investigation or legal proceeding conducted  
4 or brought by a governmental entity involving an allegation that Defendants have committed a  
5 crime in relation to patient care operations in any California skilled nursing facility. The  
6 statement shall include a description of the allegation, the identity of the investigating or  
7 prosecuting agency, and the status of such investigation, legal proceeding, or requests for  
8 information;

9 d. A summary describing any mass involuntary transfers of patients; and

10 e. For matters related to patient care, patient quality management concerns, and  
11 patient care and services, copies of the following for each California facility:

- 12 (1) CSC Scorecard Rollup Report;  
13 (2) Clinical Key Performance Indicators Report;  
14 (3) Confidential Disclosure Program Tracking Log Report; and  
15 (4) For each of these reports, a narrative report explaining how to read, analyze,  
16 and assess the report.

17 190. The first Annual Report shall be provided to the BMFEA no later than one (1) year and  
18 one hundred eighty (180) days after the Effective Date. Subsequent Annual Reports shall be  
19 provided to the BMFEA no later than the anniversary date of the due date of the first Annual  
20 Report; i.e., the second Annual Report shall be provided to the BMFEA no later than two (2)  
21 years and one hundred eighty (180) days after the Effective Date, the third Annual Report shall  
22 be provided to the BMFEA no later than three (3) years and one hundred eighty (180) days after  
23 the Effective Date, and so on.

24 191. The Implementation Report and Annual Reports shall include a certification by the  
25 California Compliance Officer that, to the best of his/her knowledge, based upon diligent  
26 inquiry: (1) Defendants are in full compliance with all of the requirements of this PIFJ (unless  
27 any noncompliance is clearly and explicitly described in the Implementation Report or Annual  
28

1 Report), and (2) he or she has reviewed the Report and has made reasonable inquiry regarding its  
2 content and believes that, upon such inquiry, the information is accurate and truthful.

3 192. Defendants shall notify the BMFEA within forty-eight (48) hours of any resident death in  
4 any of Defendants' California skilled nursing facilities, which is reportable to DHS; any  
5 substantiated allegation of staff abuse or neglect (as defined in the applicable state or federal  
6 regulations or statutes) of a resident occurring at any of Defendants' California skilled nursing  
7 facilities; and any resident transfer and admission to a hospital as a result of injury or accident at  
8 any of Defendants' California skilled nursing facilities. Defendants shall specify for each such  
9 death or incident:

10 a. The full name and social security number of the resident;

11 b. The date of death or incident;

12 c. The names, positions, addresses, and telephone numbers of as many witnesses as  
13 are diligently discernible; and

14 d. To the extent that such information is available to Defendants, a brief description  
15 of the events surrounding the death or incident.

16 193. Within thirty (30) days of discovery, Defendants shall notify the BMFEA in writing of  
17 any ongoing investigation or legal proceeding conducted or brought by a governmental entity or  
18 its agents involving an allegation that any Covered Person has committed a crime or has engaged  
19 in fraudulent activities related to the provision of care to residents at any of Defendants'  
20 California skilled nursing facilities. This notification shall include a description of the  
21 allegation, the identity of the investigating or prosecuting agency, and the status of such  
22 investigation or legal proceeding. Defendants shall also provide written notice to the BMFEA  
23 within thirty (30) days of the resolution of the matter, and shall provide the BMFEA with a  
24 description of the findings and/or results of the proceedings, if any.

25 194. If DHS provides notice to any of the Defendants that a facility has been found to have  
26 provided substandard quality of care, or if DHS notifies any of the Defendants that there is an  
27 immediate and serious threat (immediate jeopardy) to patient health and safety at a facility,  
28 Defendants shall immediately notify the BMFEA. The notification to the BMFEA shall include:

1 a. Within forty eight (48) hours, a description of the relevant facts and persons  
2 involved; and

3 b. Within thirty (30) days, Defendant's current actions and future plans of action for  
4 correction.

5 195. Defendants shall furnish BMFEA, on a monthly basis, copies of all deficiencies and  
6 citations issued to its California facilities along with the plan of corrections. Defendants shall  
7 also furnish BMFEA with copies of any additional DHS reports on any of its California facilities  
8 upon request of BMFEA. The material in this paragraph may be sent via standard mail.

9 196. Unless otherwise stated in writing subsequent to the Effective Date, all notifications and  
10 reports required under this PIFJ shall be submitted to the persons listed below by either personal  
11 service, certified mail, next-day courier, or fax:

12 BMFEA:

13 Claude W. Vanderwold  
14 Deputy Attorney General  
15 Bureau of Medi-Cal Fraud and Elder Abuse  
16 1425 River Park Drive, Suite 300  
17 Sacramento, CA 95815  
18 Telephone: (916) 274-2905  
19 Facsimile: (916) 274-2929

20 Defendants:

21 Chauncey Hunker, Ph.D.  
22 Corporate Compliance Officer  
23 Sun Healthcare Group, Inc.  
24 101 Sun Lane, NE  
25 Albuquerque, N.M. 87109  
26 Telephone: (505) 468-6853  
27 Facsimile: (505) 821-9532

28 197. Defendants shall provide the BMFEA with any changes to the above information within  
fifteen (15) days of any such change.

**DD. Inspection and Review**

198. All of the BMFEA's pre-existing inspection and review rights pursuant to California  
statutes and regulations shall be immediately complied with by Defendants at all times. BMFEA

1 shall have at least the same rights of access as DHS for the purpose of BMFEA carrying out its  
2 official duties. In addition to any other rights the BMFEA may have by statute, regulation, or  
3 contract, the BMFEA, including its employees and its duly authorized agents and  
4 representatives, shall have the right to request, inspect, review, examine, and copy Defendants'  
5 books, records, manuals, personnel records, residents' charges, and other document and  
6 supporting materials related to patient care operations at any California skilled nursing facility,  
7 and/or conduct an on-site review of any of Defendants' California skilled nursing facilities, for  
8 the purpose of verifying and evaluating: (a) Defendants' compliance with the terms of this PIFJ;  
9 and (b) Defendants' compliance with the requirements of state and federal regulations and  
10 statutes applicable to California skilled nursing facilities that directly or indirectly affect the  
11 quality of care being provided to the residents of such facilities. The documentation described  
12 above shall be made available by Defendants to the BMFEA, including its employees and its  
13 duly authorized agents or representatives, at all reasonable times for inspection, audit, or  
14 reproduction. Furthermore, for purposes of this provision, the BMFEA, including its employees  
15 and its duly authorized agents or representatives, may interview any of Defendants' employees  
16 or contractors who consent to be interviewed at the individual's place of business during normal  
17 business hours or at such other place and time as may be mutually agreed upon between the  
18 individual and the BMFEA. Defendants agree to assist the BMFEA in contacting and arranging  
19 interviews with such individuals upon the BMFEA's request. Defendants' employees and  
20 contractors may elect to be interviewed with or without a representative of Defendants and/or an  
21 attorney present.

22 199. Defendants shall maintain for inspection each document and record directly relating to  
23 compliance with this PIFJ for five (5) years from date of creation of each document or record (or  
24 longer if otherwise required by law).

## 25 VI.

### 26 **NOTIFICATION AND OPPORTUNITY TO CURE**

27 200. If the BMFEA obtains knowledge or a report of an alleged violation of this PIFJ, then  
28 prior to seeking relief from the Court for a violation of this PIFJ (if the BMFEA believes that the

1 nature of the violation and the surrounding circumstances justify seeking relief from the Court),  
2 the BMFEA shall serve a letter of notification on Defendants through Defendants' agents for  
3 service as designated herein, advising Defendants of the following:

- 4 a. The provision of this PIFJ believed to have been violated;
- 5 b. The general nature of the alleged violation;
- 6 c. At the sole discretion of the BMFEA, facts and circumstances of the alleged  
7 violation; and
- 8 d. Any suggested cure of such alleged violation, including the time frame in which  
9 such cure is expected to be implemented.

10 201. The Defendants shall have fourteen (14) days after receipt of the letter of notification in  
11 which to serve a letter in response on the BMFEA regarding the issues raised in the BMFEA's  
12 letter of notification. The letter in response shall address each issue raised in the letter of  
13 notification, and shall include one or more of the following:

- 14 a. A plan of correction with respect to each alleged violation, including an  
15 anticipated date of completion;
- 16 b. An explanation of the circumstances;
- 17 c. Any affirmative defenses; and
- 18 d. Any other information the Defendants believe to be relevant to the issues raised in  
19 the letter of notification.

20 202. If the BMFEA believes that the letter in response does not adequately resolve the alleged  
21 violations or any other issues raised in the letter of notification, the BMFEA shall "meet and  
22 confer" with the Defendants prior to seeking relief in this Court. "Meet and confer," for this  
23 purpose, shall mean either meeting in person with opposing counsel, or speaking on the  
24 telephone with opposing counsel. Pursuant to applicable law, including but not limited to section  
25 1152 of the California Evidence Code, none of the communication between the parties during the  
26 meet and confer shall be admissible against any party to this PIFJ in any subsequent judicial or  
27 administrative proceeding.

28 ///

1 203. Any resolution proposed by the Defendants in their letter in response, or any actions  
2 taken by the Defendants with respect to the issues raised in the letter of notification, shall not  
3 operate to prohibit in any way the BMFEA's right to seek full relief from the Court after an  
4 attempt to meet and confer on the issues involved or Defendants' right to fully contest any such  
5 effort by the BMFEA. Any resolution proposed by the Defendants in their letter in response, or  
6 any actions taken by the Defendants with respect to the issues raised in the letter of notification,  
7 shall not provide a basis for any findings of, or remedies to be ordered by, the Court and shall not  
8 deprive Defendants of their rights to defend such action(s) on all available grounds.

9 204. The service of the letter of notification as required herein shall operate to toll any and all  
10 applicable statutes of limitations, with respect to actions between the parties hereto, as well as  
11 the application of the affirmative defense of laches, in any proceeding or action brought by the  
12 BMFEA regarding such alleged violations of this PIFJ. Such tolling shall commence on the date  
13 of such service, and shall remain in effect until the meet and confer process has been completed.  
14 For the purposes of this provision, any party to this PIFJ may "complete" the meet and confer  
15 process in its sole discretion by serving notice to the other party. The date of service for the  
16 purpose of this provision shall be as set forth in the following schedule, according to the method  
17 of service:

- 18 a. By personal service: the date of personal service;
- 19 b. By first class mail, with certified, return receipt: the date of the letter is deposited  
20 for collection by the United States Postal Service;
- 21 c. By next day courier: the date the letter is deposited for collection by the next day  
22 courier; and
- 23 d. By facsimile: the date of the facsimile transmission, as evidenced by a facsimile  
24 confirmation report printed by the facsimile machine or by telephone confirmation obtained from  
25 the receiving party.

26 205. The letter of notification shall be deemed to have been received by the Defendants on the  
27 dates set forth in the following schedule, according to the method of service:

28 ///

- 1 a. By personal service: the date of personal service;
- 2 b. By first class mail, with certified, return receipt: the date the receipt is signed;
- 3 c. By next-day courier: the next business day after the date of collection by the
- 4 next-day courier, excluding weekends and holidays; and
- 5 d. By facsimile: the date of the facsimile transmission, as evidenced by a facsimile
- 6 confirmation report printed by the facsimile machine or by telephone confirmation obtained from
- 7 the receiving party.

8 206. Notwithstanding any of the provisions of this section (Notification and Opportunity to

9 Cure), if the BMFEA has good cause to believe that there are repeated, systemic or flagrant

10 violations of an applicable statute or regulation, and that injury or harm to any of the residents in

11 any of the Defendants' California skilled nursing facilities has occurred or is imminent, the

12 BMFEA may seek relief in this Court, or take whatever other action otherwise authorized by law

13 the BMFEA deems necessary to ensure the health and safety of residents at any California

14 skilled nursing facility, without first complying with the other provisions of this Section.

15 Whether such good cause exists shall be within the sole discretion of the BMFEA and there shall

16 be a non-rebuttable presumption that any such decision by the BMFEA to ignore the Notification

17 and Opportunity to Cure provisions set forth above and to proceed directly to the Court was

18 based on good cause; provided that such presumption shall not provide a basis for any findings

19 of, or remedies to be ordered by, the Court and shall not deprive Defendants of their rights to

20 defend such action(s) on all appropriate grounds.

21 **VII.**

22 **DISCLOSURES AND PRIVILEGES**

23 207. Subject to California's Public Records Act (CPRA), Government Code section 6250 *et*

24 *seq.* provisions, Plaintiff shall make a reasonable effort to notify Defendants prior to any release

25 by Plaintiff of information submitted by Defendants pursuant to its obligations under this PIFJ

26 and identified at any time after submission by Defendants as trade secrets, commercial or

27 financial information and privileged and confidential under the CPRA rules. With respect to the

28 disclosure of such information, Defendants shall have all rights set forth in the CPRA.

1 Defendants shall refrain from identifying any information as trade secrets, commercial or  
2 financial information and privileged and confidential that does not meet the criteria for  
3 exemption from disclosure under the CPRA. Nothing in this PIFJ, or any communication or  
4 report made pursuant to this PIFJ, shall constitute or be construed as any waiver by Defendants  
5 of Defendants' attorney-client or work product privileges. Notwithstanding that fact, the  
6 existence of any such privilege does not affect Defendants' obligation to comply with the  
7 provisions of this PIFJ.

8 **VIII.**

9 **MODIFICATION OF INJUNCTIVE RELIEF**

10 208. Defendants will not, unless agreed to by Plaintiff, seek modification of this PIFJ for at  
11 least five (5) years after the Effective Date of this PIFJ. Modifications as used in this PIFJ  
12 include termination of this PIFJ.

13 **IX.**

14 **COSTS**

15 209. Defendant Sun Healthcare Group, Inc. shall pay Plaintiff its costs of investigation in the  
16 sum of one million five hundred thousand dollars (\$1,500,000.00). The amount shall be paid in  
17 eight quarterly payments of \$187,500.00, beginning October 1, 2005, by certified or cashier's  
18 checks payable to the Department of Justice, Attention Nancy Healy, and shall be delivered to  
19 Deputy Attorney General Claude W. Vanderwold.

20 **X.**

21 **PENALTIES**

22 210. Pursuant to California Business and Professions Code section 17207, Defendant Sun  
23 Healthcare Group, Inc. shall pay the sum of one million dollars (\$1,000,000.00) to Plaintiff as  
24 civil monetary penalties. Of this figure, one-half shall be paid in eight quarterly payments of  
25 \$62,500.00, beginning October 1, 2005, by certified or cashier's checks, payable to the  
26 California State Treasurer, and shall be delivered to Deputy Attorney General Claude W.  
27 Vanderwold; and one-half shall be paid in eight quarterly payments of \$62,500.00, beginning

28 ///

1 October 1, 2005, by certified or cashier's checks, payable to the Treasurer of the County of San  
2 Diego, and shall be delivered to Deputy Attorney General Claude W. Vanderwold.

3 211. Pursuant to California Business and Professions Code section 17207, for any future  
4 stipulated civil penalties pursuant to paragraph 174 of this PIFJ, payment shall be made to the  
5 same entities as specified in paragraph 210 of this PIFJ, and the checks shall be delivered within  
6 thirty (30) days of notification of the amounts by the BMFEA. If a court action is necessary to  
7 enforce the terms of paragraph 174, payment of the stipulated civil penalty shall be one-half to  
8 the California State Treasurer and one-half to the treasurer of the county where such action is  
9 filed.

10 **XI.**  
11 **RESTITUTION**

12 212. Pursuant to Business and Professions Code section 17203, for any future stipulated  
13 restitution pursuant to paragraph 173 of this PIFJ, Defendant Sun Healthcare Group, Inc. shall  
14 make payment by certified or cashier's check to the Health Care Deposit Fund, and shall deliver  
15 the check to Deputy Attorney General Claude W. Vanderwold. Defendants shall deliver the  
16 check within thirty (30) days of notification of the amount by the BMFEA.

17 **XII.**  
18 **MISCELLANEOUS ORDERS**

19 213. Defendants and their partners, officers, directors, representatives, assigns, successors,  
20 subsidiaries, transferees, agents, employees, contractors, and subcontractors shall not intimidate  
21 or take any retaliatory action against any individual who cooperated with the investigation of this  
22 matter, and/or who cooperates with the BMFEA throughout the pendency of this PIFJ.

23 214. In the event Plaintiff takes action to enforce compliance with any provision of this PIFJ,  
24 including collection of any sums due under this judgment, and if Plaintiff shall prevail in such  
25 action, Plaintiff shall be entitled to collect from the Defendants against whom such action is  
26 taken expenses incurred in taking such action, including attorneys' fees and costs of  
27 investigation. Defendants shall not be entitled to collect expenses, costs or attorneys' fees from

28 ///

1 Plaintiff if Plaintiff does not prevail. California Civil Code section 1717 is not applicable to this  
2 provision.

3 215. The parties acknowledge that they engaged in arms' length negotiations which resulted in  
4 the final language of the Stipulation for Entry of the Superseding Permanent Injunction and Final  
5 Judgment and the Superseding Permanent Injunction and Final Judgment, and for the purposes of  
6 construing the terms of these documents there is no presumption the documents should be  
7 interpreted against any party. The presumption set forth in California Civil Code section 1654 is  
8 not applicable.

9 216. This PIFJ shall take effect immediately upon the entry thereof.

10 217. The clerk shall enter this PIFJ forthwith.

11 GOOD CAUSE APPEARING THEREFOR, THE FOREGOING PROVISIONS SHALL  
12 BE THE ORDER OF THIS COURT.

13  
14 IT IS SO ORDERED.

15 Dated: \_\_\_\_\_

\_\_\_\_\_  
16 JUDGE OF THE SUPERIOR COURT