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14 THE REGENTS OF THE UNIVERSITY OF  
15 CALIFORNIA

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **FOR THE COUNTY OF SAN DIEGO**

18 THE REGENTS OF THE UNIVERSITY OF  
19 CALIFORNIA, a California Constitutional  
20 Corporation,

21 Plaintiff,

22 v.

23 KEVIN T. MURPHY, an individual; KEVIN T.  
24 MURPHY, M.D., A PROFESSIONAL  
25 CORPORATION, a California corporation;  
26 PEAKLOGIC, INC., a Delaware corporation;  
27 and DOES 1 through 50, inclusive,

28 Defendants.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**09/16/2020** at 04:20:18 PM  
Clerk of the Superior Court  
By Jose Hernandez, Deputy Clerk

Case No. \_ 37-2020-00032541-CU-BT-CTL

**COMPLAINT FOR MONEY  
DAMAGES AND EQUITABLE RELIEF  
FOR:**

1. **BREACH OF FIDUCIARY DUTY;**
2. **BREACH OF DUTY OF LOYALTY  
BY EMPLOYEE**
3. **CONSTRUCTIVE FRAUD;**
4. **INTENTIONAL  
MISREPRESENTATION**
5. **CONCEALMENT;**
6. **VIOLATION OF THE  
CALIFORNIA FALSE CLAIMS  
ACT;**
7. **CONVERSION;**
8. **UNJUST ENRICHMENT/  
RESTITUTION;**
9. **VIOLATION OF UNIVERSITY  
POLICIES; and**
10. **ACCOUNTING**

**JURY TRIAL DEMANDED**

Plaintiff The Regents of the University of California (“The Regents” or “the University” or  
“Plaintiff”) for causes of action against Defendants Dr. Kevin T. Murphy, M.D. (“Murphy”), Kevin  
T. Murphy, M.D., a Professional Corporation (“Murphy, P.C.”), PeakLogic, Inc., and Does 1

1 through 50, inclusive (collectively, “Defendants”) allege as follows:

2 **NATURE OF THE ACTION**

3 1. This is an Action by The Regents, against Murphy, a former employee and long-time  
4 faculty member at the University of California, San Diego (“UC San Diego”), who competed against  
5 the University while employed there as a full-time faculty member, misappropriated University  
6 resources for the benefit of himself and his affiliated businesses, and willfully concealed and  
7 retained income he received from sources other than UC San Diego — despite that income being the  
8 property of UC San Diego under the terms of his employment there — all to enrich himself and his  
9 competing businesses at the University’s expense. Plaintiff seeks equitable relief and damages for  
10 harm caused by Murphy’s acts of dishonesty and disloyalty.

11 2. Murphy, a medical doctor, is a former Health Sciences Clinical Professor and Vice  
12 Chair of Business Development of the UC San Diego School of Medicine Department of Radiation  
13 Medicine & Applied Sciences (“RMAS”) who also provided medical services through UC San  
14 Diego. Murphy abused his position of significant trust with the University by, among other conduct:

- 15 a. Providing unauthorized medical services outside of the UC San Diego medical  
16 system and retaining compensation for those services which belongs to (and which he  
17 knew at the time belongs to) the University;
- 18 b. Failing to make timely, proper, and truthful disclosures of and obtain prior approval  
19 for his participation in competing outside businesses and for his research outside of  
20 the University;
- 21 c. Using funds donated for UC San Diego’s use and benefit for the benefit of himself  
22 and his unauthorized competing businesses;
- 23 d. Using University resources, including University equipment and labor, for the benefit  
24 of himself and his unauthorized competing businesses; and
- 25 e. Selling University equipment and retaining the proceeds (or having one or more of  
26 his businesses retaining the proceeds) of the sales for his own benefit.

27 3. Much of Murphy’s misconduct for which Plaintiff seeks relief relates to his misuse of  
28 funds from a \$10,000,000.00 gift to the University through the UC San Diego Foundation. Although

1 the gift was intended to fund five clinical trials by Murphy at UC San Diego, Murphy was  
2 responsible for spending \$6,899,917.00 in gift funds over a four-year period without conducting a  
3 single UC San Diego clinical trial. On information and belief, a significant portion of these funds  
4 were instead spent for the benefit of Murphy and one or more of his competing affiliated businesses.

5 4. Another significant aspect of Murphy’s misconduct relates to his unauthorized  
6 provision of medical services outside of UC San Diego, along with his improper retention of the  
7 income he received for providing those medical services. The Regents and UC San Diego have  
8 established a compensation plan for faculty, such as Murphy, who are participants in the Health  
9 Sciences Compensation Plan. Participation in this plan is mandatory for Health Sciences Clinical  
10 Professors with University appointments greater than 50%, such as Murphy up until July 1, 2019.  
11 Under this plan, patient care activity must be provided within the University setting or as part of a  
12 University approved affiliation agreement or professional services agreement. The plan also  
13 requires that any clinical income from patient care activities earned by Health Sciences  
14 Compensation Plan participants in any setting is owned by and owed to UC San Diego. In return, in  
15 some instances, some of that income is then paid out to faculty as compensation from UC San  
16 Diego. Although fully aware of the rule, Murphy nevertheless performed unauthorized medical  
17 services outside of the University medical system and failed to report and kept the income he  
18 received for performing those unauthorized services.

19 **THE PARTIES**

20 5. The Regents is, and at all times relevant to this Action was, a California constitutional  
21 corporation authorized and empowered to administer a public trust known as the University of  
22 California. Under Article IX, section 9, of the California Constitution, The Regents is vested with  
23 full powers of organization and government over the University of California, including all powers  
24 necessary or convenient for the effective administration of the public trust. The Regents maintains a  
25 medical school in the County of San Diego known as the University of California San Diego School  
26 of Medicine (the “UC San Diego School of Medicine”).

27 6. Defendant Murphy is an individual who is, and at all times relevant to this Action  
28 was, a resident of the County of San Diego. At all relevant times, The Regents employed Murphy at

1 the UC San Diego School of Medicine as a Health Sciences Clinical Professor up until June 30,  
2 2019, and then as an Associate Physician Diplomate under a Management and Senior Professionals  
3 Contract. Murphy also served as Vice Chair of Business Development for RMAS. On information  
4 and belief, Murphy currently resides and at all relevant times has resided, in San Diego County.

5 7. Defendant PeakLogic, Inc. is a Delaware corporation doing business in San Diego  
6 County, California and having its principal place of business at 16918 Dove Canyon Road, Suite  
7 102, San Diego, California 92127.

8 8. Defendant Kevin T. Murphy, M.D., a Professional Corporation, is a California  
9 corporation doing business in San Diego County, California and having its principal place of  
10 business at 16918 Dove Canyon Road, Suite 102, San Diego, California 92127.

11 9. Plaintiff is informed and believes and thereon alleges that each of the defendants  
12 fictitiously sued hereunder as Does 1 through 50 (“Does”) are in some manner responsible for the  
13 occurrences and damages alleged and subject to the other relief requested in this Complaint, and that  
14 at all times, each of the Does were acting as the agent for each other or Murphy within the scope and  
15 capacity of said agency. Plaintiff is ignorant of the true names and capacities of the Does and  
16 therefore sues these defendants by such fictitious names for the same acts and causes of action  
17 alleged against Murphy. Plaintiff will seek leave of Court to amend this Complaint to allege the true  
18 names and capacities of said Does at such time as they may be ascertained.

19 **VENUE AND JURISDICTION**

20 10. Jurisdiction in this Court is proper because Plaintiff seeks equitable relief, including  
21 declaratory relief and injunctive relief, including a permanent injunction, conferring jurisdiction  
22 upon this Court. Additionally, the value of money Plaintiff seeks to recover in legal damages,  
23 restitution, and disgorgement, as well as the amount of money Plaintiff seeks to protect, including  
24 the extent of the injury to be prevented by the requested declaratory judgment and injunctive relief,  
25 is in excess of the jurisdictional minimum of this Court.

26 11. All defendants are subject to personal jurisdiction in San Diego County and venue is  
27 proper in San Diego County because a substantial part of the events or omissions giving rise to the  
28 claims asserted in this Complaint occurred in San Diego county, because the individual defendants

1 work and reside in San Diego County, because the entity defendants are located in San Diego  
2 County; and because the injuries complained of herein occurred in San Diego County.

3 **GENERAL ALLEGATIONS**

4 12. Defendant Murphy is an individual who is, and at all times relevant to this Action  
5 was, employed by the Regents to work at the UC San Diego School of Medicine. Murphy joined the  
6 UC San Diego School of Medicine Department of Radiology in 2005 as a full-time Health Sciences  
7 Assistant Clinical Professor and then became a full-time Health Sciences Associate Clinical  
8 Professor from July 1, 2009 to March 31, 2010. On April 1, 2010, he accepted employment with the  
9 Regents at UC San Diego as a part-time Associate Physician Diplomate on a 50% of fulltime  
10 Management and Senior Professionals (“MSP”) contract, a position he held through December 31,  
11 2012. He joined the UC San Diego School of Medicine Department of Radiation Medicine and  
12 Applied Sciences (“RMAS”) in 2012. Murphy then worked at RMAS as a full-time Health Sciences  
13 Associate Clinical Professor from January 1, 2013, through June 30, 2015, and then as a full-time  
14 Health Sciences Clinical Professor from July 1, 2015 through June 30, 2019. Murphy also served as  
15 a Vice Chair of Business Development for RMAS during that period.

16 13. On July 1, 2019, Murphy resigned from his faculty appointment and accepted  
17 employment with the Regents at UC San Diego as a part-time Associate Physician Diplomate on a  
18 49% of fulltime MSP contract. The Regents did not renew Murphy’s contract and June 30, 2020,  
19 was his final date of employment with The Regents.

20 14. Murphy’s previous positions as a full-time Health Sciences Clinical Professor and  
21 Vice Chair of Business Development of RMAS were positions of trust and confidence. In those  
22 capacities, Murphy was responsible for supervising other University employees, conducting research  
23 on behalf of the University, managing University resources, and representing the University in  
24 transactions with third parties within the delegated scope of his authority with regard to his teaching,  
25 research, supervisory, and medical duties. In those capacities, Murphy qualified as an agent of the  
26 University, owing the University an undivided fiduciary duty of loyalty.

27 15. At all relevant times, Murphy, as a Health Sciences Clinical Professor at the UC San  
28 Diego School of Medicine, has been subject to various policies adopted by The Regents and UC San

1 Diego. These include, but are not limited to:

- 2 a. Conflict of Commitment and Outside Activities of Health Sciences Compensation
- 3 Plan Participants, Academic Personnel Manual (“APM”) 671 (the “Conflicts
- 4 Policy”);
- 5 b. The Health Sciences Compensation Plan, APM 670 (the “Compensation Plan”);and
- 6 c. Regents Policy 1111: Policy on Statement of Ethical Values and Standards of Ethical
- 7 Conduct (the “Ethical Conduct Policy”);
- 8 d. The Requirement to Submit Proposals and to Receive Awards for Grants and
- 9 Contracts through the University (“Research Policy”).

10 16. Such policies have the force and effect of a State statute. (*See Regents of University*

11 *of California v. City of Santa Monica* (1978) 77 Cal.App.3d 130, 135.)

12 17. The Conflicts Policy, APM 671 governs the type of outside, private professional

13 activities that Compensation Plan participants may engage in. It includes very strict rules

14 prohibiting covered employees from providing medical services through anyone other than the

15 University or an approved affiliate with whom the University has an agreement and also strictly

16 prohibits covered employees from retaining payments for medical services through anyone other

17 than the University.

18 18. Specifically, the Conflicts Policy states in relevant part:

19 Patient care (clinical) activities must be provided within the University

20 setting, or as part of an approved affiliation agreement or professional

21 service agreement. All clinical income is due to the Plan. In no case

will Plan participants be allowed to retain income from patient care

(clinical) activities.

22 (APM 671-16.) A true and correct copy of the currently operative July 1, 2014 version of the

23 Conflicts Policy (APM 671) is attached to this Complaint as **Exhibit 1**.

24 19. Health sciences disciplines require varying compensation levels in order to remain

25 competitive with comparable schools elsewhere in the United States, as well as with private practice.

26 However, because University health sciences schools share some common needs and operating

27 requirements, the University has developed a uniform “Health Sciences Compensation Plan” (the

28 Compensation Plan) to govern compensation arrangements and account for compensation plan

1 income to the University's Schools of Medicine, Dentistry, Nursing, Pharmacy, and other health  
2 sciences units. A true and correct copy of the currently operative July 2012 version of the  
3 Compensation Plan (APM 670) is attached to this Complaint as **Exhibit 2**.

4 20. Through the Compensation Plan, compensation is set as a part of the employment  
5 relationship. Membership in the Compensation Plan is a term and condition of employment. All  
6 new and continuing eligible Compensation Plan participants receive a copy of the Compensation  
7 Plan document, applicable campus operating procedures and any related departmental guidelines  
8 setting forth Regental, campus, and department policy applicable to faculty covered by the  
9 Compensation Plan.

10 21. Members of the faculty of the UC San Diego School of Medicine are participants of  
11 the Compensation Plan if they hold a University funded appointment at greater than 50% of full time  
12 in any of the following series: Professor, Professor-in-Residence, Professor of Clinical (e.g.,  
13 Medicine), Adjunct Professor, Acting Professor, Health Sciences Clinical Professor, Health Sciences  
14 School Dean, or any other professorial series approved for membership in the Compensation Plan by  
15 the President of the University. (See APM - 670-14-a.) Murphy was a full-time Health Sciences  
16 Clinical Professor from November 1, 2005, through March 31, 2010, and from January 1, 2013,  
17 through June 30, 2019, and was therefore a member of the Compensation Plan during those times.  
18 Membership in the Compensation Plan is not only mandatory but also, under the provisions of the  
19 Compensation Plan, a term and condition of employment.

20 22. One important purpose of the Compensation Plan is to provide funding to allow  
21 certain University Health Sciences faculty to be compensated above their "Fiscal Year Salary  
22 Scales." In particular, the Compensation Plan ensures that the various campuses within the  
23 University of California, including UC San Diego, are able to recruit and retain the best and most  
24 dedicated faculty by offering competitive salary structures, salary structures that are indispensable to  
25 UC San Diego's recruitment and retention efforts. Without the ability to offer such competitive  
26 salary structures, UC San Diego's efforts to provide a world-class medical education, creative  
27 medical research opportunities, and quality health care services would suffer greatly.

28 23. Towards that end, the Compensation Plan provides that all "outside income" earned

1 by a Compensation Plan member such as Murphy belongs to and is owned by the University.  
2 Specifically, all professional services income generated by Compensation Plan participants shall be  
3 managed by, accounted for, and reported as revenue of the University.

4 24. Pursuant to the Compensation Plan, UC San Diego has adopted the “University of  
5 California San Diego School of Medicine & School of Pharmacy Implementation Procedures for the  
6 Health Sciences Compensation Plan APM 670 & Conflict of Commitment and Outside Activities of  
7 Health Sciences Compensation Plan Participants APM 671” (the “UCSD SOM Compensation  
8 Plan”). A true and correct copy of the currently operative March 20, 2015 version of the UCSD  
9 SOM Compensation Plan is attached to this Complaint as **Exhibit 3**.

10 25. Under the Compensation Plan, as well as the UCSD SOM Compensation Plan that  
11 implements the Compensation Plan, except for specific limited exceptions, none of which apply  
12 here, *all professional services income generated by UC San Diego’s health sciences faculty belongs*  
13 *to the University. (See APM - 670-19-b and App. B-a-(1); UCSD SOM Compensation Plan, App.*  
14 *A, section 3.1.)*

15 26. The Compensation Plan provides in pertinent part: “All professional services income  
16 generated by Compensation Plan participants shall be managed by, accounted for and reported as  
17 revenue of the University.” To enforce this policy, the Compensation Plan further provides:  
18 “Professional fee billing and collection activities shall be conducted by University billing groups, by  
19 external vendors with which the University has contracted, or as otherwise permitted by University  
20 procedures. All such fees shall be deposited upon receipt by the University or by an external vendor  
21 in a University bank account established in accordance with University delegations of authority. [¶]  
22 Contracts with external billing vendors shall be processed and executed in accordance with  
23 delegated authority and University purchasing policies and procedures. They shall contain standard  
24 University-approved clauses, be subject to audit, and provide for monthly transmission of billings  
25 and receipt information to the University. Specific University-wide regulations may be developed  
26 for such contracts as needed to assure that funds are accounted for, safeguarded, and appropriately  
27 managed.” (See APM - 670-19, App. B-a-(1)(a)-(b).)

28 27. The UCSD SOM Compensation Plan provides: “All income derived from patient

1 care activity shall be paid into the Plan. Further, except for the income described below, other  
2 professional income related to the qualifications associated with the Plan member’s Health Sciences  
3 appointment shall also be paid to the Plan. This includes income earned while on paid leave of  
4 absence, vacations, holidays, weekends, etc. Professional income, as used here, includes **both cash  
5 and non-cash compensation (e.g., stock and stock options).**” (UCSD SOM Compensation Plan,  
6 App. A, section 3.1 [emphasis added].)

7 28. The UCSD SOM Compensation Plan further provides: “All professional fee income,  
8 except for the excluded categories listed under Section 4 above, will be managed, accounted for and  
9 reported as revenue of the University, and must be deposited into the revenue account of the  
10 appropriate Departmental Compensation Plan fund (funds numbers 60XXX).” (UCSD SOM  
11 Compensation Plan, section 9.1.)

12 29. In addition, under the Compensation Plan, assessments are levied against professional  
13 services income. The Compensation Plan provides in part that, “[a]n aid in the administration,  
14 budgeting, and allocation of professional services income, gross Plan income shall be assessed using  
15 a rate(s) annually recommended by the Dean and approved by the Chancellor for each school or  
16 department.” (See APM – 670, App. B-c.)

17 30. Murphy is and has been familiar with the Compensation Plan at all relevant times.

18 31. Additional policies prohibit Compensation Plan participants, including Murphy, from  
19 engaging in certain outside activities without proper prior disclosure to and written pre-approval by  
20 the Chancellor (or the Chancellor’s specified designee) and also prohibit related conflicts of interest.  
21 For example the Conflicts Policy provides that “Category I” activities, which require advanced  
22 disclosure and written pre-approval by the Chancellor (or the Chancellor’s specified designee)  
23 include: (1) outside employment; (2) assuming a founding/co-founding role of a company; (3)  
24 assuming an outside executive or managerial position and (4) outside research. (See APM - 671-10-  
25 a-(1) (b)-(d); Research Policy.) Covered employees must annually report all Category I outside  
26 professional activities conducted during the prior 12 months and all earnings derived from those  
27 activities. (See APM - 671-10-c-(2).) In addition, covered employees must obtain prior written  
28 approval by the Chancellor (or the Chancellor’s specified designee) for any outside professional

1 activities that in total exceed 48 days a year or \$40,000 a year. Covered employees may retain  
2 outside professional activity income (other than patient care) that is appropriately disclosed and  
3 approved as necessary if it does not exceed a total of \$40,000 a year; any excess must be deposited  
4 in the Compensation Plan. (See APM 671-8-b, c and d.) These provisions in the Conflicts Policy do  
5 not apply to patient care (clinical) income, all of which must be deposited in the Plan and none of  
6 which may be retained by the participant. (See APM 671-16-b.)

7 32. Additional applicable policies generally prohibit University employees, including  
8 Murphy, from using University resources, including money, equipment, and labor, for the  
9 employee's personal gain or purposes. For example, the Ethical Conduct Policy, Regents Policy  
10 1111, provides in relevant part:

11 **10. Use of University Resources**

12 University resources may only be used for activities on behalf of the  
13 University. They may not be used for private gain or personal purposes  
14 except in limited circumstances permitted by existing policy where  
15 incidental personal use does not conflict with and is reasonable in  
16 relation to University duties (e.g. telephones). Members of the  
17 University community are expected to treat University property with  
18 care and to adhere to laws, policies, and procedures for the acquisition,  
19 use, maintenance, record keeping, and disposal of University property.  
20 For purposes of applying this policy, University resources is defined to  
21 include but not be limited to the following, whether owned by or under  
22 the management of the University (for example, property of the federal  
23 government at the National Laboratories):

- Cash, and other assets whether tangible or intangible; real or personal property;
- Receivables and other rights or claims against third parties;
- Intellectual property rights;
- Effort of University personnel and of any non-University entity billing the University for effort;
- Facilities and the rights to use of University facilities;
- The University's name;
- University records, including student and patient records; and
- The University information technology infrastructure.

24 A true and correct copy of the currently operative version of the Ethical Conduct Policy (Regents  
25 Policy 1111) is attached to this Complaint as **Exhibit 4**.

26 33. Additional applicable policies generally prohibit covered University employees,  
27 including Murphy, from conducting research outside of the University system. For example, the  
28 Research Policy provides that: "It is the policy of the University of California that employees who

1 receive any part of their salary through the University, or whose activities use any University  
2 resources or facilities, must submit their proposals for extramural support through the appropriate  
3 local contracts and grants office. Awards must be made to The Regents of the University of  
4 California.” A true and correct copy of the currently operative version of the Research Policy is  
5 attached to this Complaint as **Exhibit 5**.

6 34. Personalized Repetitive Transcranial Magnetic Stimulation (“PrTMS”) is a  
7 noninvasive treatment for certain psychological issues.

8 35. On information and belief, beginning on about January 1, 2014, and continuing at  
9 least until September of 2015, Murphy provided PrTMS-related medical treatment and/or engaged in  
10 PrTMS-related medical research at the Del Mar Neuro Center located at 1601 Dove Street, Newport  
11 Beach, California 92660. Plaintiff does not currently know whether Murphy provided the medical  
12 services and/or research as a sole proprietor and/or through some other form of business  
13 organization. Murphy failed to provide proper prior disclosure to and also failed to obtain prior  
14 approval from The Regents for this business. At all relevant times, there was never any approved  
15 affiliation agreement or professional service agreement with The Regents permitting Murphy to  
16 provide medical services through the Del Mar Neuro Center.

17 36. On information and belief, Murphy has obtained payments and/or other profits for  
18 services provided by him through the Del Mar Neuro Center, which he has retained for himself  
19 (and/or for his benefit through his businesses) and for which he has not made proper disclosures to  
20 The Regents.

21 37. On information and belief, on or about June 30, 2015, Murphy founded, formed, and  
22 registered The Medical Synchrony Research Institute, Inc., a California corporation, to facilitate  
23 fundraising activities for research relating to PrTMS in competition with fundraising efforts by and  
24 on behalf of The Regents. Murphy failed to provide proper prior disclosure to and also failed to  
25 obtain prior approval from The Regents for this business.

26 38. On information and belief, on or about September 22, 2015, Murphy founded,  
27 formed, and registered Murphy, P.C., a Professional Corporation, initially doing business as The  
28 Medical Synchrony Center and later as Mindset, to provide medical services and research, including

1 PrTMS-related medical services and research, competing with medical services and research  
2 provided by The Regents and outside of the Compensation Plan. Plaintiff does not currently know  
3 whether Murphy also or in the alternative provided the medical services and/or research under the  
4 name of The Medical Synchrony Center acting as a sole proprietor and/or through some business  
5 organization other than Murphy, P.C. Murphy failed to provide proper prior disclosure to and also  
6 failed to obtain prior approval from The Regents for this business. At all relevant times, Murphy,  
7 P.C. (and/or The Medical Synchrony Center if a separate entity) never had an approved affiliation  
8 agreement or professional service agreement with The Regents.

9 39. On information and belief, Murphy has obtained payments and/or other profits for  
10 services provided by him through Murphy, P.C. (and/or The Medical Synchrony Center if a separate  
11 entity), which he has retained for himself (and/or for his benefit through his business) and for which  
12 he has not made proper disclosures to The Regents, as well as payments and/or other profits obtained  
13 through The Medical Synchrony Research Institute, Inc. based on fundraising in support of Murphy,  
14 P.C. (and/or The Medical Synchrony Center if a separate entity).

15 40. On information and belief, on or about May 6, 2016, Murphy formed FreqLogic, Inc.,  
16 a Delaware corporation, for the purposes of holding intellectual property relating to certain EEG  
17 equipment and technology used in connection with PrTMS-related medical services and/or medical  
18 research. Murphy failed to provide proper prior disclosure to and also failed to obtain prior approval  
19 from The Regents for this business. On information and belief, FreqLogic, Inc. was not registered  
20 with the California Secretary of State until on or about November 17, 2016.

21 41. On information and belief, Murphy has obtained payments and/or other profits for  
22 services provided by him through FreqLogic, Inc., which he has retained for himself (and/or for his  
23 benefit through his business) and for which he has not made proper disclosures to The Regents.

24 42. The UC San Diego Foundation (the "Foundation") is a nonprofit corporation  
25 organized pursuant to Internal Revenue Code section 501(c)(3) which helps UC San Diego obtain  
26 private gifts in support of research, teaching, and public service and manages the gift assets.

27 43. Charles Kreutzkamp was a former patient of Dr. Murphy's. Upon his passing away  
28 in November of 2015, Mr. Kreutzkamp's estate gifted \$10,000,000.00 to the Foundation through the

1 Kreutzkamp Separate Property Trust (the “Kreutzkamp Gift”). Although the Kreutzkamp Gift was  
2 originally designated to support cancer research, Mr. Kreutzkamp’s widow, Ernestina Kreutzkamp,  
3 provided a June 2, 2016 letter to the Foundation stating that the purpose of the gift was to finance  
4 Murphy’s PrTMS research at UC San Diego, including five PrTMS medical trials.

5 44. University of California President Napolitano authorized acceptance of the  
6 Kreutzkamp Gift by the Foundation on December 13, 2016, and the Foundation received the gift in  
7 two payments on December 21, 2016 and January 30, 2017.

8 45. Although Murphy began steps to establish a UC San Diego clinic for the purpose of  
9 conducting PrTMS-related medical research after the Kreutzkamp Gift funds became available, he  
10 never received permission to conduct clinical trials for PrTMS-related research through UC San  
11 Diego. Murphy arranged to lease office space for the UC San Diego PrTMS clinic, paid for by the  
12 Kreutzkamp Gift, beginning on December 1, 2017. During the time that he was supposed to  
13 establish a UC San Diego PrTMS clinic and obtain permission to and conduct related clinical trials,  
14 Murphy used The Regents’ resources, including but not limited to Kreutzkamp Gift funds, for his  
15 own personal benefit and that of one or more of his affiliated private businesses.

16 46. On information and belief, on or about February 24, 2017, Murphy formed  
17 PeakLogic, Inc., a Delaware corporation, to provide PrTMS-related services in competition with The  
18 Regents. Murphy failed to provide proper prior disclosure to and also failed to obtain prior approval  
19 from The Regents for this business. On information and belief, PeakLogic, Inc. was not registered  
20 with the California Secretary of State until on or about September 27, 2017.

21 47. On information and belief, on or about March 21, 2017, Murphy founded, formed,  
22 and registered PeakMD Institute, a California corporation, to facilitate fundraising for PrTMS-  
23 related research in competition with The Regents. Murphy failed to provide proper prior disclosure  
24 to and also failed to obtain prior approval from The Regents for this business.

25 48. On information and belief, Murphy has obtained payments and/or other profits for  
26 services provided by him through PeakLogic, Inc., which he has retained for himself (and/or for his  
27 benefit through his business) and for which he has not made proper disclosures to The Regents, as  
28 well as payments and/or other profits obtained through PeakMD Institute, Inc. based on fundraising

1 in support of PeakLogic, Inc.

2 49. At all relevant times, Compensation Plan participants were supposed to make the  
3 annual disclosures required by the Conflicts Policy using APM 025 forms. Murphy sometimes  
4 failed to submit annual APM 025 forms. For the following years, he made the following APM 025  
5 form disclosures:

- 6 a. Fiscal Year Ending June 30, 2013 (dated August 1, 2013) — disclosure of honoraria  
7 and the word “consultant” only;
- 8 b. Fiscal Year Ending June 30, 2014 (dated July 29, 2014) — disclosure of honoraria  
9 and work as an Advisory Board Member for Newport Brain Research Lab - MRT  
10 Company (reported as requiring 6.5 days of work per year for no compensation);
- 11 c. Fiscal Year Ending June 30, 2015 (dated August 5, 2015) — disclosure of honoraria  
12 (described as honorariums) only;
- 13 d. Fiscal Year Ending June 30, 2016 (dated August 5, 2016) — disclosure of honoraria  
14 (described as honorarium) only;
- 15 e. Fiscal Year Ending June 30, 2017 (dated June 18, 2017) — disclosure of himself as  
16 the “founder” of “Mindset” and “Peaklogic”, described as providing “medical  
17 research” services for which Murphy reported that “no income earned exceeded  
18 threshold” with additional disclosure that he earned income from “Various Medical”  
19 as a speaker at “honorarium lectures.” Murphy further reported that worked a total of  
20 24 days for Mindset and 10 days for Peaklogic. On information and belief, Murphy’s  
21 representations about outside income earned through his affiliation with and the  
22 number of days worked for “Mindset” and “Peaklogic” were knowingly false.
- 23 f. Fiscal Year Ending June 30, 2018 (dated August 10, 2018) — disclosure of himself as  
24 the “President” and a “shareholder” of “Peaklogic, Inc.” and “Kevin T. Murphy,  
25 M.D., a PC, dba as Mindset” for each of which Murphy reported that “no income  
26 earned exceeded threshold.” Murphy further reported that worked a total of 48 days  
27 for Murphy, P.C. and 24 days for PeakLogic, Inc. On information and belief,  
28 Murphy’s representations about outside income earned through his affiliation with

1 and the number of days worked for Murphy, P.C. and Peaklogic, Inc. were knowingly  
2 false.

3 50. At all relevant times, Compensation Plan participants seeking prior approval from the  
4 University to participate in Category I activities were supposed to submit a “Prior Approval Form  
5 for Outside Activities (Category I)” (“Prior Approval Request”). Only after others raised concerns  
6 with Murphy that he might be violating University policies did he finally submit a Prior Approval  
7 Request, dated August 10, 2018, regarding Murphy, P.C. and PeakLogic, Inc. The Prior Approval  
8 Request requested approval for Murphy to engage in outside activities with regard to three  
9 companies only: Murphy, P.C., PeakLogic, Inc., and Toragen Inc., described as a “private  
10 Biotechnology company.”

11 51. Murphy knew well before he submitted the Fiscal Year 2018 Prior Approval Request,  
12 however, that he was required to obtain prior approval for Category I activities using the Prior  
13 Approval Request form. In fact, Murphy had submitted a Prior Approval Request to the University  
14 in November of 2014 regarding his previous participation in Category I activities relating to Genelux  
15 Biomedical, with which Murphy had reportedly been involved while working for the University  
16 part-time in 2012. On information and belief, a key reason that Murphy had transitioned to part-time  
17 status from April 1, 2010 through December 31, 2012 was to avoid various obligations which would  
18 otherwise apply. This included, but was not limited to, the obligation to remit income from outside  
19 Category I activities to the University pursuant to the requirements of the Compensation Plan.

20 52. Regarding Murphy, P.C., Murphy’s Fiscal Year 2018 Prior Approval Request  
21 described his role as to “oversee a medical practice” with an estimated time commitment of 48 days  
22 per year. Murphy requested approval for Fiscal Years 2018, 2019, and 2020. He did not indicate  
23 that he was either a salaried employee or a stockholder. On information and belief, Murphy’s  
24 representations on the Fiscal Year 2018 Prior Approval Request Form were incomplete and  
25 misleading in that they obscured his actual level of commitment to and involvement with Murphy,  
26 P.C. Moreover, Murphy did not disclose any income affiliated with his work for Murphy, P.C. at  
27 that time, whether on the Fiscal Year 2018 Prior Approval Request form or otherwise. On  
28 information and belief, however, Murphy had previously and was then receiving undisclosed income

1 for providing medical services through Murphy, P.C.

2 53. On his Fiscal Year 2018 Prior Approval Request form, Murphy described PeakLogic,  
3 Inc. as a “software company” for which his role was to oversee its offices and guide the general  
4 direction of the company with an estimated time commitment of 24 days per year. Murphy  
5 requested approval for Fiscal Years 2018, 2019, and 2020. He did not indicate that he was either a  
6 salaried employee or a stockholder. On information and belief, Murphy’s representations on the  
7 Fiscal Year 2018 Prior Approval Request Form were incomplete and misleading in that they  
8 obscured his actual level of commitment to and involvement with PeakLogic, Inc. Moreover,  
9 Murphy did not disclose any income affiliated with his work for PeakLogic, Inc. at that time,  
10 whether on the Fiscal Year 2018 Prior Approval Request form or otherwise. On information and  
11 belief, however, Murphy had previously and was then receiving undisclosed income and/or stock  
12 options through PeakLogic, Inc.

13 54. Although he had resigned from his full-time faculty position for a 49% MSP position  
14 effective July 1, 2018, on September 17, 2019, Murphy improperly submitted a Fiscal Year 2019  
15 Prior Approval Request by fax, referencing “Mindset Professional Corporation, Kevin Murphy  
16 Consulting dba Mindset & Mindset Medical” described as a “medical practice, using leased clinic  
17 space from UCSD real estate, treating patients with personalized for of tTMS (PrTMS).” The Fiscal  
18 Year 2019 Prior Approval Request describes the beginning and ending dates for Murphy’s  
19 involvement with the newly disclosed business entity as July 1, 2018 through June 30, 2019 and  
20 seeks approval for Fiscal Years 2018 and 2019. On information and belief, Murphy’s  
21 representations on the Fiscal Year 2019 Prior Approval Request form were incomplete and  
22 misleading in that they obscured both the form of the business entity disclosed as well as his actual  
23 level of commitment to and involvement with that entity. Moreover, Murphy did not disclose any  
24 income affiliated with his work for the newly disclosed business entity at that time, whether on the  
25 Fiscal Year 2019 Prior Approval Request form or otherwise. On information and belief, however,  
26 Murphy had previously and was then receiving undisclosed income and/or stock options through  
27 “Mindset Professional Corporation, Kevin Murphy Consulting dba Mindset & Mindset Medical”.

28 55. Murphy also improperly submitted a “Supplemental Memo for Outside Activities” to

1 the University by fax on September 16, 2019. Contrary to his previous representations, that  
2 document disclosed that Murphy had previously earned income from PeakLogic, Inc. and “Mindset  
3 PC”, none of which Murphy remitted to the University.

4 56. Since at least 2013, approval authority for all Conflicts Policy (APM 671) Prior  
5 Approval Requests at UC San Diego, including authority to authorize Compensation Plan  
6 Participants to engage in Category I activities, has been delegated to Associate Vice Chancellor for  
7 Academic Affairs for UC San Diego Health Sciences Andrew L. Ries, M.D., M.P.H. (“Ries”).  
8 Although Ries generally considers recommendations by the Health Compliance Advisory Group  
9 (“CAG”), Ries, and not CAG, is the approval authority. Ries has never granted any waiver or  
10 approval to Murphy to engage in any Category I activities, including but not limited to any activities  
11 relating to Del Mar Neuro Center, The Medical Synchrony Center, The Medical Synchrony  
12 Research Institute, Murphy, P.C., PeakLogic, Inc., PeakMD Institute, FreqLogic, Inc., Toragen Inc.,  
13 “Mindset”, “Mindset PC”, and/or “Mindset Professional Corporation, Kevin Murphy Consulting dba  
14 Mindset & Mindset Medical”.

15 57. Prior to receipt of the Kreutzkamp Gift, Murphy and/or his private businesses had  
16 purchased certain PrTMS equipment for his personal benefit, including PrTMS systems from  
17 MagVenture, Inc. (“MagVenture”), EEG caps and/or headbands from Cognionics, Inc.  
18 (“Cognionics”), and laptop computers and/or tablet devices required to use the other equipment. The  
19 cost of a MagVenture PrTMS system is approximately \$50,000.00 to \$60,000.00. The cost of a  
20 Cognionics EEG cap or headband is approximately between \$5,000.00 and \$12,000.00.

21 58. After Kreutzkamp Gift funds became available in early 2017, Murphy hired Diana  
22 Shapiro as a project manager on a consulting/contract basis, purportedly to facilitate UC San Diego  
23 PrTMS clinical trials. Between February 1 and November 30, 2017, Shapiro was paid a total of  
24 approximately \$143,000 funded by the Kreutzkamp Gift. During that time, however, Shapiro was  
25 also serving as the *de facto* chief of staff for Murphy, P.C. (doing business as Mindset), purportedly  
26 on a volunteer basis. In reality, Shapiro spent a significant amount of the time she was supposed to  
27 be rendering services to the University working on behalf of one or more of Murphy’s private  
28 businesses, specifically including Murphy, P.C. and PeakLogic, Inc. Murphy also regularly directed

1 University employees working under his supervision to render services on behalf of one or more of  
2 his personal businesses, specifically including Murphy, P.C. and PeakLogic, Inc.

3 59. On information and belief, after the Kreutzkamp Gift funds became available to him,  
4 Murphy used Kreutzkamp Gift funds in an amount currently unknown to Plaintiff to obtain  
5 reimbursements for certain PrTMS equipment previously purchased by Murphy and/or one or more  
6 of his private businesses.

7 60. Between January 2017, when the Kreutzkamp Gift funds became available, and  
8 October 2018, Murphy purchased approximately \$1,543,806 worth of PrTMS equipment. Murphy  
9 used certain equipment purchased with Kreutzkamp Gift funds, which were intended to facilitate UC  
10 San Diego clinical trials, for the benefit of himself and one or more of his personal businesses.  
11 However, despite having investigated this matter, Plaintiff is currently unaware of the full extent to  
12 which Murphy has done so.

13 61. UC San Diego's Audit and Management Advisory Services ("AMAS") conducted  
14 two separate reconciliations of the physical inventories of all major equipment that Murphy  
15 purchased with Kreutzkamp Gift funds. The first reconciliation, done in October 2018, identified 52  
16 items that were missing for a total of approximately \$333,620.00, exclusive of shipping costs. The  
17 second reconciliation, done in November 2019, established that some items had been returned to  
18 inventory, reducing the number of missing items to 28, with a total value of approximately  
19 \$158,000.00. On information and belief, at least some portion of the missing inventory was taken by  
20 Murphy and/or at least one of his private businesses for his benefit.

21 62. Murphy (and/or at least one of his private businesses) sold at least two PrTMS  
22 systems belonging to The Regents and retained the proceeds. Plaintiff was unaware of Murphy's  
23 conduct at the time of the sales, the most recent of which occurred in March of 2018, including  
24 PrTMS systems from MagVenture, Inc.

25 **AGENCY, CONSPIRACY, AIDING AND ABETTING, JOINT VENTURE AND**  
26 **PARTNERSHIP ALLEGATIONS**

27 63. In all the matters and causes of action alleged in this Complaint, Murphy was acting  
28 as the agent of the other defendants, acting with the authorization of those defendants and within the

1 course and scope of that agency. Each other defendant is vicariously liable to The Regents based  
2 upon Murphy's conduct as well as directly liable for his or her or its own conduct.

3 64. In all the matters and causes of action alleged in this Complaint, each defendant  
4 conspired with each other defendant to engage in the wrongful conduct alleged in the Complaint,  
5 damage The Regents and unjustly enrich himself or herself or itself at the expense of The Regents.  
6 With knowledge of the improper nature of the conduct, and in particular with knowledge that  
7 Murphy was breaching his duties to The Regents, each defendant took actions in furtherance of the  
8 conspiracy, and provided substantial aid and support to the Conspiracy including, without limitation,  
9 assisting Murphy in taking The Regents' opportunities, assisting Murphy's fraud and aiding Murphy  
10 in concealing his breaches and wrongdoing from The Regents. Each defendant is therefore liable to  
11 The Regents for the acts, omissions and conduct of each other defendant.

12 65. In all the matters and causes of action alleged in this Complaint, each defendant aided  
13 and abetted each other defendant in committing the wrongful conduct alleged in the Complaint,  
14 damaging The Regents and unjustly enriching himself or herself or itself at the expense of The  
15 Regents. Each defendant knew Murphy owed The Regents a fiduciary duty of loyalty and a duty of  
16 loyalty based on his employment with the Regents and was breaching that duty as further alleged in  
17 this Complaint. Each defendant is therefore liable to The Regents for the acts, omissions and  
18 conduct of each other defendant.

19 66. In all the matters and causes of action alleged in this Complaint, each defendant acted  
20 as the joint venturer and partner of each other defendant in causing The Regents damage and  
21 unjustly enriching themselves at The Regents' expense. Defendants agreed to, and did, share  
22 common control of their joint venture and partnership, and to share in the profits and losses of their  
23 joint venture and partnership. Pursuant to such joint venture and partnership, defendants damaged  
24 The Regents and unjustly enriched themselves, and defendants continue to pursue such joint venture  
25 and partnership, damaging The Regents and unjustly enriching themselves. Each defendant is  
26 therefore liable as the joint venturer and partner of each other defendant in this action.

27  
28

1       **DEFENDANTS’ ACTIVE CONCEALMENT, EQUITABLE ESTOPPEL AND EQUITABLE**  
2       **TOLLING OF LIMITATION DEFENSES**

3           67.     The Regents was prevented from discovering, and could not have reasonably  
4     discovered, the facts related to the wrongdoing, including the scope of that wrongdoing, alleged in  
5     this Complaint by virtue of Defendants’ active concealment and false reports designed to evade  
6     detection of their misconduct. Accordingly, and because of their misconduct, Plaintiff is entitled to  
7     invoke the discovery rule and Defendants are equitably estopped from raising laches, statutes of  
8     limitation, or other time-based defenses, and all such defenses are equitably tolled.

9                               **LIMITATION OF SCOPE OF CLAIMS**

10          68.     None of the causes of action alleged in this Complaint are predicated on any dispute  
11     over the ownership (or misappropriation) of any proprietary information, trade secrets, or other  
12     intellectual property owned by The Regents or the infringement of any of The Regents’ intellectual  
13     property rights.

14                               **FIRST CAUSE OF ACTION**

15                               **(Breach of Fiduciary Duty)**

16                               **(Against Defendant Murphy)**

17          69.     Plaintiff realleges as though fully set forth at length, and incorporates herein by  
18     reference, all of the allegations and statements contained in paragraphs 1 through 68, inclusive,  
19     above.

20          70.     Murphy was an agent of the University by virtue of his service as a full-time Health  
21     Sciences Clinical Professor and Vice Chair of Business Development for RMAS. He therefore owed  
22     the University fiduciary duties, including a duty of care as well as a duty of loyalty.

23          71.     Murphy’s duty of loyalty to the University included a number of obligations during  
24     the course of his agency, including but not limited to: (1) a duty not to exceed his authority; (2) a  
25     duty to give preference to the University’s business over his own similar business; (3) a duty to  
26     refrain from competing with the University; (4) a duty not to acquire a material benefit from a third  
27     party in connection with actions taken through the use of his position with the University; and (5) a  
28     duty to fully and completely disclose all material facts to the University.

1           72.     In addition, pursuant to the terms and conditions of Murphy’s employment,  
2 University policy (specifically, the Compensation Plan), Civil Code sections 2223 and 2224, and  
3 Labor Code 2861, Murphy had a fiduciary duty to properly collect, account for, deposit and report to  
4 the University all applicable professional fee income and other compensation, property interests and  
5 benefits he received from his outside professional activities.

6           73.     Murphy breached his fiduciary duties to the University by committing the acts  
7 complained of herein, including by:

- 8           a.     Failing to collect, account for, deposit, and report: (1) professional fee income  
9                 received for providing medical services outside of the University system; and (2)  
10                outside professional activity non-clinical income from his competing businesses in  
11                excess of the applicable annual threshold, and retaining and failing to remit payment  
12                for assessments due and owing on either source of income;
- 13           b.     Failing to make timely full and complete disclosures of and obtain waivers for his  
14                 own competing businesses;
- 15           c.     Using funds which had been donated for UC San Diego’s use and benefit for the  
16                 benefit of himself and his unauthorized competing businesses;
- 17           d.     Using University resources, including University equipment and labor, for the benefit  
18                 of himself and his unauthorized competing businesses; and
- 19           e.     Selling equipment purchased with funds donated for UC San Diego’s use and benefit  
20                 and retaining the proceeds (or having one or more of his businesses retaining the  
21                 proceeds) of the sales for his own benefit.

22           74.     As a direct and proximate result of Murphy’s wrongful and tortious conduct, Murphy  
23 has been unjustly enriched at the expense of The Regents, and The Regents has suffered, and will  
24 continue to suffer, substantial damages. Murphy’s actions were a substantial factor in causing The  
25 Regents’ harm.

26           75.     By virtue of his wrongful acts, Murphy holds benefits, property interests, entity  
27 interests and money due and owing to The Regents as a constructive trustee for The Regents’  
28 benefit.



1           82. Pursuant to the terms and conditions of Murphy’s employment, University policy  
2 (specifically, the Compensation Plan), Civil Code sections 2223 and 2224, and Labor Code 2861,  
3 Murphy had a duty to properly collect, account for, deposit and report to the University all  
4 applicable professional fee income and other compensation, property interests and benefits he  
5 received from his outside professional activities.

6           83. Murphy breached his duty of loyalty to the University by committing the acts  
7 complained of herein, including by:

- 8           a. Failing to collect, account for, deposit, and report: (1) professional fee income  
9           received for providing medical services outside of the University system; and (2)  
10           outside professional activity non-clinical income from his competing businesses in  
11           excess of the applicable annual threshold, and retaining and failing to remit payment  
12           for assessments due and owing on either source of income;
- 13           b. Failing to make timely full and complete disclosures of and obtain waivers for his  
14           own competing businesses;
- 15           c. Using funds which had been donated for UC San Diego’s use and benefit for the  
16           benefit of himself and his unauthorized competing businesses;
- 17           d. Using University resources, including University equipment and labor, for the benefit  
18           of himself and his unauthorized competing businesses; and
- 19           e. Selling equipment purchased with funds donated for UC San Diego’s use and benefit  
20           and retaining the proceeds (or having one or more of his businesses retaining the  
21           proceeds) of the sales for his own benefit.

22           84. As a direct and proximate result of Murphy’s wrongful and tortious conduct, Murphy  
23 has been unjustly enriched at the expense of The Regents, and The Regents has suffered, and will  
24 continue to suffer, substantial damages. Murphy’s actions were a substantial factor in causing The  
25 Regents’ harm.

26           85. By virtue of his wrongful acts, Murphy holds benefits, property interests, entity  
27 interests and money due and owing to The Regents as a constructive trustee for The Regents’  
28 benefit.



1 services outside of the University medical system.

2 d. His use of University resources for his personal benefit, including the benefit of one  
3 or more of his businesses.

4 e. His conversion of University property through sales to third parties; and

5 f. His conversion of University property through transfer to third parties.

6 92. Murphy breached that duty by failing to disclose to the University all material facts  
7 and/or by providing the University with information that was inaccurate or incomplete relating to the  
8 issues referenced above.

9 93. As a result of this conduct, defendant Murphy has caused The Regents to sustain  
10 pecuniary loss and damages.

11 **FOURTH CAUSE OF ACTION**

12 **(Intentional Misrepresentation)**

13 **(Against Defendant Murphy)**

14 94. Plaintiff realleges as though fully set forth at length, and incorporates herein by  
15 reference, all of the allegations and statements contained in paragraphs 1 through 68, inclusive,  
16 above.

17 95. As alleged in greater detail in paragraphs 49 through 55 of this Complaint, Murphy  
18 submitted A 025 for Fiscal Years 2017 and 2018 and a Fiscal Year 2018 Prior Approval Request to  
19 the University in which he represented that he had not earned any reportable outside income from  
20 Murphy, P.C. and PeakLogic, Inc. Murphy also made representations about the estimated number of  
21 days each year he devoted to each business. These representations were false, which Murphy knew  
22 at the time he made them.

23 96. Murphy intended the University to rely on his false representations that he had no  
24 reportable outside income and the University reasonably relied on those representations.

25 97. As a direct result of this conduct, Murphy has caused The Regents to sustain  
26 pecuniary loss and damages.

27 98. The above-recited actions of Murphy were done with malice, fraud, oppression, and  
28 reckless disregard of the above described rights of The Regents and within the meaning of California

1 Civil Code section 3294. Therefore, The Regents is entitled to recover punitive damages against  
2 Murphy.

3 **FIFTH CAUSE OF ACTION**

4 **(Concealment)**

5 **(Against Defendant Murphy)**

6 99. Plaintiff realleges as though fully set forth at length, and incorporates herein by  
7 reference, all of the allegations and statements contained in paragraphs 1 through 68, inclusive,  
8 above.

9 100. Murphy was, at all relevant times, a fiduciary of The Regents who also owed The  
10 Regents an independent duty of loyalty by way of his employment.

11 101. Murphy had a duty of full and complete disclosure to the University of all material  
12 facts he knew regarding obligations within the scope of his agency and employment which might  
13 affect his motives or The Regents' decisions, including but not limited to:

- 14 a. His participation in "Category I" activities requiring advanced disclosure and prior  
15 approval, including: (1) outside employment; (2) assuming a founding/co-founding  
16 role of a company; (3) assuming an outside executive or managerial position; and (4)  
17 outside research.
- 18 b. His receipt of income and the amount of income received for participating in  
19 "Category I" activities for which he had not received prior approval.
- 20 c. His receipt of income and the amount of income received for providing medical  
21 services outside of the University medical system.
- 22 d. His use of University resources for his personal benefit, including the benefit of one  
23 or more of his businesses.
- 24 e. His conversion of University property through sales to third parties; and
- 25 f. His conversion of University property through transfer to third parties.

26 102. Murphy breached that duty by intentionally failing to disclose to the University all  
27 material facts and/or by providing the University with information that was inaccurate or incomplete  
28 relating to the issues referenced above. Specifically, Murphy:

- a. Completely failed to disclose his participation in numerous “Category I” activities and failed to fully and accurately disclose the extent and details of his participation in the few “Category I” activities that he did disclose.
- b. Completely failed to disclose the fact that he received outside income, as well as the amount of outside income, for numerous outside activities which he never disclosed to the University, and failed to fully and accurately disclose the extent of outside income he received by providing medical services through Murphy, P.C.
- c. Failed to disclose that he was using University resources, including University labor, equipment, and facilities for his personal benefit, including the benefit of one or more of his businesses.
- d. Failed to disclose his conversion of University property (PrTMS-related equipment) through sales to third parties; and
- e. Failed to disclose his conversion of University property (PrTMS-related equipment) by having equipment delivered to his businesses and third parties.

103. The Regents was unaware of Murphy’s failure to disclose the above-referenced facts.

104. Murphy intended to and did deceive The Regents by concealing the above-referenced fact.

105. Some of these acts of concealment are reflected in Murphy’s failure to make disclosures and/or make full and honest disclosures on A 025 reports and Prior Approval Requests as alleged in greater detail in paragraphs 49 through 55 of this Complaint.

106. As a direct result of this conduct, Murphy has caused The Regents to sustain pecuniary loss and damages.

107. The Regents would have taken steps to prevent Murphy’s misconduct and to recover its losses earlier had The Regents known that Murphy had obtained and retained income from providing medical services outside of UC San Diego, had sold University property for his own benefit, had transferred University property for his own benefit, and had participated in outside activities without prior disclosure and approval.

108. The above-recited actions of Murphy were done with malice, fraud, oppression, and

1 reckless disregard of the above described rights of The Regents and within the meaning of California  
2 Civil Code section 3294. Therefore, The Regents is entitled to recover punitive damages against  
3 Murphy.

4 **SIXTH CAUSE OF ACTION**  
5 **(Violation of the California False Claims Act)**  
6 **(Against Defendant Murphy)**

7 109. Plaintiff realleges as though fully set forth at length, and incorporates herein by  
8 reference, all of the allegations and statements contained in paragraphs 1 through 68, inclusive,  
9 above.

10 110. This is a claim for damages under the California False Claims Act, Government Code  
11 section 12650 *et seq.*

12 111. Pursuant to Government Code section 12652.5, The Regents is a “political  
13 subdivision” and The Regents’ Office of the General Counsel is a “prosecuting authority” within the  
14 meaning of the California False Claims Act.

15 112. Murphy knowingly presented or caused to be presented false or fraudulent claims for  
16 payment to The Regents by submitting or causing the submission of requests for payment of  
17 expenses made for the benefit of himself (including expenses incurred by one or more of his private  
18 businesses), as described above.

19 113. Murphy also knowingly made, used, or caused to be made or used a false record or  
20 statement material to a false or fraudulent claim by representing that requests for payment from The  
21 Regents for expenses for his own personal benefit (including that of one or more of his businesses)  
22 were actually requests for payment for the benefit of The Regents and by directing others to make  
23 similar false representations.

24 114. Murphy also had possession, custody, or control of public property and money used  
25 or intended to be used by The Regents and knowingly delivered less than all of that property and  
26 money and/or knowingly caused less than all of that property to be delivered to The Regents. This  
27 included, but was not limited to Kreutzkamp Gift funds which he diverted to his own personal use,  
28 resources which were supposedly purchased on behalf of the University but which were instead

1 delivered to and used by Murphy and/or one or more of his personal businesses, and professional  
2 fees paid to Murphy for patient care services he performed outside of the University Medical system  
3 and outside professional activity non-clinical income exceeding the applicable annual threshold, both  
4 of which he retained for himself instead of remitting to the University as required by the  
5 Compensation Plan, the existence and amount of which he knowingly concealed from The Regents.

6 115. More specifically, and by way of example, Murphy purchased equipment from  
7 MagVenture for his personal use but directed MagVenture to invoice the University for the  
8 purchase. MagVenture issued two April 19, 2017 invoices to the University (Invoice No. 1759 and  
9 Invoice No. 1760) for six pieces of equipment in the total amount of \$67,762, which the University  
10 paid. However, Murphy sold that equipment to Windmill Wellness Ranch, a partner of one of his  
11 private businesses. The University did not discover that this equipment was in the possession of  
12 Windmill Wellness Ranch until it performed an inventory in October of 2018.

13 116. Similarly, Shapiro sent a July 23, 2018 email to MagVenture directing it to invoice  
14 the University for Invoices 2266 and 2267 for "UCSD owned equipment" in Suite 102, which was  
15 the office space for Murphy, P.C. Murphy, P.C. had entered into a March 16, 2018 lease agreement  
16 for Suite 102 and certain equipment, but, on information and belief, this order was for University  
17 equipment acquired after execution of the lease and therefore not being charged by the University to  
18 Murphy, P.C. under the lease. On information and belief, Murphy, who was copied on the July 23,  
19 2018 email, also directed Shapiro to instruct MagVenture to invoice the University directly for the  
20 referenced equipment used by Murphy and Murphy, P.C.

21 117. Murphy (through his staff) regularly directed vendors to invoice equipment to the  
22 University. On information and belief, this included University equipment which was then delivered  
23 to one or more of Murphy's businesses, including but not limited to Murphy, P.C. and PeakLogic,  
24 Inc. and/or to third parties doing business with Murphy and/or his businesses. However, due to  
25 Murphy's duplicity, the full extent to which Murphy directed vendors to invoice the University for  
26 equipment used by him, his businesses, and/or their business partners, is not yet known to the  
27 University.

28 118. Murphy's false claims were material in that The Regents would not have made the

1 requested payments/disbursements were it not for the false claims.

2 119. As a direct and proximate result of the foregoing, The Regents has been, and  
3 continues to be, damaged in an amount to be proved at trial.

4 120. Pursuant to Government Code section 12651(a), The Regents is entitled to three times  
5 the damages it sustained as a result of Defendants' violation of the California False Claims Act, civil  
6 penalties of not less than \$5,500 and not more than \$11,000 for each violation of the California False  
7 Claims Act, and the costs it incurs in bringing this action to recover those damages and penalties.

## 8 SEVENTH CAUSE OF ACTION

### 9 (Conversion)

### 10 (Against All Defendants)

11 121. Plaintiff realleges as though fully set forth at length, and incorporates herein by  
12 reference, all of the allegations and statements contained in paragraphs 1 through 68, inclusive,  
13 above.

14 122. The Regents owned certain PrTMS-related equipment purchased with Kreutzkamp  
15 Gift funds.

16 123. On information and belief, on at least two separate occasions, and potentially more,  
17 Murphy, Murphy, P.C., PeakLogic, Inc., and/or Does 1 through 50, inclusive, deprived The Regents  
18 of its property by selling PrTMS equipment belonging to The Regents and retaining the proceeds.  
19 The total amount of proceeds obtained from these sales is currently unknown but exceeds  
20 \$122,000.00. Defendants did not disclose the sales to Plaintiff at the time of the sales and Plaintiff  
21 was otherwise unaware of Defendants' conduct at the time of the sales, the most recent of which  
22 occurred in March of 2018.

23 124. On information and belief, Murphy, Murphy, P.C., PeakLogic, Inc., and/or Does 1  
24 through 50, inclusive, also deprived The Regents of its property by sending University equipment off  
25 campus, including out of state, to various third parties. Defendants did not disclose these transfers to  
26 Plaintiff at the time of the transfers and Plaintiff was otherwise unaware of Defendants' conduct at  
27 the time of the transfers.

28 125. On information and belief, Murphy, Murphy, P.C., PeakLogic, Inc., and/or Does 1

1 through 50, inclusive, also deprived The Regents of its property by using University resources,  
2 including PrTMS-related equipment, for Defendants' own personal benefit. Defendants did not  
3 disclose the use of University resources for Defendants' own benefit to Plaintiff at the time of the  
4 use for his personal benefit and Plaintiff was otherwise unaware of Defendants' conduct at that time.

5 126. Under the Compensation Plan, The Regents had a right to any compensation Murphy  
6 received in connection with professional services he rendered to entities other than UC San Diego.  
7 Murphy and, on information and belief, Murphy, P.C., PeakLogic, Inc., and/or Does 1 through 50,  
8 inclusive, also deprived The Regents of its property by, as to Murphy, failing to report and retaining,  
9 and as to the other defendants, retaining, income obtained by Murphy for providing medical services  
10 outside of the University system. Murphy did not disclose the receipt of compensation he received  
11 in connection with rendering professional services to entities other than UC San Diego at the time he  
12 received such income and Plaintiff was otherwise unaware of Murphy's receipt of such income for  
13 rendering such medical services at that time.

14 127. As a direct and proximate result of the foregoing, The Regents has been damaged by  
15 Defendants' wrongful acts.

16 128. The above-recited actions of Murphy were done with malice, fraud, oppression, and  
17 reckless disregard of the above described rights of The Regents and within the meaning of California  
18 Civil Code section 3294. Therefore, The Regents is entitled to recover punitive damages against  
19 Murphy.

20 **EIGHTH CAUSE OF ACTION**

21 **(Unjust Enrichment/Restitution)**

22 **(Against All Defendants)**

23 129. Plaintiff realleges as though fully set forth at length, and incorporates herein by  
24 reference, all of the allegations and statements contained in paragraphs 1 through 68, inclusive,  
25 above.

26 130. As set forth above, Defendants Murphy, PeakLogic, Inc., Murphy, P.C., and Does 1  
27 through 50, inclusive, have each received University property, including but not limited to:

- 28 a. The value of University resources in the form of equipment and labor diverted to

1 Defendants' use and benefit.

2 b. Money obtained through the sale of University property.

3 c. Secret profits in the form of income paid to Murphy for performing medical services  
4 for anyone other than UC San Diego.

5 d. Secret profits in the form of income paid to Murphy related to his outside professional  
6 activities for performing non-medical services that exceeded the applicable annual  
7 threshold in the Conflicts Policy.

8 131. Based on the previously alleged facts, it would be unjust and inequitable for  
9 Defendants to retain these benefits, which are the property of the University, at the University's  
10 expense.

11 132. Defendants were unjustly enriched as a direct and proximate result of the foregoing.  
12 Accordingly, The Regents are entitled to restitutionary relief, disgorgement, a constructive trust, an  
13 accounting, injunctive relief, and all other available remedies.

14 **NINTH CAUSE OF ACTION**

15 **(Violation of University Policies)**

16 **(Against Defendant Murphy)**

17 133. Plaintiff realleges as though fully set forth at length, and incorporates herein by  
18 reference, all of the allegations and statements contained in paragraphs 1 through 68, inclusive,  
19 above.

20 134. As alleged above, the Conflicts Policy, Compensation Plan, UCSD SOM  
21 Compensation Plan, Ethical Conduct Policy, and Research Policy are policies of The Regents of the  
22 University of California and, as such, have the force and effect of State statutes. (*See Regents of*  
23 *University of California v. City of Santa Monica* (1978) 77 Cal.App.3d 130, 135.)

24 135. By his conduct, including but not limited to the following specific conduct, Murphy  
25 has violated University policy governing disclosures, obtaining prior approval to participate in  
26 Category I activities, outside income, and the disclosure and assignment of certain intellectual  
27 property:

28 a. Failure to use a billing service required by the Compensation Plan and the UCSD

1 SOM Compensation Plan;

- 2 b. Failure to deposit income to the University as required by the Compensation Plan and
- 3 the UCSD SOM Compensation Plan;
- 4 c. Failure to submit accurate annual forms declaring outside income, including non-cash
- 5 compensation, and outside commitments as required by the Conflicts Policy, the
- 6 Compensation Plan, and the UCSD SOM Compensation Plan;
- 7 d. Failure to make prior disclosures of and obtain prior approval to participate in
- 8 Category I activities as required by the Conflicts Policy;
- 9 e. Failure to remit to the University payment for assessments due and owing as required
- 10 by the Compensation Plan and the UCSD SOM Compensation Plan as well as the
- 11 Conflicts Policy; and
- 12 f. Providing medical services through anyone other than the University or an approved
- 13 affiliate with whom the University has an agreement and/or conducting unauthorized
- 14 medical research outside of the University.
- 15 g. Using University resources for the benefit of himself and his businesses, in violation
- 16 of the Ethical Conduct Policy.

17 136. As a direct and proximate result of Murphy's wrongful and tortious conduct, Murphy  
18 has been unjustly enriched at the expense of The Regents, and The Regents has suffered, and will  
19 continue to suffer, substantial damages. Murphy's actions were a substantial factor in causing The  
20 Regents' harm.

21 137. The above-recited actions of Murphy were done with malice, fraud, oppression, and  
22 reckless disregard of the above described rights of The Regents and within the meaning of California  
23 Civil Code section 3294. Therefore, The Regents is entitled to recover punitive damages against  
24 Murphy.

25 **TENTH CAUSE OF ACTION**

26 **(Accounting)**

27 **(Against All Defendants)**

28 138. The Plaintiff realleges as though fully set forth at length, and incorporates herein by

1 reference, all of the allegations and statements contained in paragraphs 1 through 68, inclusive,  
2 above.

3 139. Under University policy (specifically, the Compensation Plan and the UCSD SOM  
4 Compensation Plan), as described above, under section 2861 of the Labor Code, and as The Regents'  
5 fiduciary, Murphy was required to account for and report all income, properties and benefits he  
6 received arising from or relating to his professional activities. Murphy breached this obligation.

7 140. Furthermore, under the Conflicts Policy, and as The Regents' fiduciary, Murphy was  
8 required to account for and report all income, properties and benefits he received arising from or  
9 related to his outside activities exceeding the applicable annual threshold. Murphy also breached  
10 this obligation.

11 141. By not accounting for and reporting professional income and interests and outside  
12 activity income and interests he received, Murphy avoided assessments on such income and property  
13 for his own gain and profit.

14 142. As set forth above, Murphy, PeakLogic, Inc., Murphy, P.C., and Does 1 through 50,  
15 inclusive, each received benefits intended for The Regents in the form of use or conversion of  
16 University resources in the form of funds, equipment, labor, and facilities.

17 143. The amount and identification of money, property and other benefits misappropriated  
18 and due from Murphy and the other defendants to The Regents for the foregoing wrongs is unknown  
19 and cannot be ascertained without an accounting from Murphy and the other defendants of all assets,  
20 income, property interests and other benefits arising from or relating to Murphy's professional  
21 activities.

## 22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for Judgment in Plaintiff's favor and against each of the  
24 Defendants as follows:

- 25 1. For compensatory damages, according to proof;
- 26 2. For restitution and/or disgorgement, including but not limited to, as to Murphy,  
27 disgorgement of the compensation and benefits The Regents previously paid him as  
28 an employee during the period of his disloyalty.

3. As to Murphy only, for treble damages pursuant to Government Code section 12651;
4. As to Murphy only, for a civil penalty of up to \$11,000 for each false claim, pursuant to Government Code section 12651;
5. For punitive damages in an amount to be proven at trial;
6. For the costs of suit incurred in this action, including an award of reasonable attorneys' fees;
7. That a receiver be appointed to take possession of all benefits, property interests, entity interests and money Defendants hold by virtue of their wrongful conduct and to care for, control, manage and preserve those assets and interests pending further order of the Court;
8. For an order declaring that Murphy holds as a constructive trustee for Plaintiff's benefit all benefits, property interests, entity interests and money he obtained directly or indirectly by virtue of the breaches and other misconduct alleged in this Complaint, and ordering Murphy to deliver to Plaintiff all such benefits, property interests, entity interests and money;
9. For an accounting;
10. For pre-judgment and post-judgment interest at the legal rate;
11. For costs of suit and reasonable attorneys' fees and litigation expenses; and
12. For such further relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury of all issues subject to trial by jury.

Dated: September 16, 2020

**DUANE MORRIS LLP**

By: \_\_\_\_\_

Robert D. Eassa (SBN 107970)  
Delia A. Isvoranu (SBN 226750)  
Marc A. Koonin (SBN 166210)

Attorneys for Plaintiff  
THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA

# Exhibit 1

671-0 **Policy**

The University of California policy on conflict of commitment and outside activities and the disposition of income earned from outside professional activities provides guidance for the identification and management of outside professional activities in order to avoid conflicts of commitment, while assuring that Health Sciences Compensation Plan (the “Plan”) participants may engage in a wide array of outside activities without unnecessary limitations. This policy is specific to faculty members who are participants in the Health Sciences Compensation Plan. Faculty members who are not participants in the Health Sciences Compensation Plan are subject to the provisions of [APM - 025](#).

671-2 **Purpose**

a. **General**

Faculty members who are employed by the University of California owe their primary professional allegiance to the University and accept as their own the University’s responsibilities to advance and communicate knowledge. Teaching, research or other creative activities, clinical care, and the cultivation of scholarly or creative competence are their primary activities and should receive the largest commitment of time and energy; the same expectation exists for part-time faculty to the extent of their faculty appointment. In service of the University’s goals to advance and communicate knowledge through interaction with the public, faculty have an obligation to provide, within limits, University-related public service by using their expertise to contribute to the University and/or the professions, business, the community or the public. Such activities also help faculty identify and address community needs and afford practical experience and knowledge valuable to teaching and research or creative activity. This policy seeks to balance these competing University obligations in the context of a faculty member’s professional discretion in allocating time and effort across multiple activities.

This policy acknowledges the value of outside professional activities while recognizing the likelihood that some activities may cause real or apparent conflicts of commitment. Outside professional activities that interfere with a faculty member’s professional obligations to the University represent a conflict of commitment. The Department Chair, in consultation with the faculty member and the Dean, shall resolve all questions related to whether an activity constitutes an outside professional or non-professional activity or if an activity is within the course and scope of employment.

This policy manages conflict of commitment, defines which outside professional activities must be disclosed to the University, approved prior to engagement, and/or reported annually. This policy limits the amount of time a faculty member may devote to outside professional activities, describes the requirements when involving a student in outside professional activities, and defines the disposition of income earned from such activities.

Health Sciences Compensation Plan participants may engage in outside professional activities (other than patient care) only if they are deemed to be in Good Standing (see [APM - 670-10](#)) and may retain the income from outside professional activities only in accordance with the terms of this policy, the Plan, and the School Implementing Procedures.

**b. Related University Policy**

In addition to this policy on conflict of commitment and outside activities, Plan participants must comply with all University policies involving University intellectual property (see [APM - 740-18-c-3](#)), conflict of interest and restrictions on compensation. See Appendix A for a list of other relevant University policies.

**c. School Implementing Procedures**

This policy provides a framework within which Implementing Procedures will be developed by each health sciences school that participates in the Plan. Additional Implementing Procedures may be developed for individual departments or organized research units. Departmental or Organized Research Unit Procedures must be consistent with the Plan and School Implementing Procedures and approved by the Dean. (See [APM - 670-80](#) for details related to School Implementing Procedures.)

School Implementing Procedures and changes to approved Implementing Procedures must be consistent with this policy, approved by the Chancellor, and approved by the President or the President's designee prior to implementation.

Affected Plan participants shall be provided the opportunity to review and comment on the proposed School Implementing Procedures, and any subsequent changes to School Implementing Procedures. The School Advisory Committee, described in [APM - 670-6-d](#), shall advise the Dean on School Implementing Procedures developed in accordance with this policy.

School Implementing Procedures must reference the Plan, this policy, and

- The University's Conflict of Interest Code, adopted pursuant to the requirements of the Political Reform Act of 1974, which requires designated University employees to disqualify themselves from participating in University decisions in which they have a personal financial interest; and
- The Political Reform Act of 1974, including the Academic Decision Regulation, which provides instruction on where to obtain information on disclosure and disqualification requirements; and
- The Policy on the Requirement to Submit Proposals and to Receive Awards for Grants and Contracts through the University.

#### 671-4 **Definitions**

##### a. **Outside Professional Activities**

Outside Professional Activities, compensated or uncompensated, and regardless of financial interest, are defined as those activities that are within a faculty member's area of professional, academic expertise and that advance or communicate that expertise through interaction with industry, the community, or the public. Outside additional teaching as described in APM - 671-10-a-(2)-(a) is included in this definition. Outside professional activities are distinct from non-professional activities, i.e., activities that are part of the faculty member's private life and are not expressly governed by University regulations or by the guidelines on outside professional activities. Outside professional activities must not interfere with a faculty member's professional obligation to the University.

##### b. **Conflict of Commitment**

A conflict of commitment occurs when a faculty member's outside activities interfere with the faculty member's professional obligations to the University of California.

##### c. **Conflict of Interest**

This policy does not cover conflict of interest; it covers only conflict of commitment. See Appendix A for relevant University policies concerning conflict of interest.

d. **Outside Consulting**

Outside consulting is one type of outside professional activity. It is defined as professional advice or service related to the faculty member's field or discipline, whether compensated or uncompensated, that furthers the interests of an entity outside the University of California.

e. **A Day**

For purposes of this policy, a day is defined using common sense and customary practice. This definition may vary by campus and/or discipline. School or Departmental Implementing Procedures may include a more specific definition of a day.

f. **Compensation**

Compensation for outside professional activities includes all types of remuneration (including stock and stock options) that have immediate or potential financial value, excluding customary honoraria,<sup>1</sup> reimbursement for reasonable travel expenses, and per diem expenses.<sup>2</sup>

671-6 **Responsibility**

a. **Chancellor**

The Chancellor is responsible for overseeing compliance with this policy which includes:

- (1) Communicating policy requirements;
- (2) Developing Implementing Procedures and administrative mechanisms for disclosure, prior approval of Category I activities, and annual reporting (see APM - 671-10, Guidelines, for a description of Categories I, II, and III activities, APM - 671-10-a-(1) and Appendix B for prior approval requirements, and APM - 671-10-a-(2) and Appendices C and D for annual reporting requirements);

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<sup>1</sup> See APM - 666

<sup>2</sup> See Business and Finance Bulletin G-28

- (3) Developing procedures to identify and resolve, if possible, conflicts between a faculty member's commitment to generating University revenue within the Plan and his or her outside professional activities; and
- (4) Establishing a deadline for submission of annual reports.

**b. Faculty**

Faculty are responsible for complying with this policy, including:

- (1) Maintaining Good Standing per the terms of the Plan (School or Department) that governs the faculty member's appointment;
- (2) Obtaining prior written approval for engagement in Category I activities (see APM - 671-10, Guidelines, for description of Categories I, II, and III activities, APM - 671-10-a-(1) and Appendix B for prior approval requirements);
- (3) Maintaining a running total of annual earnings from, and time spent on, all outside professional activities;
- (4) Depositing all income that exceeds the earnings approval threshold into the Plan (see APM - 671-8-c) with the exception of income earned from Category III activities (see APM - 671-10-a-(3) for a description of Category III activities) and certain other activities listed in APM - 671-10-b;
- (5) Obtaining prior written approval to engage in outside professional activities that may result in exceeding the total annual time and/or earnings approval thresholds;
- (6) Submitting annual reports of all Category I and II activities and compensation earned from such activities (or the lack thereof) to the Department Chair (see APM - 671-10-a-(2) and Appendices C and D for annual reporting requirements);
- (7) Attesting to adherence with the requirements of the policy in the annual report;
- (8) Disclosing any current or prospective outside professional activity to the Department Chair if in doubt as to whether there is a conflict of commitment; and

- (9) Obtaining prior approval from the Department Chair before involving a student in an outside professional activity (see APM - 671-8-f).

#### 671-8 **General Principles**

##### a. **Obligations to the University**

Outside professional activities must be undertaken in a manner consistent with the faculty member's professional obligations to the University. Outside activities must not conflict with the faculty member's obligations to students, colleagues, or to the University as a whole. In order to fulfill those obligations, faculty members must maintain a significant presence on campus, meet classes, keep office hours, hold examinations as scheduled, be accessible to students and staff, be available to interact with University colleagues, and share service responsibilities throughout every quarter or semester of active service.

##### b. **Time Limits**

School Implementing Procedures must specify the maximum number of days which Plan participants may devote to compensated and uncompensated outside professional activities that may not be less than 21 days and may not exceed 48 days annually.<sup>3</sup> The School Implementing Procedures may allow departments or organized research units to set more restrictive limits than the maximum of 48 days, but such limits shall not be less than 21 days of compensated and uncompensated outside professional activity. Prior to implementing or revising the limit on the number of days that may be devoted to outside professional activities, affected Plan participants shall be provided an opportunity to review and comment on the proposed limit.

##### c. **Annual Outside Professional Activities Earnings Approval Threshold**

- (1) The maximum annual outside professional activities approval threshold set by the Provost and Executive Vice President shall be up to \$40,000 or 40 percent of the fiscal-year base salary scale (scale 0), whichever is greater, for an individual faculty member's rank and step. The Provost and Executive Vice President may re-evaluate the maximum approval threshold periodically, adjust the maximum approval threshold for inflation on a periodic basis in accordance with the California Consumer Price Index (CPI), and publish it in the Academic Salary Scales.

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<sup>3</sup> The maximum number of days allowed shall remain consistent with time limits established for outside professional activities in APM - 025.

Individual School, Department, or Organized Research Unit Implementing Procedures may choose a threshold lower than the maximum set by the Provost and Executive Vice President.

- (2) A Plan participant who has satisfied the Good Standing Criteria established in accordance with [APM - 670-10](#), who has not exceeded the limit on the number of days devoted to outside professional activities established in School Implementing Procedures, and whose annual earnings from all outside professional activities will not exceed the approval threshold is allowed to engage in outside professional activities (other than patient care) in accordance with all applicable University policies.

**d. Retention/Non-retention of Income**

- (1) Income earned above the approval threshold, with the exception of income earned from Category III activities (see [APM - 671-10-a-\(3\)](#) for a description of Category III activities) and certain other activities listed in [APM - 671-10-b](#), must be deposited to the Plan.
- (2) School Implementing Procedures must clearly describe the types of activities for which time limits and earned income apply toward the approval threshold.
- (3) Income due the Plan is subject to established Departmental and/or School assessment policies.
- (4) Departments have the authority to determine the amount of deposited income that may be set aside for academic enrichment. Academic Enrichment Accounts are established by departments to support the academic, research and professional development activities of the faculty by allowing direct charge or reimbursement of business-related expenses.
- (5) Departments have the authority to distribute a portion of or the entire amount of the deposited income, after assessment, and with the exception of income set aside for academic enrichment, to the individual faculty member, consistent with applicable law and University policies.

**e. Exception Requests**

Each Plan participant shall be responsible for maintaining a running total of his or her time devoted to and annual earnings derived from all outside professional

activities whether they exceed the time or earnings threshold and whether the funds are due to the Plan. If a Plan participant wishes to engage in an activity that might reasonably be expected to cause his or her time and/or total annual earnings from outside professional activities to exceed the annual approval threshold, then the Plan participant must request prior written approval to engage in the activity. To request approval, the Plan participant is required to provide to his or her Department Chair, in writing, relevant details about the proposed engagement or schedule of engagements, the nature of the services to be provided, the person or entity(ies) who will receive and/or pay for the service,<sup>4</sup> the anticipated period of service and/or days to be devoted to the activity, the total expected income from the activity, and the amount by which the participant's total annual earnings from outside professional activities are expected to exceed the threshold. Department Chairs shall forward to the Dean any request which requires review by the Dean and/or Chancellor, in accordance with School Implementing Procedures. After a Plan participant has received approval to engage in an activity that may cause his or her time allotment and/or annual earnings from outside professional activities to exceed the approval threshold, he or she must request the Department Chair's approval for any subsequent engagement(s). If such engagements are approved, they shall be undertaken with all related income accruing to the Plan unless an exception is approved in writing, in accordance with School Implementing Procedures.

Department Chairs and/or Deans may approve Plan participants' requests to engage in outside professional activities in accordance with School Implementing Procedures. However, School Implementing Procedures shall state that only the Chancellor or Chancellor's designee has the authority to approve any request which involves a Plan participant retaining earnings that exceed the maximum annual outside professional earnings approval threshold set by the Provost and Executive Vice President.

Plan participants shall immediately notify their Department Chairs if they inadvertently exceed the time limits or earnings threshold or if any of the information they provided in an approval request is inaccurate or has changed since the initial notification. For example, a participant should immediately notify his or her Department Chair if the earnings estimate from an outside professional activity was understated. Plan participants are subject to corrective action and disciplinary measures as outlined in APM - 671-26-b for violation, neglect, or manipulation of Plan requirements.

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<sup>4</sup> When required to ensure appropriate patient confidentiality, the person or entity to be reported as recipient/payer for professional witness activities is the attorney or law firm requesting the services.

f. **Students**

Involvement of students in the outside professional activities of a faculty member may, under certain conditions, offer the student potential educational benefits. However, the relationship between the faculty member and the student must be protected from influences or activities that could interfere with the student's learning and must be consistent with the goals and ideals of the University (The Faculty Code of Conduct, [APM - 015](#)). A faculty member involving a student in outside activities has the responsibility to ensure that the student's participation does not interfere with the student's academic obligations.

If the faculty member has, or expects to have, academic responsibility (instructional, evaluative, or supervisory) for the student, the faculty member must obtain prior written approval from the Department Chair before involving a student in an outside professional activity regardless of whether the faculty member is compensated for or has a financial interest in the activity. Involvement of students means any substantive activity in which the student participates, whether the student is compensated or uncompensated. The involvement of a student in the outside professional activity of a faculty member must not affect, positively or negatively, the faculty member's evaluation of the student's performance in any other context.

g. **Use of University Resources**

The use of University resources in connection with outside professional activities is subject to limitations. The Faculty Code of Conduct ([APM - 015](#), Part II, C) defines the unauthorized use of University resources or facilities on a significant scale for personal, commercial, political, or religious purposes as a type of unacceptable conduct. The Standards of Ethical Conduct, as adopted by The Regents, state that University resources may only be used for activities that are undertaken on behalf of the University. The University's resources may not be used for private gain or for personal purposes.

h. **Liability Coverage**

The University's liability and workers compensation coverage does not extend to activity that is outside of the course and scope of the participant's University employment. Some outside professional activities, particularly certain consulting and expert witness testimony, would generally be considered outside the course and scope of University employment, depending on the facts and circumstances of any given case. Questions about University liability coverage in connection with a specified activity or exposure should be discussed with the Office of Risk Services at the Office of the President.

## 671-10 Guidelines

Professional activities are separated into three categories in the management of this policy. Categories I and II include activities that must be reported and -- in the case of Category I -- must receive prior approval before the faculty member engages in the activity. Category III activities are those that are within the course and scope of University employment and need not be approved or reported. When an activity falls into more than one category, it should be assigned to the category which requires more stringent reporting and prior approval, as applicable.

### a. Types of Outside Professional Activity

Outside professional activities are categorized based on the extent to which they are likely to constitute conflict of commitment:

#### (1) Category I

Category I activities are outside professional activities that are most likely to create a conflict of commitment because: 1) they are activities related to the training and expertise which is the individual's qualification for University appointment, but performed for a third party, and/or 2) they require significant professional commitment.

Category I activities require prior approval by the Chancellor and require disclosure in annual reporting. Approvals are generally for one fiscal year but may be granted for a longer term, not to exceed five years. Category I activities count toward the faculty member's time threshold for outside professional activities (see APM - 671-8-b, Appendix C, and School Implementing Procedures for definition of time limits), and earned income counts toward the earnings approval threshold (see APM - 671-8-c and School Implementing Procedures for definition of the earnings approval threshold).

Category I activities include, but are not limited to:

- (a) Teaching, research, or administration of a grant<sup>5</sup> at an educational institution, trust, organization, government agency, foundation, or other entity outside of the University;

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<sup>5</sup> Grants submitted on behalf of a professional society are exempt from this restriction, i.e., are not considered Category I activities.

- (b) Employment outside of the University;
- (c) Assuming a founding/co-founding role of a company;
- (d) Assuming an executive or managerial position outside of the University.<sup>6</sup>

**(2) Category II**

Category II activities are typically shorter term outside professional activities that are outside the course and scope of University employment. Category II activities have a lesser potential for a conflict of commitment than do Category I activities.

Category II activities require disclosure in annual reporting under this policy, but do not require prior approval. Category II activities count toward the faculty member's time allotment for outside professional activities (see APM - 671-8-b, Appendix C, and School Implementing Procedures for definition of time limits). Income earned from these activities count toward the earnings approval threshold (see APM - 671-8-c and School Implementing Procedures for definition of the earnings approval threshold). Prior approval is required if the time and/or earnings thresholds are exceeded.

Examples of Category II activities include, but are not limited to:

- (a) Additional University-compensated teaching, including teaching for UNEX courses and programs (see [APM - 662](#), Additional Compensation: Additional Teaching), other continuing health education programs run by the University, and self-supporting UC degree programs;<sup>7</sup>
- (b) Consulting under the auspices of the University of California;
- (c) Consulting or testifying as an expert or professional witness;
- (d) Consulting for for-profit entities;
- (e) Consulting for non-profit entities;

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<sup>6</sup> This does not include positions with professional societies.

<sup>7</sup> These are teaching activities outside of the assigned teaching load. If the department assigns the teaching activity, it is not considered an outside activity.

- (f) Consulting for non-profit health or education-related organizations;
- (g) Consulting for government agencies;
- (h) Serving on a board of directors outside of the University whether compensated or uncompensated;
- (i) Providing or presenting a workshop for industry;
- (j) Providing outside consulting or compensated professional activities performed for entities such as the Los Alamos and Lawrence Livermore National Laboratories;<sup>8</sup>
- (k) Other income-generating activities specified in approved Implementing Procedures.

**(3) Category III**

Category III activities are within the course and scope of University employment. As such, they are unlikely to raise conflict of commitment issues.

Category III activities, even if compensated, do not require disclosure in annual reporting or prior approval under this policy, do not count toward the faculty member's time threshold for outside professional activities, and the income does not count toward the earnings approval threshold. Nevertheless, these activities must not interfere with a faculty member's obligations to the University (see APM - 671-8-a).

Examples of Category III activities include, but are not limited to:

- (a) Serving on government or professional panels or committees or as an officer or board member of a professional or scholarly society;
- (b) Reviewing manuscripts; acting in an editorial capacity;

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<sup>8</sup> Because of the nature of their relationship to the University, consulting specifically for the Board of Governors Science and Technology Committee of Los Alamos National Security, LLC and Lawrence Livermore National Security, LLC does not require disclosure in annual reporting or prior approval and does not count toward the faculty member's maximum days of outside professional activities.

- (c) Attending and presenting talks at university/academic colloquia and conferences; and
- (d) Developing scholarly or creative works.

**b. Other Activities**

Income from the following activities may be retained by Plan participants and does not count toward the earnings approval threshold. Time related to these activities does not count toward time limits.

- (1) Prizes, defined as gifts in recognition of personal achievements and not for services rendered;
- (2) Royalties, defined as shares of proceeds for contributions as authors or inventors, as allowed under the University's copyright and patent policies;
- (3) Honoraria, defined as payments by agencies outside the University for occasional lectures and similar public appearances beyond normal academic responsibilities to the University of California and which are not in return for other services, whether given directly or indirectly;
- (4) University honoraria, defined as payment for occasional lectures or similar services performed on a University of California campus as permitted by Academic Personnel Policy (see [APM - 666](#), Additional Compensation: Honoraria) and relevant campus policies;
- (5) Administrative stipends;
- (6) Income from a profession unrelated to the training and experience which is the individual's qualification for University appointment.

**c. Disclosure Requirements**

Faculty are responsible for disclosing all situations that may raise conflict of commitment issues in the following manner:

(1) **Prior Approval Requirements**

All Category I activities and requests to exceed the time or the earnings approval threshold require prior written approval from the Chancellor in advance of performing the activity.

(2) **Reporting Requirements**

All faculty must provide an annual report of outside professional activities to their Department Chairs each year, even if the faculty member did not engage in outside professional activities during the year. Faculty must report annually all Category I and II outside professional activities that were conducted during the prior 12 months, including activities conducted during normal service periods and during periods of leave with pay. All earnings derived from these activities must be reported as well.

671-14 **Eligibility**

a. **Faculty subject to APM - 671**

All participants in the Health Sciences Compensation Plan are subject to the provisions of this policy.

b. **Recalled Faculty**

Faculty who have retired and are recalled to active service for appointments at or less than 43 percent time and who are participants in the Health Sciences Compensation Plan are subject to the provisions of this policy.

c. **Faculty on Leave**

Faculty who engage in professional activities while on approved leaves with pay such as sabbatical and vacation must comply with requirements for disclosure, prior approval, and annual reporting for outside professional activities. These activities, as well as professional activities performed during the evenings and weekends, count toward the annual time limits and earnings approval threshold. School Implementing Procedures must describe the requirements for disclosure, prior approval, and annual reporting for outside professional activities and earnings during periods of leave without pay.

d. **Faculty Administrators**

Faculty administrators are covered under this policy, but they are also subject to the provisions in [APM - 240](#), Deans, [APM - 241](#), Faculty Administrators (Positions Less Than 100%), and [APM - 246](#), Faculty Administrators (100% Time).

671-16 **Restrictions**

- a. A faculty member shall not engage in any outside professional activity that creates a conflict of commitment.
- b. Patient care (clinical) activities must be provided within the University setting, or as part of an approved affiliation agreement or professional service agreement. All clinical income is due to the Plan. In no case will Plan participants be allowed to retain income from patient care (clinical) activities.

671-24 **Authority**

a. **President**

This policy may be amended or repealed by the President, following consultation with the Health Sciences Chancellors, Deans, and the appropriate Academic Senate Committee(s).

b. **Chancellor**

The Chancellor shall issue campus or School Implementing Procedures that further refine APM - 671 and has the authority to approve Category I requests and individual exceptions under this policy.

c. **Deans**

Deans have authority to determine whether faculty are meeting established standards and requirements.

671-26 **Non-compliance**

a. **Monitoring and Compliance**

Department Chairs shall monitor compliance with this policy by collecting and reviewing annual reports and shall consult with the Dean about any concerns. The Dean shall review the Department Chairs' annual reports of outside professional activities each year.

b. **Consequences for Non-compliance**

School Implementing Procedures shall clearly state that the University reserves the right to impose administrative remedies and/or to take corrective action and disciplinary measures toward any faculty member who fails to comply with Implementing Procedures on outside professional activities.

Situations where faculty will be considered out of compliance include, but are not limited to, the following:

- (1) Failure to remit income due to the Plan as required by School Implementing Procedures;
- (2) Failure to obtain prior written approval for Category I activities or for involving a student in outside professional activities (see APM - 671-8-f);
- (3) Failure to comply with time limits for Categories I and II activities; and
- (4) Failure to disclose and describe accurately the nature and scope of Categories I and II outside professional activities and earnings derived from those activities as required by School Implementing Procedures.

If the Department Chair or the Dean has reason to believe that a faculty member has not complied with the School Implementing Procedures, the Dean may take appropriate corrective action. A procedure for hearing and resolving disputes about corrective action shall be provided in the School Implementing Procedures. Corrective action refers to the discontinuation of certain privileges available only to Plan participants, in particular the opportunity to earn and receive compensation above the fiscal-year salary scale through the Plan.

Corrective actions may include, but are not limited to, the following:

- (1) Incentive or bonus compensation (Z compensation) may be suspended until such time as the faculty member complies with the provisions of the Plan and the provisions of the Implementing Procedures;
- (2) Additional negotiated compensation (Y compensation) may be set with consideration of the faculty member's prior performance, including compliance with Implementing Procedures.

Compensation established in accordance with the Health Sciences Compensation Salary Scales (X, X' compensation) shall not be reduced as a corrective action unless the faculty member is placed, by Chancellorial exception, on the fiscal-year salary scale (Scale 0).

Reductions in compensation are not always the result of corrective action and may also occur for other reasons such as insufficiency of current year income and contingency reserves. Whenever there are reductions in compensation, faculty shall be notified in writing by the Department Chair. In addition, corrective action will not preclude administrative remedies, sanctions or disciplinary measures in accordance with [APM - 016](#), University Policy on Faculty Conduct and the Administration of Discipline and [APM - 150](#), Non-Senate Academic Appointees/Corrective Action and Dismissal. Violations by faculty members of either the time limits or earnings approval thresholds for outside professional activities represent an unauthorized use of University resources and/or retention of funds that belong to the University.

**c. Complaints and Appeals**

A faculty member who has a complaint about an issue related to outside professional activities should first try to resolve the issue at the departmental level. If the complaint cannot be resolved through discussions at the department level, the faculty member's complaint and the Department Chair's response should be documented in writing. If a faculty member disagrees with the Department Chair's decision, he or she should file a formal complaint with the Dean. The Dean will charge the School Advisory Committee with fact-finding. Both the Chair or the Chair's designee and the faculty member will have the right to be heard by the Committee. The Committee will issue a formal recommendation for resolution to the Dean. The Dean makes the decision based on this recommendation.

d. **Grievance Rights**

Senate faculty members may grieve pursuant to Senate Bylaw 335, Privilege and Tenure: Divisional Committees – Grievance Cases. Non-Senate faculty members may grieve pursuant to [APM - 140](#), Non-Senate Academic Appointees/Grievances.

**RELATED UNIVERSITY POLICIES**

- Standing Order of The Regents 103.1(b)
- University Regulation No. 3 – [APM - 005](#)
- University Regulation No. 4 – [APM - 020](#)
- Faculty Code of Conduct – [APM - 015](#)
- University Policy on Faculty Conduct and the Administration of Discipline – [APM - 016](#)
- Standards of Ethical Conduct
- University of California Policy on Disclosure of Financial Interests and Management of Conflicts of Interest Related to Sponsored Projects
- University of California Policy on Disclosure of Financial Interests and Management of Conflicts of Interest, Public Health Service Research Awards
- Policy on Disclosure of Financial Interest in Private Sponsors of Research and Guidelines – [APM – 028](#)
- University of California Policy on the Requirement to Submit Proposals and to Receive Awards for Grants and Contracts Through the University Policy and Guidelines on Outside Professional Activities for Officers and Designated Staff
- Conflict of Interest Code – Disqualification Requirement
- Conflict of Interest Policy and Compendium of Specialized University Policies – BFB-G-39
- Health Care Vendor Relations Policy
- Health Sciences Compensation Plan – [APM - 670](#)
- Deans – [APM - 240](#)
- Faculty Administrators (Positions Less Than 100%) – [APM - 241](#)
- Faculty Administrators (100% Time) – [APM - 246](#)

**PRIOR APPROVAL FORM  
FOR OUTSIDE ACTIVITIES (CATEGORY I)**

Name \_\_\_\_\_ Department \_\_\_\_\_  
Please print

For each Category I compensated outside professional activity in which you wish to engage in outside professional activities answer the following questions. Attach separate sheets, if necessary.

Type of activity in which you will be involved:

Category I Activities

Executive/managerial role: \_\_\_\_\_

Salaried employee: \_\_\_\_\_

Outside teaching or research activity: \_\_\_\_\_

Other potential conflict of commitment: \_\_\_\_\_

General description of the business/agency/organization/group/individual:

\_\_\_\_\_

Activities/products/services of entity described above: \_\_\_\_\_

Nature of your relationship to entity named above (check all that apply):

Founder/co-founder: \_\_\_\_\_

Owner: \_\_\_\_\_

Consultant: \_\_\_\_\_

Board member: \_\_\_\_\_

Salaried employee: \_\_\_\_\_

Stockholder/partnership interest: \_\_\_\_\_

Equity/royalty interest: \_\_\_\_\_

Other, please explain: \_\_\_\_\_

Description of the nature of your participation in this activity, including, if you wish, possible beneficial outcomes to areas of research, industry, and public service:

\_\_\_\_\_  
\_\_\_\_\_

Beginning/ending month/year you could be involved in this activity: \_\_\_\_\_

Fiscal year(s) for which seeking approval: \_\_\_\_\_ (Approvals are generally for one fiscal year but may be granted for a longer term not to exceed five years. Outside income reports must be submitted annually.)

Estimated number of days= involvement during fiscal-year appointment: \_\_\_\_\_

Do you wish to take a full- or part-time leave while engaged in this activity? \_\_\_\_\_

Approval granted through fiscal year  
ending June 30, \_\_\_\_\_

Request denied: \_\_\_\_\_

\_\_\_\_\_  
Department Chair Date

\_\_\_\_\_  
Dean Date

\_\_\_\_\_  
Faculty Member Signature Date

\_\_\_\_\_  
Chancellor or Chancellor's Designee Date

**REPORT OF CATEGORY I AND II COMPENSATED  
OUTSIDE PROFESSIONAL ACTIVITIES  
FOR THE FISCAL YEAR ENDING JUNE 30, \_\_\_\_\_  
EXPLANATIONS FOR INFORMATION REQUESTED**

Compensated Outside Activities: *Compensation* is defined broadly as all types of remuneration (including stock options) realized or having the potential to become realized for outside activity, excluding customary honoraria and reimbursement for reasonable travel expenses and per diem.

Fiscal-Year Faculty Appointment: A *Fiscal-Year Appointment* is an appointment in which the faculty member renders service to the University throughout the calendar year as opposed to the academic year (APM - 600-4-f). Fiscal-year faculty accrue vacation time in accordance with APM - 730.

Terms of Leave, if any: A faculty member may be permitted to go on full- or part-time leave in order to pursue certain compensated outside professional activities. If you were on such leave during any part of the pertinent fiscal year, provide information here about the percentage of time and inclusive months.

Category: For each activity, enter I or II.

*Category I* activities include: teaching, research, or administering a grant at an educational institution, trust, organization, government agency, or foundation outside of the University; employment outside the University; assuming a founding/co-founding role of a company; assuming an executive or managerial position outside of the University. You must receive prior approval to engage in Category I activities, which always count toward the 21- 48-day limit and must be reported annually.

*Category II* activities include: additional University-compensated teaching, including teaching pursuant to APM – 662, Additional Compensation: Additional Teaching, for UNEX courses and programs, other continuing education programs run by the University, and self-supporting UC degree programs; consulting under the auspices of the University of California; consulting or testifying as an expert or professional witness; consulting for for-profit entities; consulting for non-profit entities; consulting for non-profit health or education-related organizations; consulting for government agencies; serving on a board of directors outside of the University whether compensated or uncompensated; providing or presenting a workshop for industry; providing outside consulting or compensated professional activities performed for entities such as the Los Alamos and Lawrence Livermore National Laboratories; other income-generating activities specified in approved Implementing Procedures. Category II activities are counted within the 21- 48-day limit and must be reported annually.

Number of Days: A full-time faculty member may engage in outside professional activities 21- 48 days depending on the terms of the Department/School Implementing Procedures.

Enter the approximate number of days you worked on this activity during your period of active service to the University. For compensated outside professional activities a *Day* is defined using common sense and customary practice. This definition may vary by campus and/or discipline. A School or Departmental Implementing Procedure may include a more specific definition of a day. For additional teaching activities, the general rule is that every six contact or “podium” hours spent with students equals one day. See APM - 662 for further information.

Role: Use one or more of the following terms to describe your relationship to the entity identified in the last column: Founder/co-founder, owner, board member, consultant, recipient of equity or royalty interest, stockholder or partnership interest, salaried employee, or other (explain).

Compensation Dollars in Thousands: If income earned for the activity did not exceed the annual threshold, check the box in the left column. If income earned exceeded the annual threshold, enter the amount earned in the right column.

**ANNUAL HEALTH SCIENCES COMPENSATION PLAN REPORTING FORM  
FOR CATEGORY I & II COMPENSATED OUTSIDE PROFESSIONAL ACTIVITIES**

Fiscal Year Ending June 30, \_\_\_\_\_

In accordance with APM - 671, all Compensation Plan participants are required to complete this form not later than \_\_\_\_\_

Faculty Member Name (Print)	Academic Title	Department
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Category I or II	# of Days	Name of Outside Entity	Description of Services Provided	Role (e.g., consultant, speaker, employee, shareholder)	Compensation Dollars in Thousands	
					Income earned did not exceed the threshold	Income earned exceeded threshold
					☐	\$
					☐	\$
					☐	\$
					☐	\$
					☐	\$
					☐	\$
<i>Total # Days</i>				<i>Total income earned</i>	\$	\$

_____ I did not engage in Category I or II activities during the reporting period. _____ Total income earned did not exceed the earnings threshold.	
I certify that I have complied with the provisions of the University of California Health Sciences Compensation Plan, the School of _____ Health Sciences Compensation Plan Implementation Procedures, and my departmental guidelines for the Plan regarding limitations on the retention of earnings, and time spent in Outside Professional Activities.	
Faculty Member Signature	Date

The department chair's signature affirms the form was received and reviewed. Corrective actions should be implemented for time reports (days) that are above the annual limit and for unapproved Category I activities.	
Department Chair Signature	Date

N.B.: Information disclosed herein is a public record under the California Public Records Act

# Exhibit 2

July 2012

**670-0 Policy**

The Health Sciences Compensation Plan (HSCP) provides a policy framework within which Implementing Procedures will be developed by each health sciences school that participates in the Plan. School Implementing Procedures must be consistent with the Plan and its philosophy (see Appendix A), reviewed by the appropriate faculty committee(s), approved by the Chancellor, and reviewed prior to implementation by the President or the President's designee.

In developing Procedures consistent with this policy, the participating health sciences schools, after discussion and comment by the participants, and consultation with the school Advisory Committee (see APM - 670-6-d), may include provisions that are more, but not less, restrictive than those outlined herein.

**670-2 Purpose**

The purpose of this Health Sciences Compensation Plan is to provide a common administrative framework within which a participating health sciences school can compensate its faculty according to the competitive requirements of each discipline. Specific goals of this Plan are:

- a. To provide sufficient non-State resources to recruit and retain outstanding health sciences faculty;
- b. To encourage a balance among teaching, research/scholarship, clinical care, and University and public service activities that meet the standards of excellence required in the University of California;
- c. To provide teaching, patient care and research incentives that encourage and recognize academic merit as well as generation of income;
- d. To offer consistent benefits and privileges to participating health sciences faculty;  
and
- e. To benefit the health sciences schools by providing academic and research support funds in addition to State-appropriated funds.

670-6 **Responsibility**

a. **Role of the The Regents and the President**

After consultation with the Health Sciences Chancellors, Deans, and the appropriate Academic Senate committee(s), and upon recommendation by the President, The Regents may amend or repeal the entire Plan or any portion thereof.

The President or the President's designee shall review Implementing Procedures for those schools electing participation in the Plan.

The President shall report to The Regents total compensation for any Plan participant which is greater than four times the highest step on the Professor Series Fiscal Year Salary Scale.

b. **Role of the Chancellor**

The Chancellor shall have operational authority over the development and – subsequent to review and approval by the President or the President's designee – implementation and monitoring of the school Implementing Procedures for administration of this Plan.

The Chancellor shall be responsible for assuring that affected Plan participants and the appropriate division Academic Senate committee(s) shall be afforded the opportunity to review and comment on the proposed school Implementing Procedures.

c. **Role of the Academic Senate**

The President shall consult with the appropriate Academic Senate committee(s) concerning proposed revisions of this Plan.

The appropriate division of the Academic Senate and other committee(s) shall be provided the opportunity to review and comment on any proposed exceptions to school Implementing Procedures which the Chancellor intends to submit to the President or the President's designee for review.

d. **Role of the Advisory Committee**

A school-specific Advisory Committee which includes Senate and non-Senate faculty members representative of the disciplines and faculty series participating in the Plan shall be established to assist the Dean in resolving the issues that may arise from implementing the Plan.

The Committee assists in assuring compliance with and resolving issues on outside professional activities, conflict of interest, and conflict of commitment. The Committee also reviews the submissions of individual department or unit Implementing Procedures.

The composition of the Committee, method for selecting members, terms of service defined to ensure rotation of service, Committee responsibilities, and procedures (including those for receiving and hearing faculty complaints) shall be specified in school Implementing Procedures. No more than 50 percent of the voting members will be appointed by the Dean and the remaining members of the Advisory Committee are elected by Plan members. All voting members of the Committee must have a faculty appointment. The Committee's functions shall include advising the Dean on:

- 1) Development of the school Implementing Procedures, including the establishment of Good Standing Criteria, Academic Programmatic Unit (APU) assignments, and APU Scales. (See APM - 670-18-b for more information on APUs.)
- 2) Departmental Implementing Procedures including methods for obtaining faculty input and for determining consistency with school Implementing Procedures.
- 3) Review of potential conflicts between a Plan participant's commitment to generating revenue within the Plan and his or her outside professional activities. (See APM - 670-19-c.)
- 4) Review of faculty appeals regarding implementing and administering the Plan that are not resolved at the department or school levels or are submitted to the Advisory Committee as a result of a determination of loss of Good Standing. Senate faculty members may pursue their grievance rights before the Privilege and Tenure Committee under Senate Bylaw 335. Non-Senate faculty are entitled to a Step III hearing under APM - 140.

The Advisory Committee will provide an annual summary report on its activities to Plan participants, the Dean, and the Chancellor.

#### **670-10 Standards/Criteria/Qualifications**

##### **Good Standing Criteria**

- a. Written Good Standing Criteria shall be established at the School or Department level and shall be included in the school Implementing Procedures. Good Standing Criteria must include: 1) a definition of Good Standing, 2) a description of the administrative review process that occurs when a member is

determined to be out of Good Standing, 3) consequences for not being in Good Standing, and 4) the process by which a faculty member may return to Good Standing. (See role of the Advisory Committee in APM - 670-6-d-1.)

- b. Health sciences research and clinical practice are characterized by considerable diversity in sources of funding and are dependent on revenue streams that can be interrupted due to external circumstances, sometimes beyond the control of faculty. In support of the health sciences school's central function, a major responsibility of the Administration is to provide the faculty with conditions hospitable to the pursuits of teaching, research/scholarship, clinical care, and University and public service. The faculty member is responsible for performing the duties assigned at the time of hire, as well as reasonable new duties assigned by the department.

Good Standing Criteria for health sciences faculty will include expectations related to their academic series, departmental expectations related to service, and expectations related to generation of salary support and to shared expenses.

Plan participants must satisfy the Good Standing Criteria in order to be allowed to earn and/or retain income from professional, non-clinical activities. Good Standing Criteria might include, for example, keeping appropriate licensure and clinical privileges current, or meeting requirements for clinical coverage, teaching obligations, participation in departmental activities, or revenue generation. A pathway to return to Good Standing, should it be lost, must be defined. Prior to implementing or revising Good Standing Criteria, affected Plan participants and the Advisory Committee representatives shall be provided the opportunity to review and comment on the proposed criteria.

All members of the Health Sciences Compensation Plan should be deemed to be in Good Standing until they encounter some circumstance in which their capacity to earn income is impaired. A faculty member may fail to be in Good Standing only for conduct which significantly and negatively impacts the health sciences school's central functions of teaching, research/scholarship, clinical care, and University and public service. Reasons for loss of Good Standing might include, for example, a negative five-year review, instances of misconduct, inability to participate in the generation of salary, refusal to participate in assigned duties, failure to participate in mandatory training, loss of clinical privileges, or loss of licensure and/or credentials.

A determination that a faculty member is not in Good Standing may affect the amount of negotiated additional compensation (Y; see APM - 670-18-c(1)) and/or Incentive/Bonus compensation (Z; see APM - 670-18-c(2)) that the faculty member may earn. If a faculty member is unable to practice at a specific site due to revocation of clinical privileges, for example, that faculty member must be willing to undertake new duties as assigned, or otherwise must forfeit the compensation from that assignment. Faculty who are not in Good Standing must

obtain advance approval from the Department Chair to engage in any unassigned professional activities. If approved, the income from all such approved activities shall accrue to the Plan and not to the faculty member.

Exceptions may be approved in writing in accordance with school Implementing Procedures. A determination that a faculty member is not in Good Standing must be approved by the Dean, and any faculty member who is found not in Good Standing shall be notified in writing by the Department Chair of the reasons for that determination and what steps must be taken in order to return to Good Standing. A faculty member who believes that Good Standing Criteria have been applied unfairly may appeal to the Advisory Committee (described in APM - 670-6-d) in accordance with school Implementing Procedures.

#### 670-14 Eligibility

##### **Membership in the Health Sciences Compensation Plan**

###### **a. Membership Requirements**

Individuals in health sciences schools, disciplines or specialties that have been approved for participation in this Plan shall be members of this Plan if they hold a University appointment at greater than 50 percent of full time, funded by one or more of the participating health sciences units, in any of the following title series:

- 1) Professor
- 2) Professor In Residence
- 3) Professor of Clinical \_\_\_\_\_(e.g., Medicine)
- 4) Adjunct Professor
- 5) Acting Professor
- 6) Visiting Professor
- 7) Health Sciences Clinical Professor
- 8) Health Sciences School Dean titles
- 9) Any other title series approved for membership in this Plan by the President or the President's designee

A member of the faculty who was appointed in a health sciences school at the time of their retirement may be recalled to participate in the Health

Sciences Compensation Plan yet may not exceed a maximum total per each month of 43 percent of full time. Please refer to APM - 205, Recall for Academic Appointees for terms and conditions for Plan membership for recall appointees. All other faculty participating in the Plan must hold appointments greater than 50 percent of full time.

Deans and other faculty administrators in Plan schools shall be members of the Plan if they hold an underlying Health Sciences Compensation Plan faculty title; however, salary and reporting requirements are defined by the personnel policies governing the administrative appointments.

Membership in the Plan is a term and condition of employment. All new and continuing eligible Plan members shall receive a copy of this Plan document, the school Implementing Procedures, and any related School or Departmental Guidelines setting forth campus and departmental policy applicable to faculty covered by the Plan.

Membership in the Plan shall continue while the Plan continues to be in effect. Separation from an eligible appointment will terminate membership in the Plan.

Faculty holding any of the titles 1 through 9 above with an appointment in more than one department will participate in the Plan if their appointment is more than 50 percent in a department participating in the Plan and funded by one or more of the participating health sciences units. If included in the Plan, they will be subject to continued membership and to all requirements of the Plan. Determination of and responsibility for the faculty member's salary must be jointly agreed to in writing by the Chairs of the affected Departments and approved annually by the Dean(s). The Departments participating in the Plan are responsible for administering compensation including health and welfare benefits.

**b. Exceptions to Membership Requirements**

The Chancellor may approve exceptions to membership requirements to meet special teaching, research, clinical care, or University and public service requirements.

The Chancellor shall review and is authorized to approve specific provisions in campus procedures and requests by Deans for inclusion in the Plan of individuals in a health sciences school whose appointments are in the title series listed in APM - 670-14-a, regardless of percentage of appointment.

670-18 **Salary**

a. **Total Compensation**

Faculty members participating in this Plan shall:

- 1) receive base salary as described in section b, below;
- 2) be eligible for optional University additional compensation as described in section c, below; and
- 3) be permitted to retain other miscellaneous income as described in APM - 670-19.

Payment under the Health Sciences Compensation Plan will be made directly to the Plan participant in his/her individual capacity and will not, absent prior approval from the President or the President's designee, be made to any professional corporation or other legal entity maintained by the Plan participant.

Generally, off-scale salaries are not awarded. No State funds shall be used for the portion of base salary that exceeds the Fiscal Year Salary Scales for the Plan member's rank and step or for optional University additional compensation as described in section c, below. This portion of compensation shall be funded using Compensation Plan funds and other non-State funds in compliance with any related fund source restrictions.

b. **Base Salary (X and X') and Academic Programmatic Unit (APU)**

Base salary is the approved rate on one of the Health Sciences Compensation Plan Salary Scales associated with a faculty member's academic rank, step and assigned APU. Base salary shall equal at least the approved rate on the Fiscal Year Salary Scale (HSCP Scale 0) for the faculty member's rank and step (X). Base salary is covered under the University of California Retirement Plan (UCRP) up to the amount permissible under Internal Revenue Code provisions and in accordance with UCRP policy and provisions. Plan participants' APU scale assignments shall be approved by the Dean and assignments may be changed in accordance with guidelines issued by the Chancellor. The differential between X (Scale 0) and the faculty member's rank and step on the HSCP Salary Scale assigned to the faculty member's APU is designated X-prime (X').

- 1) For the purpose of determining the Health Sciences Base Salary Rate, each Department shall establish at least one APU to which the faculty shall be assigned. An APU shall comprise faculty with similar clinical, teaching and research responsibilities. The Department Chair shall recommend an appropriate APU assignment for each member of the Plan, based on

clinical, teaching and research responsibilities. Each APU shall be assigned to an HSCP Salary Scale, according to school Implementing Procedures.

- 2) In keeping with the responsibility of the University to ensure consistency of compensation by creation of APUs or assignment of faculty to APUs:
  - a) Deans are authorized to approve the faculty composition of each APU and assignment of a salary scale to that unit, subsequent to the Department Chair's recommendation.
  - b) Deans must receive advance approval from the Chancellor or the Chancellor's designee for an APU comprising fewer than four members. The request for approval shall include the criteria for composition of the APU, and the name, series, rank, and step of each member.
  - c) An APU must remain at its assigned HSCP Salary Scale for at least one year before being assigned to a higher or lower scale.
  - d) An APU may move to a higher HSCP Salary Scale by a maximum of one scale per year. An APU typically moves down no more than one scale at a time.

No individual faculty member may be moved from one APU to another without a significant change in duties or a change in department. Department chairs shall report annually to the Dean the name of any faculty member who has moved from one APU to another and the reason for the transition.

**c. Optional University Additional Compensation**

School Implementing Procedures and department, division and/or APUs may provide for the payment of additional compensation. Prior to implementing or revising Implementing Procedures, affected Plan participants and the Advisory Committee shall be afforded the opportunity to review and comment on the proposed Procedures. Implementing Procedures shall specify how additional compensation will be calculated, when it may be paid, and the title(s) of person(s) authorized to approve individual compensation agreements. Additional compensation may be paid, in accordance with fund source restrictions, as follows:

1) Negotiated additional compensation (Y)

Plan members may receive a negotiated amount of additional compensation. This component of pay is beyond the base salary and is not covered compensation for UCRP, but may be eligible for optional disability and life insurance programs, where applicable.

2) Incentive/Bonus compensation (Z)

Plan members may receive incentive/bonus compensation. This incentive/bonus compensation is not covered compensation for UCRP.

Departmental Implementing Procedures will describe the manner in which faculty members within a department, division, or APU may earn incentive compensation beyond base and negotiated compensation, upon approval by the Dean.

3) Administrative Stipends

Plan members may receive administrative stipends, defined as payments by the University for responsibilities related to University administration beyond normal responsibilities.

**670-19 Other Outside Income That May be Retained by Plan Members**

- a. Patient care activities must be provided within the University setting, or as part of an approved affiliation agreement or professional service agreement. All clinical income is due to the Plan. In no case will Plan participants be allowed to retain income from patient care activities.
- b. Certain categories of income accruing from occasional service, as described below, may be retained by Plan members. Department Implementing Procedures shall address whether members can deposit remuneration from miscellaneous outside activities into an academic enrichment account, and the terms and conditions for those accounts. The Department Chair and/or Dean shall monitor the frequency of individual activity in these areas:
  - 1) Income from occasional outside professional activity in accordance with [APM - 671](#), Conflict of Commitment and Outside Activities of Health Sciences Compensation Plan Participants and school Implementing Procedures;

- 2) Prizes, defined as gifts in recognition of personal achievements and not for services rendered;
- 3) Royalties, defined as shares of proceeds for contributions as authors or inventors, as allowed under the University's copyright and patent policies;
- 4) Honoraria, defined as payments by agencies outside the University for occasional lectures and similar public appearances beyond normal academic responsibilities to the University of California and which are not in return for other services, whether given directly or indirectly;
- 5) University honoraria, defined as payment for occasional lectures or similar services performed on a University of California campus as permitted by Academic Personnel Policy; and
- 6) Income from a profession or activity unrelated to the training and experience which is the individual's qualification for University appointment as determined by the Department Chair in consultation with the Dean.

**c. Complaints and Appeals**

A faculty member who has a complaint about an issue related to outside professional activities should first try to resolve the issue at the departmental level. If the complaint cannot be resolved through discussions, the faculty member's complaint and the Department Chair's response should be documented. If the faculty member disagrees with the departmental decision, s/he should file a formal complaint with the Dean. The Dean will charge the Advisory Committee with fact-finding. Both the Chair or the Chair's designee and the faculty member will have the right to be heard by the Committee. The Committee will issue a formal recommendation for resolution to the Dean. The Dean makes the decision based on this recommendation. Senate faculty may pursue their grievance rights under the terms of [Senate Bylaw 335](#). Non-Senate faculty may request a hearing under the terms of [APM - 140](#).

**670-20 Use/Terms of Employment/Conditions of Employment**

**Benefits**

No campus may offer faculty benefits beyond those which have been approved by The Regents. All benefits shall be provided in accordance with policies and/or guidelines issued or approved by the Office of the President. Each health sciences school and respective accounting office shall develop and provide a funding

mechanism for support of all benefits made available under the provisions of this Plan, and this mechanism shall be included in the school Implementing Procedures established for administration of the Plan. All such benefits as described below and in related policies shall be provided uniformly within departments or divisions, as reviewed by their participants and as approved by the Dean.

a. **Base Salary-Related Benefits**

Base salary-related benefits are associated with an individual's salary from one of the Health Sciences Salary Scales. These benefits include participation in the UCRP, health care benefits, disability benefits, regular term life coverage, and other benefits as may be approved by The Regents. Base salary-related benefits will be made available to faculty members who are members of this Plan on the same basis as to all other members of the University faculty.

b. **Optional Benefits on Additional Compensation**

The Regents have authorized disability and life insurance benefit programs related to health sciences additional compensation beyond the base salary. These programs must be approved by the Office of Human Resources, Office of the President. Policies governing optional disability and life insurance programs on additional compensation are available from that office.

c. **Paid Leave**

Plan members who are eligible for sabbatical leave, leave with salary, or extended illness leave may be granted such leave paid at least the Health Sciences Scales Base Salary rate (X, X') as set forth in local Implementing Procedures. A Plan member who leaves University service or transfers from a vacation-accruing title to a non-accruing title shall be paid for accrued vacation at the Plan member's total negotiated salary rate at the time of separation.

With the exception of the two provisions below, or where explicitly stated in policy, members of the Plan are eligible for leaves as defined in APM - [710](#) - [760](#). Schools or departments that include provisions in Implementing Procedures for leaves shall clearly define the rate of pay, i.e. whether any additional leave will be paid more than the minimum base salary rate. In the absence of specific Implementing Procedures, the leave provisions as described in APM - [710](#) - [760](#) will be used.

1) **Extended Illness**

Members of the Plan who are appointed full-time to at least a twelve-month term who are unable to work for reasons of extended personal illness, injury,

or disability shall be granted paid medical leave of a minimum of six (6) weeks of consecutive or intermittent paid medical leave at the approved base salary. Any additional compensation under the HSCP shall be paid in accordance with campus policies.

- a) Extended illness leave may not exceed the maximum time period allowable under [APM - 710-11-a and b](#).
- b) Authority to review and approve requests for extended illness leave rests with the Chancellor. This authority may be redelegated.

2) **Childbearing and Childrearing**

Childbearing and childrearing leaves shall be approved consistent with [APM - 760-25](#). In no case shall childbearing and childrearing leave be less than the minimum time period or base salary rate of pay as allotted under [APM - 760-25-b](#).

670-22 **Funds**

The management and reporting of professional services income and expenses under this Plan must be consistent with campus accounting and budgeting methods as outlined in Appendix B of this policy.

670-24 **Authority**

a. **The President**

- 1) The President or the President's designee shall have the authority to issue administrative guidelines and procedures further refining this Plan.
- 2) The President or the President's designee shall approve the inclusion or exclusion of a health sciences school, discipline, or specialty in the Plan, subsequent to the Chancellor's recommendation.

b. **The Chancellor**

- 1) The Chancellor shall submit school Implementing Procedures to the President or the President's designee for approval. Such authority may not be redelegated.
- 2) The Chancellor shall submit revisions to school Implementing Procedures within the limitations of the Plan to the President or the President's designee for approval. Such authority may not be redelegated.

- 3) The Chancellor shall approve exceptions to the provisions of the Plan to meet special teaching, research, or clinical service requirement.

**670-80 Procedures/Review Procedures**

**a. Annual Notification**

Once per fiscal year, the Department Chair or Unit Head shall provide each member of the Plan a written notification of the member's total annual compensation. This notification shall include:

- 1) The amount of UCRP-covered salary (X, and if applicable, X');
- 2) Which HSCP Salary Scale has been assigned to the Plan member's APU (X, X');
- 3) The amount of negotiated additional compensation (Y); and
- 4) The payment schedule for Incentive/Bonus compensation (Z) payments and the departmental and/or school assessment policy for Z payments.

**b. Implementation**

- 1) Revisions to school Implementing Procedures that are necessitated by revisions to the Plan shall be submitted for the President's or the President's designee's review within one year of approval of said Plan revisions. School Implementing Procedures may be made effective as of the effective date of such revisions to the Plan, or at any time thereafter, as authorized by the President or the President's designee.
- 2) The Dean is responsible for implementing and administering the school Plan, including the resolution of complaints and appeals.

## **Appendix A Philosophy**

Health Sciences education occupies a special place in American higher education with unique functions and responsibilities. In health sciences education, the orientation to clinical practice, essential to the teaching function, requires an emphasis on sophisticated patient care, in addition to an emphasis on research and the advancement of knowledge. In medicine, dentistry, nursing, pharmacy, and other health sciences education as well, clinical teaching is integrated with basic and applied research. The University of California is committed to excellence in instruction, research, and public service in the health sciences just as it is committed to the same goals in other academic disciplines. Health sciences faculty members are expected to act as professional role models for all. As a public university in California authorized to grant professional doctoral degrees in the health sciences, the University has a responsibility to the State, the public, and its students to maintain the breadth and depth of its curricula, the creativity of its research efforts, and the quality of its health care services.

To ensure the level of excellence essential in the University of California, special effort must be exerted to recruit and retain the best and most dedicated faculty. Special compensation plans have been established over the years to provide for quality across academic programs in the health sciences disciplines. These health sciences compensation plans must offer a competitive salary structure indispensable to the health sciences schools' recruitment and retention efforts.

Health sciences disciplines require varying compensation levels in order to remain competitive with comparable schools elsewhere in the United States. However, because University health sciences schools share some common needs and operating requirements, the University has developed a uniform Health Sciences Compensation Plan to govern compensation arrangements and account for compensation plan income to the University's Schools of Medicine, Dentistry, Nursing, Pharmacy, and other health sciences units as deemed appropriate by the President or the President's designee.

Health sciences compensation plans must be clear and justify calculation of compensation and contain a mechanism for impartial review to protect the rights of individual faculty.

The Health Sciences Compensation Plan is approved, amended and repealed by and under the authority of The Regents of the University of California. Through the Plan, compensation is set as a part of the employment relationship, and as a consequence, the level of compensation and the terms and conditions of the Plan may be amended or repealed at any time by the President, following consultation with the Health Sciences Chancellors, Deans, and the appropriate Academic Senate Committee(s).

SALARY ADMINISTRATION  
Health Sciences Compensation Plan

APM - 670

The implementation, administration and continued operation of this Plan shall be contingent on the understanding and assurance that it will not require the expenditure of more State-appropriated funds in the University budget than operation without the Plan would require.

**Appendix B**  
**Campus Accounting and Budgeting Methods**

a. **Management and Reporting of Professional Services Income and Expenses**

1) University Management

All professional services income generated by Compensation Plan members shall be considered revenue of the University; the only exception to this requirement shall be income which the Plan participant is allowed to retain in accordance with APM - 670-19. All compensation paid by the University to Plan members will be subject to Federal and State withholding and reported on a W-2 form as wages in accordance with Internal Revenue Service (IRS) Regulations and University policies and procedures. All compensation must be included in the employee's income as wages subject to withholding for applicable Federal, State and FICA taxes. Eligibility and withholding for benefits (such as the University of California Retirement Plan, Retirement Savings Programs and employee life insurance programs) will be determined based upon the University's policies and procedures. School Implementing Procedures shall include billing and accounting procedures necessary to assure accountability for all funds. All financial transactions shall be approved, documented, and otherwise processed or executed in accordance with University policies, procedures and delegations of authority.

- a) Professional fee billing and collection activities shall be conducted by University billing groups, by external vendors with which the University has contracted, or as otherwise permitted by University procedures. All such fees shall be deposited upon receipt by the University or by an external vendor in a University bank account established in accordance with University delegations of authority.
- b) Contracts with external billing vendors shall be processed and executed in accordance with delegated authority and University purchasing policies and procedures. They shall contain standard University-approved clauses, be subject to audit, and provide for monthly transmission of billings and receipt information to the University. Specific University-wide regulations may be developed for such contracts as needed to assure that funds are accounted for, safeguarded, and appropriately managed.

2) Reports

The accounting standards specified in the University of California Accounting Manual must be used in reporting income and expenses in all compensation arrangements.

b. **Accounts and Sources**

Each campus shall establish one or more school Compensation Plan account(s) in the financial accounting records for the campus or, with the approval of the Chancellor on recommendation of the Dean, an account for each such unit participating in this Plan; may also be established at the department and divisional level. Plan income from the following sources should be recorded in these accounts:

- 1) Income from professional services.
- 2) Amounts paid by University hospitals or affiliated institutions for professional and managerial services rendered to the hospitals by participants in the Plan, excluding stipends in APM - 670-18-c(3).
- 3) Such other funds as are required by the Chancellor or President or the President's designee to be included in fund accounts.

Certain other sources of University income may be available to support faculty compensation and benefits but are not recorded in Compensation Plan accounts, such as:

- 1) Funds made available for salaries from University-administered grants and contracts.
- 2) Funds made available from unrestricted, non-State fund accounts within the school.
- 3) Gifts and other funds available for such purposes, as allocated by the Dean or Chancellor.

c. **Assessment of Professional Services Income**

To aid in the administration, budgeting, and allocation of professional services income, gross Plan income shall be assessed using a rate(s) annually recommended by the Dean and approved by the Chancellor for each school or department. The income categories specified in APM - 670-19 are not subject to assessment.

d. **Contingency in Event of Inadequacy of Health Sciences Fund Accounts**

School Implementing Procedures shall require the establishment of one or more reserve account(s) and shall specify whether such reserve account(s) will be established at the school, department, or division. The purpose of the reserve(s) is to

provide the funds necessary to pay Plan expenses, including the agreed-upon compensation to each Plan participant, in the event that the current year income of the Plan is insufficient to do so. If the funds in the appropriate reserve account are insufficient for the purpose, the Chancellor may seek support from another non-State account(s) within the school. If such support is not forthcoming, then the campus will reduce the participants' additional compensation in a uniform manner in accordance with any fund source restrictions across the school, department, or division, as determined by the Chancellor.

Although funds may be transferred from one account to another within a health sciences school in accordance with University accounting and budgeting policies and procedures, accounts on each campus shall be maintained as financially independent for administrative purposes.

e. **Budgeting**

Subject to approval by the Chancellor on recommendation of the Dean, each campus shall develop a process to annually budget for and monitor expenditures from the Health Sciences Compensation Plan accounts. Expenditures shall be budgeted for and funded in the following order of priority:

- 1) Clinical practice operating expenses, defined as costs incurred by the University for billing and collection of fees for clinical services; for faculty use of University-owned and/or -leased practice facilities; and for related professional operating activities.
- 2) To the extent that funds remain after expenditures for clinical practice costs indicated in 1), above, compensation may be paid to eligible participants in the Plan. Base salary and related benefits, including any required contribution on behalf of University of California Retirement Plan covered compensation, shall be funded before additional compensation.
- 3) To the extent that funds remain after the foregoing expenditures, benefits costs approved in accordance with APM - 670-20 may be paid.
- 4) To the extent that funds remain after all the foregoing expenditures, funds shall be contributed to the reserve(s) for contingencies in an amount recommended by the Dean and approved by the Chancellor.

- 5) When a health sciences account has accumulated a surplus beyond that required for expenditures and reserves as provided in all the above categories, the surplus shall be used as follows:
  - a) At least one-half may be used for academic purposes in the department or division of origin (including but not limited to salaries for support personnel) as recommended by the Chair and approved by the Dean; and
  - b) The remainder may be used for other purposes in the school or campus as recommended by the Department Chair and the Dean and approved by the Chancellor.

# Exhibit 3

**University of California San Diego  
School of Medicine & School of Pharmacy**

**Implementation Procedures for the  
Health Sciences Compensation Plan APM 670**

**&**

**Conflict of Commitment and Outside Activities of Health Sciences Compensation  
Plan Participants APM 671**

**1. INTRODUCTION**

1.1 The University of California San Diego School of Medicine and the Skaggs School of Pharmacy and Pharmaceutical Sciences (“UCSD”) hereby amends the implementation procedures (the “Implementation Procedures”) for the Health Sciences Compensation Plan (the “Plan”) as jointly developed and approved in accordance with the Plan as approved in July 2012 and the Guidelines on Occasional Outside Professional Activities by Plan Participants (the “Guidelines”) as approved by The Regents of the University of California in July 2014. The Implementation Procedures supplement the Plan. Department compensation plan procedures (“Department Procedures”) shall be developed in accordance with the Implementation Procedures. All Department Procedures must be reviewed and approved by the Vice Chancellor for Health Sciences (the “VCHS”) and the applicable School Dean before implementation.

1.2 The Plan and the Implementation Procedures will be used in each Department to foster academic balance among the joint responsibilities of teaching, research, patient care, and other public service responsibilities. Individual levels of compensation will be established so as to maintain this academic balance and to permit the recruitment and retention of the individuals necessary for each School to fulfill its missions at a level of excellence.

1.3 Plan participants may engage in occasional outside professional activities other than patient care and retain the related income only in accordance with the Guidelines and Implementation Procedures. Outside professional activities must be undertaken in a manner consistent with the faculty member’s professional obligations to the University. Outside activities must not conflict with the faculty member’s obligations to students, colleagues, or to the University as a whole. In order to fulfill those obligations, faculty members must maintain a significant presence on campus, meet classes, keep office hours, hold examinations as scheduled, be accessible to students and staff, be available to interact with University colleagues, and share service responsibilities throughout every quarter or semester of active service. The Implementation Procedures are annexed to this document as Appendix A.

1.4 In addition to the Implementation Procedures, Plan participants are also subject to the requirements of other University policies including: (i) the University’s Conflict of Interest Code, adopted pursuant to the requirements of the Political Reform Act of 1974, which requires designated University employees to disqualify themselves from participating in University decisions in which they have a personal financial interest and (ii) the Policy on Requirements to Submit Proposals and to Receive Awards for Grants and Contracts Through the University. A faculty member’s compensated outside activities may create an obligation for the faculty member to disclose a financial interest before making or participating in certain University decisions. Department Procedures must reference the University’s Conflict of Interest Code, adopted pursuant to the requirements of the Political Reform Act of 1974 (see web site <http://coi.ucsd.edu>). Faculty can obtain information on the disclosure and disqualification requirements of the Political Reform Act of 1974, including the Academic Decision Regulation, from the campus Conflict of Interest Office.

**2. REVIEW AND APPROVAL RESPONSIBILITY**

2.1 The Implementation Procedures are developed to be consistent with the policy framework of the Plan. Affected Plan participants shall be afforded the opportunity to review and comment on any proposed revisions to the Implementation Procedures. This will include consultation with the joint School of Medicine and

the Skaggs School of Pharmacy and Pharmaceutical Sciences Compensation Plan Advisory Committee (the “Advisory Committee”), as well as the Faculty Council. School Deans, the Vice Chancellor for Health Sciences (the “VCHS”), the Chancellor, and the President or the President’s designee shall approve all revisions. The VCHS shall administer local implementation. All Department Compensation Procedures shall be reviewed and approved by the applicable Dean and VCHS prior to implementation.

2.2 The Chancellor may approve individual exceptions to provisions of the Plan and to the Implementation Procedures to meet special teaching, research, public service, or clinical service requirements. Such exception requests shall be proposed by the appropriate Chairperson and approved by the applicable Deans, the VCHS and the Chancellor. The Advisory Committee shall be provided with the opportunity to review and comment on any such proposed exceptions prior to forwarding the exception request to the Chancellor.

2.3 Good Standing. Good standing criteria shall be established in writing by each department and included in the Department’s Compensation Plan Procedures. Good standing criteria are subject to review by the Advisory Committee in accordance with Section 5 herein, and they must be approved by the applicable Dean and the VCHS. Good standing criteria might include, for example, requirements for clinical coverage, teaching obligations, participation in departmental and University activities, and revenue generation. Plan participants must satisfy the good standing criteria in order to be allowed to earn and/or retain income from professional activities. Reasons for loss of good standing might include, for example, loss of clinical privileges, instances of misconduct, loss of licensure and/or credentialing, non-compliance with required training, refusal to teach, or lack of quality in assigned teaching or administrative duties. Any faculty member who is not in good standing shall be notified in writing by the Department Chair of the reasons for that determination. Faculty who believe the good standing criteria have been applied unfairly may appeal to the Advisory Committee. The Advisory Committee will hold a hearing and issue a recommendation to the VCHS for a final decision regarding whether or not the faculty member has fallen out of good standing. A determination that a faculty member is not in good standing may affect the amount of negotiated additional compensation and/or incentive/bonus compensation that the faculty member may earn. It may also affect their ability to engage in outside professional activities. Faculty who are not in good standing must obtain advance approval from the Department Chair to engage in any unassigned professional activities, and income from all such activities shall accrue to the Plan, not the Plan participant. In order to return to good standing, a faculty member must submit a plan for demonstrating compliance to the department chair and must file a petition with the department chair and VCHS to restore approval to earn and retain income from outside professional activities.

2.4 Department Chairs are responsible for ensuring that all new and continuing eligible Plan members receive a copy of the Plan, these Implementation Procedures, and any related Department Compensation Plan Procedures.

### **3. MEMBERSHIP IN THE PLAN**

3.1 Health Sciences faculty shall be members of the Plan if they hold University funded appointments at greater than 50 percent time in Health Sciences departments in any of the following professorial series: Professor, Professor In-Residence, Professor of Clinical \_\_\_\_\_ (e.g., Medicine), Adjunct Professor, Acting Professor, Health Sciences Clinical Professor, Visiting Professor, Dean, and other titles approved by the President.

3.2 Faculty members who are otherwise eligible for the Plan, as defined above, but who have appointments of 50 percent or less of full-time, may participate in the Plan upon the recommendation of the Department Chair and approval by the applicable Dean(s) and VCHS. Department Procedures should specify when membership in the Plan is required for faculty whose University-funded appointment is 50 percent or less of full-time.

3.3 As per the provisions of APM 205, retired faculty members who are recalled at a salary rate greater than base salary (X, X’ plus Y and/or Z), regardless of percentage effort, are required to be members of the Plan. As members of the Plan, all of the terms and conditions of the Plan apply.

3.4 If the faculty position is funded by two or more Health Sciences departments, the faculty member shall be subject to the Department Compensation Plan Procedures in which the preponderance of her/his academic activities occurs. Exceptions to this policy must be recommended by the relevant Department Chair(s) and must be approved by the applicable Dean(s) and the VCHS.

3.5 By statutory requirement and associated Regental policy, membership in the Plan is a term and condition of employment. Department Chairs are responsible for ensuring that all new and continuing eligible Plan members receive a copy of the Plan, the Implementation Procedures, and any related Department Compensation Plan Procedures.

3.6 Payment under the Health Sciences Compensation Plan will be made directly to the Plan participant in his/her individual capacity, and will not, absent prior approval from the President or the President's designee, be made to any professional corporation or other legal entity maintained by the participant.

#### **4. COMPENSATION-RELATED IMPLEMENTATION PROCEDURES**

4.1 Components of Compensation: Faculty members participating in the Plan shall receive base salary as described in Section 4.1.1 and may be eligible for optional additional compensation as described in Section 4.1.2 and be permitted to retain the other miscellaneous income as described in Section 4.1.3. No State funds shall be used for any component of compensation beyond the University's Fiscal Year Salary Scale applicable to the Plan member's rank and step (i.e., beyond Scale 0, which is the X component only). Compensation above the Fiscal Year Salary Scale 0 (X only) level shall be funded from Compensation Plan funds and other appropriate non-State funds, and in compliance with any associated fund source restrictions.

4.1.1 Base Salary and APU's. Base salary for an individual Plan member refers to that portion of salary associated with that faculty member's academic rank, step and Academic Program Unit ("APU"). Every APU will be annually assigned to a Health Sciences Compensation Plan Salary Scale (i.e., any of the scales between Scales 0 through 9). Each Salary Scale delineates a specific amount for each rank and step. Scale 0 equals one times the University's Fiscal Year Salary Scale (X only). Scale 9 equals 2.25 times X, and the Scales below 9 are at lesser multiples of X only. APUs shall be proposed, and the basis for their creation explained, by the Chairperson, and approved by the applicable Dean(s) and VCHS. An APU must be a group of faculty with similar clinical, teaching and/or research responsibilities. The VCHS must receive advanced approval from the Chancellor or the Chancellor's designee for an APU comprising fewer than four members. The request for approval shall include criteria for composition of the APU, and the name, series, rank, and step of each member. No individual faculty member may be moved from one APU to another without a significant change in duties or a change in department. Department Chairs shall report annually to the Dean the name of any faculty member who has moved from one APU to another and the reason for the transition. The base salary is considered covered compensation under the University of California Retirement Plan (UCRP), up to the amount permissible under law, and in accordance with UCRP provisions and regulations. Mid-year adjustments in APU salary scales are not permitted. The differential between X (Scale 0) and the faculty member's rank and step on the HSCP Salary Scale assigned to the faculty member is designated as X Prime (X').

4.1.2 Optional Additional Compensation. Additional negotiated compensation (Y) and/or incentive bonus compensation (Z) may be paid in accordance with the following requirements and approved Department Procedures:

4.1.2.1 Negotiated Additional Compensation (Y). Additional compensation beyond base salary may be negotiated annually with the Division Head or Chair, as specified by the Department of each Plan member. The Department Chair will propose negotiated additional compensation, and it will be subject to approval by the VCHS. This additional negotiated compensation is called "Y." Y will be paid to faculty through the University payroll system; will be subject to Federal and State withholding, and will be reported on a W-2 form as wages. Mid-year renegotiation of Y is permitted only under unusual circumstances and with the approval of the VCHS. This component of pay is beyond the base salary and is not currently covered compensation under the University of California Retirement Plan ("UCRP").

4.1.2.2 Incentive/Bonus Compensation (Z). Incentive Bonus Compensation may be earned in addition to Base and Negotiated Additional Compensation. Z is not covered compensation under the UCRP. Z compensation will be paid to faculty through the University's payroll system, is subject to Federal and State tax withholding, and will be reported on a W-2 form as wages. Z compensation may be paid on a monthly, quarterly, semiannual, or annual basis, as specified in department compensation plan procedures, and may be based on clinical, consulting or other miscellaneous earnings. The Department Compensation Plan Procedures must be approved by the Dean(s), as well as the VCHS, and shall describe how Z compensation will be calculated and when it will be paid.

4.1.2.3 Administrative Stipends. Plan members may receive administrative stipends, defined as payments by the University for responsibilities related to University administration beyond normal responsibilities.

4.2 Annual Negotiation Process and Department Procedures. Plan participants shall annually negotiate their salary with their Division Head or Chairperson in accordance with Department Procedures. The negotiation and approval process used in each unit shall be specified in the Department Procedures, which are subject to approval by the Dean(s) and VCHS. Additional compensation will be paid in accordance with the applicable University, campus and Department Procedures during sabbatical leave, vacation leave, sick leave, or other leave with salary. Each department shall develop Department Procedures that detail good standing criteria; the Base Salary scale; the manner in which Additional Compensation is negotiated; and the methodology for calculating Incentive/Bonus Compensation (when applicable) and the frequency of payments; department requirements on occasional outside professional activities; the policies regarding paid and unpaid leaves (including paid leave for disability) and sabbaticals. These Department Procedures shall be approved by the Dean(s), as well as the VCHS, and may be altered only on July 1st, of each fiscal year. Each department must ensure that Plan participants have an opportunity to review and comment on proposed Department Procedures, and any significant modification of such Procedures. Revisions must be reviewed and approved by the Dean. Department Procedures may be more, but not less, restrictive than the Plan and must be consistent with the Implementation Procedures. By July 1 of each fiscal year, each faculty member of the Plan shall receive, in writing from his/her Department Chair or Division Head, a statement of proposed compensations for the forthcoming period July 1 - June 30. Base salary, additional compensation, and the methodology for calculating incentive compensation will be detailed.

4.3 Procedures Applicable To Termination of Employment Circumstances. In the event of termination of employment, any outstanding account receivables will be treated in accordance with the compensation arrangement of the individual faculty member, but all receivables will be the property of the University. Receivables for those with Optional Incentive/Bonus Compensation will be handled in accordance with Department Procedures. All compensation, including any compensation calculated based on any outstanding account receivables, must be paid through the University of California payroll system.

4.4 Assessments Applicable To Professional Fees And Outside Professional Income Not Retained. A School assessment on gross professional fee collections (the "Dean's Tax"), used to pay overhead and operational expenses, will be collected monthly. The rate used to calculate the School's assessment will be recommended by the Dean and approved by the Chancellor. Department Procedures may levy assessments beyond the School assessments for the purpose of funding department operating expenses (the "Department Tax"). Department faculty shall be provided an opportunity to review and comment on proposed changes to department assessments.

## **5. COMPENSATION PLAN ADVISORY COMMITTEE**

5.1 The Advisory Committee will assist the VCHS in resolving issues on outside professional activity. The Faculty Council will nominate and elect faculty to fill four positions on the Advisory Committee. At least one elected faculty member must have a Ph.D. The VCHS will appoint four additional members, at least one of whom must have a Ph.D. If none of the elected Advisory Committee members are from the Skaggs School of Pharmacy and Pharmaceutical Sciences ("SSPPS"), one of the VCHS-appointed Committee members must be from SSPPS.

5.2 Both the elected or appointed Advisory Committee members are limited to four consecutive one year terms, and initial terms will be staggered to ensure continuity. The Advisory Committee's functions include: advising the VCHS on these Implementation Procedures and department good standing criteria; the processes for developing Departmental Implementing Procedures, including methods for obtaining faculty input and for determining consistency with School Implementing Procedures; and mechanisms for hearing faculty grievances with regard to the implementation of administration of these Implementation Procedures. The Advisory Committee shall meet at least annually with representatives of at least four Medical School departments to review Departmental Procedures for compliance with outside activity guidelines, and every department of the School should be reviewed at least once every four years.

## **6. COMPLAINTS AND APPEALS PROCEDURES**

6.1 Faculty who have complaints about issues related to provisions of the Plan or its implementation in their unit should first try to have the issues resolved at the unit level. If the complaints cannot be resolved through such discussions, the faculty member's complaints and the Department Chair's response should be memorialized in writing. If the faculty member is dissatisfied with the department's decision, he or she should file a formal complaint with the Assistant Vice Chancellor for Faculty Affairs. The Assistant Vice Chancellor for Faculty Affairs will undertake fact-finding and will then present the case for consideration to the Advisory Committee. Both the complainant and the complainant's chair (or designee) will have the right to be heard by the Advisory Committee. The Advisory Committee will issue a formal recommendation for consideration by the applicable Dean(s), and then the VCHS for final decision. If the faculty member is dissatisfied with the VCHS' decision, she or he can pursue administrative remedies through applicable University academic personnel processes.

6.2 To ensure that the formal complaint process is fair and impartial, Advisory Committee members shall excuse themselves from deliberation on any single complaint if the Advisory Committee member has already participated in an administrative review of the action being considered in the grievance process or if there is a conflict of interest.

## **7. DISCIPLINARY ACTION RELATED TO IMPLEMENTATION PROCEDURES**

7.1 The University reserves the right to take corrective action and disciplinary measures against any Plan member who violates, neglects, or manipulates Compensation Plan requirements, subject to normal academic personnel policies and rules. Department Chairs(s) must notify the AVC Faculty Affairs if they believe a Plan participant has violated, neglected, or manipulated Compensation Plan requirements. Any Plan member being subjected to corrective actions will be so informed in writing by an appropriate University official at least thirty days in advance of the implementation of the action or measure. Situations where Plan members will be considered out of compliance include, but are not limited to, failure to turn over income due to the Plan as required by the Implementation Procedures and failure to accurately disclose and describe the nature and scope of outside professional activity as required by the Implementation Procedures.

7.2 The Advisory Committee will review disputes about corrective action related to the Implementation Procedures and make recommendations to the applicable Dean and the VCHS. Corrective action refers to termination of certain privileges available to Plan members, including the opportunity to earn and receive compensation above the fiscal year salary scale through the Plan, because of noncompliance. For example, corrective action may include incentive or bonus compensation (Z) termination until such time as a Plan member complies with the Plan provisions, or adjustment of negotiated compensation (Y), both with consideration of the Plan member's prior performance and compliance with these Implementation Procedures and Department Compensation Plan Procedures. Compensation established in accordance with the specialized Health Sciences Salary Scales (or base salary) shall not be reduced as a corrective action unless the Plan member is placed, by Chancellorial exception, on the fiscal year salary scale. Whenever a reduction in compensation is a result of corrective action related to outside activities, the faculty member will be so notified in writing. Corrective action will not preclude sanctions or disciplinary measures in accordance with the Faculty Code of Conduct or Academic Senate Bylaws (see <http://academicaffairs.ucsd.edu/offices/apo/>). Violations by Plan members of either the time

limit or approval limits on outside professional activities represent an unauthorized use of University resources or retention of funds belonging to the University. Such violations are subject to discipline in accordance with the Faculty Code of Conduct. Academic Senate members subject to corrective action under these Procedures have available to them a grievance process through the Privilege and Tenure Committee as described in the San Diego Division of the Academic Senate's Bylaw 230. (<http://www-senate.ucsd.edu/manual/SDBYLAWS.RV2.HTML#BYLAW230>). Other faculty may file a grievance under Academic Personnel Policy 140 (<http://www.ucop.edu/academic-personnel/files/apm/apm-140.pdf>)

## 8. BENEFITS

8.1 Base Salary-Related Benefits. Base Salary-Related Benefits are associated with an individual's salary from one of the Health Sciences Salary Scales (APU Scales 0 through 9), paid through the University of California payroll system. These benefits include participation in the UCRP, health care insurance, disability insurance, regular term life insurance, and other benefits as may be approved by The Regents. Base Salary benefits will be available to faculty members who are members of this Plan on the same basis as to all other members of the University's faculty. No State funds shall be used for any portion of benefit expenses applicable to compensation above Fiscal Year salary (Scale 0). Any required contribution to the Health Sciences retirement reserve fund on the portion of Base Salary above Scale 3 cannot be charged to State funds, and will be charged to the appropriate department/division Medical School fund account.

8.2 Optional Benefit Programs. The Regents have authorized disability and life insurance benefit programs related to health sciences additional compensation beyond base salary. These programs must be approved by the Office of Human Resources, Office of the President. Policies governing optional disability and life insurance programs on additional compensation are available from that office.

8.3 Leaves. Plan members who are eligible for sabbatical leave or other leaves with salary, including parental leave may be granted such leave at a compensation rate above the Health Sciences Scales Base Salary rate. Department Procedures must specify the salary rate(s) that will be used for calculating compensation during paid leaves. The possible rates that may be used are: 1) Health Sciences Scale Base Salary (X, and, if applicable, X' + Y') and/or 2) total negotiated salary (Base plus additional negotiated compensation). Each department's Implementation Procedures shall include provisions for Plan members who are eligible for sabbatical leave or other leaves with salary, including parental leave, to ensure that such benefits are provided uniformly within departments and/or divisions. No department may offer faculty benefits beyond those approved by The Regents for faculty members in the University.

8.3.1 Extended Illness Leave. Extended illness is defined as a health condition resulting in absence for more than two weeks. Plan Participants who are unable to work for reasons of extended personal illness, injury or disability shall be granted paid medical leave of a minimum six (6) weeks consecutive or intermittent paid medical leave at the Plan Participant's approved base salary. Extended illness must be documented as a leave with pay on a *Leave of Absence* form. Department/Unit guidelines must provide a minimum of six weeks of salary at the covered compensation (X, and, if applicable, X' + Y') rate, must specify the salary rate(s) (e.g. X, and, if applicable, X', Y'+Y) that applies during paid leave(s), the maximum duration of leave provided, and any documentation requirements. In addition, eligibility for successive paid extended illness leave must be articulated in the guidelines. Departments/Units may provide a graduated benefit depending upon the years of faculty service.

8.3.2 Childbearing Leave. Childbearing leave is for a Plan Participant who bears a child or children regardless of academic series or months of service. Childbearing leave shall consist of time the Plan Participant is temporarily disabled because of pregnancy, childbirth, or related medical conditions. A minimum of six weeks of full salary (X, and, if applicable, X', Y' + Y) shall be covered. Guidelines must specify the salary rate and duration of any additional paid leave. A Plan Participant who bears a child is also eligible for childrearing/parental leave without pay and a period of Active Service-Modified Duties (*See* APM 760-28).

8.3.3 Childrearing/Parental Leave with Pay. Guidelines must provide a minimum of two weeks childrearing/parental leave at full salary (X, and, if applicable, X', Y'+Y) to any non- birth parent who is a Plan Participant. Guidelines may not provide more childrearing/parental leave with pay than childbearing leave with pay. Childrearing/Parental leave with pay must be used within 12 months of the birth or adoption.

8.3.4 Childrearing/Parental Leave without Pay. Plan Participants are eligible for full-time or part-time parental leave without pay for up to 12 months to care for a child. At the Plan Participant's request, accrued vacation shall be substituted for unpaid parental leave. Childrearing/Parental leave without pay must be used within 12 months of birth or adoption.

## **9. CAMPUS ACCOUNTING METHODS AND INDIVIDUAL ACCOUNTABILITY**

9.1 Management and Reporting of Income and Expenses. All professional fee income, except for the excluded categories listed under Section 4 above, will be managed, accounted for and reported as revenue of the University, and must be deposited into the revenue account of the appropriate Departmental Compensation Plan fund (funds numbers 60XXX). All income paid to faculty will be subject to Federal and State withholding and reported on a W-2 form as wages. For consulting and other payments not authorized for direct retention, but which are made directly to the faculty member and are owed to the Plan, the check should be endorsed payable to The UC Regents and deposited in the same revenue accounts. A receipt for each such deposit should be provided to the faculty member, along with any other requested documentation the faculty member may need in conjunction with the filing of his/her personal income tax submission. All financial transactions shall be approved, documented and otherwise processed or executed in accordance with University policies, procedures and delegations of authority. In accordance with the Plan, all professional fee billing and collection activities shall be conducted by a University billing group or by an external vendor which has been approved by the UCSD Medical Group and the Dean's Office. All billing and collection services for external vendors shall be detailed in a written agreement. Agreements with external vendors shall follow guidelines developed by the Office of the Controller, Office of the President. Regardless of the billing agent, all professional fees shall be deposited directly into an authorized University bank account. Contracts with approved external billing agents shall utilize the standard UCSD billing agreement form with appropriate approval by the Medical Group, Dean's Office and the Materiel Management Department. The accounting standards specific in the University of California Accounting Manual must be used in reporting income and expenses in all Plan matters.

9.2 Fund Accounts and Sources. Compensation Plan fund accounts shall be structured so that each department has at least two distinct Funds: a current-year operations fund and a prior-year fund to which accumulated surpluses will be transferred.

9.3 All income from professional services, University and affiliated institutional, professional or management services performed by Plan participants and other funds as required by the Chancellor shall be appropriately recorded in such accounts.

9.5 Contingency in Event of Inadequacy of Medical School Fund Accounts. Although the Plan allows for the transfer of funds from one fund account to another, the customary practice at UCSD will be to preserve the financial autonomy of each department by maintaining separate departmental fund accounts. The purpose of the reserve(s) is to provide the funds necessary to pay Plan expenses, including the agreed-upon compensation to each Plan participant, in the event that the current year income of the Plan is insufficient to do so.

9.6 Budgeting. Each department shall develop and submit to the Dean each year an annual budget projecting income and expenses for departmental Plan funds as a part of its annual faculty salary budget submission. Except where accumulated surpluses are being used to support an extensive growth phase, it is expected that revenue will always be adequate to support anticipated expenses. Departments should clearly indicate the funding mechanism for all benefits provided under the provisions of the Plan. Funding clinical practice operation expenses shall have the highest priority, followed by compensation and benefit plans for participants. Each department may have an assessment rate for each which is approved by the applicable Dean and applied against gross professional fee collections; capitation payments; clinical service agreement income; and expert witness fee and consultant

income (beyond that which faculty can retain under provisions of Section 9.4) and will be used to pay clinical practice operations expenses. Each department is expected to maintain a reserve for contingencies in an amount acceptable to the Dean. These reserves will be used for such academic purposes as funding necessary renovation projects, recruitment expenses, or unfunded research expenses, and as a security for emergencies. In the event a department has accumulated a surplus beyond that required as a reserve, it is expected that these funds will be used to enhance the department's academic program or to develop new programs as recommended by the Chair and approved by the Dean. Fund balances will be monitored monthly by the Dean's Office.

## **10. IMPLEMENTATION AND TRANSITION ARRANGEMENTS**

10.1 These campus procedures are effective July 1, 2013 to comply with the Plan approved by The Regents in July of 2012, and supersede any previous implementation. In order for UCSD to meet the Plan requirements of these Implementation Procedures, each department shall submit to the Dean(s) and VCHS annual data on Departmental Clinical Compensation Plan operations and fiscal projections of costs and of sources of proposed funding for departmental fund accounts.

## **11. DISCIPLINARY ACTION RELATED TO IMPLEMENTATION PROCEDURES**

11.1 The University reserves the right to take corrective action and disciplinary measures against any Plan member who violates, neglects, or manipulates the Health Sciences Compensation Plan or the implementing procedures on outside professional activities requirements. Department Chairs(s) must notify the AVC Faculty Affairs if they believe a Plan participant has violated, neglected, or manipulated these requirements. Any Plan member being subjected to corrective actions will be so informed in writing by an appropriate University official at least thirty days in advance of the implementation of the action or measure. Situations where Plan members will be considered out of compliance include, but are not limited to, failure to turn over income due to the Plan as required by campus Implementing Procedures and failure to accurately disclose and describe the nature and scope of outside professional activity as required by the campus' Implementing Procedures. The Advisory Committee will review disputes about corrective action related to the Implementation Procedures and make recommendations to the applicable Dean and the VCHS. Corrective action refers to termination of certain privileges available to Plan members, including the opportunity to earn and receive compensation above the fiscal year salary scale through the Plan, because of non-compliance. For example, corrective action may include incentive or bonus compensation (Z) termination until such time as a Plan member complies with the Plan provisions, or adjustment of negotiated compensation (Y), both with consideration of the Plan member's prior performance and compliance with these Implementation Procedures and Department Compensation Plan Procedures. Compensation established in accordance with the specialized Health Sciences Salary Scales (or base salary) shall not be reduced as a corrective action unless the Plan member is placed, by Chancery exception, on the fiscal year salary scale. Whenever a reduction in compensation is a result of corrective action related to outside activities, the faculty member will be so notified in writing. Corrective action will not preclude sanctions or disciplinary measures in accordance with the Faculty Code of Conduct or Academic Senate Bylaws (see <http://academicaffairs.ucsd.edu/offices/apo/>). Violations by Plan members of either the time limit or approval limits on outside professional activities represent an unauthorized use of University resources or retention of funds belonging to the University. Such violations are subject to discipline in accordance with the Faculty Code of Conduct. Academic Senate members subject to corrective action under these Procedures have available to them a grievance process through the Privilege and Tenure Committee as described in the San Diego Division of the Academic Senate's Bylaw 230. <http://senate.ucsd.edu/Operating-Procedures/Senate-Manual/Bylaws/230>. Other faculty may file a grievance under Academic Personnel Policy 140 <http://www.ucop.edu/academic-personnel/files/apm/apm-140.pdf>

## APPENDIX A

### **CONFLICT OF COMMITMENT AND OUTSIDE ACTIVITIES OF HEALTH SCIENCES COMPENSATION PLAN PARTICIPANTS APM 671**

#### **1. ELIGIBILITY**

1.1 The University of California policy on conflict of commitment and outside activities and the disposition of income earned from outside professional activities provides guidance for the identification and management of outside professional activities in order to avoid conflicts of commitment, while assuring that Health Sciences Compensation Plan (the “Plan”) participants may engage in a wide array of outside activities without unnecessary limitations. This policy is specific to faculty members who are participants in the Plan.

1.2 Faculty who have retired and are recalled to active service for appointments at or less than 43 percent time and who are participants in the Plan are subject to the provisions of this policy. Faculty members who are not participants in the Plan are subject to the provisions of APM – 025.

1.3 Faculty who are approved for a leave without pay must comply with requirements for disclosure, prior approval, and annual reporting for outside professional activities and earnings during periods of leave without pay. Faculty who are on leave without pay are not subject to the time limits or earnings threshold of this policy.

#### **2. REVIEW AND APPROVAL RESPONSIBILITY**

2.1 These Implementation Procedures are developed to be consistent with the policy framework of the Plan. Affected Plan participants shall be afforded the opportunity to review and comment on any proposed revisions to the Implementation Procedures. This will include consultation with the joint School of Medicine and the Skaggs School of Pharmacy and Pharmaceutical Sciences Compensation Plan Advisory Committee (the “Advisory Committee”), as well as the Faculty Council. School Deans, the Vice Chancellor for Health Sciences (“VCHS”), the Chancellor, and the President or the President’s designee shall approve all revisions. The VCHS shall administer local implementation. All Department Compensation Procedures shall be reviewed and approved by the applicable Dean and VCHS prior to implementation.

2.2 The Chancellor may approve individual exceptions to provisions of the Plan and to these Implementation Procedures. Such exception requests shall be proposed by the appropriate Chairperson and approved by the applicable Deans, the VCHS and the Chancellor. The Advisory Committee shall be provided with the opportunity to review and comment on any such proposed exceptions prior to forwarding the exception request to the Chancellor.

2.2.1 Good Standing. Good standing criteria shall be established in writing by each department and included in the Department’s Compensation Plan Procedures. Good standing criteria are subject to review by the Advisory Committee as per the provisions of Section 5 herein and must be approved by the applicable Dean and the VCHS.

2.2.2 Only the Chancellor has the authority to approve any exception request that involves a Plan participant directly retaining earnings that exceed the limitation of \$40,000 or 40% of the fiscal-year Scale 0 salary, whichever is greater. In order to return to good standing, a faculty member must submit a plan for demonstrating compliance to the department chair and must file a petition with the department chair and VCHS to restore approval to earn and retain income from outside professional activities.

2.2.3 Department Chairs are responsible for ensuring that all new and continuing eligible Plan members receive a copy of the Plan, these Implementation Procedures, and any related Department Compensation Plan Procedures.

### **3. COMPENSATION RELATED IMPLEMENTATION PROCEDURES**

3.1 All income derived from patient care activity shall be paid into the Plan. Further, except for the income described below, other professional income related to the qualifications associated with the Plan member's Health Sciences appointment shall also be paid to the Plan. This includes income earned while on paid leave of absence, vacations, holidays, weekends, etc. Professional income, as used here, includes both cash and non-cash compensation (e.g., stock and stock options). Income due to the Plan must be deposited into the revenue account of the appropriate School's compensation plan fund. The following categories of income may be directly retained by the faculty member, subject to stated limitations:

3.1.1 Prizes. Defined as gifts in recognition of personal achievements and not for services rendered;

3.1.2 Royalties. Defined as shares of proceeds for contributions as authors or inventors, as allowed under the University's copyright and patent policies;

3.1.3 Honoraria. Defined as payments by agencies outside the University for occasional lectures and similar public appearances beyond normal academic responsibilities to the University of California and which are not in return for other services, whether given directly or indirectly;

3.1.4 University Honoraria. Defined as payment for occasional lectures or similar services performed on a University of California campus as permitted by Academic Personnel Policy;

3.1.5 Unrelated Income. Defined as income from a profession or activity unrelated to the training and experience that is the individual's qualification (e.g., M.D. or Ph.D. degree) for University appointment, as determined by the Department Chairperson in consultation with the Dean.

3.1.6 Administrative Stipends. Plan members may receive administrative stipends, defined as payments by the University for their responsibilities related to University administration beyond normal responsibilities.

### **4. INCOME FROM OCCASIONAL OUTSIDE PROFESSIONAL ACTIVITIES**

4.1 Some income that results from occasional service other than patient care to governmental agencies, work as a consultant to non-profit or for-profit entities, activity as an expert or professional witness, and participation in continuing education programs administered by the University may be retained, so long as the Plan member complies with the provisions set forth in Sections 5 through 10. Also, a Plan participant who has satisfied the good standing criteria established by his/her department, and who is in compliance with various limitations discussed in the following sections, is allowed to engage in outside professional activities other than patient care without prior approval (unless it is a Category I activity) from his/her Department Chair or, so long as his or her University obligations are satisfactorily met.

4.2 Faculty have the option of depositing income from outside professional activities into an Academic Enrichment Account. Academic Enrichment Accounts are established for the purpose of supporting the academic activities of the Plan Participant by allowing direct charge or reimbursement for business-related expenses. Funds allocated to an Academic Enrichment Account may be used to support University-approved academic professional activities that are allowed direct charge or reimbursable University-related business expenses of an individual Plan Participant consistent with University accounting guidelines.

To the extent he or she wishes to participate, by May 31 of each fiscal year each Plan Participant may make a written request to his/her Chair/Director with respect to one of the following options for allocation of income accumulated in the plan in excess of financial requirements. After review, and if approved by the Plan Participant's Chair/Director (which approval shall be in writing), such requested allocation will then remain in effect for the forthcoming fiscal year (July 1 – June 30). Changes are not permitted under any circumstances until the following

fiscal year.

Options:

***Option A: Z Payment***

Remaining income is paid as a “Z” payment on a [SPECIFY FREQUENCY – E.G., ANNUAL, QUARTERLY, MONTHLY] basis following the close of each [SPECIFY PERIOD AND DATES IF APPLICABLE – e.g., “QUARTER (MARCH 31, JUNE 30, SEPTEMBER 30, DECEMBER 31)”. A “Z” payment may be paid earlier in the [SPECIFY PERIOD] if the Plan Participant retires or separates from University employment or upon approval of the Chair/Director. ***Option A is the default option. It will be implemented each year for Plan Participants who do not select in writing and secure approval for another option (i.e., Option B or Option C, below).***

***Option B: Academic Enrichment Fund***

Remaining income is requested to be allocated to an AEF. Account funds may be used to support University-approved academic professional activities by reimbursing expenses that can be characterized as either: (1) an allowable direct charge or (2) reimbursable University-related business expenses incurred and documented consistent with University business and finance bulletins and accounting guidelines in support of the Plan Participant’s academic work. Once funds are allocated to an AEF, they may not subsequently be used for faculty salary support. If the Plan Participant retires or separates from University employment, the unexpended balance, if any, remains the property of the University. Funds may be allocated to an AEF under the conditions described more fully below in the Section titled Conditions Governing Allocations to AEFs.

***Option C: Designated Academic Enrichment Fund and Z Payment***

A defined part (flat dollar amount or percentage) of the remaining income is requested to be allocated to an AEF and the remainder is paid to the Plan Participant as a “Z” payment. Each part is subject to the restrictions described in Option A or Option B, as applicable.

Conditions Governing Allocations of Outside Professional Activity Income to Academic Enrichment Funds

- All or a portion of a Plan Participant’s academic outside professional activity income due to the Plan may be allocated to an AEF.
- On an annual basis, if allowed by his/her department/unit guidelines, a Plan Participant may submit a request to the Chair/Director that funds be allocated to an AEF for the forthcoming fiscal year (July 1 through June 30). **The request must be submitted in writing prior to May 31 (i.e., in advance of the forthcoming academic year)** and approved prior to implementation (i.e., by July 1<sup>st</sup>).
- A Chair/Director may submit a written request to the Dean’s Office to allocate funds for the upcoming fiscal year to an AEF. The Dean or the Dean’s designee must confirm his/her approval, if forthcoming, in writing.
- Disposition of the funds in an AEF is under the auspices of the department/unit. The Chancellor or the Chancellor’s designee, through the Chair/Director, has final authority over the use and distribution of funds held in an AEF.
- Once a request that funds be allocated to an AEF has been approved, the Plan Participant cannot change the designation of such funds.
- The department/unit must maintain detailed records that are readily available for audit and other appropriate reviews and support the allowable nature of the reimbursable academic professional expenses that are paid from the AEF. Plan Participants must submit all required supporting documentation for reimbursement consistent with University accounting guidelines. Unspent travel advances or any other disallowed amounts charged to the AEF must be repaid by the Plan Participant consistent with University accounting guidelines.
- An AEF can maintain a positive balance at the end of an academic year that may be carried forward to the next academic year, if approved by the Chair/Director, in his or her discretion. Disposition of year-end positive balance is communicated annually to the Plan Participant at the time requests for allocations to AEFs are made.
- In the event of termination of employment, any outstanding account receivables shall be treated consistent with the Plan Participant’s compensation arrangement. Specifically, receivables originated by Plan Participants without incentive/bonus compensation are the property of the University. AEF funds remain the property of the University. Receivables of Plan Participants with incentive/bonus compensation are handled in accord with

department/unit guidelines. All incentive/bonus compensation, including payments for outstanding account receivables, will be paid through the University's payroll system.

## **5. LIMITATION REGARDING NUMBER OF DAYS**

5.1 The number of days devoted to occasional outside professional activity cannot exceed 48 days per fiscal year. This limit on the number of days devoted to compensated outside professional activities applies regardless if they are conducted during the normal work week, on weekends, evenings, vacations, paid leaves, etc. For members of the Plan, activities that are not counted toward the 48-day limitation include: reviewing grants and manuscripts; serving on Study Sections; being an oral examiner for national specialty boards; and editing an academic journal. If it is necessary to exceed the 48-day limit in order to complete a specific outside professional activity, the entirety of such activity will require approval under Request For Exceptions below. It may be permitted if approved in advance by the VCHS if the amount of time beyond 48 days is reasonable as determined by the VCHS. A day of outside professional activity is defined based on common sense and customary practices of each department. The Department Chairs and faculty should exercise sound professional judgment when determining what constitutes a day of outside activity. Faculty should be prepared to provide, upon request, an explanation of the definition of a "day" used in preparing the required annual report as described below.

5.2 Plan participants must abide by the provisions of the Plan regarding both time and income limitations on outside professional activity. Failure to do so will result in submission by the VCHS of an issue/complaint to the Compliance Advisory Group (CAG). CAG will refer the complaint or issue for investigation. If the issue is confirmed, CAG will recommend in writing that the VCHS notify the faculty member in writing of the issue and the recommendation for remedying the issue. The faculty member will be given 30 days to comply or submit a plan for compliance. The department is responsible for follow-up. If the situation is not corrected, the VCHS shall send a second letter to the faculty member, who will receive 30 days' notice that action will be taken, which may include termination of any negotiated and/or incentive/bonus salary component(s). The faculty member will also be notified of an option to file a grievance with the Advisory Committee, which will hold a hearing and issue a recommendation to the VCHS for final decision. If the faculty member remains noncompliant and does not file a grievance with the Advisory Committee, corrective action may be taken. The faculty member must submit a petition to the department and the VCHS in order to restore approval to earn and retain outside professional compensation.

## **6. LIMITATION ON THE AMOUNT OF INCOME THAT CAN BE DIRECTLY RETAINED:**

6.1 The aggregate annual income from occasional outside professional activity that a Plan member may directly retain cannot exceed the approval threshold determined by the Provost, which is \$40,000 or 40% of the fiscal-year Scale 0 salary, whichever is greater for an individual faculty member's rank and step.

6.2 The total amount of income from occasional outside professional income that a Plan member may receive via his or her University paycheck is however not limited, although compensation a Plan member receives via his or her University paycheck is subject to normal academic personnel and budgeting processes. Also, outside activity income that passes through University accounts is assessed per Section IV. D. Directly retained income is not assessed. The value of non-cash compensation (i.e., stock, stock options, etc.) that a Plan member receives for occasional outside professional activity, on the day of receipt, must be counted toward limitations of retainable income discussed here. Each faculty member is responsible for maintaining a running total of his or her earnings from the outside professional activities. If a Plan participant wishes to engage in an activity that might reasonably be expected to cause his or her total annual earnings from outside professional activities to exceed the approval threshold, then the Plan participant must request approval to engage in the activity in accordance with the Exception Section below.

## **7. LIMITATION ON USE OF UNIVERSITY RESOURCES FOR OUTSIDE ACTIVITY**

7.1 The use of University staff, laboratories, facilities or other resources in connection with outside

professional activity is subject to limitation under the Faculty Code of Conduct. Academic Personnel Policy 015, Section II, Part II, C (see web site <http://www.ucop.edu/acadadv/acadpers/apm/apm-015.pdf>) lists the unauthorized use of University resources or facilities for personal, commercial, political and/or religious purposes as a type of unacceptable conduct. In general, when faculty retain income for professional consulting or expert witness activity, particularly when the activities are conducted for third party for-profit entities or private individuals, the cost associated with the consulting or witness activities shall be borne by the third party or the faculty member, not by the University. In addition, the University's liability coverage does not extend to certain faculty consulting and expert witness activities. For example, University malpractice/professional liability coverage does not generally extend to expert witness activities when the faculty member retains the related income (See UC Business and Financial Bulletin, BUS-9, Professional Medical & Hospital Liability Self Insurance Program at <http://policy.ucop.edu/doc/3520505/BFB-BUS-81> for more information). Questions about the appropriate use of University resources and coverage under University liability programs should be discussed with the faculty member's department or unit head, who may consult with the Dean and VCHS. The Dean or VCHS will, if necessary, refer the question to other appropriate University officers.

## **8. LIABILITY INSURANCE GUIDELINES**

8.1 The University's liability and workers compensation coverage does not extend to activity that is outside of the course and scope of the participant's University employment. Some outside professional activities, particularly certain consulting and expert witness testimony, would generally be considered outside the course and scope of University employment, depending on the facts and circumstances of any given case. Questions about University liability coverage in connection with a specified activity or exposure should be discussed with the Office of Risk Services at the Office of the President. Faculty members who engage in professional activities that are outside the course and scope of their University employment are encouraged to obtain outside legal consultation, as needed, and consider obtaining personal liability insurance.

## **9. REQUESTS FOR EXCEPTIONS TO OCCASIONAL OUTSIDE ACTIVITY LIMITATIONS**

9.1 Plan participants must request and receive approval in advance for exceptions: (i) to exceed the 48-day limit on compensated outside professional earnings; (ii) to engage in compensated outside professional activities if the Plan participant is not in good standing; and/or (iii) to exceed the annual outside professional earnings threshold on directly retained earnings. Authority to approve exceptions varies depending on the type of exception. Engaging in outside activity beyond the 48-day limit or when a faculty member is not in good standing is subject to approval in writing by the VCHS. However, only the Chancellor has authority to approve any exception request which involves a Plan participant directly retaining earnings that exceed the limitation of \$40,000 or 40% of the fiscal-year Scale 0 salary, whichever is greater.

9.2 All exception requests must be submitted in writing to the Department Chair and must include the relevant information about the engagement, including: the nature of services to be provided; the person or entity who will receive and pay for the services (e.g., government entity, for-profit pharmaceutical company, etc.); and the anticipated period of service and/or days to be devoted to the activity. In addition, if an exception involves exceeding the annual outside professional earnings threshold, the request must state the total expected income from the activity and the amount by which the participant's total annual earnings from outside activities are expected to exceed the limit.

9.3 Plan participants should notify the Chair immediately if they inadvertently exceed the time limits or earnings threshold or if any of the information they provided in the approved request changes or becomes inaccurate. Department Chairs will forward all exception requests to the Dean(s) and VCHS. The Dean will recommend to the Chancellor whether to approve any request which involves a Plan participant retaining earnings that exceed the limitation of \$40,000 or 40% of the fiscal-year Scale 0 salary, whichever is greater. If the Chancellor approves such requests, the approval will be in writing and such approvals bring with them the authorization for the Plan participant to directly retain the entire amount approved by the Chancellor.

## 10. ANNUAL OUTSIDE ACTIVITY REPORT

10.1 Each Plan member must provide to his or her Department Chair an annual report describing the previous year's outside professional activities from which the Plan participant retained income and an attestation to adherence with these Implementation Procedures and Department Compensation Plan Procedures. The following activities and/or income do not need to be included on the report: royalties, prizes, honoraria, University honoraria, administrative stipends, and income from a profession or activity unrelated to the training and experience that is the individual's qualification for University appointment, as determined by the Department Chairperson in consultation with the Dean and VCHS. This annual report should include a general description of the entity to whom the service was provided (e.g., individual person, law firm, research company, or other); a brief description of the type of service performed; a description of the faculty member's relationship to the entity (e.g., consultant, board member); and the number of days devoted to the activity. The report shall also indicate the month in which the service was provided. The Department Chair may request, and the faculty member shall be obliged to provide, information regarding the specific person or entity to which the services were provided and the dollar amount associated with each service.

10.2 Prior Approval Requirements. All Category I activities and requests to exceed the time or the earnings approval threshold require prior written approval from the Chancellor in advance of performing the activity.

10.3 Reporting Requirements. All faculty must provide an annual report of outside professional activities to their Department Chairs each year, even if the faculty member did not engage in outside professional activities during the year. Faculty must report annually all Category I and II outside professional activities that were conducted during the prior 12 months, including activities conducted during normal service periods and during periods of leave with pay. All earnings derived from these activities must be reported as well. Grants submitted on behalf of a professional society are exempt from this restriction, i.e., are not considered Category I activities. The responsibility for oversight of the outside professional activities of Department Chairs shall reside with the Dean.

10.4 Outside professional activities are categorized based on the extent to which they are likely to constitute conflict of commitment. Categories I and II include activities that must be reported and, in the case of Category I, must receive prior approval before the faculty member engages in the activity. Category III activities are those that are within the course and scope of University employment and need not be approved or reported. When an activity falls into more than one category, it should be assigned to the category which requires more stringent reporting and prior approval, as applicable.

10.4.1 Category I activities are most likely to create a conflict of commitment because 1) they are activities related to the training and expertise which is the University's qualification for University appointment, but performed for a third party, and/or 2) they require significant professional commitment. Examples of Category I activities are teaching, research, or administration of a grant at an entity outside of the University; employment outside of the University; assuming a founding/co-founding role of a company; and assuming an executive or managerial position outside of the University. All earnings and time spent on Category I activities count toward the threshold.

10.4.2 Category II activities are typically shorter term outside professional activities that are outside the course and scope of University employment. Category II activities have a lesser potential for a conflict of commitment than do Category I activities. The following are examples of Category II activities: additional University-compensated teaching outside of the assigned teaching load; consulting or testifying as an expert or professional witness; providing consulting services; serving on the board of directors of an outside entity; and providing a workshop for industry. All earnings and time spent on Category II activities count toward the threshold.

10.4.3 Category III activities are within the course and scope of University employment and ordinarily do not present issues of conflict of commitment. The following are examples of Category III activities: serving on a federal, state or local government agency committee, professional panels or committees or as an officer or board member of a professional or scholarly society; reviewing manuscripts acting in an editorial capacity;

reviewing journal manuscripts or grant contract proposals; attending and presenting talks at scholarly colloquia and conferences; and developing scholarly and creative works. All earning and time spent on Category III activities do not apply toward the threshold.

10.4 Plan participants must adhere to the University Faculty Code of Conduct (APM 015) when involving students in their outside professional activities. A faculty member involving a student in outside activities has the responsibility to ensure that the student's participation does not interfere with the student's academic obligations. If the faculty member has, or expects to have, academic responsibility (instructional, evaluative, or supervisory) for the student, the faculty member must obtain prior written approval from the Department Chair before involving a student in an outside professional activity regardless of whether the faculty member is compensated for or has a financial interest in the activity.

# Exhibit 4



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## Regents Policy 1111: Policy on Statement of Ethical Values and Standards of Ethical Conduct

*Approved May 2005*  
*Amended March 16, 2017*

### Statement of Ethical Values

Members of the University of California community are committed to the highest ethical standards in furtherance of our mission of teaching, research and public service. We recognize that we hold the University in trust for the people of the State of California. Our policies, procedures, and standards provide guidance for application of the ethical values stated below in our daily life and work as members of this community.

We are committed to:

*Integrity.*

We will conduct ourselves with integrity in our dealings with and on behalf of the University.

*Excellence.*

We will conscientiously strive for excellence in our work.

*Accountability.*

We will be accountable as individuals and as members of this community for our ethical conduct and for compliance with applicable laws and University policies and directives.

*Respect.*

We will respect the rights and dignity of others.

### Standards of Ethical Conduct

#### **Purpose**

Pursuit of the University of California mission of teaching, research and public service requires a shared commitment to the core values of the University as well as a commitment to the ethical conduct of all University activities. In that spirit, the Standards of Ethical Conduct are a statement of our belief in ethical, legal, and professional behavior in all of our dealings inside and outside the University.

#### **Applicability**

The Standards of Ethical Conduct apply to all members of the University community, including the Regents, Principal Officers of the Regents, senior leadership, faculty and other academic personnel, staff, students, and volunteers, contractors, and agents associated with the University. Organizationally, the Standards apply to campuses, the National Laboratories, the Office of the President, the Division of Agriculture and Natural Resources, campus organizations, foundations, alumni associations, and support groups.

#### **1. Fair Dealing**

Members of the University community are expected to conduct themselves ethically, honestly, and with integrity in all dealings. This means principles of fairness, good faith, and respect consistent with laws, regulations, and University policies govern our conduct with others both inside and outside the

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#### **Related Resources**

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community. Each situation needs to be examined in accordance with the Standards of Ethical Conduct. No unlawful practice or a practice at odds with these standards can be justified on the basis of customary practice, expediency, or achieving a “higher” purpose.

## **2. Individual Responsibility and Accountability**

Members of the University community are expected to exercise responsibility appropriate to their position and delegated authorities. They are responsible to each other, the University, and the University’s stakeholders both for their actions and their decisions not to act. Each individual is expected to conduct the business of the University in accordance with the Core Values and the Standards of Ethical Conduct, exercising sound judgment and serving the best interests of the institution and the community.

## **3. Respect for Others**

The University is committed to the principle of treating each community member with respect and dignity. The University prohibits discrimination and harassment and provides equal opportunities for all community members and applicants regardless of race, color, national origin, religion, sex, gender identity, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), ancestry, marital status, age, sexual orientation, citizenship, or status as a covered veteran. Further, romantic or sexual relationships between faculty responsible for academic supervision, evaluation, or instruction and their students are prohibited. The University is committed to creating a safe and drug free workplace. Following is a list of the principal policies and reference materials available in support of this standard:

- The Faculty Code of Conduct
- Academic Personnel Policy Manual
- Personnel Policies for Staff Members
- Policies Applying to Campus Activities, Organizations and Students
- Policy on Sexual Violence and Sexual Harassment
- University policies on nondiscrimination and affirmative action
- Campus, laboratory and Office of the President Principles of Community

The University’s health sciences enterprises are committed to the ethical and compassionate treatment of patients and have established policies and statements of patient rights in support of this principle.

## **4. Compliance with Applicable Laws and Regulations**

Institutions of higher education are subject to many of the same laws and regulations as other enterprises, as well as those particular to public entities. There are also additional requirements unique to higher education. Members of the University community are expected to become familiar with the laws and regulations bearing on their areas of responsibility. Many but not all legal requirements are embodied in University policies. Failure to comply can have serious adverse consequences both for individuals and for the University, in terms of reputation, finances, and the health and safety of the community. University business is to be conducted in conformance with legal requirements, including contractual commitments undertaken by individuals authorized to bind the University to such commitments.

The Office of the General Counsel has responsibility for interpretation of legal requirements.

#### **5. Compliance with Applicable University Policies, Procedures and Other Forms of Guidance**

University policies and procedures are designed to inform our everyday responsibilities, to set minimum standards, and to give University community members notice of expectations. Members of the University community are expected to transact all University business in conformance with policies and procedures and accordingly have an obligation to become familiar with those that bear on their areas of responsibility. Each member is expected to seek clarification on a policy or other University directive he or she finds to be unclear, outdated, or at odds with University objectives. It is not acceptable to ignore or disobey policies if one is not in agreement with them, or to avoid compliance by deliberately seeking loopholes.

In some cases, University employees are also governed by ethical codes or standards of their professions or disciplines - some examples are attorneys, auditors, physicians, and counseling staff. It is expected that those employees will comply with applicable professional standards in addition to laws and regulations.

#### **6. Conflicts of Interest or Commitment**

Employee members of the University community are expected to devote primary professional allegiance to the University and to the mission of teaching, research, and public service. Outside employment must not interfere with University duties. Outside professional activities, personal financial interests, or acceptance of benefits from third parties can create actual or perceived conflicts between the University's mission and an individual's private interests. University community members who have certain professional or financial interests are expected to disclose them in compliance with applicable conflict of interest/conflict of commitment policies. In all matters, community members are expected to take appropriate steps, including consultation if issues are unclear, to avoid both conflicts of interest and the appearance of such conflicts.

#### **7. Ethical Conduct of Research**

All members of the University community engaged in research are expected to conduct their research with integrity and intellectual honesty at all times and with appropriate regard for human and animal subjects. To protect the rights of human subjects, all research involving human subjects is to be reviewed by institutional review boards. Similarly, to protect the welfare of animal subjects, all research involving animal subjects is to be reviewed by institutional animal care and use committees. The University prohibits research misconduct. Members of the University community engaged in research are not to: fabricate data or results; change or knowingly omit data or results to misrepresent results in the research record; or intentionally misappropriate the ideas, writings, research, or findings of others. All those engaged in research are expected to pursue the advancement of knowledge while meeting the highest standards of honesty, accuracy, and objectivity. They are also expected to demonstrate accountability for sponsors' funds and to comply with specific terms and conditions of contracts and grants.

#### **8. Records: Confidentiality/Privacy and Access**

The University is the custodian of many types of information, including that which is confidential, proprietary, and private.

Individuals who have access to such information are expected to be familiar and to comply with applicable laws, University policies, directives and agreements pertaining to access, use, protection, and disclosure of such information. Computer security and privacy are also subject to law and University policy.

Information on the University's principles of privacy or on specific privacy laws may be obtained from the respective campus or laboratory information privacy office.

The public right to information access and the individual's right to privacy are both governed by state and federal law, as well as by University policies and procedures. The legal provisions and the policies are based upon the principle that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person, as is the right of individuals to privacy.

#### **9. Internal Controls**

Internal controls are the processes employed to help ensure that the University's business is carried out in accordance with these Standards, University policies and procedures, applicable laws and regulations, and sound business practices. They help to promote efficient operations, accurate financial reporting, protection of assets, and responsible fiscal management. All members of the University community are responsible for internal controls. Each business unit or department head is specifically responsible for ensuring that internal controls are established, properly documented, and maintained for activities within their jurisdiction. Any individual entrusted with funds, including principal investigators, is responsible for ensuring that adequate internal controls exist over the use and accountability of such funds. The University has adopted the principles of internal controls published by the Committee of Sponsoring Organizations (COSO) of the Treadway Commission.

#### **10. Use of University Resources**

University resources may only be used for activities on behalf of the University. They may not be used for private gain or personal purposes except in limited circumstances permitted by existing policy where incidental personal use does not conflict with and is reasonable in relation to University duties (e.g. telephones). Members of the University community are expected to treat University property with care and to adhere to laws, policies, and procedures for the acquisition, use, maintenance, record keeping, and disposal of University property. For purposes of applying this policy, University resources is defined to include but not be limited to the following, whether owned by or under the management of the University (for example, property of the federal government at the National Laboratories):

- Cash, and other assets whether tangible or intangible; real or personal property;
- Receivables and other rights or claims against third parties;
- Intellectual property rights;
- Effort of University personnel and of any non-University entity billing the University for effort;
- Facilities and the rights to use of University facilities; • The University's name;
- University records, including student and patient records; and
- The University information technology infrastructure.

### **11. Financial Reporting**

All University accounting and financial records, tax reports, expense reports, time sheets and effort reports, and other documents including those submitted to government agencies must be accurate, clear, and complete. All published financial reports will make full, fair, accurate, timely, and understandable disclosures as required under generally accepted accounting principles for government entities, bond covenant agreements, and other requirements. Certain individuals with responsibility for the preparation of financial statements and disclosures, or elements thereof, may be required to make attestations in support of the Standards.

### **12. Reporting Violations and Protection from Retaliation**

Members of the University community are strongly encouraged to report all known or suspected improper governmental activities (IGAs) under the provisions of the Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (Whistleblower Policy). Managers and persons in supervisory roles are required to report allegations presented to them and to report suspected IGAs that come to their attention in the ordinary course of performing their supervisory duties. Reporting parties, including managers and supervisors, will be protected from retaliation for making such a report under the Policy for Protection of Whistleblowers from Retaliation and Guidelines for Reviewing Retaliation Complaints (Whistleblower Retaliation Policy).



# Exhibit 5



# Requirement to Submit Proposals and to Receive Awards for Grants and Contracts through the University

<b>Responsible Officer:</b>	VP - Research & Graduate Studies
<b>Responsible Office:</b>	RG - Research & Graduate Studies
<b>Issuance Date:</b>	12/14/1994
<b>Effective Date:</b>	12/14/1994
<b>Scope:</b>	In the case of projects to be conducted by the University in collaboration with other organizations, the University can be either the prime contractor or a subcontractor. In all cases, all resources required for the conduct of the portion of the work which will be directed by University employees must be included in the award to the University.

<b>Contact:</b>	Jeff Hall
<b>Email:</b>	<a href="mailto:jeff.hall@ucop.edu">jeff.hall@ucop.edu</a>
<b>Phone #:</b>	(510) 987-0688

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## I. POLICY SUMMARY

It is the policy of the University of California that employees who receive any part of their salary through the University, or whose activities use any University resources or facilities, must submit their proposals for extramural support through the appropriate local contracts and grants office. Awards must be made to The Regents of the University of California.

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## II. DEFINITIONS

Not applicable

### **III. POLICY TEXT**

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This requirement is necessary to insure that all research and other extramurally funded projects conducted by University employees, or with the use of University resources or facilities, are approved by the appropriate University contract and grant office and comply with relevant University policies, and guidelines, including but not limited to those governing:

- integrity in research,
- appropriateness of the activity to the University,
- protection of human and animal subjects and the environment,
- use of University facilities,
- adherence to personnel policies,
- compensation plans,
- intellectual property,
- conflicts of interest,
- recovery of direct and indirect costs.
- liability insurance and indemnification, and
- professional liability coverage.

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### **IV. COMPLIANCE / RESPONSIBILITIES**

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Each Chancellor is responsible for establishing procedures to ensure compliance with this Policy

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### **V. PROCEDURES**

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Exceptions to the requirement to submit proposals and awards through the University may be granted by Chancellors in unusual circumstances on a case by case basis, after consideration of the policy areas cited above, when it is in the best interest of the University. When an exception is granted, there must be a clear distinction between service to the University and service to the external party, relevant personnel policies shall be followed, the name of the University shall not be used by the external party, and in no case shall the University assume liability for a third party's action without the approval of the Regents as required by the Bylaws and Standing Orders of The Regents.

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### **VI. RELATED INFORMATION**

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Not applicable.

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### **VII. FREQUENTLY ASKED QUESTIONS**

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Not applicable

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## **VIII. REVISION HISTORY**

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This policy was reformatted into the standard University of California policy template effective April 1, 2012.