



Mary Gauvain
Telephone: (510) 987-0887
Email: mary.gauvain@ucop.edu

*Chair of the Assembly of the Academic Senate
Faculty Representative to the Regents
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200*

May 11, 2021

**MICHAEL DRAKE, PRESIDENT
UNIVERSITY OF CALIFORNIA**

Re: UC Healthcare Affiliations

Dear President Drake,

At its April 28, 2021 meeting, the Academic Council unanimously endorsed the attached letter from the University Committee on Faculty Welfare (UCFW) expressing support for the Senate's past positions on the University's affiliations. As in the past, the Council rejects affiliations with external providers that include discriminatory policy-based restrictions on health care. In addition, it offers five principles to guide an independent panel's consideration of existing and proposed affiliations.

The present debate around affiliations arose in early 2019 when faculty at UCSF objected to a proposed affiliation with a Catholic hospital operated by Dignity Health. A subsequent PRA [public records act] request revealed that all UC medical centers have similar affiliations. Many UC faculty raised concerns about the UC's affiliations with hospitals subject to ethical and religious directives (ERDs). These ERDs are based on religious doctrine and not on scientific, evidence-based medical best practices. Reliance on the ERDs to guide medical care not only defies the University's commitment to provide treatment based on the best scientific information available, it goes against the University's obligation as a public institution not to discriminate against any individuals. Of specific concern is that hospitals with ERDs prohibit the provision of certain services for LGBTQ and women patients and regarding certain end-of-life decisions. In so doing, they restrict UC physicians and medical students from engaging in medical treatment according to the best scientific practices.

The Academic Council has been consistent in our position. In July 2019, the UCFW Task Force on Nondiscrimination in Health Care (NDHCTF) recommended¹ that UC avoid affiliations with providers that discriminate in health care. In February 2020, the Senate responded to the Working Group on Comprehensive Access (WGCA) Chair's Letter², which described a set of options regarding UC's affiliations. Since the WGCA did not reach consensus, it did not issue a

¹ https://senate.universityofcalifornia.edu/_files/reports/rm-jn-final-report-non-discrimination-healthcare-taskforce.pdf

² https://senate.universityofcalifornia.edu/_files/reports/kkb-jn-wgca-chairs-report.pdf

formal report, and the Chair's letter did not represent the full spectrum of views in the WGCA, including those of the faculty representatives. The Senate recommended that the University avoid affiliations with health entities whose policies conflict with the University's fundamental value of nondiscrimination, and allow those affiliations under very strict and closely monitored conditions.

Early in 2021, we learned that the Regents plan to discuss a policy on affiliations this spring or summer, and I asked the Academic Council to examine the issue afresh. Council discussed the issue with the help of several experts over the course of three meetings. In February, Lisa Ikemoto, a UC Davis Professor of Law, chair of the UCFW-Health Care Task Force, and an expert in health care law, provided an overview of Catholic healthcare and the ERDs for Catholic Health Care Services. Prof. Ikemoto described the medical guidelines established by the U.S. Conference of Catholic Bishops that govern ethical decision-making in Catholic hospitals and include religiously-based restrictions on services such as emergency contraception, abortion, sterilization, and euthanasia. Application of the ERDs varies by hospital and diocese, Prof. Ikemoto explained, but they affect providers' ability to provide care. For instance, some transgender patients have been denied access to care; women have been denied miscarriage care, tubal ligations, and other procedures.

In March, Council met with Executive Vice President for UC Health Carrie Byington, who acknowledged that UC Health does not support the ERDs. However, Dr. Byington maintained that affiliations will help UC increase access to quality health care at the Dignity hospitals with which UC is affiliated. This arrangement would extend UC Health's public mission to serve more Californians, especially for any underserved and low-income patients who use Dignity healthcare services. Dr. Byington also cautioned that a blanket prohibition of affiliations could harm people during social emergencies such as a pandemic. In addition, she emphasized that UC Riverside's medical residency training programs depend on affiliations, and she assured us that UC physicians are presently working in Dignity hospitals under interim guidelines. These guidelines prohibit the suppression of information, or "gag orders", that would keep medical personnel from providing the best medical advice and medical options available to a patient. They also permit emergency care as needed and allow referrals to other facilities. Dr. Byington said UC Health is committed to adding language to contracts that support UC values and ensure that medical students and residents working in Dignity facilities receive comprehensive training in all relevant procedures.

In March, Council also met with Lori Freedman, a UCSF Professor of Sociology and member of the UCFW-HCTF with expertise in health care disparities. Professor Freedman was also a member of the NDHCTF and she described its "middle path" recommendation. This recommendation would allow affiliations with discriminatory entities if they include "overwhelming evidence" to support the "greater common good." Professor Freedman's participation on the UCFW-HCTF helped define the five principles outlined in the UCFW letter.

Finally, President Drake, when you visited with Council during our April meeting, you expressed your commitment to eliminating discrimination in health care. You said your decision on affiliations took into account their impact on the working conditions of staff, their financial impact on the University, their benefit to research, their benefit to the overall educational mission, and their impact on the quality and extent of care to patients. You stressed that affiliations must address these five areas positively and that UC Health had modified its interim contracts to ensure that UC physicians and students in Dignity hospitals can make evidence-

based medical decisions and prescribe medically necessary and appropriate interventions. You emphasized that severing affiliations would have a catastrophic impact on UC medical training programs and on thousands of Californians who have access to UC care through these hospitals.

Following your visit, Council discussed two pieces of legislation related to affiliations. Senate Bill 379 (Wiener) would prohibit affiliations between UC and health care providers with policy-based restrictions on care in their facilities, and Senate Bill 642/Assembly Bill 705 (Kamlager) would prohibit healthcare facilities from limiting access to comprehensive care and ensure that all patients can access inclusive, high quality and comprehensive medical service in California, with care decisions based on clinical or evidence-based criteria.

After our extensive information gathering sessions and deliberations, Council re-endorsed the July 2019 NDHCTF report and Council's February 2020 letter on affiliations. We believe that affiliating with discriminatory entities does not align with UC values, and that doing so could hurt the University's credibility and standing. Such affiliations, while they may contribute to the provision of better care to patients, particularly in underserved geographic areas of California, fundamentally validate and strengthen health entities that adhere to discriminatory and non-scientific policy-based medical practices. We acknowledge the value and good intentions behind the utilitarian arguments about expanding quality care to the most people possible, and we appreciate the ethical dimension of this position; however, we find that it does not outweigh the high ethical non-discrimination standard that guides how the UC conducts itself. Furthermore, faculty are unconvinced by arguments that these affiliations are not motivated, to some degree, by the goal to expand the UC Health enterprise and related financial gain.

The Senate does not have a formal position on SB 379. We found SB 642 (Kamlager) to be consistent with the Senate's position that medicine must be rooted in scientifically-based best practices only, and that any affiliation between UC and other medical facilities or hospitals must fully abide by this principle.

In advocating for affiliations, Council observes that UC Health has occasionally blurred the distinction between UC academic medical centers' formal affiliations with religiously-based healthcare providers, and the University's other relationships with them, including as options in the UC health insurance network. This issue is most evident when UC Health has tied affiliations to the health care options of employees at UC Merced and UC Santa Cruz, where Catholic hospitals are the main provider in the community (Dignity is in Merced; Dominican is in Santa Cruz). When UC Health makes this linkage, it implies that those employee health care relationships will be at risk if the University bans affiliations. These two issues are completely separate and distinct and must not be conflated. To be clear, the Senate is not calling for the UC health insurance network to exclude Dignity Healthcare or similar providers from employee health benefit options.

In our attempts to understand the issue of hospital affiliations at UC Health, the Senate has found it difficult to obtain pertinent data, including: the financial impact of affiliations; the proportion of UC care that occurs through affiliations now as well as the proportion projected under expanded partnerships; the number of people who currently—and the number who would—work and receive care under the ERDs; data on revenue associated with patient transfers; and instances when physicians training at a hospital operating under ERDs have lacked access to equipment required to learn certain procedures. We also sought information about the extent to which UC Health has worked with Dignity to eliminate language from contracts such that UC can ensure

the care offered is nondiscriminatory. Regrettably, UC Health representatives have not provided these data or information to the Senate. Although the UC Health Affiliation Impact Report provides general descriptions of affiliations and associated programs, the level of detail there falls far short of what is needed to address these questions.

Council fully supports UC Health's goal to extend health care to more poor and uninsured patients in California and we would welcome discussion of how hospital affiliations can help UC Health achieve this goal. To this end, we urge UC to foster affiliations with hospitals that do not have ERDs. When we have raised this possibility with UC Health representatives, we have been told that pursuing such affiliations would be burdensome. However, absent specifics on the burdens involved and a strong rationale as to why this option should not be considered, we remain interested in alternative affiliations. Finally, we reject the argument that discrimination would occur whether or not UC affiliates with hospitals with ERDs. While this general point is indisputable, the point it raises is not what is at issue here. UC Health can pursue its goals to extend health care to needy Californians in many ways; claiming that affiliations with discriminatory hospitals present us with an all-or-nothing choice is misleading.

In sum, we oppose the expansion of UC Health's affiliations with discriminatory entities and we ask the Regents to allow affiliations only under the specific circumstances and with meaningful controls as outlined in the UCFW letter. Such a path will help ensure that UC upholds the highest ethical standards of nondiscrimination in relation to patient care and the public good.

Please do not hesitate to contact me if you have additional questions.

Sincerely,



Mary Gauvain, Chair
Academic Council

Cc: Provost Brown
EVP Byington
Professor Ikemoto
Professor Freedman
Academic Council
Chief of Staff Kao
Chief Policy Advisor McAuliffe
Senate Directors
Senate Executive Director Baxter

Encl.

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UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
Shelley Halpain, Chair
shalpain@ucsd.edu

Assembly of the Academic Senate
1111 Franklin Street, 12th
Oakland, CA 94607-5200

March 16, 2021

**MARY GAUVAIN, CHAIR
ACADEMIC COUNCIL**

RE: UC Health Affiliations

Dear Mary,

The University Committee on Faculty Welfare (UCFW) has discussed the issue of non-discrimination in health care at the University of California, including both the UCFW 2018 [Non-discrimination in Health Care Task Force \(NDHCTF\) report](#), and the 2019 Chair's letter from the [Working Group on Comprehensive Access \(WGGA\)](#). Our committee and, independently, the Health Care Task Force both unanimously voted to reaffirm their 2018 endorsements of the NDHCTF conclusions that UC should avoid affiliations with discriminatory health organizations, such as those that use [Ethical and Religious Directives \(ERDs\)](#). ERDs are used as a basis for forbidding specific types of healthcare and the provision of health care information to women and transgender individuals, among other types of patients. The NDHCTF report was unanimously endorsed in 2018 by HCTF, UCFW, and the Academic Council.

In addition, HCTF has reviewed the language of [SB 379](#), introduced to the California legislature on February 10, 2021, that would legally bar the UC from such discriminatory affiliations, and communicated its discussion to UCFW. Although we are generally concerned about state government incursions into our constitutional autonomy, in this case we strongly support the underlying principle and urge the UC to act with or without state pressure. In addition, HCTF reviewed the language of the bill and, based on the committee's expertise in reproductive health care law, concluded that the bill, if enacted, would not affect UC's existing and future affiliations with government agencies, such as those with the Veteran's Affairs Medical Centers.

UCFW believes that health care entities that abide by ERDs, or similar non-evidence, belief-based policies and restrictions to patient care, are intrinsically discriminatory. Such discrimination erodes human dignity. The ERDs have a discriminatory impact, particularly on women and the LGBTQ+ community, and it would be dishonorable for our University to support such policies via contractual business arrangements, regardless of other perceived benefits. It would be equally dishonorable to contract with organizations that have policies that are, say, anti-Semitic or racist. As a public trust, the University of California should steadfastly uphold its non-discrimination principles throughout its research, academic, and service enterprises.

Moreover, as a committee that advocates for an inclusive and non-discriminatory work environment for UC faculty, UCFW believes that the very existence of affiliations with discriminatory health care providers harms our faculty. Many LGBTQ+ and women faculty may feel marginalized and disrespected by what amounts to a tacit endorsement of discriminatory policies.

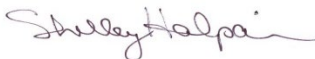
The Non-Discrimination in Health Care Task Force Report does acknowledge that there may be rare instances where affiliation or interaction with discriminatory health care systems could be justifiable if affiliation is deemed to be “for the greater common good.” However, the report emphasizes that such affiliations should meet a very high bar, and outlined specific guiding principles.

UCFW suggests that affiliations with discriminatory health care organizations, if they are engaged in at all, should be vetted rigorously by an independent panel of experts who are free from conflicts of interest. The panel should consist mainly of biomedical ethicists with health care and health administration expertise, and that any panel members from the domain of health care administration should be free from past, present, or future direct relationships with the UC Health enterprise. The recommendations of such a panel should be delivered in a timely and completely transparent manner. Both existing and proposed affiliations should be evaluated by the panel, and each proposed affiliation or existing contract should be evaluated individually, not as a “blanket” proposal. Proposed new affiliations should be constructed in a manner that limits their scope as much as reasonably possible. Finally, we propose that the following principles and guidelines be used as a basis for the independent panel’s deliberations.

- a) The UC must adhere to the highest standards of non-discrimination. UC employees and trainees should never be permitted to engage in health care delivered in a discriminatory fashion.
- b) Affiliations with discriminatory health care entities should only be entered into for purposes of the greater common good, and this should meet an exceptionally high bar. Examples include health care delivery under emergency conditions (natural disasters, mass trauma, public health emergencies); or health care delivery for high level specialty care, especially to low income or underserved populations, that cannot otherwise be met either by the UC or by the discriminatory entity without an affiliation between them. For the latter, market data supporting the case for affiliation should be shared transparently.
- c) Affiliations should only occur when viable alternative options, for example to partner instead with non-discriminatory entities, do not exist.
- d) The affiliation arrangement should ideally be temporary, with a clearly articulated plan to withdraw or phase out the affiliation within a specified time frame.
- e) The UC should not stand to profit financially from the affiliation.

UCFW recognizes that the University of California has built a world-class health care system that provides both care and training at the highest level of quality. It is imperative that its integrity continues to match that quality. We are proud of our UC Health system, its health care providers, and all of its highly dedicated employees. We hope our engagement in discussions around the very challenging topic of UC Health affiliations reflects our commitment to help the UC continue its mission to be the best health system in our state and in our nation.

Sincerely,



Shelley Halpain, UCFW Chair

Copy: UCFW
 Hilary Baxter, Executive Director, Academic Senate
 Robert Horwitz, Academic Council Vice Chair
 Lisa Ikemoto, HCTF Chair