

Executive Board

Dignity Health

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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,

A handwritten signature in cursive script that reads "Mary Gauvain".

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.



UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
Shelley Halpain, Chair
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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

Interim Report of the UC Academic Senate UC Non-Discrimination in Healthcare Task Force

April 02 2019

The UC Non-Discrimination in Healthcare Task Force

In January 2019, due to serious concerns initially raised by UCSF faculty, the Academic Senate of the University constituted the UC Non-Discrimination in Healthcare Task Force. The Task Force was, in summary, charged with exploring potential conflicts arising between UC's public trust, mission and values, standards, and non-discrimination policies, on the one hand, and religiously-based practices and claims for accommodation or exemption on the other, in the context of health care. In this Interim Report, the Task Force notes that extant and proposed affiliation agreements between the university and external health care providers gives rise to conflict with the mission and values of the University. Such issues may affect teaching, research, and healthcare service activities. Faculty, other employees, students, and patients will bear the impacts.

UC's Place in the State of California

Following the Organic Act of 1868, the California Constitution of 1879 affirmed that the University of California *shall constitute a public trust*, and that *it shall be entirely independent of all political or sectarian influence*. At that time, the University of California was granted autonomy in its affairs, in effect becoming a branch of state government. Such status conferred great responsibility upon the University for the educational, social and economic needs of the people of California. Subsequent legislation, such as the 1960 Donohue Act, gave the University jurisdiction and responsibility for public education in healthcare professions. The University mission is to provide: education, research, and service, including healthcare, for all the people of California.

Concerns and Conflicts

The Task Force has made an initial appraisal of potential issues, and has identified at least five. One set of issues arises from affiliations between campus health divisions and private religious health care entities. A second area of concern is UC Care's network sufficiency given the prevalence of Catholic hospitals included as providers. A third set of issues arises when individual providers request exemptions from treating certain groups of patients. Issues also arise when students object to UC vaccination requirements. A potential fifth set of issues arises from providers who offer unsolicited prayer to patients or who seek accommodation to pray with patients. This Interim Report focuses primarily on the first set in the context of the UCSF-Dignity affiliations.

Concerns arise when external entities with whom UC enters into an affiliation with an entity governed by a private, sectarian organization bound by religious doctrine that requires limiting or denying care to particular groups of people and denying types of care which are standard practice of evidence-based medicine. Health care facilities with religious identities may and do provide health care shaped by religious belief. Catholic hospitals and health care systems are most likely to generate conflicts. Two factors account for this. One is prevalence. Catholic health systems constitutes the largest group of nonprofit health care providers in the United States (Catholic Health Association of the United States <https://www.chausa.org/about/about/facts-statistics>). The second is that Catholic hospitals, including most Dignity hospitals follow the Ethical and Religious Directives for Catholic Health Care Services (ERDs) issued by the United States Conference of Catholic Bishops. A few Dignity Health hospitals follow a set of health care restrictions called the Statement of Common Values. Both the ERDs and the Statement of Common Values substantively constrain care and information provided to patients. They discriminate on the basis of gender identity. In particular, the ERDs prohibit highly-utilized, standard reproductive

healthcare such as contraception, tubal-ligation, vasectomy, abortion in all cases, assisted reproductive technology use, and in the case of transgender care, hysterectomy. The ERDs also limit end-of-life care. The restrictions in the ERDs and Common Values interfere with usual secular standards of care and patient outcomes. While international and domestic research repeatedly shows that evidence-based family planning methods are both widely embraced by women and critical to their family's health and wellbeing, they are largely prohibited by the Catholic policies. In a UC facility, a mother's contraceptive needs are addressed before returning home to take care of a newborn, a critical window of opportunity, especially if she desires sterilization. Whereas, 23% of women denied a sterilization after childbirth have an unintended pregnancy within one year (Flink-Bochacki, Flaum and Betstadt 2019).

Women having miscarriages who attend Catholic hospitals may face care restricted by doctrine. Catholic hospital doctors report they must wait for signs of infection if the fetus hasn't passed, in order for their ethics committee to allow them to treat. This may cause distress to both patient and doctor (Freedman, Landy and Steinauer 2008; Freedman and Stulberg 2013; Raghavan 2007). A national study found that 52% of ob-gyns who work in Catholic hospitals report conflict with their hospitals' religious policies for care, as compared with 17% for Christian hospitals and 9% for Jewish hospitals (Stulberg et al. 2012). Transgender care in Catholic hospitals is less well studied, but two cases under litigation in California indicate that denial can happen, consistent with statements that Catholic Bishops have made condemning transgender surgery. Some end-of-life care, most notably removing food and water per the patient's request and referrals for physician-aid-in-dying are not permitted.

Patients and UC providers may not have viable alternatives to seeking or providing care in UC affiliated facilities. Medical emergency, geography, or employment constrains health care access. A UC employee may have few options in their work assignments or in the providers covered by their benefits plan. A faculty member must not be denied the freedom to practice to the accepted standard of care, be forced to knowingly endanger a patient's welfare, to teach something inconsistent with the established standard of care, or be constrained in health promotion.

The ERDs and Statement of Common Values also constrain UC's educational mission. Students, trainees, and residents must not receive a lesser educational experience. Nor should UC employees be compelled to teach and students be compelled to receive instruction based on religious doctrine. In fact, Section 8 of the California Constitution prohibits instruction, directly or indirectly, of *"any sectarian or denominational doctrine . . . in any of the common schools of the State."*

Whereas UCSF leadership has proposed that a focus on transparency would help patients avoid being denied care, this is a formidable challenge that neither UC hospitals nor affiliated entities may be truly incentivized to take on. In fact, Catholic hospitals have exhibited an increasing trend toward opaque branding (Catholic Healthcare West became Dignity; The new system created by the Dignity-Catholic Health Initiatives merger is becoming CommonSpirit). Generally, patients (and many individual providers) do not expect a facility's religious identity to affect the scope of services provided. Many are not even aware of their own hospital's religious identity. In a recent national survey, 37% of women whose primary hospital is Catholic, did not know it was (Wascher et al. 2018). Likewise, the New York Times reported last year that it is quite difficult determine from a hospital's website that it is Catholic (Hafner 2018). It is even less likely that women can anticipate the specific restrictions because few understand that care can be religiously restricted at all (Freedman et al. 2018). Women incorrectly believe that IVF, abortion for medical reasons, and sterilization among other prohibited services are actually available in Catholic hospitals (Guiahi, Sheeder and Teal 2014). Clearing up all these

misperceptions would take considerable resources and perhaps a willingness for Catholic hospitals to affirmatively disclose the services they do not provide.

It is important to note key recommendations in the Report of the UCSF September 2017 Joint Senate-Administration committee of the campus affiliation Review policy have not yet been enacted. These included the creation of a Centralized Office to “*serve as a communications hub to the review committee,*” amongst other functions (page 11); policy revisions to “*include guidelines for the expansion of existing affiliations, which is separate than entering into new agreements*” (page 12); and that issues related to standards of care must be addressed (page 13). Of course, UCSF is not the only UC campus impacted by affiliations with religious healthcare entities; in fact, students, employees, faculty members, the families of UC employees availing of employer-provided health benefits, and non-associated members of the public may all be impacted.

The Task Force understands that UC’s schools, clinics and hospitals exist in a competitive marketplace which is undergoing consolidation and that success in our mission involves opportunity for teaching service and patient care. However, UC must avoid affiliation agreements with entities that constrain teaching, research, clinical care or other service, or that do not share UC’s key values, fail to advance our mission, and undermine UC’s public trust. Such affiliations may cause new gaps in care for UC patients. In addition, the inherently discriminatory and medically regressive model of care resulting from such affiliations will jeopardize UC’s reputation.

Recommendation

The taskforce recommends that UC’s existing and potential affiliation agreements with entities whose values are in conflict with UC’s role as a public trust for the people of California be paused, scrutinized with increased rigor, and curtailed until any area of conflict with University mission and values have been resolved.

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[Joint Senate-Administration committee of the campus affiliation Review policy](#)

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April 29, 2019

DRAFT

**ROBERT MAY, CHAIR
ACADEMIC COUNCIL**

Re: UCSF/Dignity Affiliation

Dear Council Chair Robert May,

The University Committee on Privilege and Tenure (UCPT) members discussed the proposed affiliation between UCSF and Dignity Health at its April 19, 2019 meeting. UCPT understands that the proposed expansion of UCSF's hospital services is to provide additional healthcare. However, UCPT faculty members are unanimous in its opinion that the Ethical and Religious Directive (ERD) required is irreconcilable with core UC values. UC partnering with an organization that, as a fundamental policy, severely limits reproductive and gender rights is a boundary that should not be crossed, irrespective of any potential counter-benefits.

If an affiliation is to exist, UCPT strongly suggests that the relationship between UCSF and Dignity Health is subject to the non-discrimination values of UC that is described on page 3 of the document titled, "UC Statement of Ethical Values"

(<https://www.ucop.edu/ethics-compliance-audit-services/files/stmt-stds-ethics.pdf>):

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicolas Webster", with a long horizontal flourish extending to the right.

Nicolas Webster
Vice Chair, UCPT

cc: Kum-Kum Bhavnani, Academic Council Vice Chair
Hilary Baxter, Academic Senate Executive Director
UCPT members