

**Professional Services Agreement
Between the County of San Mateo and
Bohdan Makarewycz, M.D.
For ENT Medical Specialty Services**

THIS PROFESSIONAL SERVICES AGREEMENT is entered into by and between the County of San Mateo, San Mateo County Health Center ("County") and Bohdan Makarewycz, M.D. ("Contractor").

WITNESSETH:

WHEREAS, County operates health care facilities collectively known as the San Mateo County Health Center; and

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of performing professional services described for the San Mateo County Health Center; and

WHEREAS, pursuant to Government Code 31000, County may contract with independent contractors for the furnishing of such services to or for the County; and

WHEREAS, Contractor desires to provide such services all upon the terms and conditions stated below, and this Agreement is entered into for the purpose of defining the parties' respective rights and responsibilities

NOW, THEREFORE, in consideration of the mutual agreements set out below, the parties agree as follows:

Section 1 - Contractor's Obligations

1.1 Organizational Status

Contractor represents and warrants that it is either (Check One):

- 1.1.1 ☒ An individual health care provider duly licensed, certified, accredited or otherwise duly authorized to practice medicine in the specialty of Medical Specialty, in the State of California.
- 1.1.2 ☐ A partnership, professional services corporation or association duly organized and validly existing under the laws of the State of California and authorized to engage in the profession of medicine in the State of California;
- 1.1.3 ☐ Other _____

1.2 Contractor's Representatives

- 1.2.1 The term "Contractor" shall include all Contractor's representatives, employees, shareholders, partners, subcontractors, and agents providing services in San Mateo County under this Agreement, i.e. every member of a medical group that contracts with the County shall be considered a "Contractor", for purposes of complying with this Agreement.
- 1.2.2 Where contractor represents more than one individual, contractor will designate a "Lead Contractor". This Lead Contractor will be the contact person for the County when dealing with issues affecting both parties, including, but not limited, to the enforcement of this Agreement, in cases where direct discussion with the individual contractor's representative fails to adequately resolve the issue.

1.3 Qualifications

The following indicate qualifications that must be satisfied by each Contractor as a condition of providing services under this Agreement.

- 1.3.1 Must be accepted by the Facility's Chief Executive Officer, or designee; said acceptance may be withdrawn immediately for cause by the Facility's Chief Executive Officer, or designee, in his or her reasonable determination that there is a threat to the safety of patients or staff, at any time with written notice to Contractor
- 1.3.2 Shall at all time keep and maintain a valid license to engage in the practice of medicine in the State of California and Active Medical Staff membership and/or privileges as may be required under the Bylaws of County for Contractor's Representatives to provide the services contemplated by this Agreement
- 1.3.3 Contractor's representatives shall be certified by the AMA/AOA recognized Board in the relevant areas (or eligible for certification by such Board by virtue of having successfully completed all educational and residency requirements required to sit for the Board examinations).
- 1.3.4 Contractor is not currently excluded, debarred or otherwise ineligible to participate in federal health care programs or in federal procurement or non-procurement programs; nor has Contractor been convicted of a criminal offense.

1.4 Services to be Performed by Contractor

In consideration of the payments hereinafter set forth, Contractor, under the general direction of the Chief Executive Officer, or her designee, with respect to the product or results of Contractor's services shall provide medical services as described in SCHEDULE A, attached hereto and incorporated by reference herein. Such services shall be provided in a professional and diligent manner.

1.5 Payments

1.5.1 Maximum Amount. In full consideration of Contractor's performance of the services described in SCHEDULE A, the amount that County shall be obligated to pay for services rendered under this Agreement shall not exceed that specified in SCHEDULE A.

1.5.2 Rate of Payment. The rate and terms of payment shall be as specified in SCHEDULE B, attached hereto and incorporated herein. Any rate increase is subject to the approval of the Chief Executive Officer, or her designee, and shall not be binding on County unless so approved in writing. Each payment shall be conditioned on the Contractor's performance of the provisions of this Agreement, to the full satisfaction of the Chief Executive Officer, or her designee.

1.5.3 Time Limit for Submitting Invoices. Contractor shall submit an invoice for services to County for payment in accordance with the provisions of SCHEDULE B. County shall not be obligated to pay Contractor for the services covered by any invoice if Contractor presents the invoice to County more than one hundred eighty (180) days after the date Contractor renders the services, or more than ninety (90) days after this Agreement terminates, whichever is earlier.

1.6 Substitutes

Contractor shall provide at Contractor's sole cost and expense, a substitute for any Contractor who is unable to provide services required under this Agreement. As a condition of providing services under this Agreement, any such substitute shall first be approved by County's Chief Executive Officer, or her designee, and shall otherwise satisfy all qualification requirements applicable to the Contractor, including, but not limited to, being covered under Contractor's insurance or submitting separate insurance issued by a company under such terms and limitations as County shall reasonably approve.

1.7 General Duties of Contractor

In addition to the services performed in SCHEDULE A, Contractor shall perform the following duties:

- 1.7.1 Administrative and Miscellaneous Duties and Responsibilities Contractor will cooperate with the administration of the medical practice. Such cooperation shall include, but not be limited to, the following: maintaining medical records in a timely fashion (including the appropriate use of dictation, or other technology, as required by County).
- 1.7.2 Billing and Compliance. Contractor shall prepare such administrative and business records and reports related to the Service in such format and upon such intervals as County shall reasonably require. Contractor shall not directly submit a billing or statement of charges to any County patient or other entity for services arising from the practice of medicine, nor shall Contractor make any surcharge or give any discount for care provided without the prior written authorization of County. The County has complete authority to assign patients to various Contractors, determine write-offs, and take any other action relating to billing and collection of fees for clinical services. All accounts receivable generated for services rendered by Contractor pursuant to this Agreement are the property of the County. Contractor shall participate in all compliance programs adopted by County. Contractor shall have the right to review any and all billings for his/her services bearing his/her name or Provider Number and totals for ENT. Contractor is required to request the correction of any errors including providing a refund to payors if warranted. Contractor agrees to keep accurate and complete records pursuant to SCHEDULE C, incorporated by reference herein.
- 1.7.3 Compliance with Rules and Regulations. Contractor agrees to abide by rules, regulations and guidelines of County, as the County may from time to time amend, add or delete rules, regulations or guidelines at County's sole discretion, and such amendment will not affect the enforceability or terms of this Agreement.
- 1.7.4 Managed Care Contracts. Contractor is obligated to participate in, and observe, the provisions of all managed care contracts which County may enter into on behalf of Contractor for health care services with, managed care organizations including, but not limited to Health Maintenance Organizations (HMOs), Independent Practice Associations (IPAs), Preferred Provider Organizations (PPOs), Medical Service Organizations (MSOs), Integrated Delivery Systems (IDSs) and Physician-Hospital Organizations (PHOs).

1.7.5 Requirement of Physician to Notify County of any Detrimental Professional Information or Violation of Contract Rules or Policies. During the term of this Agreement, Contractor shall notify County immediately, or as soon as is possible thereafter, in the event that:

- (A) Contractor's license to practice medicine in any jurisdiction is suspended, revoked, or otherwise restricted;
- (B) A complaint or report concerning Contractor's competence or conduct is made to any state medical or professional licensing agency;
- (C) Contractor's privileges at any hospital, health care County or under any health care plan are denied, suspended, restricted or terminated or under investigation for medical disciplinary cause or reason;
- (D) Contractor's controlled substance registration certificate (issued by the Drug Enforcement Administration) if any, is being, or has been suspended, revoked or renewed;
- (E) Contractor's participation as a Medicare or MediCal provider is under investigation or has been terminated.
- (F) There is a material change in any of the information the Contractor has provided to County concerning Contractor's professional qualifications or credentials.
- (G) Contractor's conviction of a gross misdemeanor or felony.
- (H) Contractor must also notify the County within thirty (30) days of its being aware of any breach of this Agreement, violation of any of County's rule or regulation whether by others or by the Contractor himself/herself, or if the Contractor is subject to or participant in any form of activity which could be characterized as discrimination or harassment.
- (I) Contractor will be found to be in breach of this section only if it does not remove a member of its medical group or a subcontractor within thirty days of being aware of a violation of any of the above subsections.

1.8 Citizenship Duties of Contractors

- (A) Contractor will meet County expectations of outpatient clinic productivity, as determined by relevant standards, adjusted for local conditions.

- (B) Contractor will be physically present in the designated location and prepared to perform designated duties during the entire duration of the relevant work schedule as detailed in SCHEDULE A, specifically, will commence work on time, and not leave until duties are complete.
- (C) Contractor will work cooperatively with County designees to optimize work flow, including participating in work-flow analysis, appropriate use of scheduling, division of duties, optimal use of clinic staff, and other activities as designated by County.
- (D) Contractor will maintain appropriate medical records including the use of dictation or other technology required by County.
- (E) Contractor will make all reasonable efforts to schedule the provision of services, including, but not limited to, outpatient, operating room, and procedures, in a manner that complies with the County's staffing needs. Elective procedures will be scheduled during routine staffing hours, unless otherwise dictated by patient care or other exceptional circumstances.
- (F) Contractor will attempt to provide two (2) months notice, but under no circumstances shall provide less than two (2) weeks, for non-emergency absences from assigned duties without appropriate substitution. Notice shall be provided electronically or in writing to all relevant service areas.
- (G) Contractor will make all reasonable efforts to participate in coordination and optimization of services, including but not limited to active participation in Quality Improvement and Utilization Management efforts.
- (H) Contractor will make all reasonable efforts to communicate effectively and coordinate care and services with Primary Care providers, including, but not limited to, direct contact with individual providers where clinically indicated, and participation in training as benefits both parties.
- (I) Contractor will make all reasonable efforts to comply with County request to staff services at satellite, community-based clinics other than San Mateo County General Hospital, provided that total services do not exceed those specified in SCHEDULE A. Physician is not required to staff satellite clinics should their private practice be financially or operationally harmed.
- (J) Contractor will restrict his/her practice largely to his/her relevant specialty, and will not engage in substantial provision of medical services outside their relevant specialty, specifically Primary Care, even if qualified by board specialty or hospital privileges to do so. Patients requiring Primary Care services will be referred to the Primary Care Department for care. This requirement will not be construed as to abrogate, or diminish in any degree, the contractor's legal obligations enjoining patient abandonment.

- (K) Contractor will conduct himself/herself with professionalism at all times, which includes, but is not limited to, courteous and respectful conduct towards, and reasonable cooperation with, all County employees.
- (L) Contractor's professionalism and citizenship will be assessed no less than annually, and total compensation will be affected, as per SCHEDULE D, entitled "Professionalism and Citizenship Incentive", incorporated by reference herein.

1.9 Provision of Records For County

Contractor shall furnish any and all information, records and other documents related to Contractor's services hereunder which County may reasonably request in furtherance of its quality assurance, utilization review, risk management, and any other plans and/or programs adopted by County to assess and improve the quality and efficiency of County's services. As reasonably requested, Contractor may participate in one or more of such plans and/or programs.

1.10 Cooperation With County In Maintaining Licenses

Contractor shall assist County in obtaining and maintaining any and all licenses, permits and other authorization, plus achieving accreditation standards, which are dependent upon, or applicable to, in whole or in part, Contractor's services under this Agreement.

1.11 Contractor's Conflict Of Interest

Contractor shall inform County of any other arrangements which may present a professional, financial, Stark law, or any other state or federal conflict of interest or materially interfere in Contractor's performance of its duties under this Agreement. In the event Contractor pursues conduct which does, in fact, constitute a conflict of interest or which materially interferes with (or is reasonably anticipated to interfere with) Contractor's performance under this Agreement, County may exercise its rights and privileges under Section 3.3 below.

1.12 Non-Permitted Uses of County

Contractor agrees not to use, or permit any of Contractor's Representatives to use, any part of the County for any purpose other than the performance of services under this Agreement. Without limiting the generality of the foregoing, Contractor agrees that no part of the premises of County shall be used at any time as an office for private practice and delivery of care for non-County patients.

1.13 No Contract in County Name

Contractor shall not have the right or authority to enter into any contract in the name of County or otherwise bind County in any way without the express written consent of County.

1.14 Regulatory Standards

Contractor shall perform all services under this Agreement in accordance with any and all regulatory and accreditation standards applicable to County and the Service, including, without limitation, those requirements imposed by the Joint Commission on Accreditation of Healthcare Organizations, the Medicare/Medicaid conditions of participation and any amendments thereto.

1.15 Availability of Records For Inspection

As and to the extent required by law, upon written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, Contractor shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such services. If Contractor carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a twelve (12) month period with a related individual or organization, Contractor agrees to include this requirement in any such subcontract. This section is included pursuant to and is governed by the requirements of 42 U.S.C. Section 1395x(v)(1) and the regulations thereto. No attorney-client, or accountant-client, or other legal privilege will be deemed to have been waived by County, Contractor or any Contractor's Representative by virtue of this Agreement.

1.16 Professional Standards

Contractor shall perform his or her duties under this Agreement in accordance with the rules of ethics of the medical profession. Contractor shall also perform his/her duties under this Agreement in accordance with the appropriate standard of care for his/her medical profession and specialty.

Section 2 - Change of Circumstances

- 2.1** In the event (i) Medicare, Medi-Cal, or any third party payor or any federal, state or local legislative or regulative authority adopts any law, rule, regulation, policy, procedure or interpretation thereof which establishes a material change in the method or amount of reimbursement or payment for services under this Agreement, or if (ii) any or all such payors/authorities impose requirements which require a material change in the manner of either party's operations under this Agreement and/or the costs related thereto, then, upon the request of either party materially

affected by any such change in circumstances, the parties shall enter into good faith negotiations for the purpose of establishing such amendments or modifications as may be appropriate in order to accommodate the new requirements and change of circumstances while preserving the original intent of this Agreement to the greatest extent possible. If, after thirty (30) days of such negotiations, the parties are unable to reach an agreement as to how or whether this Agreement shall continue, then either party may terminate this Agreement upon thirty (30) days' prior written notice.

Section 3 - Term and Termination

3.1 Term

This Agreement shall commence on April 1, 2002, (the "Effective Date") and shall continue for two year(s). Unless sooner terminated, this Agreement shall expire and be of no further force and effect as of the end of business on the 31st day of March, 2004.

3.2 Extension of Term

The term of the Agreement may be extended by mutual written, signed agreement by both parties.

3.3 Termination

This Agreement may be terminated by either party at any time upon one hundred eighty (180) days' written notice to the other party.

3.3.1 Automatic Termination

A Contractor shall immediately terminate services and withdraw from this Agreement as follows:

- (A) Upon Contractor's loss, restriction or suspension of his or her professional license to practice medicine in the State of California;
- (B) Upon Contractor's suspension or exclusion from the Medicare or MediCal Program;
- (C) If the Contractor violates the State Medical Practice Act;
- (D) If the Contractor's professional practice jeopardizes imminently the safety of patients.
- (E) If Contractor is convicted of a gross misdemeanor or felony;

- (F) If Contractor violates ethical and professional codes of conduct of the workplace as specified under state and federal law;
- (G) Upon revocation cancellation, suspension or limitation of the Contractor's medical staff privileges at the County;
- (H) Contractor has a guardian or trustee of its person or estate appointed by a court of competent jurisdiction;
- (I) Contractor becomes disabled so as to be unable to perform the duties required by this Agreement;
- (J) Contractor fails to maintain professional liability insurance required by this Agreement;
- (K) Upon County's loss of certification as a Medicare and/or Medi-Cal provider;
- (L) Upon the closure of County;

3.3.2 Breach of Material Terms

Either party may terminate this Agreement at any time in the event the other party engages in an act or omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement shall provide the breaching party with not less than thirty (30) days advance written notice specifying the nature of the breach. The breaching party shall then have thirty (30) days from the date of the notice in which to remedy the breach and conform its conduct to this Agreement. If such corrective action is not taken within the time specified, this Agreement shall terminate at the end of the sixty (60) day period without further notice or demand. Upon breach of the terms of this Agreement by an individual contractor's representative, County shall have the option of withdrawing its acceptance of that individual contractor's representative, as described in 1.3.1, without terminating this Agreement. Upon withdrawal of acceptance, contractor must replace said contractor representative as specified in section 1.6 of this contract. Withdrawal of acceptance of an individual contractor's representative will not, of itself, constitute grounds for termination of this Agreement, by either party.

3.3.3 Patient Records Upon Termination and Notice to Patients

All original patient records shall be property of the County. Upon termination of this Agreement, Contractor shall return any such records as may be in Contractor's possession to County, subject to Contractor's right to copies of records.

Section 4 - Insurance and Indemnification

4.1 Insurance

- (A) Contractor shall not commence work under this Agreement until all insurance required under this section has been obtained and such insurance has been approved by the Chief Executive Officer. Contractor shall furnish the County with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

In the event of breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this agreement.

Such insurance shall include:

- 1) Professional Liability Insurance.....\$1,000,000/\$3,000,000

If this Agreement remains in effect more than one (1) year from the date of its original execution, County may, at its sole discretion, require an increase in the amount of liability insurance to the level then customary in similar County agreements by giving sixty (60) days' notice to Contractor. This will be mutually discussed and agreement upon by both parties.

Said certificate(s) of insurance is (re) attached hereto and incorporated by reference herein as Attachment II

4.2 Tail Coverage

If Contractor obtains one or more claims-made insurance policies to fulfill its obligations, Contractor will: (i) maintain coverage with the same company during the term of this Agreement and for at least three (3) years following termination of this Agreement; or, (ii) purchase or provide coverage that assures protection against claims based on acts or omissions that occur during the period of this Agreement which are asserted after the claims-made insurance policy expired.

4.3 Hold Harmless Indemnification

Each party will be responsible for its own acts or omissions and any and all claims, liabilities, injuries, suites, demands and expenses of all kinds which may result or arise out of any malfeasance or neglect, caused or alleged to have been caused by either party, their employees or representatives, in the performance or omission of any act or responsibility of either party under this contract. In the event that a claim is made against both parties, it is the intent of both parties to cooperate in the defense of said claim and to cause their insurers to do likewise. However, both parties shall have the right to take any and all actions they believe necessary to protect their interest..

Section 5 - Miscellaneous Provisions

5.1 Notice Requirements

Any notice required or desired to be given in respect to this Agreement shall be deemed to be given upon the earlier of (i) actual delivery to the intended recipient or its agent, or (ii) upon the third business day following deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested. Any such notice shall be delivered to the respective addresses set out below, or to such other address as a party shall specify in the manner required by this Section 5.1. The respective addresses are:

If to County: Nancy Steiger, CEO
 San Mateo County Health Center
 222 W 39th Ave
 San Mateo, CA 94403

With Copy to: County Counsel's Office
 400 County Center
 Redwood City, CA 94063.

If to Contractor:
Bohdan A. Makarewycz, M.D.
1828 el Camino Real, #704
Burlingame, CA 94010

5.2 Entire Agreement

This Agreement contains the entire agreement of the parties hereto and supersedes all prior agreements, contracts and understanding, whether written or otherwise, between the parties relating to the subject matter hereof. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5.3 Partial Invalidity

In the event any provision of this Agreement is found to be legally invalid or unenforceable for any reason, the remaining provisions of the Agreement shall remain in full force and effect provided the fundamental rights and obligations remain reasonably unaffected.

5.4 Assignment

Because this is a personal service contract, Contractor may not assign any of its rights or obligations hereunder without the prior written consent of County. County may assign this Agreement to any successor to all or substantially all, of County's operating assets or to any affiliate of County. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

5.5 Independent Contractor

Contractor and all Contractor's Representatives are performing services and duties under this Agreement as independent contractors and not as employees, agents, partners of, or joint ventures with County. County does retain responsibility for the performance of Contractor and Contractor's Representatives as and to the extent required by law and the accreditation standards applicable to County. Such responsibility, however, is limited to establishing the goals and objectives for the Service and requiring services to be rendered in a competent, efficient and satisfactory manner in accordance with applicable standards and legal requirements. Contractor shall be responsible for determining the manner in which services are provided and insuring that services are rendered in a manner consistent with the goals and objectives referenced in this Agreement.

5.6 Regulatory Requirements

The parties expressly agree that nothing contained in this Agreement shall require Contractor or Contractor's Representatives to refer or admit any patients to, or order any goods or services from County. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party will knowingly or intentionally conduct himself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 USC Section 1320a-7b).

5.7 Alternate Dispute Resolution

The parties firmly desire to resolve all disputes arising hereunder without resort to litigation in order to protect their respective reputations and the confidential nature of certain aspects of their relationship. Accordingly, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be mediated. If mediation is unsuccessful, the parties may take the dispute to Superior Court in San Mateo County.

5.8 Third Party Beneficiaries

This Agreement is entered into for the sole benefit of County and Contractor. Nothing contained herein or in the parties' course of dealings shall be construed as conferring any third party beneficiary status on any person or entity not a party to this Agreement, including, without limitation, any Contractor's Representative.

5.9 Governing Law

This Agreement shall be governed by the laws of the state of California.

5.10 Amendments

All amendments shall be approved by the Board of Supervisors.

5.11 HIPAA

For the purposes of compliance with the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Contractor relationship with the County may be considered as that of A Business Associate. As used hereunder, the terms "Business Associate", "Protected Health Information", "use" and "disclosure" shall have the meanings ascribed to them in 42 CFR Section 164.101 and 164.501. If Contractor is a "Business Associate", then Sections 5.12.1 through 5.12.9 shall apply:

5.11.1 Contractor agrees to conduct its business with County in accordance with all applicable laws and regulations, including HIPAA and the regulations promulgated thereunder. Contractor further agrees to comply with all policies and procedures adopted by County related to use and disclosure of Protected Health Information.

5.11.2 Disclosure by County to Contractor of any Protected Health Information will be made for the sole purpose of helping the County carry out its healthcare functions and to allow Contractor to complete its obligations pursuant to this

Agreement. Protected Health Information will not be disclosed for independent use by Contractor. Contractor represents and warrants that it will use Protected Health Information only to complete its obligations pursuant to this Agreement, and as may otherwise be required by law.

- 5.11.3 Contractor represents and warrants that it will safeguard and protect all Protected Health Information from misuse and/or disclosure, and that upon Contractor's learning of any misuse or improper disclosure of such Protected Health Information, Contractor will take immediate steps to stop such impermissible use or disclosure and to prevent further dissemination and misuse of such Protected Health Information. Contractor further represents and warrants that it will immediately report to County any use or disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware.
- 5.11.4 Any breach by Contractor of its obligations under the confidentiality provisions of this contract and/or HIPAA will be grounds for immediate contract termination at the discretion of County.
- 5.11.5 Contractor represents and warrants that its agents, including any subcontractor(s), to whom it may provide Protected Health Information, agree to the same restrictions and conditions that apply to Contractor with respect to Protected Health Information. Contractor further agrees that it will incorporate in any and all agreement(s) with subcontractor(s) a provision naming County as an intended third party beneficiary with respect to the enforcement of, and right to benefit from, the subcontractor's covenants regarding the use and disclosure of Protected Health Information.
- 5.11.6 Contractor agrees to make available Protected Health Information in accordance with the requirements of CFR ' 164.524, 164.526 and 164.528.
- 5.11.7 Contractor agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary for purposes of determining County's compliance with this HIPAA.
- 5.11.8 Contractor agrees that upon termination of this Agreement, Contractor shall return or destroy all Protected Health Information, and Contractor agrees that it will not maintain copies of such Protected Health Information in any form. The provisions of this Agreement regarding uses and disclosures of Protected Health information shall continue beyond termination of this Agreement.

5.11.9 Notwithstanding any other provision of this Agreement to the contrary, if any, nothing in this Agreement, or in the parties' course of dealings, shall be construed as conferring any third-party beneficiary status on any person or entity not named a party to this Agreement.

5.12 Non-Discrimination

Contractor shall comply with the non-discrimination requirements described in SCHEDULE E, which is attached hereto, and incorporated herein.

Contractor shall comply with the County admission and treatment policies which shall provide that patients are accepted for care without discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, age, handicap, or political affiliation.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject Contractor to penalties, to be determined by the County Manager, including, but not limited to:

- i. termination of this Agreement;
- ii. disqualification of Contractor from bidding or being awarded a County contract for a period of up to three (3) years;
- iii. liquidated damages of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) per violation;
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of these paragraphs, the County Manager shall have the authority to:

- i. Examine Contractor's employment records with respect to compliance with this paragraph;
- ii. Set off all or any portion of the amount described in this paragraph against amount due to Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within thirty (30) days of such filing, provided that within such thirty (30) days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notifications shall include the name of the complainant, a copy of such complaint, and description of the circumstance. Contractor shall provide County with a copy of its response to the complaint when filed.

With respect to the provisions of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

5.13 General Standards

Contractor shall maintain its operations in compliance with all applicable laws and rules relating to licensure and certification, including but not limited to, Title 22 of the California Administrative Code, those necessary to participate in the Medicare and Medi-Cal programs under Title VIII and Title XIX, respectively, of the Social Security Act, and those required by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). Contractor shall provide satisfactory evidence of such licenses and certificates. Contractor shall inform Hospital of any notice of any incident within its operations which may affect any license or certification held by Contractor.

5.14 Confidentiality of Patient Information

Contractor shall keep in strictest confidence and in compliance with all applicable state and federal law any patient information. Contractor shall not disclose such information except as permitted by law.

5.15 Non-Disclosure of Names

Notwithstanding any other provision of this Agreement, names of Patients receiving public social services hereunder are confidential and are to be protected from unauthorized disclosure in accordance with Title 42, Code of Federal Regulations, Section 431.300 et seq. and Section 14100.2 of the California Welfare and Institutions Code and regulations adopted thereunder.

For the purpose of this Agreement, all information, records, data, and data elements collected and maintained for the operation of the Agreement and pertaining to Patients shall be protected by Contractor from unauthorized disclosure.

With respect to any identifiable information concerning a Medi-Cal Patient that is obtained by Contractor, Contractor: (i) will not use any such information for any purpose other than carrying out the express terms of this Agreement (ii) will promptly transmit to DHS and the applicable Medi-Cal plan all request for disclosure of such information; and, (iii) will not disclose except as otherwise specifically permitted by this Agreement, any such information to any part other than DHS and the applicable Med-Cal Plan, without prior written authorization specifying that the information is releasable until Title 42, CFR, Section 431.300 et seq., Section 14100.2 Welfare and Institutions Code, and regulations adopted thereunder, or as ordered by a court or tribunal of competent jurisdiction and (iv) will, at the expiration or termination of this Agreement, return all such information to DHS and the applicable Med-Cal Plan or maintain such information according to written procedures sent to Health Plan by DHS and the applicable Medi-Cal Plan for this purpose.

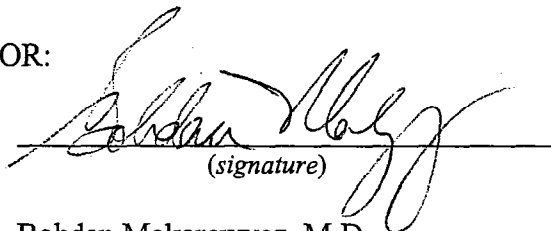
5.16 Disclosure of Records

Contractor agrees to provide to County, to any federal or state department having monitoring or reviewing authority, to County's authorized representatives and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine and audit all records and documents necessary to determine compliance with relevant federal, state, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed. Contractor shall comply with all provisions of the Omnibus Budget Reconciliation Act of 1980 regarding access to books, documents, and records. Without limiting the foregoing, Contractor shall maintain such records and provide such information to Hospital, and to Government Officials as may be necessary for compliance by Hospital with all applicable provisions of all state and federal laws governing Hospital. Upon request, County and Government Officials shall have access to, and copies of, at reasonable times at the Contractor's place of business (or such other mutually agreeable location in California), the medical records, books, charts, and papers relating to the Contractor's provision of health care services to Patients, the cost of such services, and payments received by the Contractor from Patients (or from others on their behalf) and, to the financial condition of Contractor. Such records described herein shall be maintained at least four (4) years from the end of the Contract year.

All records of Contractor shall be maintained in accordance with the general standards applicable to such book or record keeping and shall be maintained during any governmental audit or investigation.

IN WITNESS WHEREOF, County and Contractor have duly executed this Agreement as of the dates set out beneath their respective signatures.

CONTRACTOR:


(signature)

By: Bohdan Makarewycz, M.D.

Date: 5-2-02

COUNTY:

(signature)

By: Jerry Hill, President
Board of Supervisors, San Mateo County

Attest:

By: _____
Clerk of Said Board

Date: _____

SCHEDULE A SERVICES

In consideration of the payments specified in Exhibit "B," Contractor shall perform such services described below under the general direction of the Director.

1. Provide ENT services in the Department of Surgery, including inpatient, outpatient, and emergency care.
2. Participate in such scheduled coverage of service as is mutually arranged and agreed upon by members of the Department of Surgery under the supervision of the Chief of Surgery.
3. Contractor shall develop and accept an alternating schedule for "On Call," and/or "Emergency Call" status during all other times on Monday through Friday and for twenty-four (24) hours each Saturday, Sunday, or holiday. "On Call" and "Emergency Call" are defined as being available by telephone or pager to the hospital medical staff, nursing supervisor, and administrator on-call as needed. In addition, Contractor must adhere to the guidelines of the San Mateo County Trauma System by being immediately available by phone and must make every reasonable effort to be present at the hospital at the time of the patient's arrival.
4. It is expressly understood that Contractor and subcontractors are subject to these conditions, that all will accept equal scheduling for "On Call" status and that each will be responsible for his/her portion of "On Call" time. All physicians who take calls for ENT must have San Mateo County General Hospital privileges.
5. Scheduled surgery hours shall be Monday through Friday, 0730 through 1500 hours. Add-on cases during the afternoon, nights, and weekends should be truly emergent. Any elective add-on cases need prior administrative approval.
6. Contractor shall participate in such training programs as are, or may be, established by the medical staff at San Mateo County General Hospital. Each individual's participation in continuing education is documented and considered at the time of reappointment to the medical staff and/or renewal or revision of individual clinical privileges.
7. Contractor shall fulfill those requirements for active staff membership set forth in Articles 3 and 4.2 of the San Mateo County General Hospital Medical Staff Bylaws, and maintain such active staff status as a condition of the Agreement.

8. Contractor shall attend regularly and serve without additional compensation on committees responsible for Peer Review activities, Quality Assurance, Utilization Review as outlined in the Medical Staff Bylaws, Rules and Regulations.
 9. Contractor shall provide Medical Staff administrative support to hospital and nursing in meeting surgical and ENT standards as defined by Joint Commission, Title 22, and other applicable standards.
-

SCHEDULE B PAYMENTS

Total payment for services under this agreement will not exceed ONE HUNDRED FIFTY-SIX THOUSAND, TWO HUNDRED SEVENTY-ONE DOLLARS AND FIFTY CENTS (\$156,271.50).

April 1, 2002- March 31, 2003

1. Contractor shall be paid a fixed rate of \$72,600 per year to be paid in twelve monthly installments of \$6,050 per month.
2. An annual 5% performance incentive of \$3,630 is to be paid according to the provisions of Schedule D.

April 1, 2003- March 31, 2004

3. Contractor shall be paid a fixed rate of \$76,230 per year to be paid in twelve monthly installments of \$6,352.50 per month.
4. An annual 5% performance incentive of \$3,811.50 is to be paid according to the provisions of Schedule D.

Monthly payments shall be paid no later than the 20th day of the following month. The performance incentive payments are to be made once per year, no later than April 20th, following the evaluation process described in Schedule D.

**SCHEDULE C-
Billing Requirements**

All Contractors shall be obligated to comply with the following billing provisions:

A. OUTPATIENT

Contractor shall submit to County complete, accurate and timely encounter forms here:

“Complete” shall mean:

- all procedure and diagnosis codes shall be present on form in
- CPT and ICD9 format
- Contractor's signature, date and title is present on form
- Referral Authorization Form (RAF) is completed by Contractor as required by MediCal or HPSM regulations

“Accurate” shall mean:

- E & M CPT codes must be consistent with level of care
- Other procedures codes must be consistent with diagnosis
- Procedures must be consistent with Medicare and MediCal guidelines for medical necessity
- All Contractor services must be supported by documentation in-patient Chart

“Timely” shall mean:

- Submission of encounter forms to County within three calendar days from date of service

The County will provide physician encounter forms appropriate to specialties covered under this agreement. The County will also provide, at time of service, encounter forms will be embossed or have a sticker applied with the following information:

- Medical Record number
- Patient Name
- Date of Birth
- Date of Service
- Patient Number
- Financial Class

County will attach a RAF with encounter form where appropriate

B. INPATIENT (includes Same Day Surgery and Observation)

Submission to County of complete, accurate and timely charge slips and additional documentation needed for billing:

“Complete” shall mean:

Charge slips shall include:

- Date of Service
- Appropriate CPT code
- Physician signature and title
- Patient name
- Medical Record number

“Timely” shall mean:

Contractor charge slips are submitted to the County within three calendar days of date of service.

“Additional documentation” shall mean:

- Discharge summary is completed in the time and manner specified in the
- Medical Staff Bylaws
- Operative notes are complete in the time and manner specified in the
- Medical Staff Bylaws
- History and Physical is complete in patient chart
- Short Stay/Admission form completed with CPT for all surgeries

SCHEDULE D
Professionalism & Citizenship Compensation Incentive

Professionalism & Citizenship Performance Evaluation will comprise 5% of total compensation, and will consist of the follow four measures, each weighted equally (25%):

1. Patient Satisfaction Ratings
2. Peer Ratings (Primary/ Referring Contractor Satisfaction)
3. Staff Ratings (nurses, clerks, other clinic staff)
4. Organizational Citizenship Ratings (as defined in contract section "Citizenship Duties")

These shall be evaluated annually, between January and March, and the result shall be used to calculate the Professionalism & Citizenship Compensation Incentive. If the evaluation fails to be conducted or completed at no fault of the Contractor, the provider will be granted maximum credit for the incomplete component. The components of the evaluation will be conducted by the relevant part of the organization, under the general direction of the CEO, and coordinated thru the Medical Staff Office. Responsibility for conducting the surveys will be as follows: Patient Satisfaction ratings will be conducted by Administration; Peer Ratings to be coordinated by the Medical Staff Office; the Staff Ratings by Administration; Organizational Citizenship Ratings by the Administration.

The ratings, for all four measures shall have, or be translated into, a three point system: 1=improvement needed, 2=meets expectations, 3=exceeds expectations. For each of the four areas, a score of 1 will translate into 0%; score of 2=12.5%; a score of 3=25%.

Appeals regarding interpretation or validity of the evaluation will be adjudicated by a panel appointed by the Chief Executive Officer and the Medical Director and its decision will be binding to both parties.

The language and administration of the provisions of Schedule D and Paragraph 1.8 "Citizenship Duties of Contractor" is subject to development and refinement through language mutually agreed upon by the Chief Executive Officer and Contractor(s). Such development and refinement is to be completed by June 30, 2002 and the provisions are to be retroactively enforced beginning April 1, 2002.

SCHEDULE E
Non-Discrimination

Contract between County of San Mateo and Physician Contractor M.D., hereinafter called "Contractor."

- a. No person shall, on the grounds of race, color, creed, national origin, religious affiliation or non-affiliation, sex, sexual orientation, marital status, age (over forty (40)), disability, medical condition (including but not limited to AIDS, HIV positive diagnosis, or cancer), political affiliation or union membership be excluded from participation in, be denied the benefits of, or be subjected to discrimination under this Agreement.
- b. Contractor shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this contract. Contractor's personnel policies shall be made available to County upon request.
- c. Contractor shall assure compliance with Section 504 of the Rehabilitation Act of 1973 by submitting a signed letter of assurance (attachment I) of compliance. Contractor shall be prepared to submit a self-evaluation and compliance plan to County upon request within one (1) year of the execution of this Agreement.

COUNTY OF SAN MATEO

Equal Benefits Compliance Declaration Form

I Vendor Identification

Name of Contractor: BOHDAN A. MAKAREWYCZ, M.D.
Contact Person: _____
Address: 1828 EL CAMINO REAL, #704
BURLINGAME, CA. 94010
Phone Number: 650-697-5551 Fax Number: 650-697-5809

II Employees FOR PURPOSE OF THIS CONTRACT

Does the Contractor have any employees? ___ Yes X No

Does the Contractor provide benefits to spouses of employees? ___ Yes X No

If the answer to one or both of the above is no, please skip to Section IV.

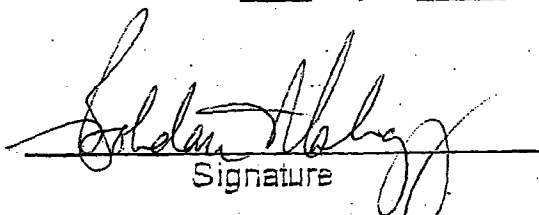
III Equal Benefits Compliance (Check one)

- ☐ Yes, the Contractor complies by offering equal benefits, as defined by Chapter 2.93, to its employees with spouses and its employees with domestic partners.
- ☐ Yes, the Contractor complies by offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- ☐ No, the Contractor does not comply.
- ☐ The Contractor is under a collective bargaining agreement which began on _____ (date) and expires on _____ (date).

IV Declaration

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this 30 day of APRIL, 2002 at SAN MATEO, CA.
(City) (State)


Signature
M.D.
Title

BOHDAN A. MAKAREWYCZ, M.D.
Name (Please Print)

Contractor Tax Identification Number

COUNTY OF SAN MATEO

HEATH SERVICES
Hospital and Clinics DivisionMEMORANDUM

Date: April 29, 2002
To: Priscilla Morse, Risk Management/ Pony # EPS 163 Fax # 363-4864
From: Teré Larcina, Hospital and Clinics/ Pony # HOS316/Fax # 2267
Subject: Contract Insurance Approval

CONTRACTOR: Polidan Makarewycz, M.D.

DO THEY TRAVEL: No.

PERCENT OF TRAVEL TIME:

NUMBER OF EMPLOYEES: None.

DUTIES (SPECIFIC): Contractor shall provide professional Eyes, Nose, and Throat medical services to the patients of San Mateo County Health Center.

<u>COVERAGE:</u>	Amount	Approve	Waive	Modify
Comprehensive Liability:	_____	_____	<input checked="" type="checkbox"/>	_____
Motor Vehicle Liability:	_____	_____	<input checked="" type="checkbox"/>	_____
Professional Liability:	\$1/3m	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Worker's Compensation:	_____	_____	<input checked="" type="checkbox"/>	_____

REMARKS/COMMENTS:


SIGNATURE

CERTIFICATE OF INSURANCE

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy below.

Name and Address of Named Insured
BOHDAN A MAKAREWYCZ MD 1828 EL CAMINO REAL SUITE 704 BURLINGAME CA 94010

Reprint

Insurance afforded by this policy is CLAIMS-MADE Professional Liability Insurance

Policy Number	Limits of Liability	Annual Policy Period As of 12:01 a.m. local time
008222	1,000,000 each claim 3,000,000 aggregate 0 deductible	Effective Date: 01/01/02 Expiration Date: 01/01/03 Retro Date: 05/23/79

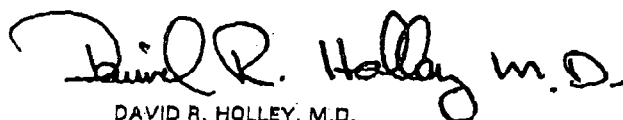
Current Medical Specialty: 8930 OTOLARYNGOLOGY-NO PLASTIC SURGERY

Certificate Holder

This is to certify that the policy of insurance listed above has been issued to the insured named above for the policy period indicated subject to payment of all billed premiums. The insurance afforded by the policy described above is subject to all the terms, exclusions and conditions of such policy. Should the above policy be canceled before the expiration date, it is the responsibility of the insured to inform recipients of Certificates of Insurance of any changes in coverage, declination of issuance or, termination or cancellation of the policy. Failure to provide such notice shall impose no obligation or liability of any kind upon NORCAL, its agents, or representatives.

By: NORCAL Mutual Insurance Company

Date: 12/21/01


DAVID R. HOLLEY, M.D.
Secretary