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 CITY AND COUNTY OF SAN FRANCISCO

11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 13

14 CITY AND COUNTY OF SAN FRANCISCO,  
 15 Plaintiff,  
 16 vs.  
 17 ALEX M. AZAR II, et al.,  
 18 Defendants.

No. C 19-02405 WHA  
*Related to*  
 No. C 19-02769 WHA  
 No. C 19-02916 WHA

**DECLARATION OF DR. ALICE CHEN  
 IN SUPPORT OF PLAINTIFFS’  
 MOTION FOR SUMMARY JUDGMENT  
 AND IN SUPPORT OF THEIR  
 OPPOSITION TO DEFENDANTS’  
 MOTION TO DISMISS OR, IN THE  
 ALTERNATIVE, FOR SUMMARY  
 JUDGMENT**

19 STATE OF CALIFORNIA, by and through  
 ATTORNEY GENERAL XAVIER BECERRA,  
 20 Plaintiff,  
 21 vs.  
 22 ALEX M. AZAR, et al.,  
 23 Defendants.

Date: October 30, 2019  
 Time: 8:00 AM  
 Courtroom: 12  
 Judge: Hon. William H. Alsup  
 Action Filed: 5/2/2019

24 COUNTY OF SANTA CLARA et al,  
 25 Plaintiffs,  
 vs.  
 26 U.S. DEPARTMENT OF HEALTH AND  
 27 HUMAN SERVICES, et al.,  
 28 Defendants.

1 I, Dr. Alice Chen, declare as follows:

2 1. I have personal knowledge of the facts set forth in this declaration and, if called as  
3 a witness, could and would testify competently to the matters set forth below.

4 2. I am the Chief Medical Officer and Deputy Director for the San Francisco Health  
5 Network (“SFHN”), a branch of the San Francisco Public Health Department. I have served in  
6 this role since 2015.

7 3. Prior to assuming this role, starting in 2005, I served as Medical Director of the  
8 General Medicine Clinic, Medical Director of the Adult Medical Center, Director of the eReferral  
9 Program, Director of the Center for Innovation in Access and Quality, and Chief Integration  
10 Officer for San Francisco General Hospital.

11 4. I attended Yale University, Stanford University Medical School, and the Harvard  
12 School of Public Health.

13 5. SFHN runs a full scope health care delivery system that includes primary and  
14 preventive care, specialty care, mental health and substance use disorder services, jail health  
15 services, maternal child adolescent health services, urgent care, emergency department services,  
16 psychiatric emergency room services, level one trauma center services and long term care.

17 6. SPDPH recognizes and respects that an individual’s religious beliefs, cultural  
18 values, and ethics may make that person reluctant to participate in an aspect of patient care.  
19 However, it would be an untenable situation if staff could categorically refuse to participate in  
20 patient care based on an objection to the service the patient seeks or needs.

21 7. In order to support the legitimate conscience rights of individual health care  
22 professionals while meeting fundamental obligations of the medical profession and the right of  
23 patients to receive timely, quality patient care, we developed a policy concerning “requests not to  
24 participate in an aspect of patient care.”

25 8. Administrative Policy 5.15 states:

26 In the event that a staff member feels reluctant to participate in an aspect of patient  
27 care because the patient’s condition, treatment plan, or physician’s orders are in  
28 conflict with the staff member’s religious beliefs, cultural values or ethics, the staff  
member’s written request for accommodation will be considered if the request does  
not negatively affect the quality of patient’s care.

1 In situations where the immediate nature of the patient's needs do not allow for the  
2 substitution of personnel, the patient's right to receive the necessary quality patient  
3 care will take precedence over the staff member's individual beliefs and rights until  
4 other competent personnel can be provided.

5 9. The Policy explains that "[a]n accommodation may include personnel substitutions  
6 through a change in patient assignment or transfer of the staff member to a different patient care  
7 area in accordance with organizational standards." It is also clear in the Policy that the  
8 individual's "manager and/or supervisor must determine if the staff member's request for  
9 accommodation negatively affects the quality of the patient's care," and "[i]f the patient's needs  
10 do not allow for the substitution of personnel, the manager and/or supervisor must inform the  
11 staff member to stay at their post until other competent personnel can be provided."

12 10. A true and correct copy of Administrative Policy 5.15 is attached hereto as  
13 Exhibit A.

14 11. This policy has enabled us to appropriately balance the important interests at stake.

15 12. If we are required to alter this policy to provide for a categorical right to refuse to  
16 participate in an aspect of patient care—even in urgent situations when other personnel is not  
17 immediately available to step in—patient care will be significantly compromised.

18 13. If we are required to alter this policy to prohibit the involuntary transfer of  
19 individuals who have a religious or moral objection to performing critical aspects of their job, it  
20 will impede the ability of our hospitals and clinics to function efficiently.

21 14. In my professional experience as a doctor, the phrase "assist in the performance" is  
22 a term of art. "Assist in the performance" is generally used only in the context of a surgical or  
23 non-surgical procedure, or an exam, and refers to a doctor, nurse, medical assistant or other  
24 medical professional who physically helps the treating doctor, either by physically handling  
25 necessary instruments or by physically handling the patient. Generally, in a surgical context, only  
26 those who had "scrubbed in" to the sterile environment could be viewed as "assisting in the  
27 performance" of a surgical procedure.

28 15. An example of someone who could be said to "assist in the performance of a  
procedure" would be a medical assistant who physically ensures that a patient stays in the correct

1 position for a doctor to perform a lumbar puncture. An example of someone who would not be  
2 said to "assist in the performance" of a procedure would be a medical interpreter who is present  
3 for the duration of a pelvic exam, but does not play any role in physically administering the exam.

4 16. In my experience as a doctor, in generally accepted medical parlance, the phrase  
5 "assist in the performance" would not include, for example, an individual without medical  
6 training, such as a receptionist or scheduler. Nor would it include someone who merely sterilizes  
7 instruments or prepares a room for a procedure.

8  
9 I declare under penalty of perjury that the foregoing is true and correct and that this  
10 declaration was executed on September 9, at Berkeley, California.

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13 Alice Chen, M.D., M.P.H.  
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# **EXHIBIT A**

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**Administrative Policy Number:** 5.15

**TITLE:** REQUESTS NOT TO PARTICIPATE IN AN ASPECT OF PATIENT CARE

## **PURPOSE**

The purpose of this policy is to establish guidelines for processing staff member's requests not to participate in patient care in a manner which ensures continuity of quality patient care.

## **STATEMENT OF POLICY**

It is the policy of San Francisco General Hospital and Trauma Center to respect the diversity of its staff and patients and the right of patients to receive quality patient care. In the event that a staff member feels reluctant to participate in an aspect of patient care because the patient's condition, treatment plan, or physician's orders are in conflict with the staff member's religious beliefs, cultural values or ethics, the staff member's written request for accommodation will be considered if the request does not negatively affect the quality of patient's care.

In situations where the immediate nature of the patient's needs do not allow for the substitution of personnel, the patient's right to receive the necessary quality patient care will take precedence over the staff member's individual beliefs and rights until other competent personnel can be provided.

All managers and supervisors are responsible for informing employees of this policy and changes in departmental scope of practice. Managers and supervisors are also responsible for implementing this policy as appropriate.

## **PROCEDURE**

### **I. Staff Notification**

At the time of employment, the manager and/or supervisor must review the departmental scope of service with new staff **member** as outlined in the Record of Orientation. The employee signs the Record of Orientation which is forwarded to Human Resources Services by the manager or supervisor for inclusion in the employee's personnel file.

### **II. Requests not to Participate in an Aspect of Care**

- A. It is recognized that staff may have certain ethical and religious beliefs or cultural values and, in good conscience, may feel compelled to request not to participate in an aspect of patient care and requests an accommodation.
  - An accommodation may include personnel substitutions through a change in patient assignment or transfer of the staff member to a different patient care area in accordance with organizational standards.
- B. The manager and/or supervisor must determine if the staff member's request for accommodation negatively affects the quality of the patient's care. If the patient's needs do not allow for the substitution of personnel, the manager and/or supervisor must inform the staff member to stay at their post until other competent personnel can be provided.

## **APPENDIX**

None

## **CROSS REFERENCES**

SFGHMC Administrative Policies and Procedures:  
3.07 Competency Assessment and Improvement Plan  
16.04 Patient Rights and Responsibilities

Staff Nurses and Per Diem Nurses Memorandum of Understanding between Service Employees International Union and the City and County Of San Francisco - July 1, 2014 and June 30, 2016, Section 40 Article II.K. Conscientious Objector

Supervising Nurses Memorandum of Understanding between Teamster Local 856 and the City and County of San Francisco - July 1, 2012 to June 30, 2016, Section 30 – H. Conscientious Objection to Areas of Moral and Religious Concerns

### APPROVAL

Nursing Executive and Patient Care Services Committee	6/2/15
Medical Executive Committee	6/18/15
Quality Council	6/16/15
Exec Committees B-25 Readiness	12/17/15

**Date Adopted:** 09/95

**Reviewed:** 04/99, 2/05, 06/07, 02/08, 03/11, 4/15

**Revised:** 12/2001

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