

November 20, 2023

Palomar Health Board Chair Linda Greer
15615 Pomerado Road
Poway, CA 92064

Dear Chair Greer:

This letter is my written response to the complaint filed by Director Laura Barry under Code of Conduct 4.1 for my “participation in a *Voice of San Diego* news article.” In that article, the comments below were attributed to me and are the subject of Barry’s complaint:

Laurie Edwards-Tate, Palomar Health board director, told Layne she came across the terms agreement for the first time only a few weeks ago while attempting to access meeting agendas. “It was shocking to me, and I felt prohibited from its use and I felt like it was a barrier for being able to access it,” Edwards-Tate said, speaking on her own behalf and not for the board. She added that, to her knowledge, the terms of use agreement was never brought up in a regular board meeting.

A copy of Barry’s complaint is attached to this letter as Exhibit A. I will address the statements and allegations made in that complaint in turn.

1. “Director Edwards-Tate’s statements to the media—made without adherence to the Board’s Media Policy recommendations—are reckless at best, intentionally misleading at worst.”

A copy of the Code of Conduct, including the media policy, is attached as Exhibit B. The media policy can be found on pages 15–16.

The Board’s media policy states that “**All Board Members have the right to express their personal points of view regarding matters of general public concern.**” The policy also states that Board Members should be clear when they speak in their personal capacity as opposed to expressing the policy of the Board.

There can be no question that my comments were expressing my personal point of view. My opinions were couched in such a way as there could be no suggestion I was expressing a position on behalf of the board. I expressed my personal reaction to coming across the terms of use, how I felt about them, my memory regarding their mention in public meetings, and I said that I was speaking on my own behalf and not for the Board. Your weaponization of the Board’s Media Policy to stop fellow directors from expressing their personal points of view regarding District matters, on threat of sanctions as outlined in Section 4.3 of the Code of Conduct, is shameful on a personal level. At the institutional level, it violates the

constitution to threaten to take away benefits, sue directors, or remove a director because you don't like that they critique District decisions.

2. "I personally witnessed legal counsel inform the Board of pending changes to the website Terms of Use during the September 11th Closed Session of the Board of Directors—a meeting that Director Edwards-Tate attended."

I do not remember the terms of use being discussed in detail at any regular board meeting. While you state that we were told about pending changes at a special session, to my memory those comments were a broad summary of general changes to the website rather than a specific discussion about the new Terms of Use pop up that would prevent users from accessing the website without agreeing to waive legal rights. I have no memory of being provided with a copy of the Terms of Use for review. I have no memory of voting on the new Terms of Use prior to the website changes being implemented. That is why I limited my comments about any prior Board actions regarding the Terms of Use by saying that, *to my knowledge*, the Terms of Use was never brought up in a regular board meeting. These comments were truthful, accurate, and could in no way be misinterpreted to suggest I was making a statement on behalf of the Board rather than myself.

3. "A Director's duties of care (section 1.1) and loyalty (section 1.2) impose some basic due diligence, such as recommending a consultation with the District's Chief Legal Officer, or following the District's Code of Conduct with respect to media engagement (section 3.8) prior to speaking to the media."

It is alarming to me that the Board would try to prevent me from telling my constituents when I think there is something wrong going on in their public health district. My duty to public health is outlined in state law, and my comments were in furtherance of the public health. Further, I have First Amendment speech rights to provide my thoughts about acts of the District to those who elected me. I do not have to restrict my personal comments about the District to only what District officials would want me to say, and it violates the First Amendment for the Board to suggest that they must approve my comments before I can speak to the public in my personal capacity. To the extent my comments somehow violated the Board's Duty of Care and Duty of Loyalty policies, those policies must yield to my obligations to follow state law, and my free speech rights enshrined in the United States Constitution.

4. "The copyright language that was the foundation for Director Edwards-Tate's comment was legacy language that had been in Palomar's Terms of Use for at least 11 years. At no time did any person—including Director Edwards-Tate—raise any concern regarding this language, nor was it ever cited by Palomar as a means of avoiding the CPRA."

My comments didn't say anything about whether the Terms of Use were legacy language. Nor did my comments suggest that the Terms of Use were a means of avoiding the CPRA. My comments were directed to the fact that users now had to click on a box waiving significant legal rights before accessing documents that are required to be freely accessible to the public under the Brown Act. I have no idea what Director Barry is referring to here, but it is clearly not any comment attributed to me in the article.

5. "The Board and Palomar take data security and privacy very seriously. To that end, requiring an affirmative step by users to agree to abide by standard, industry best-practice terms and conditions helps protect Palomar's patients and citizens of the District. Director Edwards-Tate's comments contravene Palomar's position on this matter, and her own stated interests, and thus appears to be a violation of her Code of Conduct Duty of Care (section 1.1) and Loyalty (section 1.2)."

My comments didn't say anything about a commitment to data privacy or security. Nor did they mention industry standards or terms and conditions. To the extent that my comments "contravene Palomar's position," it needs to be contravened as the position taken by Palomar Health regarding the Terms of Use rights waivers appears to me to violate requirements of open access outlined in the Brown Act. And state law preempts the Duty of Care and Duty of Loyalty to the extent there is a conflict.

6. "The Board and Palomar also regards its website as a critical resource for the District. The affirmative acknowledgement of the terms is a necessary tool to reduce the risk of automated "bot" usage by malicious parties and distributed denial of service (DDoS) attacks. The required assent helps prevent these attacks and keeps the website up and running for all legitimate users at the cost of a single (assuming cookies are enabled) minor assent to terms and conditions that every other district requires acceptance of by the mere usage of their websites. Director Edwards-Tate's comments contravene Palomar's position on this matter and thus appears to be a violation of her Code of Conduct Duty of Care (section 1.1) and Loyalty (section 1.2)."

The District is free to implement safeguards to protect the website from bot usage and denial of service attacks. What I believe it may not do is require the public to waive legal rights, such as the right to bring a lawsuit or the right to a trial by jury, to do so. Once again, I must follow state law. I believe the Terms of Use's waiver of legal rights violates the Brown Act, and I'm not going to parrot a message from the District that all is fine and good when I believe the District is violating state law.

7. "Asking users to assent to basic terms of service is a routine feature one finds on other District and government websites. The only difference here is Palomar has chosen to be very upfront and clear with its user terms—instead of burying it in 8-point font at the bottom of a page. The legal **effect** on Palomar's users is no different

than with their use of any other government website. Director Edwards-Tate's comments imply the opposite and thus are false and misleading—if she had followed the media policy in section 3.8, she could have received such information from the Chief Legal Officer and such confusion would not have occurred. Prior to Palomar implementing the new pop-up terms of use, users of the website—merely by using it—were agreeing to abide by certain terms and conditions. The only difference now is that the user knows what it is agreeing to. Palomar made the change for the benefit of Palomar's patients and the District as a whole. Director Edwards-Tate's comments imply the opposite and thus are false and misleading—if she had followed the media policy in section 3.8, such confusion would not have occurred.”

I disagree that forcing an individual to agree to not bring a class action lawsuit, or agree to mandatory arbitration of any disputes before they can access public documents like board meeting agendas, information on public comment, and budgets, is “routine,” minor, or required under the circumstances. The District is free to make this argument to the public if they want. What the District may not do under state law or the First Amendment is stop me from saying that I think the District's Terms of Use are an illegal barrier to public access mandated under the Brown Act. And to the extent the District is interpreting the Duty of Loyalty, Duty of Care, or Media Policy to require me to restrict my private speech to the public, those policies are preempted by state and federal law.

8. “[H]er statements imply the Executive and Legal teams had a duty to inform the Board or secure the Board's consent to make changes to the website. This is wrong and misleading.”

My comments speak for themselves and include nothing resembling that alleged “implication.” Her complaint does not elaborate where this alleged “implication” is contained or how it is implied, likely because the claim is farcical and imagined by Director Barry. If Director Barry thinks my comments implied this, she is projecting.

9. “Second, her statements imply the Terms of Use she encountered somehow restricted or limited her ability to access Board meeting agendas. They do not, and did not restrict this access.”

If a person does not agree to the Terms of Use, they cannot access Board meeting agendas. Thus, the Terms of Use DO restrict and limit the ability of the public to access Board meeting materials. And since I chose not to waive legal rights by agreeing to the Terms of Use, yes, my access was restricted.

10. “Third, Director Edwards-Tate neglected to mention that legal counsel— notwithstanding it had no obligation to do so—did inform the Board in the September 11th Closed Session Meeting both that changes to the website were

underway and the reason for those changes—namely that the District is now being sued, along with scores of other private and public hospitals, in trumped up, so-called “Meta-Pixel” data/privacy litigation. In the past year alone, more than 50 California hospitals—including Dignity Health, Cedars Sinai, Scripps Health, El Camino Health Care District, Washington Township Health Care District, among dozens of others and now Palomar—have been sued in purported class actions involving allegations their websites operate in a manner that constitutes invasion of privacy and a violation of state and federal wiretap laws. These lawsuits—including the one recently filed against Palomar—allege that hospital websites are set up in a manner which enables third parties like Meta (*f/k/a* “Facebook”) and Google to collect sensitive health-related information about website visitors. Media outlets have highlighted and criticized use of such tools by healthcare organizations, spurring additional litigation and investigation by State Attorney General Offices, and federal regulators, particularly the FTC.”

The *Voice of San Diego* chooses what of my comments it wants to print, and I have no control over what they print. Further, the potential for a lawsuit was discussed in a closed special session. My confidentiality requirements prevented me from discussing the lawsuit. In essence, here the Board seeks to punish me for NOT revealing confidential details relayed in a closed special session to a news outlet. Thus, I am damned if I do, damned if I don't. If the news of the potential lawsuit wasn't supposed to be confidential and was something that I could have discussed with the press, under the Brown Act we should have been discussing it in regular session, not behind closed doors.

11. “The Administration’s recent decision to make minor changes to the website’s Terms of Use (on the advice of legal counsel) was designed to reduce legal exposure to the District from these type lawsuits (*i.e.*, to protect District assets and user privacy) by making the Terms of Use more explicit and gaining visitor’s express consent they understand how third parties (not Palomar) might be accessing and using their personal data. Director Edwards-Tate’s statements to the media promote public confusion as to the reasons for the recent changes and provide fuel for the plaintiffs’ attorneys suing the District. By making misleading statements to the media about the District’s remedial measures (taken in response to active litigation), Director Edwards-Tate has increased the risk of this litigation to the District and most likely has violated the Code of Conduct’s sections on duty of care, duty of loyalty, and media relations.”

I vehemently disagree that the changes were “minor,” and I have a right to tell my constituents my thoughts. As shown, there was nothing “misleading” about my comments. They were my personal reflections regarding recent changes and were noted as such within the article. The Board’s real problem is that it doesn’t want its actions to be under public scrutiny, and the Board is therefore seeking to restrict my speech so it doesn’t have to answer to the public for what it is doing.

12. “Duty of Loyalty Violation

Section 1.2 Duty of Loyalty provides: “Board Members must . . . put the District and its constituents’ good before his or her own personal interest. Once the Board has acted, a Board Member may seek change through Board action, but may not undermine public or District constituent confidence in the Board or the District.” See also Palomar Health Bylaw Art. IV, Sec. C, Board Duties (“Members of the Board of Directors have duties as provided by applicable law, any Board-approved policy of the District, and Palomar Health’s Board of Directors Code of Conduct (‘Code of Conduct’).”). Director Edwards-Tate violated this responsibility by, among other things, making knowingly false statements to the press to cast the District in a bad light.”

Under state law, my first duty is to benefit the public health. As was my constitutional right and my obligation under state law, I raised to the public my concerns about how their rights were implicated by recent changes to the Terms of Use. There was nothing false in my statements. They were my opinions and were stated as such. No fair reading of the article could suggest that I was attempting to articulate the position held by the District rather than voicing my own. But again, even if the Duty of Loyalty presents an obligation that contradicts my obligation to benefit the public health under state law, it is preempted.

13. ”Duty of Care Violation

Section 1.1 Due Care provides: “Board Members must perform their duties as members of the Board and committees in good faith, with sound business judgment and with the care, including reasonable inquiry, of an ordinarily prudent person . . . ***Directors may not knowingly disseminate false or misleading information, and must act promptly to correct erroneous communications for which they are responsible.***” See also Palomar Health Bylaw Art. IV, Sec. C, Board Duties (“Members of the Board of Directors have duties as provided by applicable law, any Board-approved policy of the District, and Palomar Health’s Board of Directors Code of Conduct (‘Code of Conduct’).”). Director Edwards-Tate violated this responsibility by, among other things, making knowingly false statements to the press to cast the District in a bad light, or to the extent her statements were made negligently, then failing to correct her erroneous statements when made aware of the error.”

There was no provably false statement of fact in my press comments. As shown above, they were pure opinions, and no unbiased reading of them could suggest otherwise. The District may not like my opinions, but there was nothing false or misleading in them.

14. **“Media Policy Violation**

Section 3.8 Board Member Media Relations provides: “The Board wishes to ensure that ***accurate, complete and consistent information*** is provided to the constituents of the District via the news media in a responsive manner that is compliant with state and federal laws, and safeguards patient privacy . . . As a public entity, Palomar has an obligation, as well as a desire, to communicate with the public it serves. Board Members ***are encouraged to contact the District Marketing Department or specifically designated District media representative before speaking or otherwise publishing to the media on matters of District business.*** This assists the Marketing Department or specifically designated District media representative to coordinate messaging, ascertain the nature of the media query (if any) and what prompted it, determine the most recent and relevant information to disseminate, and select among possible responses and spokespersons, whether District representatives or Board Members. A District Marketing Department or specifically designated media relationship representative will be available at all times to assist in this process; should a Board Member experience difficulty reaching either, the Board Member should raise the concern with the Chair and/or General Counsel.” *See also* Palomar Health Bylaw Art. IV, Sec. C, Board Duties (“Members of the Board of Directors have duties as provided by applicable law, any Board-approved policy of the District, and Palomar Health’s Board of Directors Code of Conduct (‘Code of Conduct’).”). Director Edwards-Tate violated this responsibility by, among other things, failing to provide notice of her statements to the marketing team so that she could ensure the veracity of the information presented—which was in fact false—and coordinate any concerns with the District.”

The First Amendment of the United States Constitution says otherwise. See Exhibit C, Director Laurie Edwards-Tate’s First Amended Complaint filed in the matter of Edwards-Tate v. Palomar Health Board.

Please direct any response to my counsel, Karin Sweigart (ksweigart@dhillonlaw.com) at Dhillon Law Group.

Sincerely,

Laurie Edwards-Tate

Director Laurie Edwards Tate

EXHIBIT A

From: [Greer, Linda](#) on behalf of [Greer, Linda <Linda.Greer@palomarhealth.org>](#)
To: [Edwards-Tate, Laurie](#)
Cc: [DeBruin, Kevin](#)
Subject: FW: Complaint against Director Edwards Tate
Date: Tuesday, November 14, 2023 9:54:48 PM
Attachments: [Palomar Health - Investigation Memorandum re Edwards-Tate VOSD Comments.pdf](#)

Laurie Edwards-Tate,

I have received the below complaint of which you are the subject. Pursuant to the Palomar Health Board of Directors Code of Conduct, section 4.1, I am providing you, by way of this email, a written copy of the complaint. You have ten (10) days to respond in writing to the complaint. Please see Code of Conduct, chapter 4, for a full enumeration of this procedure. At either the next regular board meeting or a special meeting called for this specific purpose, the Board will review the complaint and any response that you provide. Any questions you have can be directed to General Counsel and Chief Legal Officer Kevin DeBruin and District Counsel John Kern, both CC'd here.

From: Barry, Laura <Laura.Barry@palomarhealth.org>
Sent: Tuesday, November 14, 2023 6:32 PM
To: Greer, Linda <Linda.Greer@palomarhealth.org>
Cc: DeBruin, Kevin <Kevin.DeBruin@palomarhealth.org>
Subject: Complaint against Director Edwards Tate

Dear Chair Linda Greer:

I write to you today to present a complaint pursuant to Code of Conduct section 4.1 against Director Laurie Edwards-Tate concerning her participation in a *Voice of San Diego* news article published on September 28, 2023, entitled “More on Palomar Health’s Unusual Demand for Its Website Visitors.” In this article, the following was published:

Laurie Edwards-Tate, Palomar Health board director, told Layne she came across the terms agreement for the first time only a few weeks ago while attempting to access meeting agendas. “It was shocking to me, and I felt prohibited from its use and I felt like it was a barrier for being able to access it,” Edwards-Tate said, speaking on her own behalf and not for the board. She added that, to her knowledge, the terms of use agreement was never brought up in a regular board meeting.

Director Edwards-Tate’s statements to the media—made without adherence to the Board’s Media Policy recommendations—are reckless at best, intentionally misleading at worst. I personally witnessed legal counsel inform the Board of pending changes to the website Terms of Use during the September 11th Closed Session of the Board of Directors—a meeting that Director Edwards-Tate attended. Counsel also explained at

that meeting the change was in response to imminent litigation against the District, which litigation has since been filed. A Director's duties of care (section 1.1) and loyalty (section 1.2) impose some basic due diligence, such as recommending a consultation with the District's Chief Legal Officer, or following the District's Code of Conduct with respect to media engagement (section 3.8) prior to speaking to the media. Further, Counsel for the District prepared, and the Board attended, training specifically on these issues earlier this year. Because Director Edwards-Tate failed to comply with the code of conduct, she made what I believe are misleading or false statements regarding the District.

This email is a formal complaint, pursuant to the Palomar Health Board of Directors Code of Conduct, section 4.1, that Director Edwards-Tate's conduct in her statements in the VOSD story constitute a violation of the District and Board's Code of Conduct Media Policy, section 3.8, and/or her fiduciary duties as a Director under sections 1.1 and 1.2, which, if true, merit sanctions and or other remedies under Code of Conduct section 4.3.

Below are the specific facts that I believe merit sanctions against Director Edwards-Tate:

- The copyright language that was the foundation for Director Edwards-Tate's comment was legacy language that had been in Palomar's Terms of Use for at least 11 years. At no time did any person—including Director Edwards-Tate—raise any concern regarding this language, nor was it ever cited by Palomar as a means of avoiding the CPRA.
- The Board and Palomar take data security and privacy very seriously. To that end, requiring an affirmative step by users to agree to abide by standard, industry best-practice terms and conditions helps protect Palomar's patients and citizens of the District. Director Edwards-Tate's comments contravene Palomar's position on this matter, and her own stated interests, and thus appears to be a violation of her Code of Conduct Duty of Care (section 1.1) and Loyalty (section 1.2).
- The Board and Palomar also regards its website as a critical resource for the District. The affirmative acknowledgement of the terms is a necessary tool to reduce the risk of automated "bot" usage by malicious parties and distributed denial of service (DDoS) attacks. The required assent helps prevent these attacks and keeps the website up and running for all legitimate users at the cost of a single (assuming cookies are enabled) minor assent to terms and conditions that every other district requires acceptance of by the mere usage of their websites. Director Edwards-Tate's comments contravene Palomar's position on this matter and thus appears to be a violation of her Code of Conduct Duty of Care (section 1.1) and Loyalty (section 1.2).

- Asking users to assent to basic terms of service is a routine feature one finds on other District and government websites. The only difference here is Palomar has chosen to be very upfront and clear with its user terms—instead of burying it in 8-point font at the bottom of a page. The legal **effect** on Palomar’s users is no different than with their use of any other government website. Director Edwards-Tate’s comments imply the opposite and thus are false and misleading—if she had followed the media policy in section 3.8, she could have received such information from the Chief Legal Officer and such confusion would not have occurred.
- Prior to Palomar implementing the new pop-up terms of use, users of the website—merely by using it—were agreeing to abide by certain terms and conditions. The only difference now is that the user knows what it is agreeing to. Palomar made the change for the benefit of Palomar’s patients and the District as a whole. Director Edwards-Tate’s comments imply the opposite and thus are false and misleading—if she had followed the media policy in section 3.8, such confusion would not have occurred.
- The findings of Counsel in the attached investigative memorandum detail Director Edwards-Tate’s comments and background in more thorough detail. I rely on and incorporate the findings of the memo here as well as my findings above. Exhibit 1 of the attached memo includes a copy of the article in question.

Director Edwards-Tate’s comments are troubling for at least the following reasons:

First, her statements imply the Executive and Legal teams had a duty to inform the Board or secure the Board’s consent to make changes to the website. This is wrong and misleading.

Second, her statements imply the Terms of Use she encountered somehow restricted or limited her ability to access Board meeting agendas. They do not, and did not restrict this access.

Third, Director Edwards-Tate neglected to mention that legal counsel—
notwithstanding it had no obligation to do so—did inform the Board in the September 11th Closed Session Meeting both that changes to the website were underway and the reason for those changes—namely that the District is now being sued, along with scores of other private and public hospitals, in trumped up, so-called “Meta-Pixel” data/privacy litigation. In the past year alone, more than 50 California hospitals—including Dignity Health, Cedars Sinai, Scripps Health, El Camino Health Care District, Washington Township Health Care District, among dozens of others and now Palomar—have been sued in purported class actions involving allegations their websites operate in a manner that constitutes invasion of privacy and a violation

of state and federal wiretap laws. These lawsuits—including the one recently filed against Palomar—allege that hospital websites are set up in a manner which enables third parties like Meta (*f/k/a* “Facebook”) and Google to collect sensitive health-related information about website visitors. Media outlets have highlighted and criticized use of such tools by healthcare organizations, spurring additional litigation and investigation by State Attorney General Offices, and federal regulators, particularly the FTC.

The Administration’s recent decision to make minor changes to the website’s Terms of Use (on the advice of legal counsel) was designed to reduce legal exposure to the District from these type lawsuits (*i.e.*, to protect District assets and user privacy) by making the Terms of Use more explicit and gaining visitor’s express consent they understand how third parties (not Palomar) might be accessing and using their personal data. Director Edwards-Tate’s statements to the media promote public confusion as to the reasons for the recent changes and provides fuel for the plaintiffs’ attorneys suing the District. By making misleading statements to the media about the District’s remedial measures (taken in response to active litigation), Director Edwards-Tate has increased the risk of this litigation to the District and most likely has violated the Code of Conduct’s sections on duty of care, duty of loyalty, and media relations.

Namely, I identify potential violations of three different sections of the Code of Conduct:

Duty of Loyalty Violation

Section 1.2 Duty of Loyalty provides: “Board Members must . . . put the District and its constituents’ good before his or her own personal interest. Once the Board has acted, a Board Member may seek change through Board action, but may not undermine public or District constituent confidence in the Board or the District.” *See also* Palomar Health Bylaw Art. IV, Sec. C, Board Duties (“Members of the Board of Directors have duties as provided by applicable law, any Board-approved policy of the District, and Palomar Health’s Board of Directors Code of Conduct (“Code of Conduct”).”). Director Edwards-Tate violated this responsibility by, among other things, making knowingly false statements to the press to cast the District in a bad light.

Duty of Care Violation

Section 1.1 Due Care provides: “Board Members must perform their duties as members of the Board and committees in good faith, with sound business judgment and with the care, including reasonable inquiry, of an ordinarily prudent person . . . ***Directors may not knowingly disseminate false or misleading information, and must act promptly to correct erroneous communications for which they are responsible.***” *See also* Palomar Health Bylaw Art. IV, Sec. C, Board Duties (“Members of the Board of Directors have

duties as provided by applicable law, any Board-approved policy of the District, and Palomar Health’s Board of Directors Code of Conduct (‘Code of Conduct’).”). Director Edwards-Tate violated this responsibility by, among other things, making knowingly false statements to the press to cast the District in a bad light, or to the extent her statements were made negligently, then failing to correct her erroneous statements when made aware of the error.

Media Policy Violation

Section 3.8 Board Member Media Relations provides: “The Board wishes to ensure that ***accurate, complete and consistent information*** is provided to the constituents of the District via the news media in a responsive manner that is compliant with state and federal laws, and safeguards patient privacy . . . As a public entity, Palomar has an obligation, as well as a desire, to communicate with the public it serves. Board Members ***are encouraged to contact the District Marketing Department or specifically designated District media representative before speaking or otherwise publishing to the media on matters of District business.*** This assists the Marketing Department or specifically designated District media representative to coordinate messaging, ascertain the nature of the media query (if any) and what prompted it, determine the most recent and relevant information to disseminate, and select among possible responses and spokespersons, whether District representatives or Board Members. A District Marketing Department or specifically designated media relationship representative will be available at all times to assist in this process; should a Board Member experience difficulty reaching either, the Board Member should raise the concern with the Chair and/or General Counsel.” *See also* Palomar Health Bylaw Art. IV, Sec. C, Board Duties (“Members of the Board of Directors have duties as provided by applicable law, any Board-approved policy of the District, and Palomar Health’s Board of Directors Code of Conduct (‘Code of Conduct’).”). Director Edwards-Tate violated this responsibility by, among other things, failing to provide notice of her statements to the marketing team so that she could ensure the veracity of the information presented—which was in fact false—and coordinate any concerns with the District.

Please take all necessary steps to effectuate an investigation into the above matters.

Thank you,

Laura Barry

Treasurer, Board of Directors



2125 Citracado Parkway, Suite 300 | Escondido, CA 92029

m. 760.336.9577 | PalomarHealth.org

A California Public Healthcare District

EXHIBIT B

Palomar Health Board of Directors Code of Conduct

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Preamble: Purpose of this Code

Palomar Health (“the District” or “Palomar Health”) enjoys a community and state-wide reputation for integrity, honesty, and good faith in all dealings. Maintaining Palomar Health’s reputation depends on maintaining the highest standards of conduct in all business endeavors. Palomar Health’s Board of Directors (collectively, the “Board” and individually, a “Board Member”) has a responsibility to lead by example, and act with truth, sincerity, and fairness in all decisions. This Code of Conduct (“Code”) is intended to focus the Board and each Board Member on areas of ethical risk, to provide guidance to help Board Members recognize and deal with ethical issues, to provide mechanisms to report unethical conduct, and to foster a culture of honesty and accountability.

Each Board Member must comply with the letter and spirit of this Code. A fundamental aspect of strong elected leadership is a commitment to the highest ethical standards of conduct by Board Members. In recognition of this principle, the Board has adopted this Code. Every Board Member is expected to maintain and foster these standards and has an obligation to promptly disclose to the Chair of the Board and to Palomar Health General Counsel (hereafter “General Counsel”) any action which is believed to be inconsistent with them. No code can anticipate every situation that may arise. Board Members are encouraged to bring questions about particular circumstances that may implicate one or more of the provisions of this Code to the attention of the Board Chair and General Counsel. To the extent this Code references statutes, regulations, case law, or policies subject to revision, amendment, or repeal by the relevant governing body or legal authority, this Code hereby incorporates such changes by reference herein.

Chapter 1: Board Member Fiduciary Duties

1.1 Due Care

Board Members must perform their duties as members of the Board and committees in good faith, with sound business judgment and with the care, including reasonable inquiry, of an ordinarily prudent person. The Board and its committees take action as a body and Board Members' duties are exercised as a part of those bodies. The District's interests are served by full and open participation by all Board Members in meetings. Directors must conduct themselves professionally, with the highest standards of candor, good faith, and fair dealing in relation to the District and all its constituents. Directors may not knowingly disseminate false or misleading information, and must act promptly to correct erroneous communications for which they are responsible. Below is a list of non-exclusive examples of what the Duty of Care requires of a Board Member:

- Perform his or her duties in good faith, in what the Board Member believes is in the best interests of the District, and with the care expected of a prudent person engaged in similar activities;
- Attend and participate regularly at Board and committee meetings, conference calls, workshops, retreats, and training sessions;
- Comply with all applicable laws, regulations, and policies;
- Review and, if necessary, ask reasonable questions about important matters requiring Board action;
- Timely read all material distributed to the Board;
- Keep informed of work delegated to committees and serve usefully when assigned to committees;
- Question information provided to the Board where the validity of the information is subject to doubt;
- Participate in Board and committee discussions and contribute usefully to the analysis of proposals which come before the Board or committees;
- Respect the boundaries between the Board's role in policy development and oversight and the management or executive team's role in the implementation of Board policy; and
- Act in good faith in making decisions guided by honest and fair business judgment.

1.2 Loyalty

Board Members must be loyal and act at all times in the best interests of the District and its constituents. Their loyalty must be to the District and all its constituents, not just to one group of constituents. Board Members must also put the District and its constituents' good before his or her own personal interest. Once the Board has acted, a Board Member may seek change through Board action, but may not undermine public or District constituent confidence in the Board or the District. Below is a list of non-exclusive examples of what the Duty of Loyalty requires of a Board Member:

- Never use his or her position on the Board or a committee to make a personal profit;

- Disclose personal interest before Board or committee action on transactions involving real or apparent conflicts of interest or personal advantage in the transaction;
- Abstain from voting on actions where the Board Member has a conflict of interest (as outlined and defined below);
- See that conflicting interests are recognized and treated objectively;
- Be concerned that all constituents of the District are dealt with fairly;
- Protect the confidentiality of information received; and
- Do not use information gained while serving on the Board to personal advantage.

Chapter 2: Conflicts of Interest¹

Board Members must avoid any conflicts of interest with the District. A conflict exists when a Board Member's personal, business, or other direct or indirect interests or relationships interfere in any way with the interests of the District. Even if an actual conflict may not exist, the appearance of a conflict ("apparent conflict") is just as objectionable and should be dealt with as a conflict in most circumstances.

Business dealings that present actual or apparent conflicts between the interests of the District and those of a Board Member must be avoided and disclosed. Such conflicts may arise because of employment or business activities of a Director, Spouse, or Dependent Child (defined below). Directors must also avoid conflicts while serving on committees and either disclose such conflict and avoid participating in decisions which may involve a conflict of interest or the appearance of a conflict, or resign from the committee.

Disclosure of an actual or apparent conflict of interest should be promptly provided, so that appropriate action can be taken, including recusal from deliberations, voting, and chairing of applicable portions of Board or Committee meetings when necessary. In addition, Directors should promptly disclose before accepting appointments to the board of directors or the advisory board of any public or privately-held company, so that such appointments may be considered in accordance with the requirements of this Code.

While a Board Member must comply with his or her to duty disclose actual or apparent conflicts, where confusion or dispute exists as to the existence of a conflict or the requirements of this Code, General Counsel must so advise the Board. The Board must thereafter take action on General Counsel's advice, including but not limited to instituting a formal vote to exclude a Director who, in General Counsel's opinion, possesses an actual or apparent conflict upon which the Board must or will take action.

2.1 Incorporation of Political Reform Act and Fair Political Practices Commission Regulations

This Code hereby adopts by reference the California Political Reform Act of 1974 (hereafter "PRA") (California Government Code, Sections 81000 *et seq.*), which requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The definitions contained in the PRA are incorporated by reference into this Code. In the case of inconsistency with this Code and the PRA, the provisions of the PRA govern.

This Code hereby adopts by reference the regulations of the Fair Political Practices Commission (hereafter "FPPC") (California Code of Regulations, Title 2, Division 6, Sections 18100, *et seq.*). The definitions contained in the FPPC are incorporated by reference into this Code. In the case of inconsistency with this Code and the FPPC, the provisions of the FPPC govern. The FPPC has adopted a regulation, California Code of Regulations, Title 2, Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference in an agency's code. After public notice and hearing, the standard code may be amended by the FPPC to conform to amendments in the PRA. Therefore, the terms of California Code of Regulations,

¹ This Code supersedes and replaces the prior Palomar Health Conflict of Interest Code, No. 21800, but only as it pertains to Board Members.

Title 2, Section 18730 and any amendments to it duly adopted by the FPPC are likewise hereby incorporated by reference.

2.2 Board Members with Positional Conflicts Adverse to the District

A Board Member who directly participates in a personal capacity, or as an agent for entity, in anticipated or existing litigation adverse to Palomar Health² must disclose his or her positional conflict prior to any Board consideration of anticipated or existing litigation in closed session. *See* California Government Code, Section 54954.5.

Thereafter, the Board may, by simple majority vote, vote to exclude the Board Member from Board consideration of the anticipated or existing litigation in closed session. *See* California Code of Regulations, Title 2, Section 18707(c) (“Nothing in the provisions of this regulation is intended to cause an agency or public official to make any disclosure that would reveal the confidences of a closed session or any other privileged information as contemplated by law including, but not limited to, the recognized privileges found [the FPPC]” or elsewhere in applicable federal or state law.).

2.3 Statement of Economic Interest and Place of Filing

Board Members are officials who manage public investments and are required to file a Statement of Economic Interest (“SEI”).³ *See* California Government Code, Section 87200 *et seq.*; California Code of Regulations, Title 2, Section 18701, subdivision (b). Board Members must file their SEI (Form 700) with the Palomar Health Chief Executive Officer or designee. The Palomar Health Chief Executive Officer or designee must make and retain a copy and forward the original to the San Diego County Board of Supervisors. The Palomar Health Chief Executive Officer or designee will make the Board Member SEIs available for public inspection and reproduction in accordance with California Government Code, Section 81008.

2.4 Disclosure Categories of Reportable Economic Interests

The PRA requires Board Members to file a SEI upon assumption of office, annually thereafter, and upon leaving office. California Government Code, Sections 87200-87210. The disclosure encompasses those reportable investments, business positions held, real property interests, income and its sources that might cause a financial conflict of interest to arise in the performance of the Board Member’s duties for Palomar Health including, but not limited to, the following:

- Each investment in a business entity with a fair market value equal to or exceeding \$2,000 or more;

² “Litigation adverse to Palomar Health” occurs where a Board Member, acting in his or her personal capacity or as entity agent, finds him/herself/the entity party to a proceeding commenced in formal arbitration, by official agency action, or in a state or federal court, or where such a proceeding is threatened with a reasonable likelihood of proceeding, with Palomar Health’s interests directly adverse to that Board Member.

³ Board Members may contact the FPPC for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly or for any other reason. The FPPC makes the final determination whether a position is subject to California Government Code, Section 87200.

- Each interest in real property located within the local agency jurisdiction with a fair market value equal to or exceeding \$2,000 or more (note: interest in real property does not include the filer's residence);
- Each source of gross income of \$500 or more (including loans) that is located in or doing business in the jurisdiction of the city; and
- Any source of a gift or gifts aggregating \$50 or more, whether or not the source is located in or does business in the jurisdiction.

When disclosure of an interest is required, the Board Member has a duty to disclose the interest whether or not there is a pending or likely governmental decision involving the disclosed interest.

The disclosure categories set forth below specify which kinds of economic interests are reportable. Each Board Member must disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned. It has been determined that the economic interests set forth in a Board Members disclosure categories are the kinds of economic interests that he or she foreseeably can affect materially through the conduct of his or her office.

Category 1.

All investments and business positions in business entities, and sources of income, including gifts, loans, and travel payments that are located in, do business in or own real property within the jurisdiction of Palomar Health.

Category 2.

All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the jurisdiction of Palomar Health.

Category 3.

All investments and business positions in, and sources of income from, business entities that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of Palomar Health.

Category 4.

All investments and business positions in, and sources of income from, business entities that are banking, savings and loan, or other financial institutions.

Category 5.

All investments and business positions in, and sources of income from, business entities that provide services, supplies, materials, machinery, vehicles or equipment of a type purchased or leased by Palomar Health.

Category 6.

All investments and business positions in, and sources of income from, business entities that provide services, supplies, materials, machinery, vehicles or equipment of a type purchased or leased by the Designated Employee's Department.

Category 7.

All financial interests in investment advisors and managers; financial services providers, actuaries, and those providing fiduciary services (including recordkeeping) to retirement plans.

2.5 Procedure Regarding Disclosure and Voting on Actual or Apparent Conflict Following SEI Filing

California Government Code, Section 87105 requires all public officials who manage public investments, such as Board Members of Palomar Health (see below) to publicly identify and announce the financial interest that gives rise to the conflict of interest or potential conflict of interest prior to the consideration of the matter. California Government Code, Section 87105(a)(1). If prior to a Board meeting, disclosure should be promptly given to the Board Chair and General Counsel. If during a Board meeting, disclosure should be promptly given immediately prior to the consideration of the matter.

If the Board's decision is to be made during an open session of a public meeting, the public identification must be made orally and be made part of the official public record. The Board Member must recuse himself or herself and leave the room after the identification is made. The Board Member may not be counted towards achieving a quorum while the item is discussed.

If a Board decision is made during a closed session, the Board Member conflict identification may be made orally during the open session before the body goes into closed session and must be limited to a declaration that his or her recusal is because of a conflict of interest under California Government Code, Section 87100. That declaration must be made part of the official record.

The Board Member may not be present when the decision is considered in closed session or knowingly obtain or review a recording or any other non-public information regarding the governmental decision. California Code of Regulations, Title 2, Section 18707(a)(2).

2.6 Board Members with Business Interests

Any business entity in which the Board Member has a direct or indirect investment worth \$2,000 or more is considered a financial interest if the business entity, or its parent or subsidiary, has an interest in real property in the jurisdiction, or does business or expects to do business, or has done business in the jurisdiction during the two years prior to the Board's action. California Government Code, Sections 87103(a), 82030(a) (imposing 2-year restriction); 82005 (definition of "business entity"); 82034 (definition of "investment"); and 82035 (defining "jurisdiction"). An indirect investment includes "any investment or interest owned by the spouse or dependent child of a public servant, by an agent on behalf of a public servant, or by a business entity or trust in which the public servant, the public servant's agents, spouse, and dependent children own directly, indirectly, or beneficially a ten percent interest or greater." California Government Code, Section 87103. *See also, Metropolitan Water Dist. v Fair Political Practices Comm'n*, 73 Cal.App.3d 650 (1977); *Commission on Cal. State Gov't Org. & Econ. v Fair Political Practices Comm'n*, 75 Cal.App.3d 716 (1977); *Witt v Morrow*, 70 Cal.App.3d 817 (1997). A business entity that is a parent or subsidiary, or is otherwise related to a business entity in which the official has an investment, is also included as an economic interest. California Government Code, Section 82034.

2.7 Board Member Spouses and Dependent Children

Financial interests of a Board Member's spouse and dependent children are attributed to the Board Member. For example, direct or indirect investments or interests in business entities worth \$2,000 or more constitute economic interests. California Government Code, Sections 87103(a), 87103(b). Indirect investments or interests include those owned by the Board Member's spouse and dependent children. California Government Code, Section 87103. A Board Member also has an economic interest in the Board Member's personal finances and those of the Board Member's "immediate family." California Code of Regulations, Title 2, Section 18700.1. The term "immediate family" means spouses and dependent children. California Government Code, Section 82029. For definition of "dependent children," see California Code of Regulations, Title 2, Section 18229.1. The term "spouse" includes "registered domestic partners" recognized by state law. California Code of Regulations, title 2, section 18229.

2.8 Board Members and Nonprofit Entities

Financial interests in nonprofits are not exempt from the PRA or the FCCP. *See, e.g.*, California Code of Regulations, Title 2, Section 18700.1. Because Board Members are often active within the communities they serve, it is not uncommon for them to serve local charitable organizations in various capacities, either as an officer or member of the board of directors or as an employee. Such service, if it is for compensation however, can affect the Board Member's ability to participate in Palomar Health's decision making.

A Board Member has a conflicting financial interest if it is reasonably foreseeable that a Board decision will have a material financial effect on a specified interest in any relevant business entity wherein the Board Member is an officer, member of the board of directors, or employee. *See* California Government Code, Section 87103. This is the case where the business entity is a source of income to the Board Member because he or she has received \$500 or more from the business entity in the previous twelve months. California Code of Regulations, Title 2, Section 18700.1(a)(2). Those specified interests include service as a director, officer, partner, trustee, employee, or any position of management in any "business entity," including nonprofit entities. California Code of Regulations, Title 2, Section 18700.1(a)(2)(B).

While a nonprofit is not a "business entity" as defined in California Government Code Section 82005, which is limited to entities operated for profit, *if* the Board Member receives payments from the nonprofit, such as a salary, stipend or meeting fees, the nonprofit would be a source of income to the Board Member, provided he or she received more than \$500 in the previous twelve months. California Government Code, Section 87103. If a Board Member is compensated by a nonprofit, a Palomar Health decision will have a reasonably foreseeable financial effect on the Board Member's financial interest in the nonprofit if:

(A) The decision may result in an increase or decrease of the organization's annual gross receipts, or the value of the organization's assets or liabilities, in an amount equal to or more than:

(i) \$1,000,000; or

(ii) Five percent of the organization's annual gross receipts and the increase or decrease is equal to or greater than \$10,000.

(B) The decision may cause the organization to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than:

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- (i) \$250,000; or
 - (ii) One percent of the organization's annual gross receipts and the change in expenses is equal to or greater than \$2,500.

California Code of Regulations, Title 2, Section 18702.3(a)(3). *See* California Code of Regulations, Title 2, Section 18702.2 for the relevant materiality standard for a financial interest in real property. For additional questions regarding Board Member activities and nonprofits, please consult General Counsel.

2.9 No Hiring or Employment within Twelve Months of Board Service

Palomar Health will not hire or employ a former Board Member for a period of one year after their term of service as a Board Member has ended. This is to ensure compliance with PRA section 87406.3, which prohibits a local elected official, for a period of one year after leaving that office or employment, to act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that local government agency (in this case, Palomar Health), or any committee, subcommittee, or present member of that local government agency, or any officer or employee of the local government agency, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. For the avoidance of doubt, this provision is likewise applicable to an individual who is, at the time of the appearance or communication, an independent contractor of a local government agency or a public agency and is appearing or communicating on behalf of that agency.

“Administrative action” means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any local government agency of any matter, including any rule, regulation, or other action in any regulatory proceeding, whether quasi-legislative or quasi-judicial. Administrative action does not include any action that is solely ministerial.

“Legislative action” means the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in his or her official capacity.

For further guidance, please refer to a California Code of Regulations, Title 2, Section 18746.2; California Code of Regulations, Title 2, Section 18746.3.

2.10 No Influence on Prospective Employment

Board Members will comply with the ban on influencing prospective employment, which prohibits any public official from making, participating in making, or influencing a governmental decision that directly relates to a prospective employer while negotiating or after reaching an employment arrangement.

For further guidance, please refer to California Government Code, Section 87407; California Code of Regulations, Title 2, Section 18747.

Chapter 3: Role and Responsibilities of Individual Board Members

3.1 Authority of Board Members

Board Members have authority on behalf of the District only when acting as a body in regular or special meetings of the Board. An individual Board Member has no authority to bind the District or the Board by his or her statements or actions except when such statements or actions are authorized by the Board. An individual Board Member acting without authority creates potential personal liability exposure for his or her actions.

3.2 Board Member Responsibilities

Serving as District Board Member involves a commitment and legal obligations. To meet that commitment and those obligations, Board Members are expected to:

- Monitor the adherence to the District’s mission, policies, and all applicable laws;
- Attend and actively participate in all Board meetings, and to notify the Chair of anticipated absences;
- Review minutes and results of meetings;
- Do his or her homework to be prepared to participate fully in Board and committee meetings;
- Act only with the full Board, not individually, unless authorized to do so by the full Board;
- Speak for the full Board only when the full Board authorizes his or her doing so;
- Exhibit high ethical standards and integrity in all Board actions;
- Be an enthusiastic advocate for the District;
- Take responsibility and accountability for the District and all decisions made by the Board;
- Be respectful of the time and responsibilities of the staff; and
- Demonstrate willingness to work as a team with other Board Members and the management and executive team.

3.3 Board Member Orientation⁴

The management or executive team, acting through the administrative staff of the District will formulate and provide an orientation program for all newly elected or appointed members of the Board. Such program may include, but not be limited to, the following components:

- Administration of the oath of office;
- Provision of the Bylaws and all other relevant policies of the District;

⁴ Section 3.3 of this Code supersedes and replaces the prior Palomar Health Governing Body Orientation policy, No. 21797.

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- Obtaining of signatures of the Annual Board Member Acknowledgment of this Code of Conduct, as described herein;
 - Provision of copies of Board and Committee meeting minutes for the previous three-month period;
 - Provision of any Board of Directors Handbook;
 - Organization of structured orientation meeting relative to roles, relationships and responsibilities of governance;
 - Organization of individual meetings with the CEO, any other officers, and staff, as requested by the newly elected or appointed Board Member;
 - Facilitation of tours of District facilities, as requested by the newly elected or appointed Board Member;
 - Procurement of subscriptions to publications that may be of interest and value;
 - Provision of information relative to District, third-party, or outside programs on hospital governance, when available; and
 - Facilitation of sexual harassment and ethics training as required by law. *See* Government Code sections 12950.1, and 53232 *et seq.*

3.4 Board Member Use of District Electronic Resources⁵

Board Members have access to District electronic resources and information, including but not limited to hardware, software, cloud-based computing platforms, and the like. Board Member access to District electronic resources and information is granted to each Board Member by the District as a privilege, not a right, to be used solely by a Board Member in the course and scope of his or her duties as a member of the Board.

Board Members may not use or employ personal, electronic storage (hardware, software, or cloud-based), or personal email accounts, or any other personal electronic profile or platform which employs a unique login credential unassociated with the District, to conduct District business, or otherwise in the course and scope of a Board's Member's duties as a member of the Board.

Board Members understand that a combination of his or her user unique I.D. and password (hereafter "login credentials") to access any District platform is confidential. Each Board Member understands and acknowledges that he or she may not grant to any other individual or group use or access to District electronic resources and information. In the event a Board Member believes his or her login credentials have been compromised, he or she will take all necessary steps to remedy the situation, including but not limited to immediately notifying the appropriate District administrative personnel, and working with such personnel as necessary, to rectify the breach.

⁵ Section 3.4 of this Code is in addition to, and must be interpreted consistent with, Palomar Health Email Access and Appropriate Use policy, No. 20310.

3.5 Board Member Receipt of Confidential Information⁶

Confidential information is non-public data that must not be disclosed due to its sensitive nature. A Board Member may access or be provided access to confidential information in the course and scope of his or her duties as a member of the Board, and must take all reasonable and appropriate steps to safeguard such information. Board Members agree to maintain the confidentiality of all discussions, deliberations, records and information related to such activities, and will not voluntarily disclose any such information to anyone except to persons authorized to receive the information in the conduct or peer review affairs or business of the District, or as otherwise required by law.

- Confidential Information Learned in Closed Session
 - All information learned in closed session constitutes confidential information unless such information may be obtained from a public source, whose public nature is not due to improper disclosure. A Board Member receives and has access to confidential information during closed session meetings of the Board. A Board Member may not disclose confidential information acquired during or in preparation for such closed session conducted pursuant to the Brown Act, *see* California Government Code, Section 54950 *et seq.*, to a person not entitled to receive it, unless (i) the Board, acting in an official capacity, expressly authorized the disclosure of that confidential information; or (ii) the Board Member is making confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law. Board Members agree and acknowledge that improperly disclosing confidential information acquired during closed session is a violation of law. *See* California Government Code, Section 54963.
- Patient Information
 - Board Members may have access to private and confidential information about patients who have been, are, or will be, patients of the District. Board Members agree to treat such information as confidential and agree not disclose it to any other party, except as necessary in the course and scope of his or her duties as a member of the Board and consistent with all applicable law.
 - Board Members agree that they must implement, maintain and use appropriate administrative, technical and physical safeguards, in compliance with the Federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and any other applicable federal or state law, regulation, or policy, to prevent use or disclosure of patient Protected Health Information (“PHI”) and Electronic Protected Health Information (“EPHI”), other than as required by law.
- Quality Management
 - A Board Member’s status as Board Member does not entitle that Board Member to access private and confidential information about patients who have been, are, or will be, patients of the District, whether that information is kept and maintained manually or electronically. In the course and scope of a Board Member’s duties

⁶ Section 3.5 of this Code supersedes and replaces the prior Palomar Health Confidentiality Statement, No. 21799.

as a member of the Board, a Board Member may be provided with, or made aware of, confidential information derived from patient information, including but not limited to PHI or EPHI, in preparation for or in closed session, or for any other specific confidential purpose, on matters related to quality management or quality assurance, or existing litigation matters involving the District. Board Members agree to maintain the confidentiality of all discussions, deliberations, records and information related to these activities, and will not voluntarily disclose any such information to anyone except to persons authorized to receive the information in the conduct or peer review affairs or business of the District, or as otherwise required by law.

- Employee, Consultant, and Medical Staff Information
 - Board Members may have access to private and confidential information concerning employees, consultants, or medical staff of the District. Board Members agree to treat such information as confidential and agree not disclose it to any other party, except as necessary for the performance of a Board Member in the course and scope of his or her duties as a member of the Board, or as otherwise required by law.
- Consequence of Violations
 - Board Members understand and acknowledge that the District may subject a Board Member in violation of this section to disciplinary action as provided in this policy, any other applicable policy of the District, or as otherwise provided by law, including but not limited to injunctive relief to prevent the disclosure of confidential information, and referral to the grand jury.

3.6 Board Member Request for Information⁷

Board Member request for information may be subject to Government Code section 54953.5(b) (“Any inspection of an audio or video recording shall be provided without charge on equipment made available by the local agency.”); *see also* 64 Cal. Op. Att’y Gen. 317 (1981). Palomar must only maintain video or audio recordings of open and public meetings made “by or at the direction of the [Board],” for 30 days. *See id.*

All Board Member requests for information originating from any standing or ad-hoc Board Committee (hereafter “Board Committee”) will be solely communicated by individual Board Committee Members to the Committee Chair and copied to the Board Chair (for informational purposes). Individual Board Committee Members will not directly request information from the management or the executive team, acting through the administrative staff of the District, nor from any District employee or consultant. The Committee Chair will determine if the information request is properly relevant to the function of the Committee and, if so, obtain the information from the management or the executive team, acting through the administrative staff of the District, to be presented to the Board Committee at the soonest available opportunity. If the Committee Chair determines that the information request is not relevant to the business of the

⁷ Section 3.6 of this Code supersedes and replaces the prior Palomar Health Information Request by Board Members policy, No. 63356.

Committee, the Committee Chair will place the information request on the agenda of an upcoming Committee Meeting on a list of information requests not accommodated and such list will formally appear in Committee Meeting Minutes.

All requests for information at the level of Board activities, including requests for information denied at the Board Committee level, may be communicated by individual Board Members to the Board Chair. Individual Board Members will not directly request information from the management or the executive team, acting through the administrative staff of the District, nor from any District employee or consultant. The Board Chair will determine if the information request is properly relevant to the function of the Board and, if so, obtain the information from the management or the executive team, acting through the administrative staff of the District, to be presented to the Board at the soonest available opportunity. If the Board Chair determines that the information request is not relevant to the business of the Board, the Board Chair will place the information request on the agenda as a potential action item of an upcoming Board Meeting on a list of information requests not accommodated and such list will formally appear in Board Meeting Minutes. If requested by any Board Member, the Board may determine by majority vote whether or not the Board wishes the management or the executive team, acting through the administrative staff of the District, to furnish the information requested. If the Board votes in favor of any information request, the Board Chair will obtain the information from the management or the executive team, acting through the administrative staff of the District, on behalf of the Board acting with the authority of the Board. The information will be presented to the Board at the soonest available opportunity.

The management or the executive team, acting through the administrative staff of the District, will provide all information to the Board that is properly requested consistent with this policy by the Chair of the Board on behalf of the Board when acting as directed by the Board with the exception of requests that violate any applicable law.

This section is not intended to preclude a Board Member from filing a properly noticed and served California Public Records Act (hereafter, "CPRA") Request. However, Board Member requests for records may be subject to the limits of Government Code section 6254 (CPRA, Exemptions), as applicable.

No Board Member may use any District record in violation of Government Code Section 1098.

Board Members understand and acknowledge that the District may subject a Board Member in violation of this section to disciplinary action as provided in this policy, any other applicable policy of the District, or as otherwise provided by law, including but not limited to injunctive relief to prevent the disclosure of any District record, and referral to the grand jury.

3.7 Board Member Management of Constituent Public Concerns⁸

When a Board Member is contacted by a constituent or member of the public who has a non-employee/non-staff concern or complaint about the District or persons within the District, the Board member will follow the following procedures:

- Remember that individual Board Members have no power or authority to speak or act for the full Board.

⁸ Section 3.7 of this Code supersedes and replaces the prior Palomar Health Correspondence To or From Board Members policy, No. 21796.

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- Remember that Board Members may not address employee or staff complaints or grievances, which will be addressed in accordance with Palomar Health employee policies. Refer all employees and staff to personnel grievance policies and procedures.
 - Remember that Board Members may not address complaints or grievances concerning employees or staff. Refer all complainants to Palomar Health complaint process and appropriate forms.
 - To the extent the complaint is related to a Board Member, listen to the person’s concern and refer the complainant to General Counsel or the Chair.
 - Express a desire to reach a satisfactory solution.
 - Assure the person that the General Counsel or the Chair will be informed of the concern and will provide resolution as needed.
 - Ask the General Counsel or the Chair to report back to you about the progress or resolution of the concern, if desired.

3.8 Board Member Media Relations⁹

The Board wishes to ensure that accurate, complete and consistent information is provided to the constituents of the District via the news media in a responsive manner that is compliant with state and federal laws, and safeguards patient privacy. For purposes of this policy, “media” or “news media” includes but is not limited to reporters or journalists, as well as social, print, radio and other audio or web-based media platforms and their hosts. As a public entity, Palomar has an obligation, as well as a desire, to communicate with the public it serves.

Board Members are encouraged to contact the District Marketing Department or specifically designated District media representative¹⁰ before speaking or otherwise publishing to the media on matters of District business. This assists the Marketing Department or specifically designated District media representative to coordinate messaging, ascertain the nature of the media query (if any) and what prompted it, determine the most recent and relevant information to disseminate, and select among possible responses and spokespersons, whether District representatives or Board Members. A District Marketing Department or specifically designated media relationship representative will be available at all times to assist in this process; should a Board Member experience difficulty reaching either, the Board Member should raise the concern with the Chair and/or General Counsel.

Board Members must be mindful of all applicable state and federal laws concerning the release of patient information.

⁹ Section 3.8 of this Code supersedes and replaces the prior Palomar Health Media Relations policy, No. 21789, but only as it pertains to Board Members. Section 3.8 of this Code likewise supersedes and replaces the prior Palomar Health Correspondence To or From Board Members policy, No. 21796.

¹⁰ For purposes of this policy, a “specifically designated District media representative” will be an employee or contractor of the District retained for a specific media purpose; the identity and responsibilities of the representative will be communicated to Board Members in a timely manner by the Board Chair or General Counsel.

- **Personal Points of View**

When speaking about the District or about Board action, Board Members should be careful to define when or what portion of their remarks represent personal opinion and when or what of their remarks represent official Board position. For purposes of this policy, “official Board position” means factually recounting an official action taken by the Board at a special or regular Board meeting. Board Members must be aware that they are always perceived and recognized as Board members, even when they designate comments as personal. As such, Board Members must be mindful of their fiduciary duties of care and loyalty, and the consequences of a violation of either or both, in the context of any discussion with the media.

All Board Members have the right to express their personal points of view regarding matters of general public concern. However, personal points of view may conflict with an official Board position. Therefore, Board Members who write letters to the editor may not use official District stationary or letterhead, nor may a Board Member sign a letter or an email to the media employing or displaying his or her Board Member title, role, or indicating or communicating the fact of his or her Board Membership as indicative or illustrative of his or her position without explicitly stating that the views set forth in the letter do not represent official Board position, but are the Board Member’s personal opinions, speaking in a personal capacity.

A similar disclaimer must be given if a Board Member addresses a public meeting, participates in a radio talk show, or is interviewed for radio or television or any similar social media platform, unless the Board Member is working with the District Marketing Department or specifically designated District media representative on a specific item of messaging, or communicating an official Board position in a factual manner.

- **Media Requests for Records**

Media requests for records will be handled in accordance with this policy, to the extent it is consistent with the California Public Records Act (“CPRA”), the California Constitution, and all other applicable state and federal laws. *See, e.g.*, California Government Code, Section 6250 *et seq.*, and Article I, Section 3(b) of the California Constitution. The records produced in response to media requests must be readily available for Board Member viewing upon request.

- **Privileged and Private Information**

The vast majority of the records and affairs of District are public information which citizens, including the media, have the right to know. All public information should be provided to the press upon request without unnecessary delay.

Some matters, however, like ongoing investigations, information regarding litigation or the threat of litigation, personnel issues, real estate transactions, medical and mental health matters, private data regarding citizens, documents in draft form, to name a few, are governed by privileges and laws intended to advance important public policy goals.

When a media request for an interview or for records appears to involve a subject matter that may be privileged or private, the Board Member must consult with General Counsel. The General Counsel will review the request without delay and promptly provide counsel to the Board Member.

3.9 District Representation in Membership Organizations¹¹

In the interest of fiscal accountability, organizations in which the District participates as a dues paying member, including trade associations, Governance 100, Volunteer Trustees, Adapt, etc. (hereafter “Membership Organizations”), will be periodically evaluated for compatibility with the District’s mission as well as community and economic benefit. For those Membership Organizations who request representation from the Board on their governing body or other position, the Board must follow the following guidelines for the selection of a nominee.

- All Membership Organizations will be periodically reviewed to ensure that:
 - Their mission is compatible with the mission of the District;
 - The value to the District or community is commensurate with the dues or other expense;
 - Progress reports are provided on a regular basis by the District representative or Membership Organization.
- Should a Membership Organization request representation from the Board on its governing body or other position, the following guidelines will apply:
 - Representatives are to be selected by a majority of the Board or, for brief, special assignments, by appointment of the Chair of the Board, who will notify the full Board;
 - Assignments of representatives are to be made in a fair and equitable manner;
 - To ensure sufficient rotation, assignments will reviewed on a regular basis.
- Should the Membership Organization solicit input from the Board on legislation, such input will reflect the views of the majority of the Board, voting at an open session of a properly noticed meeting.
 - Copies of all letters to provided to government representatives or concerning legislation must be provided to the Board.
 - The District will not take positions on individual candidates.
- District representatives selected in accordance with these guidelines in governing or other positions of influence within Membership Organizations will at all times act for the benefit of the District, not for any personal benefit.
- Expenses associated with participation in Membership Organizations by a District representative selected in accordance with these guidelines will be at the cost of the Membership Organization and not the District.
- To obtain the most value from the participation in Membership Organizations, all District representatives attending meetings of such organizations are to report to the full Board, verbally or in writing, about their participation at the meetings. In the event multiple District representatives attend, a single report will be adequate.

¹¹ Section 3.9 of this Code supersedes and replaces the prior Palomar Health Membership Organizations and Board Representations policy, No. 21795.

3.10 Board Self-Evaluation

Performance accountability for the Board can only be maintained at a high level through regular self-evaluation of the Board's work. Therefore, the Board will annually or on a periodic basis conduct a written self-evaluation of the Board's performance for the past year set period of time as established by the Board, on a Board approved evaluation form. The evaluation will include, but not be limited to, determinations of the degree to which:

- the Board has supported the Palomar Health vision and guiding principles;
- the Board has complied with Palomar Health Bylaws;
- the Board has set clear goals and expectations arising from realistic strategic planning;
- the Board attends to policy-related decisions which effectively guide operational activities of staff;
- the Board receives regular reports on finance/budget, and business performance of business lines;
- the Board meetings facilitate focus and progress on important business matters;
- the Board regularly monitors and evaluates progress toward strategic business goals and product/program performance;
- the Board regularly evaluates and assists in the development of an effective management or executive team;
- the Board has approved comprehensive personnel policies which have been reviewed by a qualified professional; and
- the work of the Board has aided in:
 - a strategic management process;
 - fiscal responsibility;
 - appropriate investment in employees and stakeholders;
 - enhanced, positive relationships with Palomar Health stakeholders.

It will be the responsibility of the Chair to initiate the Board self-evaluation.

Chapter 4: Enforcement of Board Ethics and Policies¹²

To protect the public interest, protect the District, protect the Board, and protect the rights of individual Board Members, the Board must address individual Board Member actions that constitute misconduct or malfeasance in office, violation of the law or public policy, violation of Board policy, or action harmful to the best interests of the District. This policy is intended to be consistent with, but not limited to, the provisions of California Government Code, Section 3060.

4.1 Formal Procedures Regarding Board Member Misconduct

Any Board Member may present a complaint in writing to the Chair and General Counsel for consideration concerning a fellow Board Member (hereafter “Subject Director”). If the complaint concerns the Chair, the complaint must be sent directly to the General Counsel and the General Counsel must take all actions below that are specifically designated for the Chair. The complaint must be specific in nature, associated with written materials if they are available and applicable, and directly relevant to the general issue of misconduct in office or violation of the law or policy as articulated above.

The Chair must provide a copy of the written complaint to the Subject Director with notification that the Subject Director will have ten (10) days to respond in writing to the complaint. Following the expiration of the ten (10) day notice period, the Chair must cause the written complaint along with the Subject Director’s response, if any, to be distributed to each member of the Board, including the Subject Director, with a formal copy to Palomar Health’s General Counsel.

At the next regular meeting of the Board (or at a special meeting of the Board called for this specific purpose), the Board must review the complaint and the Subject Director’s response, if any. After providing the Subject Director with an opportunity to add anything to the Subject Director’s written response and to answer any questions from Board members, the Board must excuse the Subject Director and make a determination whether investigation of the complaint and response is warranted or whether the Board has enough information to act upon the written complaint and response. If the Board determines that additional information is needed, the Board may conduct or direct such investigation as, in consultation with General Counsel, it determines to be warranted or, at the discretion of the Board, the Board, by the affirmative vote of a simple majority of four (4) Board Members, appoints among themselves a committee to conduct an investigation into the matter and report to the Board the committee’s findings and recommendations. General Counsel must advise and assist the Board and, if appointed, such committee in conducting the investigation.

The Subject Director must cooperate in all Board-sanctioned investigations, proceedings, and resulting requirements. The Subject Director must preserve and not destroy or discard any information or documents relevant to the subject matter of the investigation. The Subject Director must make reasonable efforts to resolve any issues as to confidentiality. Failure to cooperate in any investigation or proceeding is itself violation of this policy and an abdication of the Subject Director’s duty of care and loyalty to the District.

¹² This foregoing supersedes and replaces the prior Palomar Health Board Member Misconduct and Sanctions policy, No. 6335.

4.2 Resolution of Complaints to Board

Following the completion of any investigation, the Board (or the committee, if one was appointed) must prepare a draft written report containing the investigation findings and a preliminary determination of the merits of the complaint. The draft report will be distributed to the full Board, including the Subject Director. The Subject Director must have an opportunity to review the draft report and have ten (10) business days following receipt of the draft report to review the report and respond to the Board in writing either accepting or rejecting the findings and preliminary determination of the merits. Failure to provide a timely response constitutes acceptance of the report and any proposed actions.

As soon as practicable after the tenth (10th) day following distribution of the draft report, the full Board must meet to review the report and determine appropriate actions, including sanctions, if any. The Board may take into consideration the Subject Director's response prior to adopting a final report and determining the appropriate resolution of the complaint.

There is no appeal of the final written report and resolution of the complaint as determined by the Board.

A Board Member who files a complaint alleging violations that are determined by the Board to be frivolous in nature is subject to disciplinary action, up to and including sanctions as provided in this Code.

A complainant and Subject Director is entitled to a full and complete copy of the Board's final written report, including findings of fact and recommendation for sanctions, if any.

The failure or refusal of the Subject Director to accept delivery of a complaint or other documents relating to a complaint or investigation by the Board will not prevent the Board from taking any action against the Subject Director.

4.3 Sanctions

The Board may vote to enact sanctions against the Subject Director by the affirmative vote of a simple majority; where a full Board of seven (7) is seated, a simple majority is four (4) Board Members. A Board Member whose actions demonstrate misconduct or malfeasance in office, a violation of the law or public policy, a violation of Board policy, or an action harmful to the best interests of the District is subject to any or all of the following sanctions as determined by the Board of Directors, to the extent permitted by law or the Bylaws of Palomar Health:

- i. Public censure and disclosure of the violation and sanctions;
- ii. Cessation of eligibility to receive (i) meeting fees, (ii) District health and welfare benefits and/or (iii) travel and incidental expenses reimbursement, as contemplated in the Bylaws of Palomar Health;
- iii. Removal of the Board member from any or all committee officer positions, committee memberships, or any current or future meeting where (i) the conduct of the Director or (ii) any other recusal action is discussed;
- iv. Formal request by the Board that the Subject Director resign as a Board member;
- v. Commencement of a lawsuit against the Subject Director for injunctive relief or for damages caused by breach of any applicable Palomar Health policies (for the

avoidance of doubt, the Board has the discretion to compel the Subject Director to take part in confidential arbitration); and

vi. Pursuit by the Board of the removal of the Subject Director.

The Board will establish the appropriate sanctions and duration of such sanction in relation to each violation. The Board may implement any sanction listed above, or others considered appropriate, without regard to whether lesser sanctions have been imposed or considered. The following factors may be considered by the Board in determining the appropriate sanction(s) (this list is not to be considered exclusive or exhaustive):

- The seriousness of the violation and the expected resulting harm to the reputation or finances of the District;
- The likelihood of repetition;
- Prior violations by the Subject Director;
- Whether the Subject Director or his/her relatives personally profited from the violation;
- The Subject Director's willingness to disclose the conduct; and
- The Subject Director's efforts to mitigate any harm caused by such violation.

4.4 Annual Board Member Acknowledgment

General Counsel or the Chair will cause each Board member to undertake an annual acknowledgment of his or her understanding of the requirements of and compliance with this Code of Conduct at an open session of a duly called regular or special Board meeting.

DULY ENACTED THIS thirteenth day of December, 2021, at Escondido, California.



Board Secretary

ATTEST:



Chair of the Board

EXHIBIT C

1 KRISTA L. BAUGHMAN (SBN: 264600)

kbaughman@dhillonlaw.com

2 KARIN M. SWEIGART (SBN: 247462)

KSweigart@dhillonlaw.com

3 JEREMIAH D. GRAHAM (SBN: 313206)

jgraham@dhillonlaw.com

4 DHILLON LAW GROUP INC.

5 177 Post Street, Suite 700

San Francisco, California 94108

6 Telephone: (415) 433-1700

7 Facsimile: (415) 520-6593

8 Attorneys for Plaintiff

LAURIE EDWARDS-TATE

10 UNITED STATES DISTRICT COURT

11 SOUTHERN DISTRICT OF CALIFORNIA

12 SAN DIEGO DIVISION

13
14 LAURIE EDWARDS-TATE, an
individual,

15 Plaintiff,

16 vs.

17 PALOMAR HEALTH DISTRICT,

18 Defendant.

Case Number: 23-CV-2014 TWR (DEB)

**VERIFIED FIRST AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE
RELIEF AND NOMINAL DAMAGES**

1 Plaintiff, Palomar Health Board of Director Laurie Edwards-Tate (“Director Edwards-Tate”), by
2 and through her attorneys, Dhillon Law Group Inc., for claims against the above-named Defendant
3 Palomar Health District (“Palomar Health” or the “District”), alleges and avers as follows:

4 **INTRODUCTION**

5 1. The Supreme Court has stated that “there can be no question but that the First
6 Amendment protects expressions in opposition” to the prevailing views of the day, including when those
7 views are expressed by elected officials. *Bond v. Floyd*, 385 U.S. 116, 132 (1966). “The manifest
8 function of the First Amendment in a representative government requires that legislators be given the
9 widest latitude to express their views on issues of policy,” *id.* at 135, because “debate on public issues
10 should be uninhibited, robust, and wide open.” *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964).

11 2. “[T]he difference between free and enslaved countries lies principally here, that in the
12 former, their magistrates must consult the voice and interest of the people; but in the latter, the private
13 will, interest, and pleasure of the governors, are the sole end and motives of their administration.”
14 *Howard Jarvis Taxpayers Assn. v. Padilla*, 363 P.3d 628, 638 (2016) (cleaned up).

15 3. “Legislators have an obligation to take positions on controversial political questions so
16 that their constituents can be fully informed by them, and be better able to assess their qualifications for
17 office; also so they may be represented in governmental debates by the person they have elected to
18 represent them.” *Bond*, 385 U.S. at 136.

19 4. And California’s desire that its public servants remain committed to this principle is
20 outlined in state law.

21 The people of this state do not yield their sovereignty to the agencies which
22 serve them. The people, in delegating authority, do not give their public
23 servants the right to decide what is good for the people to know and what is
not good for them to know. The people insist on remaining informed so that
they may retain control over the instruments they have created.

24 Cal. Government Code § 54950 (emphasis added).

25 5. Palomar Health’s policies prohibiting elected board members from stating their personal
26 opinions about District decisions on threat that they will be denied benefits, denied reimbursement costs,
27 have to face legal action, and be removed from office if they speak, violate the First Amendment and
28 the California Constitution.

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JURISDICTION AND VENUE

6. This Action arises under 42 U.S.C. § 1983 in relation to Palomar’s violation of Director Edwards-Tate’s First Amendment rights. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1343. This Court has authority to award the requested declaratory relief under 28 U.S.C. § 2201; the requested injunctive relief and damages under 28 U.S.C. § 1343(a); and attorneys’ fees and costs under 42 U.S.C. § 1988.

7. Venue is proper in this Court pursuant to 29 U.S.C. § 1391(b), because the events giving rise to the claims made herein occurred in this Judicial District, and Defendant Palomar has its principal place of business within this District.

INTRADISTRICT ASSIGNMENT

8. This Action is properly assigned to the San Diego Division of the Court, as Defendant Palomar Health has its principal place of business in San Diego County, California.

PARTIES

9. Ms. Laurie Edwards-Tate is an individual who resides in San Diego County, California. She is a publicly elected official on the Palomar Health District Board of Directors.

10. Palomar Health District is a health care district organized under the laws of the State of California that conducts business in San Diego County, California.

RELEVANT FACTS

11. Health care districts (of which the Palomar Health District is one) are creatures of state law and may only exercise the rights and powers granted by state statute. Cal. Health & Safety Code § 32001.

12. Parameters for health care districts’ board of directors are also outlined in state law. State law sets the number board members, each of whom shall be a registered voter residing in the district. Cal. Health & Safety Code § 32100, *et seq.* They serve four-year terms. *Id.* Director elections are governed by the state’s Elections Code, and vacancies are required to be filled in accordance with the regulations in the Government Code. *Id.* Director compensation is governed by state law, and hospital boards must follow the requirements for open meetings outlined in the Ralph M. Brown Act. Cal. Government Code §§ 54950 *et seq.* (“Brown Act”); Cal. Health & Safety Code §§ 32103–32106.

1 13. Health care district board of directors are responsible for the operation of all health care
2 facilities and must act “*according to the best interests of the public health* and shall make and enforce
3 all rules, regulations and bylaws necessary for the administration, government, protection and
4 maintenance of health care facilities.” Cal. Health & Safety Code § 32125.

5 14. Health care districts must establish their own treasury. Cal. Health & Safety Code §
6 32127. They can also exercise eminent domain and levy taxes. Cal. Health & Safety Code §§ 32002,
7 32121, 32200–32243.

8 15. Director Edwards-Tate was first elected to the Palomar Health Board of Directors in
9 2018. As required by state law, she seeks to make decisions according to the best interests of the public
10 health. She has been a vocal advocate for management transparency and greater public access to the
11 public hospital’s financial records, especially because a series of poor financial decisions left Palomar
12 in dire financial straits. In her most recent election, Director Edwards-Tate garnered over 80% of the
13 popular vote in her district.

14 16. Palomar Health’s Board of Directors is responsible for establishing and maintaining the
15 District’s website. Cal. Health & Safety Code § 32139.

16 17. In or around August 2023, Palomar Health’s administration modified the way users
17 could access its website. Specifically, prior to allowing any access to Palomar Health’s website, all users
18 must first agree to Terms of Use (“Terms of Use”) that: expressly permit collection of a user’s personal
19 identifying information; limit potential damage recovery in any lawsuit; waive the right to bring a class
20 action lawsuit; and require assent to an arbitration provision, among other requirements. If the user does
21 not wish to waive these legal rights, they cannot access Palomar Health’s website. A true and correct
22 copy of Palomar Health’s Terms of Use as it appeared on October 27, 2023, is attached to this complaint
23 as Exhibit A.

24 18. Among the materials which community members may not access without agreeing to
25 waive legal rights is biographical information about the District’s elected board members, Board of
26 Directors meeting agendas and voting resolutions, information explaining the public comment process,
27 and hospital budgets.

28 19. Under the Brown Act, board agendas must be “freely accessible to the public” on the

1 government’s website and “available to the public free of charge and without any restriction that would
2 impede the reuse or redistribution of the agenda.” Cal. Government Code § 54954.2.

3 20. Requiring the public to waive legal rights through the Terms of Use before being able to
4 access board agendas impedes their reuse and redistribution.

5 21. Under the Brown Act, if a board elects to use teleconferencing, access to the meeting by
6 teleconference must be “accessible to the public.” Cal. Government Code § 54953. To access the public
7 links to attend Palomar Health meetings via teleconference, the public must first waive legal rights by
8 agreeing to the Terms of Use.

9 22. After visiting the website and reviewing its changes, a local reporter from the *Voice of*
10 *San Diego* (“*the Voice*”) wrote a story on the concerning the Terms of Use and its potential implications
11 for public access. In a follow up story on September 28, 2023, the reporter published the following
12 comments attributed to Director Edwards-Tate:

13 Laurie Edwards-Tate, Palomar Health board director, told Layne she came
14 across the terms agreement for the first time only a few weeks ago while
15 attempting to access meeting agendas.

16 “It was shocking to me, and I felt prohibited from its use and I felt like it
17 was a barrier for being able to access it.” Edwards Tate said, speaking on
18 her own behalf and not for the board. She added that, to her knowledge, the
terms of use agreement was never brought up on a regular board meeting.

19 23. On October 5, 2023, outside counsel retained by and representing the District (“Palomar
20 Health’s Counsel”) emailed Director Edwards-Tate a “Notice of Action.” A true and correct copy of
21 the Notice of Action is attached to this document as Exhibit B.

22 24. The Notice of Action stated that Palomar Health’s Counsel was recommending that he
23 be permitted to investigate Director Edwards-Tate’s “participation” in *the Voice* article because her
24 private speech “most likely [] violated both the Media Policy and Code of Conduct.” Palomar Health’s
25 Counsel stated that he would be investigating her speech so that he had “a basis to recommend whether
26 sanctions and or other remedies are warranted based on the facts.” Exh. B, p. 2 (emphasis added).

1 25. Director Edwards-Tate was shocked when she got the Notice of Action. Despite her
2 statements being her personal opinion, innocuous, and clearly reflecting that the statements were not
3 made on behalf of the District, Palomar was suggesting they violated the Code of Conduct, Director
4 Edwards-Tate’s fiduciary duties, and could be “sanctionable” offenses because her speech was contrary
5 to Palomar’s desired messaging.

6 26. The Palomar Health Board of Directors held a board meeting on Monday October 9,
7 2023. A true and correct copy of the October 9, 2023, meeting agenda, as it was found on the Palomar
8 Health District website, is attached as Exhibit C. Paragraph 8(c) on the agenda was titled: “Vote of No
9 Confidence in a Director; Request for Director to Show Cause (Laurie Edwards-Tate)” (“Vote of No
10 Confidence”). The Brown Act requires agendas to include “a brief general description of each item of
11 business.” Cal. Government Code § 54954.2. Other than the title, Palomar Health did not provide any
12 description related to what the Vote of No Confidence was about or for.

13 27. The Brown Act says that “[n]o action or discussion shall be undertaken on any item not
14 appearing on the posted agenda....” Cal. Government Code § 54954.2. At the October 9, 2023, board
15 meeting, the Board did not vote on the Vote of No Confidence. Instead, the Board voted to authorize
16 Palomar Health’s Counsel to conduct a 30-day investigation into Director Edwards-Tate’s comments.
17 No item related to investigating Director Edwards-Tate’s comments was included on the Board’s
18 agenda. *See* Exh. C. Further, it is unclear what needed to be “investigated” regarding her speech, beyond
19 whether she made the statements, which she readily admitted.

20 28. Immediately the next morning (October 10, 2023), Director Edwards-Tate sent a text
21 message to the vice chair of the board, with a “cc:” to the District’s Chief Legal Corporate Counsel,
22 asking for the pages of the policies she was alleged to have violated. Director Edwards-Tate did not
23 have a copy of the policies in her possession and the policies were not publicly available on the
24 District’s website. Neither the Board vice chair nor the District’s Chief Legal Corporate Counsel ever
25 responded to Director Edwards-Tate’s text message or provided Ms. Edwards-Tate with a copy of the
26 policies.

27 29. Initially, Director Edwards-Tate hoped to resolve this issue without having to involve
28 the courts. After it became clear District representatives were refusing to communicate, Director

1 Edwards-Tate began her search for legal counsel.

2 30. On October 23, 2023, Counsel for Director Edwards-Tate made a public records request
3 both by email and by certified mail for all documents related to the Vote of No Confidence, among
4 other requests. One of the goals in this request was to get complete copies of the policies Director
5 Edwards-Tate was alleged to have violated.

6 31. The day after counsel submitted the public records request, Palomar Health’s Counsel
7 contacted Director Edwards-Tate requesting an immediate interview. A true and correct copy of that
8 email is attached as Exhibit D.

9 32. On October 27, 2023, at 2:41 PM, Director Edwards-Tate’s counsel sent a letter in
10 response to the District’s request for an interview. The letter explained Director Edwards-Tate’s
11 concerns with how the Terms of Use created a barrier to public access of public documents and
12 information. It also stated Director Edwards-Tate’s belief that citizens should not have to waive legal
13 rights to access public records. She further informed the District that it had still not responded to
14 Director Edwards-Tate’s October 10, 2023, request for clarification on the District policies she
15 allegedly violated. Finally, she expressed outrage that the District would try to bully her into silence by
16 threatening to sanction her, a duly elected official who garnered 81% of the vote in her district in the
17 last election. A true and correct copy of that letter is attached as Exhibit E.

18 33. Roughly twenty minutes after the letter was sent, Palomar Health’s Counsel responded
19 as follows:

20 Wow, you sure use lot of colorful adjectives.
21 Will Director Edwards-Tate consent to being interviewed by counsel for the District
(with you present of course)? We are available Monday almost anytime.

22 Outside counsel’s email did not respond to any of the legal issues raised in Director Edwards-Tate’s
23 letter. A true and correct copy of the email chain including the email sent by Palomar Health’s Counsel
24 is attached as Exhibit F.

25 34. Counsel for Director Edwards-Tate responded that she was requesting additional
26 information related to the charges against her before she would sit for an interview, to which Palomar
27 Health’s Counsel replied: “We did in our initial email to her—prior to the Board meeting. Surely you
28 have seen that? I think it is attached to the email I sent her earlier this week.” *Id.*

1 35. On October 31, 2023, Palomar Health’s Counsel sent Ms. Edwards-Tate another email
2 suggesting that the Notice of Action “comprehensively sets forth the scope of the District’s concerns,
3 including the specific sections of the Board’s Code of Conduct we are concerned she has violated.” It
4 further stated that he was merely trying to “conduct a short interview” so that they could “report to the
5 Board our findings.” It stated in bold and italicized letters “***the Board voted to authorize this narrow***
6 ***interview/investigation.***” The email also threatened that Director Edwards-Tate’s “refusal to participate
7 in such an interview...[wa]s a violation of her duties.” A true and correct copy of that email is attached
8 as Exhibit G. Once again, outside counsel did not provide a complete copy of the policies it was
9 claiming Director Edwards-Tate violated, only selectively edited portions.

10 36. On Wednesday November 1, 2023, Director Edwards-Tate informed the District she
11 would be filing a Verified Complaint for Declaratory and Injunctive Relief and Application for a
12 Temporary Restraining Order and immediately provided District counsel with copies of the same after
13 filing.

14 37. The District did not respond to Director Edwards-Tate’s motion.

15 38. On November 2, 2023, this Court denied Director Edwards-Tate’s application for a
16 temporary restraining order. Dkt. 4 (“Order”). The Court determined that Director Edwards-Tate’s
17 application was inadequate because she failed to provide the Media Policy, Duty of Care policy, and
18 Duty of Loyalty policy for the Court’s review. *Id.* at 4. It further stated that the Director Edwards-Tate
19 failed to allege “that the District’s outside counsel actually has undertaken any investigation.” *Id.* at 5.
20 And that the complaint failed to indicate what sanctions could be imposed. *Id.*¹

21 39. Under California government code section 6253 (c), the District was supposed to have
22 responded to counsel’s October 23, 2023, public records request no later than November 3, 2023. As
23 of the date Director Edwards-Tate filed her First Amended Complaint, the District still has not
24 responded to the public records request.

25 40. Thus, on November 3, 2023, Director Edwards-Tate’s counsel informed Palomar
26

27 ¹ Director Edwards-Tate did not have copies of the policies or the list of proposed sanctions at the time
28 of filing. Those materials are now attached to this Complaint as Exhibit H. The Board voted to conduct
an investigation at the October 9, 2023, meeting, and Palomar Health’s Counsel interviewed Director
Edwards-Tate for that investigation on November 7, 2023.

1 Health's Counsel that Director Edwards-Tate had requested, yet had not yet received, copies of the
2 Media, Duty of Care, and Duty of Loyalty policies. Palomar Health's Counsel then provided a copy of
3 the Board's Code of Conduct. A true and correct copy of the Code of Conduct is attached as Exhibit
4 H.

5 41. The Board's Media Policy is found under Section 3.8 of the Code of Conduct. Exh. H,
6 p. 16. While it suggests Board Members may express their personal points of view, it then limits those
7 speech rights as follows:

8 Board Members must be aware that they are always perceived and recognized as Board
9 members, even when they designate comments as personal. As such, Board Members
10 must be mindful of their fiduciary duties of care and loyalty, and the consequences of a
11 violation of either or both, in the context of any discussion with the media.

12 42. The Notice of Action elaborated on the interplay of the Media Policy and the Duties of
13 Care and Loyalty, stating: "**A Director's duties of care and loyalty require some basic due diligence,**
14 **such as consulting with the District's Chief Legal Officer, or following the District's Code of**
15 **Conduct with respect to media engagement prior to speaking with the media."** Exh. B, p. 2. The
16 Notice of Action also stated that the purpose of this requirement was to "**coordinate messaging**" so
17 that the District could "select among possible responses and spokespersons, whether District
18 representatives or Board Members." Exh. B, p. 5.

19 43. The Duty of Loyalty policy is found in Section 1.2 of the Code of Conduct. Exh. H, p.
20 2. It states that "Board Members must be loyal and act at all times in the best interests of the District
21 and its constituents." It further states that "[o]nce the Board has acted, a Board Member may seek
22 change through Board action, but may not undermine public or constituent confidence in the Board of
23 the District." *Id.*

24 44. The Notice of Action quoted the above language and then suggested that the Board had
25 been told there would be changes to the website, and therefore, Director Edwards-Tate's Duty of
26 Loyalty required her not to publicly speak about those changes because questioning them would
27 "undermine public or District constituent confidence in the Board or the District." Exh. B, p. 4.

28 45. The Duty of Care policy is found in Section 1.1 of the Code of Conduct, and states
"Directors must not knowingly disseminate false or misleading information." Exh. H, p. 2.

1 46. Director Tate commented to *the Voice* in her personal capacity that: (a) she felt like the
2 Terms of Use were a barrier to website access, and (b) to her knowledge the terms of use were not
3 brought up at a regular board meeting.

4 47. The Notice of Action argued that these two comments were misleading because:

- 5 - The Terms of Use “were not designed to prevent public access to all information [the public]
6 is entitled to under the Brown Act”;
- 7 - Palomar takes data security seriously;
- 8 - The Terms of Use policies reduce the risk of “bot” attacks;
- 9 - Just because no other healthcare district uses similar Terms of Use doesn’t mean they are
10 illegal;
- 11 - The legal department crafted the Terms of Use in response to litigation;
- 12 - The Terms of Use were already impliedly agreed to by citizens use of the website;
- 13 - Director Edwards-Tate “implied” the board must consent to website changes;
- 14 - Director Edwards-Tate “implied” the terms of use restricted her access to Board agendas;
- 15 - The changes were “minor” “remedial measures.”

16 48. Yet this litany of grievances has no rational relation to Director Edwards-Tate’s actual
17 comments. *See* ¶ 22.

- 18 - She said nothing about the Brown Act;
- 19 - She said nothing about whether Palomar takes data security seriously;
- 20 - She said nothing about “bots”;
- 21 - She said nothing about other healthcare districts;
- 22 - She said nothing about who crafted the Terms of Use or why they were crafted;
- 23 - She said nothing about how long the Terms of Use had been in effect;
- 24 - And in no way did she imply that the board was required to assent to website changes or
25 that she wasn’t able to access Board agendas.

26 49. The Notice of Action further states that Palomar Health’s Counsel was recommending
27 an investigation to determine if “sanctions and or other remedies are warranted based on the facts.”
28 Exh. B, p. 2. The potential sanctions available to the Board are outlined in the Board’s Code of
Conduct, Section 4.3 (“Section 4.3”). Section 4.3 says that, upon a majority vote of the board, a Board
Member’s acts can be “subject to any or all of the following sanctions as determined by the Board of
Directors.” Exh. H, p. 20. The list of potential sanctions to which a Board Member could be subject
include: denying a board member expenses and benefits, a lawsuit to include damages, and removal of
the Director from the Board. *Id.* at 20–21.

1 50. The investigation described in ¶¶ 22-26 of this complaint into Director Edwards-Tate
2 speech was launched by Palomar Health’s Counsel in violation of the procedures outlined in the Code
3 of Conduct. The Code of Conduct requires a written complaint from another board member prior to an
4 investigation being launched, a 10-day timeline to allow a response, and other due process protections.
5 Exh. H, p. 19. Director Edwards-Tate specifically requested a copy of any written complaint from a
6 board member on multiple occasions, but not until after she raised the matter publicly at the November
7 13th Board Meeting did members of the board attempt to backfill their Code of Conduct violations by
8 cobbling together a written complaint.

9 51. In good faith and despite the Board’s authorization to investigate her violating both its
10 own Code of Conduct and the Brown Act as described herein, on November 7, 2023, Director Edwards-
11 Tate sat for an interview as a part of the Board’s investigation.

12 52. The Board’s Code of Conduct states that, following completion of the investigation, “the
13 Board must prepare a draft written report containing the investigation findings and a preliminary
14 determination on the merits of the complaint.” Exh. H, p. 20. It states “[t]he draft report will be
15 distributed to the full Board, including the Subject Director.” *Id.* It further states, “[t]he Subject Director
16 must have an opportunity to review the draft report and have ten (10) business days” to respond. *Id.*
17 The Board is then to review and “determine appropriate sanctions.” *Id.*

18 53. Here, the Board did not provide a draft written report. Director Edwards-Tate was never
19 provided with any proposed findings. She did not have anything to review, let alone ten-days to review
20 it. And she was not allowed an opportunity to respond to any findings. Instead, without any
21 accompanying information discussing the charges against her, the Board included a vote of no
22 confidence and order to show cause on its November 13, 2023, agenda. A true and correct copy of the
23 November 13, 2023, meeting agenda, as it was found on the Palomar Health District website, is attached
24 as Exhibit I.

25 54. At the board meeting, the Board moved to vote on its resolution for a vote of no
26 confidence and order to show cause against Director Edwards-Tate. However, before the Board voted
27 and articulated the sanctions it intended to impose, Director Edwards-Tate brought to the Board’s
28 attention its violations of its own Code of Conduct and the Brown Act. Palomar Health’s Counsel was

1 present at the meeting. One of the board members asked Palomar Health's Counsel if they had violated
2 the policies outlined in their Code of Conduct or the Brown Act, and Palomar Health's Counsel said
3 no.

4 55. On information and belief, certain Board members were not convinced by Palomar
5 Health's Counsel denial, as a majority of the board then agreed to postpone the vote until the next Board
6 meeting.

7 56. On November 15, 2023, Palomar Health's Counsel emailed counsel for Director
8 Edwards-Tate stating that the Director's assertions that the Board had violated the Brown Act and its
9 own code of conduct were "false." A true and correct copy of Palomar Health's Counsel's November
10 15, 2023, email is attached as Exhibit J.

11 57. In the email, Palomar Health's Counsel suggested that the meeting agenda was Brown
12 Act compliant because the statement "Vote of No Confidence" was enough of a general description of
13 what was to be voted on to satisfy the Brown Act. Palomar Health's Counsel made no effort to address
14 the fact that the Brown Act requires meeting agendas to be freely accessible to the public, yet members
15 of the public wishing to access the Palomar Health board agenda must waive legal rights by agreeing
16 to the Terms of Use before they can access the agenda. He also did not address that the Board's vote to
17 authorize an investigation into Director Edwards-Tate's speech violated the Brown Act because it was
18 not included on the agenda.

19 58. Palomar Health's Counsel suggested that the Board did not violate its own Code of
20 Conduct because, even though no director filed a written complaint as required under Board Policy 4.1,
21 Palomar Health's Counsel made a complaint against her. And even though Director Edwards-Tate was
22 not provided ten (10) days after receiving Palomar Health's Counsel complaint in which to respond,
23 Palomar Health's Counsel didn't matter because they voted to investigate the matter rather than
24 sanction her at the Oct. 9 meeting. And, finally, Palomar Health's Counsel stated that the Code of
25 Conduct's procedures didn't matter because the Board was "not required to comply with the Code of
26 Conduct in the first place." Exh. J.

27 59. Finally, Palomar Health's Counsel curiously suggested that the Board's own speech was
28 implicated in this action. Yet Palomar Health's Counsel offered no explanation as to how the Board's

1 threats to remove Director Edwards-Tate's benefits, her eligibility for reimbursement, file a civil
2 lawsuit against her, and remove her from the board (Exh. H, p. 20–21) for expressing her private views
3 to her constituents about District actions have anything to do with the Board's, rather than Director
4 Edwards-Tate's, speech.

5 60. And those threats of sanctions were then reiterated again by Board Member Laura Barry
6 in her subsequent written complaint against Director Edwards-Tate. While the allegations of Barry's
7 complaint largely mirrored those made in the complaint filed by Palomar Health's Counsel, they
8 specified that the sanctions at issue were those outlined under Board Code of Conduct 4.3. A true and
9 correct copy of the email complaint against Director Edwards-Tate is attached as Exhibit K.

10 61. In short, both facially and in the ways the District has applied its Media Policy, Duty of
11 Loyalty Policy, and Duty of Care Policy (together "Policies"), the District seeks to restrain Board
12 members from speaking messages critical of District actions directly to the public on threat of sanctions
13 including the removal of benefits, removal of reimbursement rights, civil lawsuit, and board removal.
14 Thus, the District's Policies and actions violate the First Amendment.

15 **COUNT I**

16 **Violation of the First Amendment – Prior Restraint on Speech**

17 62. Plaintiff incorporates by reference the allegations in the prior paragraphs as if fully
18 contained herein.

19 63. The Policies and Defendant's enforcement thereof violate the Free Speech Clause of the
20 First Amendment, both facially and as applied to Plaintiff.

21 64. The Free Speech Clause was incorporated against the states in *Gitlow v. New York*, 268
22 U.S. 652 (1925) (dicta) and *Stromberg v. California*, 283 U.S. 359 (1931).

23 65. The District's Policies are a prior restraint on speech.

24 66. The District's Policies forbid certain speech before the speech occurs.

25 67. Plaintiff seeks to engage in protected speech in the form of providing her opinions on
26 the District's Terms of Use policies and other District policies.

27 68. The District's policies threaten civil or criminal sanctions as a means of coercing Board
28 Members, including Plaintiff, not to speak.

1 69. The District’s Policies require a putative speaker to submit proposed speech to the
2 District before engaging in that speech, and the District is then empowered to determine whether the
3 applicant should be granted permission to speak on the basis of the District’s review of the content of
4 the proposed speech.

5 70. The District’s Policies target speech based on its communicative content.

6 71. The District’s Policies cannot survive strict scrutiny.

7 72. The District’s Policies are not narrowly tailored.

8 73. The District’s Policies do not serve a compelling state interest.

9 74. The District’s Policies target particular views taken by speakers on a subject.

10 75. The District’s Policies are per se unconstitutional.

11 76. Plaintiff has no adequate remedy at law and will suffer serious and irreparable harm to
12 her constitutional rights unless Defendant is enjoined from implementing and enforcing the Policies.

13 77. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to declaratory relief and
14 temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the
15 Policies.

16 78. Plaintiff found it necessary to engage the services of private counsel to vindicate her
17 rights under the law. Plaintiff is therefore entitled to an award of attorneys’ fees pursuant to 42 U.S.C.
18 § 1988.

19 **COUNT II**

20 **Violation of California’s Freedom of Speech Clause (Cal. Const. Art. 1, § 2)**

21 79. Plaintiff incorporates by reference the allegations in the prior paragraphs as if fully
22 contained herein.

23 80. In California “[e]very person may freely speak, write and publish his or her sentiments
24 on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty
25 of speech or press.” Cal. Const. Art. 1, §2.

26 81. “The California Supreme Court has recognized that the California Constitution is ‘more
27 protective, definitive and inclusive of rights to expression and speech’ than the First Amendment to the
28

1 United States Constitution.” *Rosenbaum v. City and County of San Francisco*, 484 F.3d 1142, 1167 (9th
2 Cir. 2007).

3 82. For the reasons stated in Count I, coercing Plaintiff to abstain from making comments
4 about the District on threat of sanctions violates Plaintiff’s liberty of speech rights under the California
5 Constitution.

6 83. Plaintiff has no adequate remedy at law and will suffer serious and irreparable harm to
7 her constitutional rights unless Defendant is enjoined from implementing and enforcing the Policies.

8 84. Plaintiff found it necessary to engage the services of private counsel to vindicate her
9 rights under the law. Plaintiff is therefore entitled to an award of attorney fees and costs pursuant to
10 California Code of Civil Procedure Section 1021.5

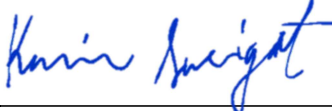
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendant
13 as follows:

- 14 1. An order and judgment declaring that the Policies, facially and as-applied to Plaintiff,
- 15 violate the First Amendment of the U.S. Constitution and Article 1, Section 2 of the
- 16 California Constitution;
- 17 2. An order temporarily, preliminarily, and permanently enjoining and prohibiting
- 18 Defendant from enforcing the Policies or otherwise interfering with Plaintiff’s ability to
- 19 exercise constitutionally protected rights;
- 20 3. For nominal damages;
- 21 4. For attorneys’ fees and costs;
- 22 5. Any other relief the Court deems just and proper.

23 Date: November 15, 2023

Respectfully submitted,
DHILLON LAW GROUP INC.

24
25 By: 
 KRISTA L. BAUGHMAN
 KARIN M. SWEIGART
 JEREMIAH D. GRAHAM
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

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LAURIE EDWARDS-TATE, an individual,

Plaintiff,

vs.

PALOMAR HEALTH DISTRICT,

Defendant.

Case Number:

VERIFICATION OF LAURIE EDWARDS-TATE

I, LAURIE EDWARDS-TATE, am the PLAINTIFF in the case captioned *Laurie Edwards-Tate v. Palomar Health District* and have authorized the filing of this complaint. I have reviewed the allegations made in the complaint, and of those allegations of which I have personal knowledge, I believe them to be true. As to those allegations of which I do not have personal knowledge which are stated on information and belief, I believe them to be true.

Date: 11/15/2023

Laurie Edwards-Tate

Laurie Edwards-Tate