MEMORANDUM OF LAW

DATE: August 28, 1991

TO: Mary Rea, Assistant Director, Risk Management Department

FROM: City Attorney

SUBJECT: Contract With Sharp Rees-Stealy Medical Group

You have asked for a legal opinion concerning Sharp Rees-Stealy Medical Group's ("SRSMG") duty to reimburse the City of San Diego ("City") for monies paid to SRSMG which exceed the amounts which would have been due SRSMG had the City contracted with SRSMG through the Community Care Network ("CCN").

The issue arises out of a contract entered into between the City and SRSMG in April of 1990. The contract provides that SRSMG will directly contract with local hospitals for industrial medical services. The contract further provides that: "This direct hospital provider panel will provide hospital discounts equal to or greater than the discount provided by Community Care Network plus the Community Care Network charge equal to 20% of savings." (Emphasis added.) Agreement, pages 2 & 3, 6 2.

The agreement with SRSMG also provides that:

> Sharp RSMG, Inc. through the San Diego Hospital Association, agrees to provide a 35% discount to total billed charges for all services at all Sharp Hospital facilities for the City's industrially injured or ill City employees. This discount will apply to all industrially injured or ill City employees who receive inpatient or outpatient services at any of the following Sharp Hospital facilities.

Agreement, page 4, 6 5.

At the time the City entered into the agreement with SRSMG, that organization had not contracted with CCN for services. It had indicated that it intended not to re-enter into a contract with CCN. Subsequently, however, SRSMG did execute an agreement with CCN and as a result entered into agreements with agencies other than the City at CCN rates as opposed to the 35% rate it granted the City. At the end of the contract year, an independent audit was conducted by Deloitte Touche to determine whether the hospital rates negotiated between the City and SRSMG were "equal to or greater than" those that would have been obtained through CCN. It was determined that the City would have saved $12,643.38 by contracting with SRSMG through CCN. SRSMG now maintains that the City is bound by the

thirty five percent (35%) discount rate and therefore SRSMG need not reimburse the City.

SRSMG argues it is not bound by the "equal to or greater than" language because it contracted for a specific rate even though that rate was inconsistent with previously cited language. However, it is well established that: "If the language used by the parties is ambiguous, and one party knows this and fails to explain it, mistake of the innocent party is partly a result of the other party's fault, and relief is proper; i.e., the innocent party's interpretation will prevail." Witkin, Contracts Section 365 (1987).

The question thus becomes, how does the City confirm its interpretation of the agreement? You have indicated that during the course of the negotiations representations were made by SRSMG that the rate being offered to the City, the 35%, was far below the rate that could have been obtained through any other health care provider organization such as CCN. Your understanding therefore, was that this rate was "equal to or greater than" the rate CCN could obtain.

Under ordinary circumstances a written agreement is assumed to be a complete integration of the intent of both parties to the agreement. However, as the court stated in Roberts v. Reynolds, 212 Cal. App. 2d 818, 825 (1963).

> When the language used in the contract is fairly susceptible to the construction claimed by one of the parties, extrinsic evidence may be considered, not to vary or modify the terms of the agreement, but to aid the court in ascertaining its true meaning. To exclude such evidence in the present case would be to ignore the admonition of Dean Wigmore that: 'Once freed from the primitive formalism which views the document as a self-contained and self-operative formula, we can fully appreciate the modern principle that the words of a document are never anything but indices to extrinsic things, and that therefore all the circumstances must be considered which go to make clear the sense of the words,-that is, their associations with things.' (Emphasis in original.)

The courts have consistently held that:

> Extrinsic evidence as to the circumstances under which a written instrument was made has been held to be admissible in ascertaining the parties' expressed intentions, subject to the limitation that extrinsic evidence is not admissible in order to give the terms of a written instrument a meaning of which they are not reasonably susceptible.

Continental Baking Co. v. Katz, 68 Cal. 2d 512, 522 (1968).

It would appear then, that when the contract and negotiations are

considered as a whole, the understanding of the City, as cited in article 2, that the rates offered by SRSMG would afford savings "equal to or greater than" CCN rates, included the SRSMG hospitals in addition to the other hospitals listed in the agreement. It is incumbent upon SRSMG to prove that this is an unreasonable interpretation. If it is unable to offer such proof, it cannot be relieved of its obligation to refund the overpayments noted in the audit.

JOHN W. WITT, City Attorney
By
Sharon A. Marshall
Deputy City Attorney

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cc Pat Brogan
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