

BEST, BEST & KRIEGER

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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*A PROFESSIONAL CORPORATION

July 20, 1988

Arthur J. Silvergleid, M.D.
Executive Director
Blood Bank of San Bernardino
& Riverside Counties
P.O. Box 5729
San Bernardino, CA 92412

Re: Bylaws for Blood Centers of California

Dear Arthur:

Yesterday, we discussed a few points concerning the comments on the draft Bylaws contained in your letter of June 22, 1988. I am enclosing a "clean" copy of the revised Bylaws, as well as a mark-up copy, which shows additions (underlined) and deletions (indicated by a caret) to the draft dated March 24, 1988.

The changes made follow your directions contained in that June 21 letter. With respect to Item No. 11, concerning the removal and resignation of officers, I verified with you that there was no confusion between the removal of a person as officer and the revocation of the membership of a member blood center (these Bylaws have no provision concerning that). Then in amending the first paragraph of Section 3 of Article V, I provided that it be a vote of the directors representing two-thirds of all of the member blood centers, since all action will have to be taken by the Board. With respect to Item 12, we agreed that if the person who is the past president resigns from the Board or is removed by his or her member blood center, it will not be necessary to choose another person to hold the "office" of past president. Likewise, I removed the provision for designating someone as "past president" during the initial year. That will have the consequence that the Executive Committee will be smaller by one person until the first annual meeting.

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With respect to Section 14, we agreed that any rules concerning the number of persons signing checks for various amounts will be stated in a Board resolution, rather than in the Bylaws. Since this organization will have no employee (at least at the outset), only the elected Board officers will be authorized to sign checks. I would advise that the President or Treasurer be authorized as sole signatories on checks up to \$500 or \$1,000, and then that the signatures of more than one officer be required for checks over that amount. For convenience and efficiency, it may be wise to make sure that there is another officer, who has a place of business close to the President or Treasurer so that checks can be processed quickly. It may be necessary, thus, to create the position of Assistant Treasurer for the purpose of signing larger checks, and that can be done by a resolution of the Board. Also, it may be wise to have the Board adopt a resolution which establishes threshold amounts for expenditures or obligations and the corresponding approval process. For example, the President or Treasurer could be authorized to make expenditures or obligate the Corporation for amounts totaling \$500 (or \$1,000) without approval; then any expenditure or obligation between that amount and \$5,000 might require the approval by the Executive Committee, and any amount over that would require approval by the Board. In this connection, the organization should have a budget process so that an annual operating budget and capital budget is approved by the Board, thereby authorizing expenditures provided in the budget. Extraordinary or out of budget expenditures or obligations would have to be approved specially by the Board.

With respect to dues and assessments, I understand that the Board will establish an initial assessment of \$3,000 to be paid by the end of August. Thereafter, any new member blood centers will have to pay an assessment determined by the Board from time to time. To the extent that participation in the organization will provide a competitive advantage to participating member blood centers, the organization will have to be careful in dealing with entities which request participation in the organization. I recommend that as each case comes up, the Board consult with legal counsel to avoid any possible antitrust exposure in excluding potential participants. Under both the federal and state antitrust laws, exclusion could constitute a boycott or collective refusal to deal, which could subject the organization to treble damages, attorneys' fees, and other penalties. Moreover, such liability is not covered by liability insurance. Thus, the organization will need to be extremely careful in considering and handling requests for participation. (By the way, I have discussed the structure and purposes of this organization with Kendall MacVey, our specialist in antitrust law, and he is prepared to assist when requested.)

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BEST, BEST & KRIEGER

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Finally, the provision for the bonding of employees who handle the organization's funds does not apply to elected officers who handle the organization's funds.

Assuming that the Bylaws are now completed, with the exception of the list of charter member blood centers for Section 2 of Article IV, we can now proceed with the formal organization of the Corporation. I understand that you will be receiving checks from each of the initial participating blood centers by the end of August. You should hold those checks as sort of an escrow account. Once you have the complete list of participating blood centers, including the names and addresses of those who will be designated Board members, please send the list to me. Since I am the incorporator of the organization, I will then complete the Certificate of Incorporator in which I will name the members of the first Board of Directors. From that point, they will be responsible for operating the organization. I will also add the names of the participating blood centers to the list in the Bylaws. Then our next step will be the Organizational Meeting at which the members of the first Board of Directors will elect officers and take a number of other formal steps. After that, we will prepare the applications for exemption from state and federal income taxation. In order to expedite matters, I would recommend that the Organizational Meeting of the First Board of Directors be scheduled for September, preferably no later than the 15th.

I should note that this organization has indicated a fiscal year ending June 30. Tax returns for federal and state purposes should be prepared for that first fiscal year (from December 1, 1987, the date of incorporation, to June 30, 1988). Also, at this point the Statement of Domestic Nonprofit Corporation, which should have been filed with the Secretary of State by March 1, is overdue and will have to be filed as soon as we have the names and addresses of the first officers of the Corporation.

If you have any questions concerning any of the above, please do not hesitate to call me.

Very truly yours,



Carl F. Herbold
for BEST, BEST & KRIEGER

CFH/bln
Enclosures

DRAFT

BB+k 7/19/88

BYLAWS
OF
BLOOD CENTERS OF CALIFORNIA, INC.

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BYLAWS
OF
BLOOD CENTERS OF CALIFORNIA, INC.

ARTICLE I

NAME

The name of this organization is BLOOD CENTERS OF CALIFORNIA.

ARTICLE II

PURPOSES

This Corporation is established for the purposes set forth in its Articles of Incorporation.

ARTICLE III

MEMBERSHIP

This Corporation shall have no members, as that term is defined by Section 5056 of the California Nonprofit Corporations Law, and shall be governed solely by its Board of Directors (hereinafter referred to as the "Board").

ARTICLE IV

BOARD OF DIRECTORS

1. Responsibility. Except as otherwise provided by the Articles of Incorporation or by the Bylaws, the powers of the Corporation shall be exercised, its property shall be controlled, and its affairs shall be conducted by the Board. The Board may delegate management of the activities of the Corporation to any person or persons or committees however composed, provided that the activities and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

2. Composition. This Corporation is an association of nonprofit blood centers and blood centers which are affiliated with public entities, all of which are located in and licensed by the State of California, and each of which is referred to as a "member blood center." Indi-

viduals or other types of organizations shall not be associated with this Corporation. Initially, the following shall be charter member blood centers:

Blood Center of San Bernardino & Riverside Counties

Additional member blood centers may become participants in this Corporation, subject to the requirements established by the Board and with the approval of a vote of the majority of the Board.

Each member blood center shall designate its chief executive officer or another employee with decision-making authority to serve on this Corporation's Board, as its delegate (who, for purposes of these Bylaws, shall be called a Director). If the designated Director is unable to attend any meeting of the Board, or of one of its committees, the respective member blood center may designate another individual as its delegate to such meeting, provided that the member blood center notifies the President in writing of such substitution. Such substitute delegates shall have voting rights, be counted for the purpose of determining a quorum, and shall enjoy all other rights, duties and privileges of a Director at such meeting.

3. Term. Each Director shall hold office until his or her successor has been designated. Each member blood center shall notify the President in writing of the designation of a successor Director.

4. Vacancies. Any vacancy in the office of a Director, whether by reason of death, resignation, removal, or otherwise, shall be filled by the member blood center which designated him or her.

5. Resignation. Any Director may resign at any time by giving written notice of such resignation to the Secretary of the Corporation. Such resignation shall be effective at the time specified therefor, and acceptance of such resignation shall not be necessary to make it effective.

6. Removal. Any Director may be removed from office with or without cause by the member blood center which designated him or her.

7. Voting Rights. Each Director shall be entitled to one (1) vote on all matters before the Board. There shall be no voting by proxy.

8. Annual Meetings. The Board shall meet annually during the first quarter of each calendar year, at a time and place to be set by the Board. The annual meeting shall be held for the purposes of organizing the Board, electing officers, and transacting such other business as may come before the meeting.

9. Regular Meetings. Regular meetings of the Board shall be held at least semiannually, during the first quarter (which shall be the annual meeting) and third quarter of each calendar year, at such time and place as the Board shall from time to time determine.

10. Special Meetings. Special meetings of the Board for any purpose or purposes may be called by the President, the Secretary, or any three (3) or more Directors, and shall be held at such place, and on such date and at such time as may be designated in the notice of such meeting.

11. Notice of Meetings. At least forty-eight (48) hours' notice of regular and special meetings shall be given to each Director, either personally or by mail, postage prepaid, addressed to each Director at the address appearing on the records of the Corporation.

12. Place. The Board shall hold its meetings at such places as it may designate.

13. Quorum. Two-thirds (2/3) of the members of the Board shall constitute a quorum at any meeting of the Board; provided, however, that at least one of the Corporation's elected officers must be among those present. The act of a majority of the voting power at any meeting at which a quorum is present shall be considered the act of the Board.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Directors, if any action is approved by at least a majority of the required quorum for such meeting, or such greater number as is required by the Articles of Incorporation, these Bylaws, or by law.

14. Adjournment. In the absence of a quorum at a meeting of the Board, the majority of the Directors present may adjourn the meeting until the time fixed for the next regular meeting of the Board.

15. Validation of Transactions. The transactions of the Board occurring at any meeting, however called or noticed, or wherever held, shall be as valid as though such meeting were duly held after regular call and notice if a quorum be present and if, either before or after the meeting, each Director who would have been entitled to vote at the meeting but who was not present signs a written waiver of notice, a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the Corporate records and made a part of the minutes of the meeting.

16. Action Without Meetings. Any action required or permitted to be taken by the Board under the provisions of the California Corporations Code, the Articles of Incorporation or these Bylaws may be taken without a meeting, if all Directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the proceedings of the Board. Such action by written consent shall have the same force and effect as a unanimous vote of such Directors. Any certificate or other document filed on behalf of the Corporation relating to an action taken by the Board without a meeting shall state that the action was taken by a unanimous written consent of the Board without a meeting, and that the Bylaws of this Corporation authorized its Directors so to act.

17. Telephonic Meetings. Members of the Board may participate in a meeting through use of a conference telephone or similar communications equipment, so long as all Directors participating in such meeting can hear one another. Participation in a meeting pursuant to this section constitutes presence in person at such meeting.

18. Fees and Compensation. Directors, members of committees, and officers shall receive no compensation for their services. However, they shall be entitled to receive

such just and reasonable reimbursement of expenses as may be determined by the Board.

ARTICLE V

OFFICERS

1. Officers. The officers of the Corporation shall consist of a President, the Past President, the President-Elect, a Secretary, and a Treasurer, each of whom shall be a Director. Officers shall attend meetings of the Board, its Executive Committee, and any other committee of which they are members. The Board may establish such other offices as it shall deem advisable. Additional officers so elected shall hold office for such period and shall have such power and duties as the Board may from time to time authorize. When the duties do not conflict, one person, other than the President of the Board, may hold more than one of these offices.

2. Election. The officers of the Corporation shall be elected by the Board at its annual meeting. The Board may accept suggestions for nominations for officers from any Director, and officers shall be elected by a majority of the Directors present and voting. Each officer shall hold office for one (1) year at the pleasure of the Board, or until his or her successor shall be selected and qualified to serve. A vacancy in any office because of death, resignation, removal, disqualification or otherwise may be filled for the unexpired term at any meeting of the Board, and the officer so elected shall hold office and serve until the next annual meeting of the Board. An officer shall serve a maximum of two (2) consecutive terms in the same office.

3. Removal and Resignation. Any officer may be removed, either with or without cause, by a vote of the Directors who represent two-thirds (2/3) of the total member blood centers at any regular or special meeting of the Board, or, except in the case of an officer elected by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4. President. The President shall preside at all meetings of the Board, and shall have such other powers and duties as may be prescribed from time to time by the Board.

5. Past President and President-Elect. The past president and the president-elect shall be deemed to be officers of the Corporation. The president-elect shall preside at meetings of the Board in the event of the President's absence or incapacity, and the past president shall preside at meetings of the Board in the event of the absence or incapacity of both the President and the president-elect. These two officers shall have such other powers and duties as may be prescribed from time to time by the Board.

6. Secretary. The Secretary shall keep or cause to be kept a book of minutes of all meetings of the Board with the time and place of holding, whether regular or special, if special how authorized, the notice thereof given, the names of those present at the Directors' meetings, and the proceedings thereof. The Secretary shall give or cause to be given notice of all the meetings of the Board required by these Bylaws or by law to be given, and the Secretary shall keep the seal of the Corporation in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board from time to time.

7. Treasurer. The Treasurer shall be the chief financial officer of the Corporation and shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains and losses. All monies and other valuables shall be deposited in the name and to the credit of the Corporation with such depositories as may from time to time be designated by the Board. The funds of the Corporation shall be disbursed upon the check or draft of the Corporation signed pursuant to the order of the Board. When requested by the President or the Board, the Treasurer shall render an account of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board.

ARTICLE VI

COMMITTEES

1. Committees Generally. Committees of the Board shall be standing or special. Each committee shall exercise

such power and carry out such functions as are designated by these Bylaws or as delegated by the Board from time to time, shall keep minutes of its meetings, and shall report to the Board concerning its activities. The Chair of each committee, with the approval of the Committee, may appoint special subcommittees, subject to approval by the Executive Committee.

2. Membership and Appointment. Unless otherwise specified in these Bylaws, each committee shall consist of as many members as the Board shall from time to time determine. The Chair of each standing committee shall be appointed annually by the President, subject to approval by the Board. Ad hoc or special committees may be created by the President, with the approval of the Executive Committee. Each committee chair shall appoint other members of the committee, subject to approval by the Executive Committee. The Chair of each committee and such members as designated in these Bylaws shall be Directors. Other committee members may, but need not be Directors. When deemed necessary, nonvoting consultants may be called to participate in a committee meeting.

3. Quorum and Meetings. A majority of the members of a committee shall constitute a quorum at any meeting of that committee. Each committee shall meet as often as is necessary to perform its duties.

4. Vacancies. Vacancies in any committee shall be filled for the unexpired portion of the term in the same manner as provided in the case of original appointment.

5. Expenditures. Except as may otherwise be provided by the Board or by these Bylaws, any expenditure of corporate funds by a committee, except the Executive Committee, shall require prior approval of the Board.

6. Executive Committee. The Executive Committee shall include the President, who shall preside at its meetings, the Past President, the President-Elect, the Secretary, and the Treasurer of the Corporation. The Board may elect other members to the Executive Committee, provided that no more than three (3) such additional members be elected, and provided further that all members of the Executive Committee are Directors.

The Executive Committee shall meet at least quarterly, which meetings may be held by telephone conference call, provided that all members participating in such meetings can hear each other. The Executive Committee shall have the power to transact all regular business of the

Corporation during the intervals between meetings of the Board, subject to any prior limitation imposed by the Board or by the California Nonprofit Corporation Law. The Executive Committee shall also have and exercise such powers and perform such duties as specifically prescribed by these Bylaws or by the Board. The Executive Committee shall not authorize any action which will obligate the Corporation for an amount in excess of that amount which is established from time to time by the Board. The Executive Committee shall not have the power to adopt the budget or take any action which is contrary to or a substantial departure from the directions established by the Board or which represents a major change in the affairs, business or policy of the Corporation. Minutes of the Executive Committee meetings shall be submitted to the Board, and its actions shall be subject to approval or disapproval at the next regular meeting of the Board.

7. Finance Committee. The Finance Committee shall consist of three (3) or more members, all of whom shall be Directors, but the Treasurer shall not be its Chair. The committee shall prepare the annual budget of the Corporation, make recommendations concerning the fiscal management of the Corporation and the expenditures of funds, and otherwise oversee the financial matters of the Corporation.

ARTICLE VII

DUES AND ASSESSMENTS

The Board may establish and collect annual dues or other assessments based on an amount per member blood center, on an amount proportional to the number of units of blood processed by each member blood center, or a combination of the two methods.

The Corporation may also assess fees for goods and services which it provides to participating member blood centers.

ARTICLE VIII

GENERAL PROVISIONS

1. Offices. This Corporation shall have and continuously maintain a registered office in the State of California.

2. Bonding. All employees handling funds shall be properly bonded.

3. Agents and Representatives. The Board may appoint such agents and representatives of the Corporation with such powers and to perform such acts or duties on behalf of the Corporation as the Board may see fit, so far as may be consistent with these Bylaws, the Articles of Incorporation, and the applicable laws.

4. Contracts. The Board, except as in these Bylaws or otherwise provided, may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of or on behalf of the Corporation, and such authority may be general or confined to a specific instance; and unless so authorized by the Board, no officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit, or render it liable pecuniarily for any purpose or to any amount.

5. Self-Dealing. In the exercise of voting rights by members of the Board, no individual shall vote on any issue, motion, or resolution which directly or indirectly inures to his or her benefit financially except that such individual may be counted in order to qualify a quorum and, except as the Board may otherwise direct, may participate in the discussion of such an issue, motion or resolution if he or she first discloses the nature of his or her interest as required by the California Nonprofit Corporation Law.

6. Indemnification. This Corporation may indemnify any Director, officer, employee or agent of the Corporation for liability incurred (including judgments, fines, reasonable settlements, and reasonable attorneys' fees and cost of defense) by such person in the exercise of his or her duties with respect to this Corporation to the extent permitted by the California Nonprofit Corporation Law.

7. Fiscal Year. The fiscal year of this Corporation shall end on the 30th day of June of each year.

8. Employee Restrictions. No paid employee, professional or otherwise, of the Corporation shall hold office or be a member of the Board.

ARTICLE IX

AMENDMENTS

These Bylaws may be amended or repealed, or new Bylaws may be adopted, by the vote of a majority of the Directors of the Corporation present and voting at any duly held meeting of the Board, or by unanimous written consent of the members of the Board.

C E R T I F I C A T E O F S E C R E T A R Y

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of Blood Centers of California, Inc., a California nonprofit corporation; and

2. That the foregoing Bylaws, comprising ten (10) pages, constitute the Bylaws of said Corporation as duly adopted by the Board of Directors of said Corporation at a meeting duly held on _____, 1988.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Corporation this ____ day of _____ 1988.

Secretary