# DEMONSTRATIVE FOR TESTIMONY OF KENNETH W. KIZER, M.D., M.P.H.

ANALYSIS OF QUALITY-RELATED EFFICIENCIES: ST. LUKE'S ACQUISTION OF SALZTER MEDICAL GROUP

October 21, 2013

# **Key Qualifications**

#### **Education**

- M.D., University of California, Los Angeles (1976)
- M.P.H., University of California, Los Angeles (1976)
- B.S., Stanford University (1972)

#### **Current Position**

- Distinguished Professor, University of California, Davis,
   School of Medicine and Betty Irene School of Nursing
- Director, Institute for Population Health Improvement,
   UC Davis Health System
  - Chief Quality Consultant, Medi-Cal Quality Improvement Program
  - Director, California Health e-Quality Program (HIE Development)
  - Director of multiple other programs

# **Key Qualifications**

#### **Professional Accomplishments and Honors**

- Board certification in 6 specialties and/or subspecialties
- Fellow or distinguished fellow of 10 professional societies
- Among fewer than 20 people elected to the Institute of Medicine, National Academy of Sciences, and the National Academy of Public Administration
- Dozens of national and other awards

#### **Selected Former Positions**

- Under Secretary for Health, U.S. Department of Veterans Affairs
  - Chief Executive Officer, Veterans Health Administration and the VA Healthcare System
  - Widely credited with engineering and leading the largest and most successful healthcare turnaround in U.S. history
- Director, California Department of Health Services
  - Nation's largest state health agency (now 3 state agencies)
  - Pioneered managed care in Medi-Cal, California's Medicaid program

# **Key Qualifications**

#### **Selected Current and Former Positions**

- Founding President and CEO, National Quality Forum
  - NQF is widely regarded as the "gold standard" for evidence-based healthcare quality performance measures
- Chairman, Medsphere Systems Corporation, Inc.
  - A leading provider of open source electronic health records
- Board of Directors, California Patient Safety Organization
  - One of nation's largest patient safety organizations
- Board of Directors, Los Angeles Network for Enhanced Services
  - A health information exchange organization (public-private partnership) for the greater Los Angeles area
- Board of Directors, DiagnosisOne, Inc.
  - A company providing clinical decision support technology for electronic health records

# **Highlighted Research**

400 original studies, book chapters, and reports

- Kizer KW, Dudley RA. Extreme makeover: Transformation of the Veterans Health Care System. Annual Review of Public Health. 30:313-339 (2009)
- Kizer KW, What Is a World-Class Medical Facility? American Journal of Medical Quality. 25(2):154-156 (2010)
- Kizer KW, Kirsh SR. The Double Edged Sword of Performance Measurement. Journal of General Internal Medicine. 27(4):395-7 (2012)

# Summary of Defendants' Arguments

Defendants assert that St. Luke's employment of the Saltzer physicians is necessary to achieve:

- The greatest benefits of integrated care
- A requisite core of employed PCPs to offer integrated care
- The highest level of integrated care through the use of health IT tools - i.e., Epic EMR and WhiteCloud data analytics tool
- Aligned provider incentives

# Summary of My Conclusions

# Defendants' quality claims are speculative and not merger-specific:

- The transaction is not necessary for Saltzer or St. Luke's to provide integrated care
- Defendants' "core" theory is unsupported and St. Luke's has a "core" of employed PCPs without Saltzer
- Independent providers use a variety of widely available EMRs and data analytic tools to facilitate integrated care
- This transaction is neither necessary nor sufficient for transitioning away from fee-forservice – i.e., aligning provider incentives

## Achieving the "Triple Aim" Is a Widely-Shared Goal Not Limited to St. Luke's

Today, the vast majority of American healthcare organizations are working to achieve the "Triple Aim's" objectives of higher quality, lower cost care and better health outcomes.

# THE TRANSACTION IS NOT NECESSARY FOR SALTZER OR ST. LUKE'S TO PROVIDE INTEGRATED CARE

#### St. Luke's Fallacy: Employment is Superior to Other Affiliations

#### **Defendants' claim**:

 St. Luke's employment of the Saltzer physicians yields greater benefits than other affiliation models

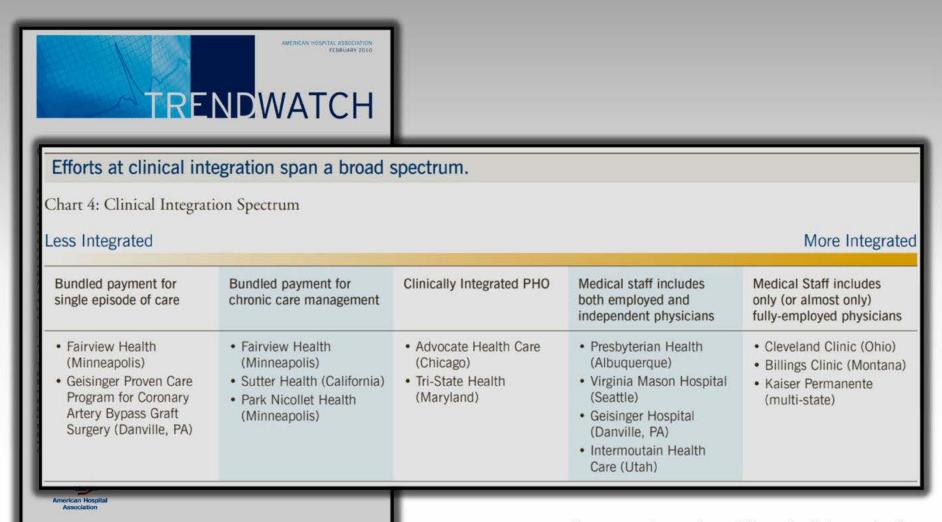
#### My Key Conclusions:

- Employment of physicians has not been shown to be a superior organizational form
- The presence of certain organizational functionalities – not a specific organizational structure or form – are essential to integrate care
- Defendants' view is unsupported by empirical evidence

# Integrated Care – Form v. Functionalities

- Full financial integration is not synonymous with effective clinical integration
- There is no standardized definition of what constitutes an integrated delivery system
- Integrated delivery systems do not necessarily produce integrated patient care – e.g., VA early 1990s, DOD-Military Treatment Facilities

# There is a Spectrum of Organizational Structures That Provide Integrated Care



## No Empirical Evidence That Employment Is Superior to Other Affiliations

#### Hwang, et al:

- "[T]here is no clear definition of what constitutes an IDS"
- IDSs come in all sizes and shapes, and span a wide spectrum of types and levels of integration
- IDSs result in higher quality, lower cost care

#### Tollen:

"Growing evidence suggests that organized delivery systems do in fact drive quality and efficiency, but because the specific causal mechanism is unknown, it may be too early to tie incentives to individual organizational attributes."

#### McWilliams, et al:

- Study comparing independent physician groups to employed physician groups
- Conclusion: Independent physician groups provided higher quality, lower cost care compared to employed physician groups

DEFENDANTS' "CORE" THEORY IS UNSUPPORTED AND ST. LUKE'S HAS A "CORE" OF EMPLOYED PCPS WITHOUT SALTZER

#### Defendants' "Core" Theory Is Unsupported And St. Luke's Has a "Core" of Employed PCPs Without Saltzer

#### Defendants' claim:

 The transaction provides St. Luke's with the requisite "core" of employed PCPs to provide integrated care

#### My Key Conclusions:

- No empirical evidence to support Defendants' "core" theory
- St. Luke's does not appear to know how many employed physicians are necessary to satisfy its own "core" theory
- St. Luke's already has a nucleus of employed PCPs in Nampa without employing the Saltzer physicians

# Defendants' "Core" Theory Is "Unsupported" And Thus Speculative

Defendants' efficiencies expert, Professor Alain Enthoven, agrees:

"[W]hat's the basis for it [the core theory]? And all I can say is it's a judgment out of unsupported opinion . . . ."

Source: Trial Tr. at 2737

# St. Luke's Has a Core of Employed PCPs Without Saltzer

- St. Luke's already employs eight PCPs in Canyon County
- There is no reason for St. Luke's to employ an even larger share of the PCPs in Canyon County to establish a "core" of PCPs in that area
- St. Luke's Health System already has sufficient physician leaders to implement quality initiatives, to the extent that is necessary

# INDEPENDENT PROVIDERS USE A RANGE OF WIDELY AVAILABLE EMRS AND DATA ANALYTICS TOOLS TO FACILITATE INTEGRATED CARE

### St. Luke's Health IT Is Neither Unique Nor Only Available to Saltzer Via the Acquisition

#### **Defendants' claim**:

 St. Luke's health IT tools are unique and only available to Saltzer through the transaction

#### My Key Conclusions:

- Saltzer is already achieving the benefits of using an EMR system without employment by St. Luke's
- The transaction is unnecessary to electronically coordinate patient care between Saltzer and St. Luke's
- The benefits of WhiteCloud are speculative and Saltzer could have access to WhiteCloud or a similar data analytics tool without being employed by St. Luke's

# Benefits of Saltzer Using Epic Are Speculative

# Saltzer Could Use Epic if it Remained Independent

St. Luke's Affiliate EMR Program allows independent providers full access to its Epic health IT tool:

"Our intent with the affiliate strategy is to actually give [independent physician groups] full access to the full capability of the EHR"

- John Kee - St. Luke's VP of Physician Services

The Affiliate EMR Program provides independent providers full access to St. Luke's Epic EMR

- Dr. Marc Chasin - St. Luke's CIO

St. Luke's would welcome Saltzer to participate in its Affiliate EMR Program if the acquisition were undone

- John Kee - St. Luke's VP of Physician Services

Sources: Kee Dep. Tr. At 180-81, 189; Chasin Dep. Tr. at 54

#### Saltzer Does Not Need to Use Epic to Coordinate Care with St. Luke's

# HIE Assessment: IHDE Value and Opportunity for SLHS June 26, 2012

St. Luke's has fully endorsed and supported the initial and continued development of IHDE as the statewide Health Information Exchange (HIE). The participants in IHDE include St. Luke's Health System. St. Alphonsus Regional Medical Center, Kootenal Health, St. Joseph's RMC, St. Mary's Hospital, Clearwater Valley Hospital, Syrloga Hospital, and 650+ individual physicians and support staff. Medical groups that subscribe to IHDE on behalf of their physicians include

#### Value to St. Luke's Health System

- Enables cross region interoperability between EPIC and non-EPIC health record systems
- Provides seamless access to data for St. Luke's providers and support staff during EPIC transitions
- Reduces the amount of "connections" between disparate systems
- Integral part (as HIE) of ACO landscape

#### Recommendations

Current Direction and Future Plans

IHDE has been continuing to review the needs of its subscribers and to develop their business case to adapt to the changing healthcare landscape. This new direction includes

HIGHLY CONFIDENTIAL

SLHS000193297 CX0205-001 Plaintiffs' Exhibit 1575

22 Source: TX 1575

### Purported Benefits of WhiteCloud Can Be Achieved Without the Transaction

- WhiteCloud can be used by independent physicians
  - WhiteCloud currently is pulling data from Saltzer's eClinicalWorks EMR
  - St. Luke's plans to use WhiteCloud with the independent providers in Select Medical Network and its ACO
- If independent, Saltzer likely will have access to other widely-known and proven data analytics tools

# Aligning Provider Incentives Does Not Require Employment

#### **Defendants' Claim:**

 Provider incentives to provide quality care are more effectively aligned through employment

#### My Key Conclusions:

- The St. Luke's/Saltzer PSA does not align physician incentives to provide quality care
- Employment of physicians does not a priori align incentives
- Alternative payment structures, including risk-based contracting and pay-for-performance, can be accomplished without employment

# St. Luke's/Saltzer PSA Does Not Incentivize Quality Care

(a) <u>wRVU Compensation</u>. St. Luke's shall pay an amount to Saltzer per work RVU ("wRVU") generated by Saltzer physicians as indicated in Attachment A to this Exhibit 5.1.

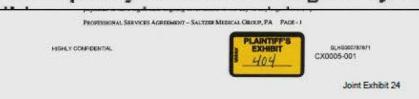
#### PROFESSIONAL SERVICES AGREEMENT

THES PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into effective December 31, 2012 ("Effective Due") by and between St. Luke's Regional Medical Center, Lid. a tex-screep it debto competit cooperation ("St. Luke's"), and Salator Medical Group, P.A., an Idaho professional association whelly comed and operated by increed physicians ("Sultare"), St. Luke's and Salator Medical professional association whelly comed and operated by increed physicians ("Sultare"), St. Luke's and Salator are each referred to herein as a "Farry" and are collectively related to herein as the "Farry" and are collectively related to thesis in the salator in the salat

RECITALS:

St. Lake's owns and operates medical centers and other health care facilities in and about

7.1 <u>Independent Contractors</u>. St. Luke's hereby engages Saltzer as an independent contractor to render Services through Saltzer Physicians, and Saltzer hereby accepts such engagement. St. Luke's will not impose duties or constraints of any kind which would require Saltzer Physicians to infringe the ethics of the medical profession or which would compromise the independence of Saltzer Physicians' medical judgment. It is understood and agreed that in the performance of all Services under this Agreement, Saltzer and Saltzer Physicians shall at all times act as independent contractors of St. Luke's and the same are not agents or employees of St. Luke's for any purpose. Further, it is expressly understood and agreed by the Parties that nothing contained



# Independents Can Be Incentivized To Provide Quality Care

- National Programs: Medicare Shared Savings Program
- In Idaho: Saint Al's Health Alliance, BCI
- St. Luke's plans to implement risk-based contracting through the Select Medical Network

# Conclusion

# Defendants' quality claims are speculative and not merger-specific:

- The transaction is not necessary for Saltzer or St. Luke's to provide quality care
- Defendants' "core" theory is unsupported and St. Luke's has a "core" of employed PCPs without Saltzer
- Independent providers use a range of widely available EMRs and data analytic tools to support quality care
- This transaction is neither necessary nor sufficient for transitioning away from fee-forservice