

AGREEMENT BETWEEN
CSUSB Philanthropic Foundation
AND
County of San Bernardino on behalf of Arrowhead Regional Medical Center

THIS AGREEMENT made and entered into on the date below in the State of California, by and between the CSUSB Philanthropic Foundation, hereinafter called FOUNDATION, and County of San Bernardino on behalf of Arrowhead Regional Medical Center, hereafter called CONTRACTOR, is effective when signed by both parties and shall expire on June 30, 2022.

WHEREAS the FOUNDATION has received an award from Arrowhead United Way in support of Cal State San Bernardino Reentry Initiative (CSRI) to provide tattoo removal services to formerly incarcerated individuals who live in the greater San Bernardino area; and

WHEREAS the FOUNDATION will require properly licensed, certified, expert service to provide these services; and

WHEREAS the CONTRACTOR has represented that it has the present ability to perform said work; NOW THEREFORE, the parties hereto do hereby mutually agree as follows:

1. Statement of Understanding

The FOUNDATION is a 501(c)3 non-profit corporation established for the purpose of furthering the educational programs of the California State University San Bernardino.

2. Scope of Work

CONTRACTOR agrees to receive referrals from FOUNDATION staff and provide tattoo removal services at CONTRACTOR's facility at no cost to the recipient of the services. All costs will be billed directly to FOUNDATION through the process described in section 3 below. Unless otherwise prohibited by applicable law, CONTRACTOR will update FOUNDATION's representative as to the progress of the treatment and will notify FOUNDATION of any complications that arrive.

3. Payment

FOUNDATION will pay CONTRACTOR for services rendered at the rate of \$150 per tattoo removal session. Invoices shall be submitted, in arrears, at the end of each month that work has been performed. FOUNDATION shall pay properly submitted invoices not more than 30 days after receipt of an undisputed invoice. All disputed invoices shall be paid by FOUNDATION no later than 30 days after resolution of said invoices. Late payment penalties shall not apply to this agreement.

4. Hold Harmless and Indemnification

Except as otherwise set forth in the Business Associate Agreement, CONTRACTOR shall indemnify, defend and hold harmless FOUNDATION, the State of California, the Trustees of the California State University, the California State University San Bernardino and their officers, employees, representatives, volunteers and agents from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation)(collectively referred to as

"Claim") to the extent such Claim arises out of the negligent acts or willful misconduct relating to CONTRACTOR's performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the FOUNDATION.

5. Governing Law and Venue

This Agreement shall be governed by and construed according to the laws of the State of California. The parties agree that the venue of any action or claim brought by any party to this Agreement will be in the State of California. If any action or claim concerning this Agreement is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the State of California.

6. Debarment and Suspension

FOUNDATION certifies that neither it nor its principals or subcontractors is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>).

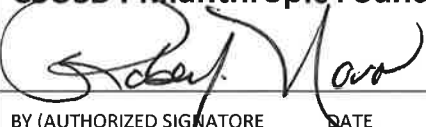

7. Business Associate Agreement

The Business Associate Agreement, attached hereto as Attachment A, is incorporated herein by reference as if set forth in full.

8. Assignment

Neither party may assign this Agreement without the prior written consent of the other party.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon signatures by both parties to agreement.

FOUNDATION	CONTRACTOR
CSUSB Philanthropic Foundation 	County of San Bernardino on behalf of Arrowhead Regional Medical Center
BY (AUTHORIZED SIGNATURE) DATE 	BY (AUTHORIZED SIGNATURE) DATE
PRINTED NAME AND TITLE OF PERSON SIGNING Robert Nava Executive Director, Philanthropic Foundation	PRINTED NAME AND TITLE OF PERSON SIGNING Curt Hagman Chairman, Board of Supervisors
5500 University Parkway, San Bernardino, CA 92407 909-537-5004 rjnava@csusb.edu	14010 City Center Drive Chino Hills, CA 91709

Attachment "A"

BUSINESS ASSOCIATE AGREEMENT

Except as otherwise provided in this Agreement, CSUSB Philanthropic Foundation, hereinafter referred to as "Business Associate", may use, access, maintain or disclose Protected Health Information to perform functions, activities or services for or on behalf of County of San Bernardino through its Arrowhead Regional Medical Center, hereinafter referred to as the "Covered Entity", as specified in this Agreement, provided such use, access, maintenance or disclosure does not violate the Health Insurance Portability and Accountability Act, 42 USC 1320d et seq., and its implementing regulations, including but not limited to, 45 CFR Parts 160, 162, and 164, (hereinafter referred to as the "Privacy and Security Rules") and patient confidentiality regulations, including but not limited to, Title 42 of the Code of Federal Regulations Part 2 and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (the "HITECH Act") and any regulations adopted or to be adopted pursuant to the HITECH Act that relate to the obligations of business associates. Business Associate recognizes and agrees it is obligated by law to meet the applicable provisions of the HITECH Act.

I. Definitions

- A. "Breach" means the acquisition, access, use or disclosure of PHI in a manner not permitted under HIPAA (45 CFR Part 164, Subpart E), which compromises the security or privacy of the PHI. An impermissible use or disclosure of PHI is presumed to be a breach unless the Covered Entity or Business Associate demonstrates that there is a low probability the PHI has been compromised. A breach shall not include:
1. Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of Covered Entity or the Business Associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the HIPAA Privacy Rule; or
 2. Any inadvertent disclosure by a person who is authorized to access PHI at Covered Entity or Business Associate to another person authorized to access Protected Health Information at Covered Entity or Business Associate, respectively, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule; or
 3. A disclosure of PHI where Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- B. "Business Associate" means with respect to a Covered Entity, a person who:
1. On behalf of such Covered Entity, but other than in the capacity of a member of the workforce of such Covered Entity creates, receives, maintains or transmits PHI for a function or activity involving the use or disclosure of Personally Identifiable Health Information, including claims processing or administration,

data analysis, data storage, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or

2. Provides, other than in the capacity of a member of the workforce of such Covered Entity, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services to or for Covered Entity where the provision of the service involves the disclosure of PHI from such Covered Entity to the person. A HIPAA Covered Entity may be the Business Associate of another Covered Entity.
- C. "Covered Entity" means a health plan, a health care clearinghouse or a health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA Privacy and Security Regulations.
 - D. "Data Aggregation" means, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.
 - E. "Discovered" means a breach shall be treated as discovered by Covered Entity or Business Associate as of the first day on which such breach is known to such Covered Entity or Business Associate, respectively, (including any person, other than the individual committing the breach, that is an employee, officer or other agent of such entity or associate, respectively) or should reasonably have been known to such Covered Entity or Business Associate (or person) to have occurred.
 - F. "Electronic Protected Health Information" or "Electronic PHI" means PHI that is transmitted by or maintained in electronic media as defined in the HIPAA Security Regulations.
 - G. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
 - H. "HIPAA Privacy Rule" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of Protected Health Information, including, but not limited to, 45 CFR Part 160 and 45 CFR Part 164, Subpart A and Subpart E.
 - I. "HIPAA Security Rule" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the security of Electronic Protected Health Information, including, but not limited to, 45 CFR Part 160 and 45 CFR Part 164, Subpart A and Subpart C.
 - J. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder.
 - K. "Individual" means the person who is the subject of PHI, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(9)

- L. "Individually Identifiable Health Information" means information that is a subset of health information, including demographic information collected from an individual, and;
 - 1. is created or received by a health care provider, health plan, employer or health care clearinghouse; and
 - 2. relates to the past, present or future physical or mental health condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and
 - (a) that identifies the individual; or
 - (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- M. "Protected Health Information" or "PHI" means Individually Identifiable Health Information transmitted or maintained in any form or medium that (i) is received by Business Associate from Covered Entity, (ii) Business Associate creates for its own purposes from Individually Identifiable Health Information that Business Associate received from Covered Entity, or (iii) is created, received, transmitted or maintained by Business Associate on behalf of Covered Entity. Protected Health Information excludes Individually Identifiable Health Information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. Section 1232(g), records described at 20 U.S.C. Section 1232g(a)(4)(B)(iv), and employment records held by the Covered Entity in its role as employer.
- N. "Unsecured PHI" means PHI that is not secured through the use of a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services.
- O. Any terms capitalized, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under HIPAA, the HIPAA Privacy Rule, the HIPAA Security Rule and the HITECH Act.

II. Obligations and Activities of Business Associate

A. Prohibited Uses and Disclosures

Business Associate shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached Agreement or as required by law. Further, Business Associate shall not use PHI in any manner that would constitute a violation of the Privacy Rule or Subtitle D of the HITECH Act. Business Associate shall disclose to its employees, subcontractors, agents, or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.

Business Associate shall not use or disclose PHI for fundraising or marketing purposes. Business Associate shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; 42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(1)(i)(A). Business Associate

shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); and 45 C.F.R. Section 164.508 however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to this Agreement.

B. Permitted Uses and Disclosures

If Business Associate discloses PHI to a third party, including any agent or subcontractor, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify Business Associate of any breach of PHI, to the extent it has obtained knowledge of such breach in accordance with provision 11.C.4. [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)].

1. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
2. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation service to Covered Entity as permitted by 45 CFR Section 164.504(e)(2)(i)(B).
3. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR Section 164.5020(1).

C. Appropriate Safeguards

Business Associate shall implement the following administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity; and to ensure that any agent or subcontractor to whom Business Associate provides such information agrees to implement reasonable and appropriate safeguards to protect PHI in accordance with the HIPAA Security Rule under 45 C.F.R., Sections 164.308, 164.310, 164.312, 164.314 and 164.316:

1. Implement policies and procedures to prevent, detect, contain and correct security violations; identify the security official who is responsible for the development and implementation of the policies and procedures required by this subpart for the Business Associate; implement a security awareness and training program for all members of its workforce; implement policies and procedures to prevent those workforce members who should not have access from obtaining access to Covered Entity's Electronic PHI; implement policy and procedures to address security incidents; establish policies and procedures for responding to an emergency or other occurrence that damages systems that contain Electronic PHI; and perform a periodic technical and nontechnical evaluation in response to environmental or operational changes affecting the security of Electronic PHI, including conducting accurate and thorough

assessments of the potential risks and vulnerabilities to the confidentiality, integrity and availability of Electronic PHI, that establishes the extent to which an entity's security policies and procedures meet the requirements of this subpart.

2. Implement policies and procedures to limit physical access to Business Associate's Electronic information systems and the facility or facilities in which they are housed, while ensuring that properly authorized access is allowed; implement policies and procedures that specify the proper functions to be performed, and the physical attributes of the surroundings of a specific workstation or class of workstations that can access Electronic PHI; implement physical safeguards for all workstations that access Electronic PHI; restrict access to authorized users; implement policies and procedures that govern the receipt and removal of hardware and electronic media that contain Electronic PHI into and out of a facility and the movement of these items within the facility.
3. Implement technical policies and procedures for electronic information systems that maintain Electronic PHI to allow access only to those persons or software programs that have been granted access rights as specified in 45 C.F.R., Section 164.208 implement hardware, software and/or procedural mechanisms that record and examine activity in information systems that contain or use Electronic PHI; implement policies and procedures to protect Electronic PHI from improper alteration, destruction, unauthorized access or loss of integrity or availability; including but not limited to, encryption of all workstations, laptops and flash drives that store PHI.
4. Enter into written agreements with agents and subcontractors to whom Business Associate provides Covered Entity's PHI that impose the same restrictions and conditions on such agents and subcontractors that apply to Business Associate with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

D. Mitigation

Business Associate shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use, access or disclosure of PHI by Business Associate, its agents or subcontractors in violation of the requirements of this Agreement.

E. Reporting of Improper Access, Use or Disclosure or Breach

Business Associate shall report to Covered Entity's Office of Compliance any unauthorized use, access or disclosure of Unsecured PHI or any other security incident with respect to PHI no later than one (1) business day upon the discovery of a breach or suspected breach consistent with the regulations promulgated under the HITECH Act, 45 CFR Part 164, Subpart D by the United States Department of Health and Human Services. Upon discovery of a breach or suspected breach, the Business Associate shall complete the following actions:

1. Provide Covered Entity's Office of Compliance with the following information to include but not limited to:
 - (a) Date the breach or suspected breach occurred;
 - (b) Date the breach or suspected breach was discovered;
 - (c) Number of staff, employees, subcontractors, agents or other third parties and the titles of each person allegedly involved;
 - (d) Number of potentially affected patients/clients; and
 - (e) Description of how the breach or suspected breach allegedly occurred.
2. Conduct and document a risk assessment by investigating without reasonable delay and in no case later than five (5) calendar days of discovery of the breach or suspected breach to determine the following:
 - (a) The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
 - (b) The unauthorized person who used PHI or to whom it was made;
 - (c) Whether the PHI was actually acquired or viewed; and
 - (d) The extent to which the risk to PHI has been mitigated.
3. Provide a completed risk assessment and investigation documentation to Covered Entity's Office of Compliance within ten (10) calendar days of discovery of the breach or suspected breach with decision whether a breach has occurred.
 - (a) If a breach has not occurred, notification to individual(s) is not required.
 - (b) If a breach has occurred, notification to the individual(s) is required and Business Associate must provide Covered Entity with affected individual(s) name and contact information so that Covered Entity can provide notification.
4. Make available to Covered Entity and governing State and Federal agencies in a time and manner designated by Covered Entity or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a breach or suspected breach for the purposes of audit or should the Covered Entity reserve the right to conduct its own investigation and analysis.

F. Access to Protected Health Information

Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or to an Individual, at the request or direction of Covered Entity and in the time and manner designated by the Covered Entity. If Business Associate maintains PHI in an electronic format, and an individual requests a copy of such information in electronic form, Business Associate shall provide such information in electronic form as required by of 45 CFR Section 164.524.

G. Amendment of Protected Health Information

If Business Associate maintains a Designated Record Set on behalf of the Covered Entity, Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to, pursuant to 45 CFR Section 164.526, in the time and manner designated by the Covered Entity.

H. Access to Records

Business Associate shall make internal practices, books, and records, including policies and procedures and PHI, relating to the use, access and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of the U.S. Department of Health and Human Services, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy and Security Rules and patient confidentiality regulations. Anything provided to the Secretary shall also be provided to the Covered Entity upon Covered Entity's request.

I. Accounting for Disclosures

Business Associate, its agents and subcontractors shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI. Further, Business Associate shall provide to Covered Entity or an Individual, in the time and manner designated by the Covered Entity, information collected in accordance with provision (I.), above, to permit Covered Entity to respond to a request by the Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR Section 164.528.

J. Destruction of Protected Health Information

Upon termination of this Agreement, Business Associate shall return all PHI required to be retained and return or destroy, with certification of destruction by an officer of Business Associate, all other PHI received from the Covered Entity, or created or received by the Business Associate or its subcontractors, employees or agents on behalf of the Covered Entity. In the event the Business Associate determines that returning the PHI is not feasible, the Business Associate shall provide the Covered Entity with written notification of the conditions that make return not feasible. Business Associate further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by Business Associate or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures to the purposes that make the return or destruction of the PHI infeasible.

K. Breach Pattern or Practice by Covered Entity

Pursuant to 42 U.S.C. Section 17934(b), if the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under this Agreement, the Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are

unsuccessful, the Business Associate must terminate the Agreement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS.

L. Costs Associated to Breach

Business Associate shall be responsible for reasonable costs associated with a breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the Covered Entity and shall not be reimbursable under the Agreement at any time. Covered Entity shall determine the method to invoice the Business Associate for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

1. Postage;
2. Alternative means of notice;
3. Media notification; and
4. Credit monitoring services.

M. Direct Liability

Business Associate may be held directly liable under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to Covered Entity; failure to provide access to a copy of Electronic PHI to covered entity or individual; failure to disclose PHI to the Secretary of the U.S. Department of Health and Human Services when investigating Business Associate's compliance with the HIPAA; failure to provide an accounting of disclosures and failure to enter into a business associate agreement with subcontractors.

N. Termination for Cause

Covered Entity may, upon written notice to Business Associate, immediately terminate this agreement, and any related agreements, if Covered Entity determines that Business Associate has breached a material term of this agreement. Covered Entity may, upon written notice to Business Associate, allow Business Associate five (5) business days to cure such breach.

III. Obligations of Covered Entity

- A. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR Section 164.520, to the extent that such limitation may affect Business Associate's use, access or disclosure of PHI.
- B. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an individual to use, access or disclose PHI, to the extent that such changes may affect Business Associate's use, access, maintenance or disclosure of PHI.
- C. Covered Entity shall notify Business Associate of any restriction to the use, access or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect Business Associate's use, access, maintenance or disclosure of PHI.

IV. General Provisions

A. Remedies

Business Associate agrees that Covered Entity shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which Covered Entity may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by Business Associate or any agent or subcontractor of Business Associate that received PHI from Business Associate.

B. Ownership

The PHI shall be and remain the property of the Covered Entity. Business Associate agrees that it acquires no title or rights to the PHI.

C. Regulatory References

A reference in this Agreement to a section in the Privacy and Security Rules and patient confidentiality regulations means the section as in effect or as amended.

D. Amendment

The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and HIPAA, the HITECH Act and patient confidentiality regulations.

E. Interpretation

Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules and patient confidentiality regulations.

F. Indemnification

Business Associate agrees to indemnify, defend and hold harmless Covered Entity and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of Business Associate, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of Covered Entity's PHI, including without limitation, any breach of PHI or any expenses incurred by Covered Entity in providing required breach notifications.

The undersigned affirms that he/she is a duly authorized representative of the Business Associate for which he/she is signing and has the authority to execute this Agreement on behalf of the Business Associate.

Covered Entity

County of San Bernardino on behalf of
Arrowhead Regional Medical Center

Business Associate

CSUSB Philanthropic Foundation

Signature

Signature



Dated

Dated

9/22/20

Curt Hagman

Robert Nava

Chairman, Board of Supervisors

Executive Director Philanthropic Foundation

400 N. Pepper Avenue

5500 University Parkway

Colton, CA 92324

San Bernardino, CA 92407

909-580-6150

909-537-5004

rjnava@csusb.edu

BUSINESS ASSOCIATE SCOPE OF WORK

Describe below the scope of work that the business associate will perform.

Arrowhead Regional Medical Center (ARMC) agrees to receive referrals from CSRI staff and provide tattoo removal services at ARMC facility at no cost to the recipient of the services. All costs will be billed directly to Foundation and Foundation will pay ARMC for services rendered at the rate of \$150 per tattoo removal session. ARMC will update FOUNDATION's representative as to the progress of the treatment and will notify FOUNDATION of any complications that arrive.