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January 4, 2024

**VIA ONLINE SHAREHOLDER PROPOSAL PORTAL**

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, NE Washington, DC 20549

**Re: Universal Health Services, Inc. - Exclusion of Shareholder Proposal Submitted by the Physicians Committee for Responsible Medicine**

Dear Sir or Madam:

We are writing this letter on behalf of our client, Universal Health Services, Inc. (the "Company"), pursuant to Rule 14a-8(j) ("Rule 14a-8(j)") promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to notify the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude from the Company's proxy materials for its 2024 annual meeting of shareholders (the "2024 Proxy Materials") a shareholder proposal and statements in support thereof (the "Shareholder Proposal") submitted to the Company by the Physicians Committee for Responsible Medicine (the "Proponent") in a letter dated November 30, 2023 and received by the Company on December 4, 2023. All references to "Company," "UHS" and "Universal Health Services" as used throughout this letter refer to Universal Health Services, Inc. and its subsidiaries.

The Company requests confirmation that the Commission's staff (the "Staff") will not recommend to the Commission that enforcement action be taken against the Company if the Company excludes the Shareholder Proposal from its 2024 Proxy Materials pursuant to Exchange Act:

- Rule 14a-8(i)(7) under the Exchange Act ("Rule 14a-8(i)(7)"), on the basis that the Shareholder Proposal relates to, and does not transcend, the Company's ordinary business operations; and

- Rule 14a-8(i)(10) under the Exchange Act ("Rule 14a-8(i)(10)"), on the basis that the Company has already substantially implemented the Shareholder Proposal.

Pursuant to Exchange Act Rule 14a-8(j) and Staff Announcement – New Intake System for Rule 14a-8 Submissions and Related Correspondence (Nov. 6, 2023) (the "Staff Intake Announcement"), the Company is submitting this letter and the exhibits attached hereto to the Commission electronically, and is concurrently sending a copy of this correspondence to the

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Proponent, no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission.

Rule 14a-8(k) under the Exchange Act ("Rule 14a-8(k)"), the Staff Intake Announcement and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Shareholder Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k), the Staff Intake Announcement and SLB 14D.

## The Shareholder Proposal

On December 4, 2023, the Company received the following Shareholder Proposal from the Proponent for inclusion in the 2024 Proxy Materials:

### Shareholder Resolution for Revenue Savings and Improved Health

**RESOLVED:**
Universal Health Services shall achieve significant revenue savings, improve patient satisfaction, improve employee health, reduce absenteeism, and enhance its image as a healthcare leader by adopting the American Medical Association policy for healthful foods for healthcare facilities and implementing the innovative program for healthful hospital food developed by the NYC Health + Hospitals system.

**SUPPORTING STATEMENT:**
In 2017, the American Medical Association adopted a policy calling on U.S. hospitals to improve the health of patients, staff, and visitors by providing a variety of healthful food, including plant-based meals and meals that arc low in fat, sodium, and added sugars; eliminating processed meats from menus; and providing and promoting healthful beverages. These healthful changes enjoy strong support from patients. Subsequently, the NYC Health + Hospitals system implemented a program following these guidelines and improving upon them in certain ways. Patient satisfaction has been greater than 90%, staff satisfaction has been similarly high, and costs have dropped by approximately 60 cents per food tray. Media coverage has been strongly favorable, greatly boosting the system's image.

Failure to adopt such a program would mean forfeiting millions of dollars in cost savings and the opportunity to improve patient health and our corporate image. By enhancing the health of patients and staff, this approach addresses the significant social issue of public health and transcends ordinary matters of business, while also reducing food costs and potentially reducing medical costs and absenteeism among employees.

Recent research shows that plant-based foods present, on average, a 16% revenue savings. When scaled to an institution level, these savings increase exponentially. Employee health improves and absenteeism decreases when the

> food environment is improved. A multicenter study for GEICO employees found that providing plant-based food offerings and simple educational messages improved employee health and reduced health-related productivity impairments by 40- 46%. With improved employee health, UHS may lower healthcare costs, increase productivity, and significantly increase revenue.
>
> Adopting the AMA nutrition recommendations supports UHS's goal to "change lives and transform the delivery of healthcare" by being compassionate and responsive to the needs of patients, and it will help UHS stand out as a healthcare leader. When we achieve revenue savings, improve patient satisfaction, and boost employee health and morale with inexpensive healthful foods, everyone wins, most of all the shareholders who have invested in the company's future.
>
> In light of the marked financial benefits, the potential improvements in employee health, and the enhanced prestige that will result from these initiatives, we respectfully ask shareholders to support this resolution.

A copy of the Shareholder Proposal is attached hereto as Exhibit A.

## Basis for Exclusion

We respectfully request on behalf of UHS that the Staff concur with the view that the Shareholder Proposal may be excluded from the 2024 Proxy Materials pursuant to (i) Rule 14a-8(i)(7), on the basis that the Shareholder Proposal relates to, and does not transcend, the Company's ordinary business operations, and (ii) Rule 14a-8(i)(10), on the basis that the Company has substantially implemented the Shareholder Proposal.

## Analysis

### I. The Shareholder Proposal May Be Excluded Pursuant to Rule 14a-8(i)(7) Because The Shareholder Proposal Relates To, And Does Not Transcend, The Company's Ordinary Business Operations.

#### *A. Background of the Ordinary Business Exclusion.*

Rule 14a-8(i)(7) permits a company to omit a shareholder proposal from the company's proxy materials if the proposal "deals with a matter relating to the company's ordinary business operations." According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, but instead the term "is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Staff stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. The first consideration concerns the subject matter of the shareholder proposal. The 1998

Release recognizes that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." Examples of such tasks cited by the Staff in the 1998 Release include "management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers." Analysis of the ordinary business exception "should focus on the underlying subject matter of a proposal's request for board or committee review regardless of how the proposal is framed." *See* Staff Legal Bulletin No. 14H (Oct. 22, 2015).

The second consideration relates to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." In the recent Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff elaborated the approach in the 1998 Release, explaining that, in evaluating companies' micromanagement arguments, it will "focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." The Staff continued that "[t]his approach is consistent with the Commission's views on the ordinary business exclusion, which is designed to preserve management's discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters."

Notwithstanding these considerations, the Staff explained in the 1998 Release that a proposal relating to a company's ordinary business operations are distinguishable from those "focusing on "sufficiently significant social policy issues (*e.g.*, significant discrimination matters)," which generally are not excludable under Rule 14a-8(i)(7) because "the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote" (citing Release No. 34-12999 (Nov. 22, 1976) (the "1976 Release").

In SLB 14L, the Staff stated that it "will realign its approach for determining whether a proposal relates to 'ordinary business' with the standard the Commission initially articulated in [the 1976 Release], which provided an exception for certain proposals that raise significant social policy issues, and which the Commission subsequently reaffirmed in the 1998 Release." As such, the Staff stated that it will focus on the issue that is the subject of the shareholder proposal and determine whether it has "a broad societal impact, such that [it] transcend[s] the ordinary business of the company," regardless of whether a nexus exists between the policy issue and the company.

As discussed below, the Shareholder Proposal implicates each of the central considerations underlying the ordinary business exclusion: the subject matter of the Shareholder Proposal deals with products offered by the Company that are "fundamental to management's ability to run the company on a day-to-day basis" and seeks to micromanage the Company by interfering with the management's discretion with respect to complex, day-to-day operations. Furthermore, the Shareholder Proposal does not focus on sufficiently significant social policy issues that transcend day-to-day business matters. Accordingly, the Shareholder Proposal relates to, and does not transcend, the Company's ordinary business operations and therefore may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7).

*B. The Subject Matter of the Shareholder Proposal Relates to the Company's Ordinary Business Operations.*

The Shareholder Proposal requests that the Company adopt "the American Medical Association policy for healthful foods for healthcare facilities" (the "AMA Policy") and implement "the innovative program for healthful hospital food developed by the NYC Health + Hospitals system" (the "NYC Program"). By implementing such proposal, the Company would be required to provide plant-based meals as the primary menu option at its hospitals and to otherwise serve "plant-based meals and meals that are low in fat, sodium, and added sugars," eliminate "processed meats from menus," and provide and promote "healthful beverages." At its core, the Shareholder Proposal attempts to direct the Company to regularly provide, or not provide, particular products and therefore involves the Company's "ordinary business."

Allowing shareholders to dictate the Company's menu items and food options would inappropriately delegate management's role to shareholders. Pursuant to Rule 14a-8(i)(7), the Staff has long concurred with this view in permitting exclusion of shareholder proposals, such as the Shareholder Proposal, seeking to influence management's decisions with respect to menu items and food options, because such decisions are squarely within the management function of a company and are of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. The Staff recently re-affirmed this long-held view in *HCA Healthcare, Inc.* (Mar. 6, 2023), where the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal that requested the Company's board of directors to require the Company's hospitals to provide plant-based food options to patients at every meal, within vending machines and in the cafeteria used by outpatients, staff and visitors, on the ground that such proposal "relates to, and does not transcend, ordinary business matters." *See also Elevance Health, Inc.* (Mar. 6, 2023); *UnitedHealth Group Inc.* (Mar. 16, 2023). Similarly, in *Papa John's International, Inc.* (Feb. 13, 2015), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal encouraging the board to expand menu offerings to include vegan cheeses and vegan meats to "advance animal welfare, reduce its ecological footprint, expand its healthier options, and meet a growing demand for plant-based foods." *See also McDonald's Corp.* (Mar. 24, 1992) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requiring the company to offer a "[low-fat] burger, switch to an all-vegetable cooking oil and offer salads ... in keeping with enlightened medical research findings and nutritional practice both in the U.S. and abroad"); *McDonald's Corp.* (Mar. 9, 1990) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal recommending that the board of directors introduce "a vegetarian entree whose means of production neither degrades the environment nor exploits other species").

The Staff has also consistently recognized that decisions relating to the products and services offered by a company are part of a company's ordinary business operations and has concurred with their exclusion. In *Papa John's International Inc.* (Feb. 13, 2015), the supporting statement argued that offering plant-based options would "promote operations that are less detrimental to the environment, public health, and animal welfare," citing studies purporting to show that vegetarians and vegans "enjoy a lower risk of death from ischemic heart disease, lower blood cholesterol levels, lower blood pressure, lower rates of hypertension and type 2 diabetes, and a lower body mass index as well as lower overall cancer rates" and that "[a]nimal agriculture is a leading contributor to climate change." The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7), despite these assertions, noting in particular that "the proposal relates to the products offered for sale by the company and does not focus on a significant policy issue." *See also The TJX Companies* (Apr. 16, 2018) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the board to develop an animal welfare policy applying to all of the company's stores, merchandise and suppliers because it concerned the company's products and services for sale); *The Home Depot, Inc.* (Mar. 21, 2018) (concurring with the exclusion under

Rule 14a-8(i)(7) of proposal encouraging the company to end sales of glue traps because it related to the products and services offered for sale by the company); *Dillard's, Inc.* (Feb. 27, 2012) (concurring with the exclusion of a proposal requesting that the company's board develop a plan to phase out the sale of fur from raccoon dogs); *Wal-Mart Stores, Inc.* (Mar. 24, 2008) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board issue a report on the viability of adopting a policy of selling only eggs produced by cage-free operations in the US); *PetSmart, Inc.* (Apr. 14, 2006) (concurring with the exclusion of a proposal requesting that the company's board issue a report based on the findings of the company's sponsored studies, detailing whether to end bird sales); *Marriott International, Inc.* (Feb. 13, 2004) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requiring, among other things, that the company to adopt and enforce a policy prohibiting the sale of certain sexually explicit material at Marriott-owned and managed properties).

As reflected by the well-established precedents discussed above, decisions with respect to products the Company makes available and serves to its patients, staff and visitors are squarely within the management function of the Company and require analysis of complex operational, business and quality of care issues beyond the ability of shareholders as a group. We own and/or operate 358 inpatient facilities and 43 outpatient and other facilities across 39 states, Washington, D.C., the United Kingdom and Puerto Rico. The decision-making process at each individual hospital facility to determine the menu items and food options, many of which is made at local facility level, inevitably implicates myriad factors that must be considered, and requires industry knowledge and knowledge specific to the respective hospital population at each facility, including their individual dietary needs and preferences that may vary from time to time. Also, our dietitians work closely with our patients and partner with their physicians to define patient menus and other offerings appropriate for patients, ensuring the highest likelihood of proper nutrition for the patients while under our care. It is important that we have the capacity to provide any diet a physician may choose for their patient while under our care and it is our policy that our hospitals do not serve patient meals without first receiving a physician's diet order. Assessing these and the many other factors that influence decisions at the Company's facilities requires the real-time judgment of the management and employees at each respective Company facility, which, unlike the Company's shareholders, are well-positioned, and have the necessary knowledge, information and resources, to make informed and thoughtful decisions on such business and operational matters.

*C. The Shareholder Proposal Would Permit Shareholders to Micromanage the Company's Ordinary Business Operations.*

The Shareholder Proposal, like those addressed in the letters cited above, seeks to probe too deeply into matters of a complex nature which are not appropriate for shareholder determination. *See also Kroger Co.* (Apr. 25, 2023) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the board take the necessary steps to pilot participation in the Fair Food Program for Kroger's tomato purchases in the Southeast United States, since this proposal seeks to micromanage the company). Evaluating the food options at each facility of the Company involves careful consideration of many factors including, in addition to those noted in the discussion above, cost, demand, other dietary restrictions and preferences, health conditions and needs of each patient, to which the Company's shareholders do not have access. Additionally, instead of "providing high-level direction on large strategic corporate matters," the Shareholder Proposal would "inappropriately limit discretion of the board or management" by usurping the day-to-day decision-making process involved with purchasing decisions at the Company's facilities.

The ability of the Company's facilities to address constantly changing needs and demands of their respective patients, staff and visitors, and to maintain the capacity to provide all kinds of diets as may be chosen by our patients' physicians, plays a fundamental role in the Company's daily operations. By asking shareholders to weigh in on such decisions at the Company's facilities without the benefit of the extensive contextual knowledge, medical sophistication and day-to-day immersion that are core to such decision-making, the Shareholder Proposal would permit shareholders to micromanage the Company's ordinary business operations.

*D. The Shareholder Proposal Does Not Focus on a Sufficiently Significant Social Policy Issue That Transcends the Company's Ordinary Business Operations.*

While the well-established precedents set forth above demonstrate that the Shareholder Proposal squarely addresses ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7), the 1998 Release further distinguishes proposals pertaining to ordinary business matters from matters involving "significant social policy issues" (citing the 1976 Release). The Commission stated that "proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues (*e.g.*, significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers "both the proposal and the supporting statement as a whole." Staff Legal Bulletin No. 14C (Jun. 28, 2005).

In contrast, proposals that refer to topics that might raise significant social policy issues—but which do not focus on or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business, and as such, remain excludable under Rule 14a-8(i)(7). *See, e.g., Apple Inc.* (Jan. 3, 2023) (concurring with the exclusion of a proposal requesting a report assessing "the effects of [the company's] return-to-office policy on employee retention and [the company's] competitiveness," noting it "relate[d] to, and [did] not transcend, ordinary business matters"); *Amazon. Inc.* (Apr. 7, 2022) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on risks to the company related to staffing of its business and operations, despite the proponent's assertion that the proposal focused on human capital management); *Amazon.com, Inc.* (Apr. 8, 2022) (concurring with the exclusion under Rule 14a- 8(i)(7) of a proposal requesting reports concerning the distribution of stock-based incentives to employees and related EEO-1 employee classification data, despite the proponent's assertion that the proposal focused on wealth inequality and other equity issues).

Here, the Shareholder Proposal fails to focus on a sufficiently significant social policy issue that transcends the ordinary business of the Company. While it requests that the Company adopt "the American Medical Association policy for healthful foods for healthcare facilities" and implement "the innovative program for healthful hospital food developed by the NYC Health+ Hospitals system", as discussed above, the Shareholder Proposal's principal focus is the development and offering of specific Company products and services. Notwithstanding the Supporting Statement's references to health considerations for hospital patients, staff and visitors, the Shareholder Proposal is fundamentally concerned with economic considerations related to the meal and food options that the Company offers, not matters of improving public health. Specifically, the Supporting Statement argues that the Proposal is necessary because, "Universal Health Services shall *achieve significant revenue savings, improve patient satisfaction,* improve employee health,

*reduce absenteeism,* and *enhance its image as a healthcare leader...*" (emphasis added), and claims that "[f]ailure to adopt such a program would mean *forfeiting millions of dollars in costs savings* and the opportunity to improve patient health *and our corporate image*" (emphasis added), "costs have dropped by approximately 60 cents per food tray," "[r]ecent research shows that plant-based foods present, on average, a 16% revenue savings," "[w]hen scaled to an institution level, these savings increase exponentially," "[m]edia coverage has been strongly favorable, greatly boosting the system's image," "[w]hen we *achieve revenue savings, improve patient satisfaction,* and boost employee health and morale with *inexpensive healthful foods,* everyone wins, *most of all the shareholders who have invested in the company's future*" (emphasis added).

The Staff has long distinguished between proposals that focus on a significant social policy issue and those that relate to ordinary business matters that may touch, but do not focus on, significant policy issues. Specifically, this distinction applies to proposals, like the Shareholder Proposal, relating to particular products, services or practices that raised public health considerations related to the company but nevertheless did not transcend day-to-day business matters. For example, as described in Section I.B., above, in *HCA Healthcare, Inc.* (Mar. 6, 2023), the shareholder proposal requested that the Company's board of directors require the Company's hospitals to provide specified plant-based food options to patients, "[g]iven the impact of nutrition on a patient's recovery process and overall health." Despite references in the proposal to public health considerations, the Staff concurred with the exclusion under Rule 14a-8(i)(7) because "the Proposal relates to, and does not transcend, ordinary business matters." *See also Elevance Health, Inc.* (Mar. 6, 2023); *UnitedHealth Group Inc.* (Mar. 16, 2023); *McDonald's Corp.* (Mar. 24, 1992) (concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company "offer [a low-fat] burger, switch to an all-vegetable cooking oil and offer salads ... in keeping with enlightened medical research findings and nutritional practice"); *Papa John's International, Inc.* (Feb. 13, 2015) (concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting offering of vegan meats and cheeses to expand healthier options, despite the assertion that such proposal "promote[s] operations that are less detrimental to the environment, public health, and animal welfare"). In *Viacom Inc.* (Dec. 18, 2015), the proposal requested that the company's board of directors issue a report assessing the company's policy responses to public concerns regarding linkages of food and beverage advertising to childhood obesity, diet-related diseases and other impacts on children's health. The Staff concurred that the proposal could be excluded under Rule 14a 8(i)(7) because the proposal related to, and did not transcend, the company's "nature, presentation and content of advertising," which was part of its ordinary business operations. *See also McDonald's Corp.* (Mar. 12, 2019) (concurred with the under Rule 14a- 8(i)(7) of a proposal that sought to create a special board committee on food integrity because it related to the company's ordinary business operations). Because of the Shareholder Proposal's focus on the options of food-related services and products offered by the Company in its owned and/or operated hospitals and other facilities, the Shareholder Proposal is readily distinguishable from proposals that focused primarily on negative impacts to animal welfare, the environment and public health related to a company's ordinary business operations. *See, e. g., The TJX Companies, Inc.* (Apr. 9, 2020) (unable to concur with the exclusion of a proposal requesting a report on the "material risks of continuing operations without a company-wide animal welfare policy or restrictions on animal-sourced products associated with animal cruelty"); *Arch Coal, Inc.* (Feb. 10, 2012) (unable to concur with the exclusion of a proposal requesting a report on the company's "efforts to reduce environmental and health hazards associated with" the company's mining operations); *Newmont Mining Corp.* (Feb. 5, 2007) (unable

to concur with the exclusion of a proposal requesting a report "on the potential environmental and public health damage resulting from the company's mining and waste disposal operations").

The Shareholder Proposal merely attempts to link potential health-related advantages of plant-based meals and similar healthful food and beverage options to the broader issue of public health while attempting to direct the Company to regularly provide, or not provide, particular products, without taking into consideration the Company's existing practices and the nuanced and diverse populations that the Company employs and serves. As described above, the public health aspect of the Shareholder Proposal is secondary to its central objective regarding the development and offering of specific Company products and services, specifically the Company's food procurement decisions at its healthcare facilities and the related economic considerations. Such issues are inherently ordinary business matters integral to the Company's business. The Proposal therefore fails to focus on any significant social policy issue that transcends the ordinary business of the Company.

For the above reasons, the Shareholder Proposal relates to, and does not transcend, the Company's ordinary business operations and may be excluded from the 2024 Proxy Materials in reliance on Rule 14a-8(i)(7).

## II. The Shareholder Proposal May Be Excluded Pursuant to Rule 14a-8(i)(10) Because The Company Has Substantially Implemented The Shareholder Proposal.

### *A. Background of the Substantially Implemented Exclusion.*

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if "the company has already substantially implemented the proposal." The Commission adopted the "substantially implemented" standard in 1983 after determining that the "previous formalistic application" of the rule defeated its purpose, which is to "avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *See* Exchange Release No. 34-20091 (Aug. 16, 1983) (the "1983 Release"); Exchange Act Release No. 34-12598 (Jul. 7, 1976) (discussing Rule 14a-8(c)(10), the predecessor to Rule 14a-8(i)(10)). Accordingly, the actions requested by a proposal need not be "fully effected" provided that they have been "substantially implemented" by the company. *See* the 1983 Release.

Under the "substantially implemented" standard, the Staff has consistently concurred that a proposal may be excluded for substantial implementation where a company can demonstrate that it has already taken actions to address both the proposal's essential objective and its underlying concerns, even if the company has not implemented every detail of the proposal. *Baxter International Inc.* (Jan. 8, 2021) (concurred with the exclusion under Rule 14a-8(i)(10) where the Company's existing independent chair policy addresses both the essential objective and underlying concerns of a shareholder proposal to adopt as policy, and amend the bylaws as necessary, to require the chair of the board of directors, whenever possible, to be an independent member of the board). *See also Exxon Mobil Corporation* (March 20, 2020) (concurred with the exclusion under Rule 14a-8(i)(10) of a proposal requesting the company issue a report on how it plans to reduce its total contribution to climate change and align its operations and investments with the Paris Agreement where the company had already expressed its support of the Paris Agreement and described its actions to help address the risk of climate change in its public disclosures); *Masco Corporation* (Mar. 29, 1999) (concurred with the exclusion under Rule 14a-8(i)(10) where the company adopted a version of the director independence proposal with minor

modifications and clarification as to one of its terms); *Starbucks Corp.* (Jan. 19, 2022) (concurred with the exclusion under Rule 14a-8(i)(10) of a proposal requesting public disclosure of the company's workplace non-discrimination and civil rights reports and training manuals, based upon the public report and disclosure that the company had already made available regarding employee training efforts); *AutoZone, Inc.* (Oct. 9, 2019) (concurred with the exclusion under Rule 14a-8(i)(10) of a proposal requesting that the board of directors issue a report to shareholders taking into consideration certain SASB standards where the Staff found that the company's existing public disclosures compare favorably with the guidelines of the proposal); *Texaco, Inc.* (Mar. 28, 1991) ("a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal"). Ultimately, the actions taken by the company must have addressed the proposal's "essential objective." *See, e.g., Exxon Mobil Corp.* (Mar. 19, 2010) (concurred with the exclusion under Rule 14a- 8(i)(10) despite differences between the company's actions and a shareholder proposal requesting the board to take action to permit shareholder actions by the majority written consents, as the company's actions satisfactorily address the proposal's essential objectives); *Freeport-McMoRan Copper & Gold, Inc.* (Mar. 5, 2003) (concurred with the exclusion under Rule 14a-8(i)(10) where the company had already implemented a human rights policy, even though the specific elements of the policy did not meet the shareholder proponent's objectives).

*B. The Company Has Substantially Implemented the Shareholder Proposal by Regularly Providing a Variety of Plant-Based Meals and Similar Healthful Food and Beverage Options to Patients, Staff and Visitors.*

The Shareholder Proposal, by requesting the Company to adopt the AMA Policy and implement the NYC Program, would essentially require the Company to (1) make healthful food options available, at reasonable prices and easily accessible at its facilities, including plant-based meals as the primary menu option; (2) serve a variety of healthy food options, such as "plant-based meals, and meals that are low in saturated and trans fat, sodium, and added sugars;" (3) eliminate "processed meats from menus," (4) provide and promote "healthful beverages" and (5) publish nutrition information on health care facility cafeterias and inpatient meal menus. As discussed previously, the Staff has interpreted substantial implementation under Rule 14a- 8(i)(10) to require a company to have satisfactorily addressed both the proposal's underlying concern and its essential objective, rather than implement every aspect of the shareholder proposal. Here, the Shareholder Proposal's underlying concern is the availability and accessibility (or potentially lack thereof) at the Company's facilities of plant-based meals and similar healthful food and beverage options as contemplated by the AMA Policy and the NYC Program, and its essential objective is for the Company to offer to patients, staff, and visitors plant-based meals and similar healthful food and beverage options on a regular basis as contemplated by the AMA Policy and the NYC Program.

We meet a vast majority of the AMA recommendations. We serve a vast diversity of diets including vegetarian, vegan, and plant-based options. We believe it is important that our patients consume the appropriate protein and caloric intake while working directly with their physician to make recommended dietary changes. We have the capacity to provide any diet a physician may choose for their patient while under our care and it is our policy that our hospitals do not serve patient meals without first receiving a physician's diet order. Our dietitians work closely with our patients to meet them where they are, partner with their physicians, and provide counsel for the best dietary choices, ensuring the highest likelihood of proper nutrition while under our care.

In summary, by making an array of plant-based meals and similar healthful food and beverage options widely available and accessible at its hospitals substantially as contemplated by the AMA Policy and the NYC Program, the Company has satisfactorily addressed the Shareholder Proposal's underlying concern, and by regularly serving plant-based meals and similar healthful food and beverage options substantially as contemplated by the AMA Policy and the NYC Program, the Company has satisfactorily achieved the Shareholder Proposal's essential objective.

For the above reasons, the Company has substantially implemented the Shareholder Proposal, and it may be excluded from the 2024 Proxy Materials in reliance on Rule 14a-8(i)(10).

## Conclusion

For the foregoing reasons, we respectfully request on behalf of UHS that the Staff not recommend any enforcement action from the Commission if UHS excludes the Shareholder Proposal from its 2024 Proxy Materials. Should you have any questions, or if the Staff is unable to concur in our view without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter. If the Staff has any questions regarding this request or requires additional information, please contact the undersigned by email at warren.nimetz@nortonrosefulbright.com or by phone at (212) 318-3384.

Very truly yours,

Warren J. Nimetz

cc: The Physicians Committee for Responsible Medicine
Universal Health Services, Inc.

**Exhibit A**

Shareholder Proposal

PhysiciansCommittee
for Responsible Medicine
PCRM.ORG
5100 Wisconsin Ave. NW, Suite 400 • Washington, DC 20016 • Te[redacted] • Fax[redacted] • pcrm@pcrm.org

November 30, 2023

Via Certified Mail
Secretary
Universal Health Services, Inc.
Universal Corporate Center
367 South Gulph Road
P.O. Box 61558
King of Prussia, PA 19406

Re: Shareholder Proposal for Inclusion in the 2024 Proxy Statement

Dear Mr. Filton:

Enclosed with this letter is a shareholder proposal submitted by the Physicians Committee for Responsible Medicine (PCRM) for inclusion in the proxy statement for the 2024 annual meeting. Also enclosed is a letter from RBC Wealth Management, PCRM's brokerage firm, confirming PCRM's beneficial ownership of 347 common stock shares, acquired at least one year ago. PCRM has held at least $25,000 worth of such shares continuously since acquisition and intends to hold at least this amount through and including the date of the 2024 annual meeting.

If there are any issues with this proposal being included in the proxy statement, or if you need any further information, please contact PCRM's designated representative, Anna Herby, RD, at 5100 Wisconsin Ave., NW, Suite 400, Washington, DC 20016[redacted] or [redacted] Ms. Herby, who will appear at the annual meeting to present this proposal, is available to meet via teleconference Mondays, Wednesdays, Thursdays, and Fridays—including during the regulatory period of "no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal"—during the hours of 12:00 p.m. through 3:00 p.m. ET.

Sincerely,

Mark Kennedy
Senior Vice President of Legal Affairs

Enclosures: Shareholder Resolution
RBC Wealth Management letter

**Shareholder Resolution for Revenue Savings and Improved Health**

**RESOLVED:**
Universal Health Services shall achieve significant revenue savings, improve patient satisfaction, improve employee health, reduce absenteeism, and enhance its image as a healthcare leader by adopting the American Medical Association policy for healthful foods for healthcare facilities and implementing the innovative program for healthful hospital food developed by the NYC Health + Hospitals system.

**SUPPORTING STATEMENT:**
In 2017, the American Medical Association adopted a policy calling on U.S. hospitals to improve the health of patients, staff, and visitors by providing a variety of healthful food, including plant-based meals and meals that are low in fat, sodium, and added sugars; eliminating processed meats from menus; and providing and promoting healthful beverages. These healthful changes enjoy strong support from patients. Subsequently, the NYC Health + Hospitals system implemented a program following these guidelines and improving upon them in certain ways. Patient satisfaction has been greater than 90%, staff satisfaction has been similarly high, and costs have dropped by approximately 60 cents per food tray. Media coverage has been strongly favorable, greatly boosting the system's image.

Failure to adopt such a program would mean forfeiting millions of dollars in cost savings and the opportunity to improve patient health and our corporate image. By enhancing the health of patients and staff, this approach addresses the significant social issue of public health and transcends ordinary matters of business, while also reducing food costs and potentially reducing medical costs and absenteeism among employees.

Recent research shows that plant-based foods present, on average, a 16% revenue savings. When scaled to an institution level, these savings increase exponentially. Employee health improves and absenteeism decreases when the food environment is improved. A multicenter study for GEICO employees found that providing plant-based food offerings and simple educational messages improved employee health and reduced health-related productivity impairments by 40-46%. With improved employee health, UHS may lower healthcare costs, increase productivity, and significantly increase revenue.

Adopting the AMA nutrition recommendations supports UHS's goal to "change lives and transform the delivery of healthcare" by being compassionate and responsive to the needs of patients, and it will help UHS stand out as a healthcare leader. When we achieve revenue savings, improve patient satisfaction, and boost employee health and morale with inexpensive healthful foods, everyone wins, most of all the shareholders who invest in our company's future.

In light of the marked financial benefits, the potential improvements in employee health, and the enhanced prestige that will result from these initiatives, we respectfully ask shareholders to support this resolution.