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## Is Unionization Just What the Doctor Ordered? Collective Bargaining for Doctors, Nurses, and Lawyers

Thomas Doyle  
*Oregon Nurses Association*

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# Is Unionization Just What the Doctor Ordered?

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April 17, 2018

Thomas Doyle

Hunter College

Bennett Hartman Morris and Kaplan LLP

# The Unionization of Doctors - History

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- Mid-1970's - 16,000 Physicians Began To Be Unionized
- Late 1990's - estimates of 25,000 to 35,000 physician union members
- AFSCME, SEIU, AFT, etc.
- Many Residents and Public Employees.

# Obstacles to Unionization

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- Employee Status?
- Anti-Trust Issues for Non-Employees
- Supervisory Status
- Contracting Out

# Anti-Trust Restrictions on Physicians

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- Sherman Act - Unreasonable Restraint of Trade.
- Independent Physicians Cannot Band Together to Set Prices.
- “The safety zone set forth in this policy statement does not apply to **collective negotiations between unintegrated providers and purchasers in contemplation or in furtherance of any agreement among the providers on fees or other terms or aspects of reimbursement**, or to any agreement among unintegrated providers to deal with purchasers only on agreed terms. Providers also may not collectively threaten, implicitly or explicitly, to engage in a boycott or similar conduct, or actually undertake such a boycott or conduct, to coerce any purchaser to accept collectively-determined fees or other terms or aspects of reimbursement. These types of conduct likely would violate the antitrust laws and, in many instances, might be per se illegal.” Department of Justice - Statements of Antitrust Enforcement Policy in Health Care.

# NLRA Coverage

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- Must be an employee.
- Not independent contractor.
- *AmeriHealth HMO*, 326 NLRB 55 (1998)

# Employee Status

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- Cases normally find private physicians are independent contractors? See e.g. *AmeriHealth*, 326 NLRB No. 55 (May 24, 1999)
- Must have a formal employee status.

## Is a doctor a supervisor?

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- Exercise Professional Judgment for Benefit of Employer. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001).
- Assign Work? *Oakwood Healthcare, Inc.*, 348 NLRB 686, 693 (2006), and reiterated in *Cook Inlet Tug & Barge, Inc.*, 362 NLRB No. 111, slip op. at 1 (2015).

# Hospitalists —

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- Trend towards Hospitals hiring doctors as employees.
- Payment model changed in 2012 — Hospital Value-Based Purchasing Program (HVBPP)
- “Quality Rather Than Quantity” of acute care services.
- 25% of score based on clinical care, 25% on patient satisfaction surveys.
- Length of stay, hospital acquired complications, other metrics.
- Hiring Hospitalists Makes Sense to maximize income.

# Why Hospitalists Continued

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- Hiring hospitalists makes sense to maximize for operational reasons also:
- Old model — Primary Care follows patient to hospital.
- PCP — call? disruption to office practice?  
Keeps other MD's happy.

# Hospitalists

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- Increase from 11,000 in 2003 to 50,000 in 2016.
- 75% of all Hospitals Use Hospitalists.
- They are in demand.
- They are crucial to operating profitable hospital.
- They are under significant pressure to maximize patient encounters and admit and discharge quickly.

# Income Is Going Up - Productivity Flatline

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- 5% annual growth in compensation last four years.
- average wRVU (“Relative Value Units”)- has not changed.
- Professional Collections — i.e. direct income has not kept up with compensation costs.
- Employer subsidizes Hospital Medicine Program.

# Dynamics Favor Unionization

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- Scarcity of MD's
- Significant Bargaining Power
- Compensation is not the issue
- Safe patient care and exercise of independent professional judgment are the issues.
- As screws turn on the hospitalist to be more productive, see more patients, discharge patients faster — MD's will push back.
- A community supports its doctors.

# Impediments to Unionization

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- Organizing — Acute care rules
- All physicians are the appropriate bargaining unit, but true community of interest may create differing inclination to organize depending on speciality.
- § 103.30 Appropriate bargaining units in the health care industry.
- (a) This portion of the rule shall be applicable to acute care hospitals, as defined in paragraph (f) of this section: Except in extraordinary circumstances and in circumstances in which there are existing non-conforming units, the following shall be appropriate units, and the only appropriate units,
  - (1) All registered nurses.
  - (2) All physicians.

# Impediments to Unionization Cont.

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- Contracting Out — Large Hospitalist companies — employ hospitalists at client hospitals. 25% of all Hospitalists are employed by these third parties. (Sound Care)

# Sacred Heart Medical Center Hospitalists

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- Lead by Dr. Dave Schwartz.
- Told couldn't be done . . .
- Did it anyway.
- NY Times Article

# First Contract Negotiations

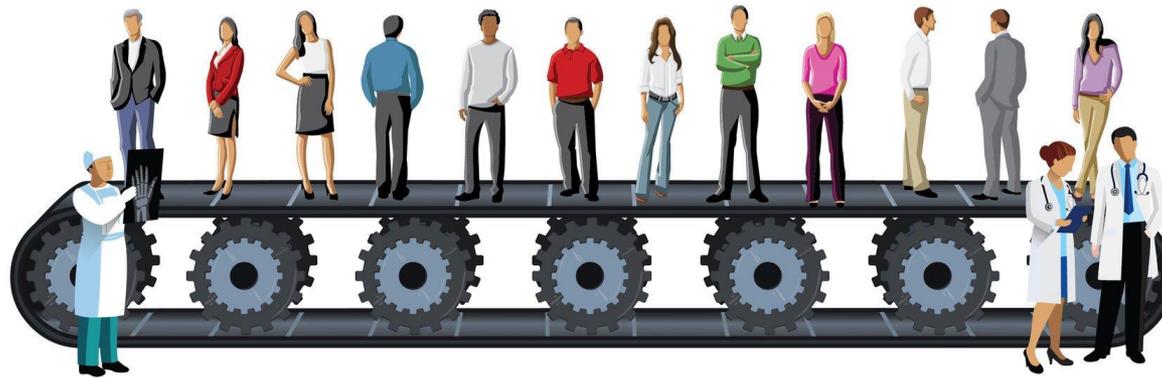
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- Took over a year and a half.
- Multiple negotiators.
- Use Nurses Contract as starting point —
- Physician specific issues added into contract template.
- Press Attention

# New York Times Article

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- January 2016.
- During Negotiations - FMCS Mediation
- Comparing Hospital Negotiator to Mr. Burns — not helpful . . .
- Succinct explanation of dynamics at play.
- Positive view of Dr's motivation and goals.
- Not about compensation, about workload and safety.



# Doctors Unionize to Resist the Medical Machine



# Dr. Dave Schwartz

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“The conversation turned, inevitably, to the dreaded “skin in the game.” I wanted to know what, exactly, they considered so offensive about having a financial stake in the hospital’s performance.

Dr. Schwartz responded by recounting the first time he had heard the expression, at a meeting with the hospital’s board of directors. A local businessman on the board had used the phrase while emphasizing the importance of providing the proper incentives for the doctors.

“It really took all of my self-control to not say, ‘What the hell do you mean skin in the game?’” he said. “We have our licenses, our livelihoods, our professions.

Every single time we walk up to a patient, everything is on the line.”

He continued: **“My thought was, I’ll put some of my skin in the game if you put your name on that chart. Just put your name on the chart. If there’s a lawsuit, you’re on there. You come down and make a decision about my patient, then we’ll talk about skin in the game.”**

# Major Areas of Dispute

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- Patient Encounter Caps.
- Maintaining Physician Control
- Translating Compensation Structure Into Contract.
- Sick Leave
- Effect of Individual Contracts.
- Fair Share
- Contracting Out

# Patient Encounters

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- Hospitalists wanted a cap on number of patients.
- Most Hospitalists and literature reflect 15 encounters a day is maximum, in practice pushed to 18.
- Employer resisted — overtones of nurse history . . .
- “No ratios”
- California model for nurses — prevent from happening here.
- Management Right.

# Compromise -HMRC

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- 11.2 Hospital Medicine Resource Committee (“HMRC”)
- 11.2.1 Focus of Committee
  - 1. Appropriate utilization of physician resources;
  - 2. Problem solving of physician workload;
  - 3. Develop workload surge protocol;
  - 4. Monitor monthly patient acuity, census, changes in patient population, work schedules; to identify trends requiring potential adjustments or considerations related to physician workload and patient care.
  - 5. The Committee will also review and consider requests by the Chief Operating Officer of the Employer (“COO”)/designee that may have an effect on Hospitalist workload.

# Compromise - HMRC -

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## 11.2.4 Quorum and Committee Decision Making

2. Recommended action from the Committee will be submitted in writing to the COO of SHMC for review and assessment. If the COO does not approve the recommended action the COO will meet with the Committee to discuss the reasons for lack of approval which would allow the Committee, if it desires, to adjust its recommendations based on additional information received from the COO.

# Compensation

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- Not a significant area of dispute.
- Area of dispute was number of shifts and compensation system.
- Required number of shifts per year - 173 per year.
- Extra-shift compensation prorated.
- Nocturnists — same pay, fewer shifts.
- Committee pay, critical needs incentive.

# Compensation

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- Incentive Compensation
  - Decision made to avoid altogether bargaining over metrics.
  - Not about compensation, not about pay.
  - “Suddenly it dawned on the doctors why they had failed to break through, Dr. Alexander said. “Imagine Mr. Burns,” the cartoonishly evil capitalist from “The Simpsons,” “sitting across the table,” he said. “There’s no way we can say, ‘This isn’t what we’re talking about. We’re not trying to get the bonus ’”

# Sick Leave

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- Oregon adopted paid sick leave statute.
- Shift work meant employees worked set number of shifts.
- If MD is out one shift, would still need to make it up later.
- Still unresolved.

# Individual Contracts

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- Individual contracts are the norm in the field.
- Spell out numerous other terms and conditions of employment.
- Ultimately agreed that master agreement controlled:

8.2.1 It is the intent of the Parties that the specific terms of this Agreement will supersede conflicting terms in the Individual Employment Agreement. Within ninety days of ratification of the contract, the Employer will reform current Individual Employment Agreements for bargaining unit members consistent with this intent. The Employer will review the reformed contract at the Labor Management Meeting before it is used.

# Contracting Out

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- This was the issue that gave rise to the creation of the union.
- MD's already comfortable with Locums Tenens.
- MOU: "For the term of this current Agreement thru October 31, 2017, no Hospitalist shall be laid off as a result of a decision by the Medical Center to contract out work traditionally performed by the bargaining unit to a new employer. In addition, for the term of the Agreement, with the exception of Locum Tenens, the Employer shall not subcontract out work performed by bargaining unit hospitalists as outlined in Article 2."

# Professional Judgment

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- 7.1 Independent Exercise of Medical Judgment. The employment relationship between the Employer and Hospitalist shall not affect the independent exercise of Hospitalists' professional judgment in the practice of medicine so long as it is consistent with the current standards of medical care in the state and complies with the rules, policies, and procedures approved by Employer consistent with these standards.

# Take Aways

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- Communities Like Their Doctors
- Doctors Have the Moral High Ground
- Organization Is Far More Important Than Legal
- Money Is Never the Issue — The Market Will Drive That, Workload, Safety and Independent Professional Judgment Are What Matter for MD's and Community.

**PROFESSIONAL AGREEMENT**

**BETWEEN**

**AMERICAN FEDERATION OF TEACHERS LOCAL 6552,  
THE PACIFIC NORTHWEST HOSPITALIST MEDICINE  
ASSOCIATION, AFL-CIO**

**AND**

**PEACEHEALTH SACRED HEART MEDICAL CENTER**

**July 1, 2016 through October 31, 2017**

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1 **ARTICLE 1 - PARTIES TO AGREEMENT**

2 1.1 Parties This Agreement is made between PeaceHealth Sacred Heart Medical Center  
3 (“Employer”) and the American Federation of Teachers Local 6552, the Pacific Northwest  
4 Hospitalist Medicine Association, AFL-CIO (the “Union”).  
5

6 **ARTICLE 2 - RECOGNITION AND BARGAINING UNIT**

7 2.1 Recognition and Bargaining Unit Employer recognizes the Union as the sole and  
8 exclusive bargaining agent for all full-time and regular part-time adult hospital medicine  
9 physicians employed by Employer in the hospital medicine department at the Employer’s  
10 RiverBend campus located in Springfield, OR, and the University District campus located in  
11 Eugene, OR (hereinafter “employees” or “hospitalists”); but excluding all adult hospital  
12 medicine department physicians with a Full Time Equivalent (FTE) of less than .5, per-diem  
13 employees, casual employees, all other physicians, advance practice clinicians, all other  
14 employees, and guards and supervisors. The term “regular part time” refers to employees  
15 having a Full Time Equivalent (FTE) of .5 or above.  
16

17 2.2 Hospital Medicine Department For purposes of this Article, the Hospital Medicine  
18 Department shall mean those hospital medicine services provided within Sacred Heart  
19 Medical Center consisting of credentialed Hospitalist physicians serving an acute care adult  
20 medicine patient population (including adult palliative care patients).  
21

22 **ARTICLE 3 - UNION MEMBERSHIP AND REPRESENTATION**

23 3.1 Membership

24 3.1.1 Membership A Hospitalist hired on or after the effective date of this Agreement  
25 will, as a condition of employment, within thirty (30) days after the Hospitalist’s hire  
26 date, become and remain a member of the Union or make payment in lieu of dues to  
27 the Union.  
28

29 3.1.1.1 Maintenance. Currently employed Hospitalists who are members  
30 of the Union, or are paying to the Union an amount equivalent to Union dues,

1 will be required, as a condition of employment, to maintain membership in the  
2 Union or make payment in lieu of dues to the Union.

3  
4 3.1.2 Dues Deduction and Indemnification. For Hospitalists who decide to become  
5 members of the Union and for any bargaining unit members who are required to make  
6 payment in lieu of dues, the Employer will deduct bi-weekly dues/payment in-lieu of  
7 dues from the pay of those employees covered by this Agreement who are members  
8 of the Union and who voluntarily execute a Union payroll deduction Authorization  
9 Form. When filed with Employer, the Authorization Form will be honored in  
10 accordance with its terms until such time as the Hospitalist withdraws authorization.  
11 Deductions will be transmitted to the Union by check payable to its order. Upon  
12 issuance and transmission of a check to the Union, the Employer's responsibility shall  
13 cease with respect to such deductions. The Union and each employee authorizing the  
14 payroll deduction for the payment of union dues hereby undertakes to indemnify and  
15 hold the Employer harmless from all claims, demands, suits, or other forms of liability  
16 that may arise against the Employer for or on account of any deduction made from the  
17 wages of such employee. The Employer shall be obligated to honor only an  
18 authorization to deduct the specific dollar amount specified, in writing by the employee.  
19 The Employer shall have no obligation or responsibility for calculating, computing, or  
20 verifying the amount of dues to be deducted.

21  
22 3.1.3 Remedy for non-payment. If a Hospitalist is not in compliance with the  
23 provisions in this section, the Union will notify the hospitalist in writing that he/she is  
24 delinquent in the satisfaction of his/her obligations, and will provide a copy of the  
25 notice to the designee of the Employer. The Union will allow the Hospitalist a  
26 reasonable period of time of not less than twenty (20) days to cure the delinquency. If  
27 the Hospitalist fails to cure within the allotted time, then the Association may contact  
28 the designee of the Employer for the purpose of proceeding with termination of  
29 employment. Should a termination occur, a duly authorized representative of the  
30 Association will be present for the termination proceeding.

1           3.1.4 Religious exemption A Hospitalist who is subject to the membership or payment  
2 requirements of this Article, but who is a member of and adheres to established and  
3 traditional tenets or teachings of a bona fide religion, body or sect which has  
4 historically held conscientious objections to joining or financially supporting labor  
5 organizations, shall not be required to continue membership in or financial support of  
6 the Union; except that such hospitalist shall contribute an amount equivalent to the  
7 Union dues to a nonreligious, tax-exempt charitable fund of his/her choice for the  
8 duration of the membership or payment requirements had they been applicable. Proof  
9 of contribution shall be supplied by the member to the Union in a timely fashion.

10  
11           3.1.5 Payment in lieu of dues. Payments in lieu of dues will be less than or equal to  
12 the regular monthly Union dues as established by the Union.

13  
14   3.2 Rosters Employer will provide the Union electronically with a quarterly list of  
15 hospitalists showing name, address, yearly base salary, FTE, and telephone number. The  
16 Union shall provide a list of local officers, committee members and authorized  
17 representatives upon ratification of the Agreement and on an annual basis, and notify the  
18 Employer of any changes within 30 days.

19  
20   3.3 Access to Premises Non-employee representatives of the Union shall be allowed to  
21 enter Medical Center premises for pre-scheduled meetings with management (e.g. grievance  
22 meetings) or after having given the Director of Human Resources/designee at least 24 hours  
23 notice of the visit and purpose of said visit. Such visitation shall be limited to one person at  
24 any given time unless otherwise agreed by the parties and shall be solely for the purpose of  
25 administration of this Agreement. In no event shall activities be engaged in which interfere  
26 with the efficient and proper functions of the Medical Center. Any such visitation shall be  
27 restricted to Hospitalist non-working time, and such meeting shall occur in non-working and  
28 non-patient care areas unless expressly permitted otherwise by Director of Human  
29 Resources/designee. The Union may request room space through the Employer for  
30 bargaining unit meetings for purposes of professional education, grievance and arbitration

1 administration and contract negotiations at mutually agreeable times and places to be  
2 scheduled through Human Resources.

3

4 3.4 Bulletin Boards Employer shall provide to the Union bulletin board space in the  
5 Hospitalists' office for posting of notices of all meetings of the Union, Union recreational and  
6 social affairs, appointments, newsletters and elections. All such notices shall be signed by a  
7 Union official/officer and shall be submitted to Director of Human Resources/designee for  
8 approval before posting. The Employer reserves the right to remove any discriminatory  
9 notices or information with profane or slanderous contents. Any material removed will be  
10 returned to the Union.

11

12 3.5 Union Membership Non-Discrimination. The Employer and Union agree to abide by all  
13 applicable local, state and federal laws with respect to eligibility for membership and  
14 participation for Hospitalists in the bargaining unit. The parties further agree that there shall  
15 be no discrimination or harassment by either party against any Hospitalist on account of  
16 membership or non-membership or lawful activity in respect to the Union.

17

18 3.6 Sale, Merger or Transfer. In the event the Medical Center is sold, leased, or otherwise  
19 transferred to be operated by another person or firm, the Medical Center shall have an  
20 affirmative duty to call this Agreement to the attention of such firm or individual and, if such  
21 notice is so given, the Medical Center shall have no further obligation hereunder. The  
22 Medical Center further agrees to abide with all laws and requirements in effect at time.

23

24

#### **ARTICLE 4- EMPLOYER RIGHTS**

25 The Union recognizes the Employer's right to operate and manage its business and facilities.  
26 Except where limited by a specific provision of this Agreement, all rights are subject to the  
27 Employer's exclusive control. These rights include but are not limited to the following: to  
28 determine the number of Hospitalists to be employed in each location, shift or to establish,  
29 change, modify, interpret or abolish the Employer's policies and procedures; to increase or  
30 diminish, change, improve or discontinue operations, programs and jobs, in whole or in part;  
31 to increase or diminish, change, improve or discontinue personnel, in whole or in part; to hire,

1 promote, and transfer Hospitalists; to suspend, discharge, demote and discipline Hospitalists  
2 for just cause; to determine the duties of and to direct Hospitalists in their duties, including  
3 direction as to the location of the work to be performed; to lay off Hospitalists; to authorize  
4 work to be performed by any outside person or entity as selected by the Employer, including  
5 the subcontracting of work; to evaluate the performance and competency of Hospitalists in  
6 their assigned work; to increase or change the content, substance or methodology of any  
7 work assignment; to determine materials and equipment to be used; to reward and pay  
8 Hospitalists; and to determine working schedules. The parties recognize that the above list is  
9 for illustrative purposes and does not exclude those rights and responsibilities not mentioned  
10 above.

11  
12 The Employer's failure to exercise any right, prerogative or function hereby reserved to it, or  
13 the Employer's exercise of any such right, prerogative or function in a particular way, shall not  
14 be considered a waiver of the Employer's right to exercise such right, prerogative or function  
15 or preclude it from exercising the same in some other way not in conflict with the expressed  
16 provisions of this Agreement.

## 17 18 **ARTICLE 5 - COMPENSATION**

### 19 5.1 Base Yearly Salary and Yearly Number of Shifts

20 5.1.1 Base salary will be paid out in equal amounts through regular payroll regardless  
21 of actual shifts worked during the payroll period.

22  
23 5.1.2 Hospitalist Yearly Number of Scheduled Shifts and Salary. Yearly number of  
24 scheduled shifts for 1.0 FTE Hospitalist is 173 shifts with a base yearly salary of  
25 \$247,217. Salary and number of shifts are prorated for FTE levels less than a 1.0 FTE.

26  
27 5.1.3 Base Yearly Salary is effective the first full pay period after March 1, 2016. Base  
28 yearly salary to increase by 2% effective January 1, 2017 and 2% effective July 1,  
29 2017.

30

1           5.1.4 Nocturnist Hospitalist Yearly Number of Scheduled Shifts and Salary. Yearly  
2           number of scheduled shifts for 1.0 FTE Nocturnist Hospitalist is 163 shifts with a base  
3           yearly salary of 117% of the Hospitalist base yearly salary. Salary and number of shifts  
4           are prorated for FTE levels less than a 1.0 FTE  
5

6           5.1.5 For absences over thirty continuous days *not* scheduled in accordance with the  
7           Scheduling Time Off provisions of this Agreement (see Appendix A), the Hospitalist's  
8           Base Yearly Salary will be prorated as well as the Yearly Number of Scheduled Shifts.  
9           During this period of time short or long term disability and paid sick days may be used  
10          for salary continuation in accordance with terms of that plan.  
11

12          5.1.6 For absences less than thirty continuous days *not* scheduled in accordance with  
13          the Scheduling Time Off provisions of this Agreement (see Appendix A), the  
14          Hospitalists' Base Yearly Salary will be not be reduced. Unless otherwise required by  
15          state law, the number of Yearly Shifts will remain the same for absences less than  
16          thirty continuous days *not* scheduled in accordance with the Scheduling Time Off  
17          provisions of this Agreement (see Appendix A). During this period of time short or  
18          long term disability and paid sick days may be used for salary continuation in  
19          accordance with terms of that plan.  
20

21          5.1.7 During the term of this Agreement the Employer, in its sole discretion, may  
22          implement across the board increases for all Hospitalists to the Base Yearly Salary  
23          amounts.

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5.2 Incentive Potential. Incentive compensation is paid in addition to the yearly base salary amount. The total potential fiscal year Incentive compensation is twenty thousand dollars (\$20,000) pro-rated by FTE. Depending on the Incentive components, Incentive compensation will be paid out on a quarterly or annual fiscal year basis based on achievement of individual and/or team criteria. Applicable payments will be made within thirty (30) days of the end of the fiscal quarter or within thirty (30) days of the end of the fiscal year. The Employer retains the right, in its sole discretion, to increase to the total dollar amount of potential Incentive compensation however the total potential Incentive amount will not be decreased below twenty thousand dollars during the term of this Agreement.

5.2.2. The incentive potential components will be developed for each fiscal year by SHMC. The components for FY 2017 will be in effect beginning the first full quarter after ratification of this Agreement (if the Agreement is not ratified before FY 2017 begins the incentive compensation will be pro-rated by quarters remaining in FY 2017.

5.3 Designated Extra Shift Compensation. At the end of each fiscal quarter, the number of shifts worked over a hospitalist's regularly scheduled shifts (prorated based on FTE), will be determined for each Hospitalist. For each Extra Shift the Hospitalist will be paid \$1429 for a full shift and \$715 for a half shift; a Hospitalist Nocturnist will be paid \$1775 for a full shift and \$888 for a half shift. Designated Extra Shift Compensation will be paid out within thirty (30) days of the end of the fiscal quarter. Regularly scheduled shifts include only one for one shift trades.

5.4 Other Compensation:

5.4.1 Teaching/Preceptorship Compensation. If a teaching/preceptorship is funded by the GME institution, the assigned Hospitalist will be paid the compensation designated for that individual Hospitalist's services.



- 1 Short Term Disability Insurance
- 2 Long Term Disability
- 3 Life and Accidental Death & Personal Loss
- 4 Retirement Programs
- 5 Others Benefit Plans as may be applicable to a majority of the Employer's employed
- 6 physicians.

7 6.1.1 The benefits available under this section will not be reduced unilaterally during  
8 the term of this Agreement. If the Employer contemplates any changes in insurance plan  
9 design benefits that would not make them substantially equivalent. The Employer will  
10 notify the Union of the proposed changes and will meet with the Union, upon request, to  
11 bargain over the proposed changes prior to their implementation.

12 6.1.2 The Employer will provide during the term of this Agreement a retirement  
13 program. If the Employer contemplates changes in retirement benefits that would not  
14 make them substantially equivalent to the existing benefits. The Employer will notify the  
15 Union of the proposed changes and will meet with the Union, upon request, to bargain  
16 over the proposed changes prior to their implementation.

17 6.2 General and Professional Liability Insurance. Employer shall procure and maintain in  
18 force during the term of this Agreement comprehensive general liability insurance covering  
19 the facility in which the Hospitalist practices. Employer shall also procure and maintain  
20 during the term of this Agreement professional liability insurance specifically naming and  
21 covering the Hospitalist for work performed on behalf of Employer all medical support  
22 personnel provided to the Hospitalist by the Employer for work performed on behalf of the  
23 Employer. In the event of a suit or claim against the Employer alleging fault on the part of  
24 Physician, Employer agrees not to seek indemnity or contribution from the Hospitalist;  
25 provided, however, that Employer reserves the right to seek indemnity or contribution for any  
26 claim involving intentional wrongdoing, activity outside the scope of the Hospitalist's  
27 employment, or otherwise charging receipt of improper benefit by Hospitalist, in accordance  
28 with Employer's Indemnification Policy.

29

1                   **ARTICLE 7 – HOSPITALIST PROFESSIONAL RELATIONSHIP**

2   7.1   Independent Exercise of Medical Judgment. The employment relationship between  
3 the Employer and Hospitalist shall not affect the independent exercise of Hospitalists’  
4 professional judgment in the practice of medicine so long as it is consistent with the current  
5 standards of medical care in the state and complies with the rules, policies, and procedures  
6 approved by Employer consistent with these standards.

7  
8   7.2   Professional Educational Development. All Hospitalists shall receive up to twenty-five  
9 hundred dollars (\$2,500) per year for professional development related to the practice of  
10 medicine. A maximum of five thousand (\$5,000) may be rolled over per year. Hospitalists  
11 shall be reimbursed if acceptable expense documentation is submitted. Hospitalists will be  
12 reimbursed within 30 days of the submission.

13  
14   7.3   Professional Practice Development. The Parties agree that performance improvement  
15 plans, performance reviews, peer review processes, coaching, counseling and reminders  
16 whether by peers or through the Employer are viewed as desired methods to address  
17 physician practice and conduct concerns which also includes whether accepted standards of  
18 care are being met. Such Professional Practice Development methods will not be considered  
19 as disciplinary actions under the terms of this Agreement.

20  
21                   **ARTICLE 8 - EMPLOYMENT PROVISIONS**

22   8.1   Discipline: Discipline and discharge shall be for just cause. The Hospitalist shall  
23 receive a copy of any written disciplinary action.

24       8.1.1 Upon written request by the Hospitalist, written disciplinary notices will be  
25 removed from the Hospitalist’s PeaceHealth personal file after two years if there have  
26 been no further disciplinary occurrences during that two year period with the following  
27 exceptions: (1) violation of the Employer’s non-discrimination policies, including sexual  
28 harassment; (2) conduct threatening or endangering patient safety; (3) abuse issues; (4)  
29 theft or falsifying records; (5) breach of confidential or other privacy violations; of (6)  
30 violation of the Employer’s substance free workplace policy.

1    8.2    Individual Employment Agreement It is expressly recognized by the Parties that  
2 Hospitalists are required, as a condition of employment, to agree with the Employer's  
3 Individual Employment Agreement. All terms and conditions under any Individual  
4 Employment Agreement remain in effect during the term of this Agreement except as  
5 provided in 8.2.1.

6           8.2.1 It is the intent of the Parties that the specific terms of this Agreement will  
7 supersede conflicting terms in the Individual Employment Agreement. Within ninety  
8 days of ratification of the contract, the Employer will reform current Individual  
9 Employment Agreements for bargaining unit members consistent with this intent. The  
10 Employer will review the reformed contract at the Labor Management Meeting before it  
11 is used.

12    8.3    Union Seniority and Lay-Off. Union seniority shall mean a Hospitalist's length of  
13 employment in the bargaining unit. The Bargaining Unit was certified October 15, 2014.  
14 Seniority will control in the lay-off order, except where, based on job related criteria including  
15 assignment, specific duties, competence, skills, and ability the Employer determines that the  
16 Employer's needs require otherwise.

17  
18           8.3.1 If Hospitalists have the same union seniority date, the following tie-break will be  
19 used to determine seniority order:

- 20           • Hire Date at PeaceHealth, and  
21           • If the Hire Date is the same, then date of birth (oldest to be most senior).

22  
23    8.4    Notice of Termination/Resignation of Employment.

24  
25           8.4.1 Employer shall give Hospitalist at least one hundred and twenty (120) days'  
26 notice of termination of employment except if the Hospitalist is terminated for cause the  
27 Employer will give the Hospitalist at least thirty (30) days' notice. During this notice  
28 period, at the Employer's sole discretion, the Hospitalist may or may not be scheduled to  
29 work during the notice period. The Hospitalist will receive compensation for the amount of  
30 the notice period.

31

1 8.4.2 Hospitalist shall give at least one hundred and twenty (120) days notice of  
2 resignation however the Hospitalist and Employer may negotiate a different notice period.  
3 During this notice period, at the Employers sole discretion, the Hospitalist may or may not  
4 be scheduled to work.

5  
6 8.5 Scheduling Time Off. To the extent possible, Hospitalists should schedule personal  
7 plans on days when they are not scheduled to work. Appendix A specifies how Hospitalists  
8 can request not to be scheduled to work on certain days (“requests”).

9  
10 8.6 Lockers. Lockers will be provided by the Employer in or near the designated  
11 Hospitalist team room.

12  
13 8.7 Laundry. Laundry services for those Hospitalists who use scrubs and lab coats shall  
14 be provided by the Employer.

15  
16 8.8 Shifts. The Employer shall maintain its current practice of shift start and ending times.  
17 In the event the employer determines that shift times need to be altered, it shall notify the  
18 Union of its proposed changes and bargain to agreement over any proposed changes. The  
19 parties acknowledge that the shift start and end times are as listed below:

- 20  
21 • Day Shift: 0700-1900. (day shift hospitalists may sign out at 1700 if all daily  
22 work is completed and they have signed out to the swing shift Hospitalist)  
23  
24 • PM (swing shift) 1300-2200 or 1400-2300  
25  
26 • PM (1/2 swing shift) 1500-2000  
27 • Night Shift: 2100-0700  
28

29 8.9 Changes in FTE status. A Hospitalist may apply for modification to his or her FTE  
30 status no more frequently that semi-annually and approval shall be granted, unless the FTE  
31 change creates an undue hardship for the employer.

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**ARTICLE 9 - NO-STRIKE OR LOCKOUTS**

9.1 The Employer agrees that during the term of this Agreement as long as the parties act in accord with this 9.2 of this Article there shall be no lockout of Hospitalists covered by this Agreement.

9.2 The Union agrees that during the term of this Agreement, and regardless of whether an unfair labor practice is alleged, (a) there shall be no strike, sympathy strike, sit-down, walk-out, work slow-down or boycott and (b) the Union shall not directly or indirectly authorize, encourage or approve any refusal on the part of a Hospitalist to proceed to the location of normal work assignment and/or provide scheduled services. Any Hospitalist who violates this clause shall be subject to a written warning or discharge.

9.3 A Hospitalist's discharge for violation of any section of this Article is grievable under the terms of this Agreement.

**ARTICLE 10 - GRIEVANCE AND ARBITRATION PROCESS**

10.1 Grievance Defined. A grievance is defined as an alleged violation of an express term of this Agreement by a Hospitalist or Hospitalists adversely affected by the alleged violation. The Union may not file a grievance unless authorized by the affected Hospitalist(s). If such grievance arises it must be reduced to writing in accordance with the terms of this Article.

10.1.1 The following actions are not grievable and are not subject to the grievance/arbitration process: (1) any disciplinary action taken by the Employer regarding a Hospitalist limited to those at the explicit direction of the Medical Staff, (2) a termination or suspension resulting from withdrawal of privileges, (3) termination or suspension resulting from non-compliance with state or federal requirements covering the Hospitalist. (4) Professional Practice Development (see Article 7.3).

10.2 Time Limits.

10.2.1 All Time limits set forth in the following steps refer to calendar days and may

1 only be extended by mutual written consent of Employer and the Union. The end of the  
2 day for timely filing of a grievance or moving to subsequent steps or to arbitration will be  
3 5:00 p.m. A time limit which ends on a Saturday, Sunday or a holiday as designated in  
4 this Agreement shall end at 5:00 p.m. on the next following non-weekend or holiday day.  
5

6 10.2.2 Failure of a Hospitalist or the Union to file a grievance as designated on a timely  
7 basis or advance a grievance (including to arbitration) in accordance with the time limits  
8 set forth below will constitute an automatic withdrawal of the grievance. Failure of the  
9 Employer to respond-within the time limits set forth below shall result in the grievance  
10 being automatically moved to the next step through Step 2 without any specific request  
11 from the Hospitalist or Union as provided for below.  
12

### 13 10.3 Grievance/Arbitration Process.

#### 15 Step 1 - Hospitalist and Employer Hospital Medicine Designee (“Director”)

16  
17 If the-Hospitalist or Union believes a grievance exists, a written grievance must be  
18 submitted to the Director within twenty (20) days of the date that the Hospitalist or  
19 Union knew or should have known that a grievance exists. The written grievance must  
20 be signed and dated and must also include (1) description of the nature of the  
21 grievance, (2) the article(s) of the contract or provisions of the Individual Agreement  
22 alleged to have been violated, (3) and the specific remedy(ies) requested. Grievances  
23 may not be submitted by email to the Director and the parties shall meet in an attempt  
24 to resolve the grievance. If the Hospitalist requests it, a Union representative may be  
25 present and the Employer may have the Medical Director and/or a Human Resources  
26 representative present. The Director will issue a written reply within twenty (20) days  
27 following the meeting.  
28

#### 29 Step 2 - Hospitalist and Employer Designated Executive (“Executive”)

30  
31 If the grievance is not resolved at Step 1, and it is the Hospitalist’s and/or Union’s

1 desire to proceed further, then the Union must refer the grievance to Step 2 within  
2 twenty (20)-days of receipt of the Step 1 response. The referral notice must be dated  
3 and submitted to the Director. The Executive, aggrieved Hospitalist and a Union  
4 Representative shall meet in an attempt to resolve the grievance. The Medical  
5 Director and/or a Human Resources representative may also be present. The  
6 Executive-shall issue a written reply within fourteen (20) days following the meeting.  
7

### 8 Step 3 – Arbitration 9

10 1. Optional Grievance Mediation. After the Step 2 response, the Employer and  
11 the Union may mutually agree in writing to submit any unresolved grievance to  
12 mediation. The fees of the mediator and any costs for a mediation room will be borne  
13 equally by both parties. At any time during the mediation process either party, through  
14 written notice to the other, may terminate the mediation process. If the mediation is  
15 terminated the Union has twenty (20) days to refer the matter to Arbitration from the  
16 date of termination of the mediation.  
17

18 2. Request for Arbitration and Process. If the grievance is not settled on the basis  
19 of the foregoing procedures, the Union must submit the request for arbitration to the  
20 Director within twenty (20) days after receipt of the Step 2 decision of the Executive-of  
21 grievance mediation. After notification that the dispute is submitted for arbitration,  
22 Employer and the Union will attempt to agree on an arbitrator. If Employer and the  
23 Union fail to agree on an arbitrator within five (5) days, either party may request a list  
24 of nine arbitrators who are attorneys with practice addresses within Oregon or  
25 Washington or Northern California from the Federal Mediation and Conciliation Service  
26 (“FMCS”). Within five (5) days of receipt of the list the parties shall alternate in striking  
27 a name from the list until one (1) name remains. A toss of the coin will choose who  
28 goes first. The person whose name remains shall be the arbitrator and the parties  
29 contact the arbitrator to set an arbitration date.  
30  
31



- 1 1. Appropriate utilization of physician resources;
- 2 2. Problem solving of physician workload;
- 3 3. Develop workload surge protocol;
- 4 4. Monitor monthly patient acuity, census, changes in patient population, work
- 5 schedules; to identify trends requiring potential adjustments or
- 6 considerations related to physician workload and patient care.
- 7 5. The Committee will also review and consider requests by the Chief
- 8 Operating Officer of the Employer (“COO”)/designee that may have an effect
- 9 on Hospitalist workload.

10  
11 11.2.2 Composition of Committee

- 12 1. The Committee shall be composed of three bargaining unit Hospitalists,
- 13 selected by the Union, and three management members selected by the
- 14 Employer. There shall be two Co-Chairs, one designated by the Union and
- 15 the other designated by the Employer. The Co-Chairs will work together to
- 16 determine mutually agreeable meeting dates and agenda for the Committee.
- 17
- 18 2. Hospitalists selected by the Union shall receive a stipend of \$125 dollars an
- 19 hour for attendance at each HMRC meeting or mutually agreed upon
- 20 subcommittee meeting.
- 21
- 22 3. The Chairs of the Committee may mutually agree to request other subject
- 23 matter persons to attend the meeting(s) to provide information to the
- 24 Committee.

25  
26 11.2.3 Meeting Times: The Committee will meet bi-monthly for up to one and 1/2

27 hours or otherwise as mutually agreed by the Co-Chairs. Starting with the first full month

28 after ratification, a Committee meeting will be scheduled every month through the end of

29 the calendar year the contract is ratified unless mutually agreed otherwise by the Co-

30 Chairs.

1           11.2.4    Quorum and Committee Decision Making

2                   1. A majority of the Committee members constitutes a quorum. There must be  
3                   a quorum in order to hold a Committee meeting. Actions by the Committee  
4                   shall be taken by a majority vote.

5  
6                   2. Recommended action from the Committee will be submitted in writing to the  
7                   COO of SHMC for review and assessment. If the COO does not approve the  
8                   recommended action the COO will meet with the Committee to discuss the  
9                   reasons for lack of approval which would allow the Committee, if it desires,  
10                  to adjust its recommendations based on additional information received from  
11                  the COO.

12  
13                  2.2 Any member of the Committee or COO may request the assistance of a  
14                  neutral facilitator or mediator to assist in resolution of disputes.

15  
16                                    **ARTICLE 12 - SEVERABILITY AND MUTUAL AGREEMENT**

17   12.1   In the event that any provision of this Agreement shall at any time be declared invalid  
18   by any court of competent jurisdiction or through government resolution or decree, such  
19   decision shall not invalidate the entire Agreement, it being the express intention of the parties  
20   hereto that all other provision not declared invalid shall remain in full force and effect.

21  
22   12.2   The terms of this Agreement may also be amended by mutual consent of the Parties in  
23   writing at any time during its term.

24  
25                                    **ARTICLE 13 - DURATION OF AGREEMENT**

26   13.1   Duration. This Agreement shall be effective the first full payroll period following its  
27   ratification by the Hospitalists, except as otherwise specifically provided for herein, up to and  
28   including October 31, 2017, and from year to year thereafter if no notice is served as  
29   hereinafter provided.

1 13.2 Modification/Termination Notice. If either party wishes to modify or terminate this  
2 Agreement it shall serve notice of such intention upon the other party no more than one  
3 hundred twenty (120) days and no less than ninety (90) days prior to the expiration or  
4 subsequent anniversary date.

SIGNED <sup>AUGUST</sup> JULY 10 of 2016

SIGNED <sup>AUGUST</sup> JULY 10 of 2016

5 AMERICAN FEDERATION OF  
TEACHERS LOCAL 6552, THE PACIFIC  
NORTHWEST HOSPITALIST

PEACEHEALTH SACRED HEART  
MEDICAL CENTER

MEDICINE ASSOCIATION, AFL-CIO

(R. ALEXANDER)

Rajeev Alexander

*Rand J. O'Leary*

*A. Salazar*

Arturo Salazar

*Michelle Birdseye*

Michelle Birdseye

*B. Ellison*

Brittany Ellison

David Schwartz

*[Signature]*

*[Signature]*

Tom Doyle

6

1 **APPENDIX A SCHEDULING TIME OFF**

2  
3 The following process shall be the contractual requirements for the scheduling and  
4 granting of personal time off. The process may be periodically modified by mutual agreement  
5 between the Employer and the Union. Upon modification a written copy of the modification  
6 shall be supplied to each bargaining unit member and the Union at least 30 days prior to its  
7 implementation. [Union]

8  
9 **Request Process**

- 10  
11 1. Requests must be made on the designated on-line Request Calendar
- 12 2. The Employer will publish a work schedule at least sixty calendar (60) days prior to the  
13 beginning of the work period. Requests must be made a minimum of thirty (30) and a  
14 maximum of 730 calendar days before the schedule is posted. The scheduling office  
15 will notify Hospitalists when the next schedule will be posted.
- 16 3. Once the work schedule is posted it shall not be changed by the employer without the  
17 mutual consent between the employer and the hospitalist.
- 18 4. Maximum total number of requests per calendar year are limited to 4 separate  
19 requests per each calendar six month period (January through June and July through  
20 December).
- 21 5. Requests cannot be made for “Holiday Weeks” ( see below)
- 22 6. Requests must include the Hospitalist’s name, the requested dates and date the  
23 request was made.
- 24 7. Requests of more than twenty-eight (28) continuous calendar days must be approved  
25 by the Medical Director. The Director/designee shall be notified of full or partial shift  
26 trades or substitutions resulting in twenty-eight (28) or fewer consecutive days off.  
27 Such trades or substitutions -shall not require Director approval as long as the  
28 Hospitalist taking the shift has the necessary competencies, and the Hospitalists are

1 working up to their yearly FTE and such trade or substitution does not result in in extra  
2 coat, other than Critical Needs Extra Compensation.

3 Holiday Weeks Scheduling Process

- 4 1. There will be a separate Holiday Week time-off schedule that is accessible to  
5 bargaining unit members.
- 6 2. Holiday weeks include: Thanksgiving, Christmas, New Years, and Spring Break
- 7 3. Each Hospitalist is expected to work 2 of the 4 holiday weeks
- 8 4. If multiple requests for time off are received for the same holiday week preference will  
9 be given to the Hospitalist who did not take the same holiday week the year before  
10 and historical use assessment.

11  
12 Approval

- 13 1. At a minimum the first five (5) requests for any given day will be approved except that  
14 if up to two of these requests are FMLA, OFLA and Worker's Compensation leaves  
15 known at the time the schedule is created they will be counted in the five (5) request  
16 total. This number of total requests will increase to six (6) if hospitalist daily core  
17 staffing exceeds twenty-one (21). In addition if there are multiple requests for time off  
18 to attend the same conference preference will be given to the physicians who did not  
19 attend the same conference the prior year.
- 20 2. All Requests beyond the first five (or six) requests will be considered in the order  
21 received with approval by the Director of Hospital Medicine Section/Designee.

**MEMORANDUM OF UNDERSTANDING – ONE**

**Smart Phone Policy**

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This is a Memorandum of Understanding (“MOU”) between PeaceHealth Sacred Heart Medical Center (the “Employer”) and the American Federation of Teachers Local 6552, the Pacific Northwest Hospitalist Medicine Association, AFL-CIO (the “Union”).

The Parties recognize that based on the communication needs for delivery of adult in-patient medicine, Hospitalists should be provided a smart phone. On this basis, effective June 23, 2015, the following policy regarding providing smart phones for Hospitalists in the bargaining unit will be implemented and remain in effect through the term of this Agreement.

1. The Employer will provide Hospitalists a smart phone.
2. The Employer would own the smart phone and provide the smart phone plan.
3. Limited personal use by the Hospitalist would be allowed.

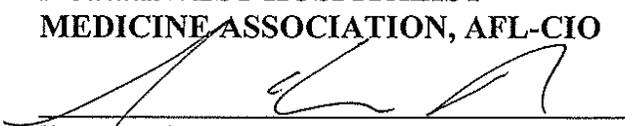
The terms of this MOU may be modified, canceled or an entirely new smart phone policy implemented through subsequent agreement between the Parties.

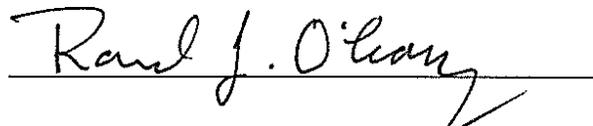
*AUGUST*  
SIGNED ~~JULY~~ 10 of 2016

*August*  
SIGNED ~~JULY~~ 10 of 2016

AMERICAN FEDERATION OF  
TEACHERS LOCAL 6552, THE PACIFIC  
NORTHWEST HOSPITALIST  
MEDICINE ASSOCIATION, AFL-CIO

PEACEHEALTH  
SACRED HEART MEDICAL CENTER

  
\_\_\_\_\_  
Tom Doyle

  
\_\_\_\_\_  
Rand J. O'Leary

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**MEMORANDUM OF UNDERSTANDING – TWO**

**Contracting Out**

This is a Memorandum of Understanding (“MOU”) between PeaceHealth Sacred Heart Medical Center (the “Employer”) and the American Federation of Teachers Local 6552, the Pacific Northwest Hospitalist Medicine Association, AFL-CIO (the “Union”).

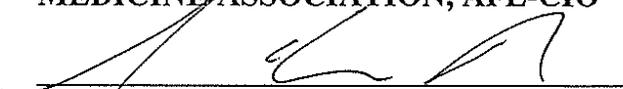
For the term of this current Agreement thru October 31, 2017, no Hospitalist shall be laid off as a result of a decision by the Medical Center to contract out work traditionally performed by the bargaining unit to a new employer. In addition, for the term of the Agreement, with the exception of Locum Tenens, the Employer shall not subcontract out work performed by bargaining unit hospitalists as outlined in Article 2.

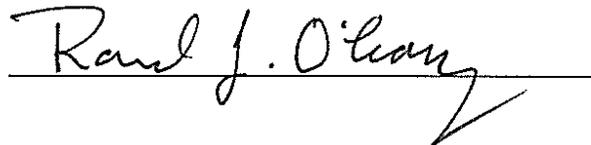
*AUGUST*  
SIGNED ~~JULY~~ 10 of 2016

*August*  
SIGNED ~~JULY~~ 10 of 2016

AMERICAN FEDERATION OF  
TEACHERS LOCAL 6552, THE PACIFIC  
NORTHWEST HOSPITALIST  
MEDICINE ASSOCIATION, AFL-CIO

PEACEHEALTH  
SACRED HEART MEDICAL CENTER

  
\_\_\_\_\_  
Tom Doyle

  
\_\_\_\_\_  
Rand J. O'Leary

1 **LETTER OF UNDERSTANDING**

2 **June 2016**

3  
4 The Medical Center agrees to provide Tail Insurance as outlined below or equivalent:

5  
6 Coverage for Independent Professional Services. Unless PeaceHealth provides insurance for  
7 Physician's independent patient care services as specified in Section 4.5.1, Physician shall  
8 procure and maintain professional liability insurance covering such activities in a form  
9 acceptable to PeaceHealth with liability limits of not less than One Million and No/100 Dollars  
10 (\$1,000,000) per occurrence and Three Million and No/100 Dollars (\$3,000,000) in the  
11 aggregate. Physician shall provide System Risk Management with the certificate of  
12 insurance evidencing the insurance coverage required under this Section and providing for  
13 not less than thirty (30) days notice to System Risk Management of the cancellation of such  
14 insurance. Physician shall promptly notify System Risk Management of any cancellation,  
15 reduction, or other material change in the amount or scope of any coverage required under  
16 this Section.

17  
18 Tail Coverage for Independent Professional Services. If the medical professional liability  
19 coverage procured pursuant to Section 4.5.1.1 is on a "claims made" rather than "occurrence"  
20 basis, Physician shall, upon ceasing of independent medical professional services, obtain  
21 extended reporting malpractice insurance coverage ("tail coverage") or prior acts medical  
22 professional liability coverage ("nose coverage") for all claims relating to Physician's  
23 independent medical professional services in a form acceptable to PeaceHealth, with liability  
24 limits of not less than One Million and No/100 Dollars (\$1,000,000) per occurrence and Three  
25 Million and No/100 Dollars (\$3,000,000) aggregate. Physician shall provide System Risk  
26 Management with proof of such tail coverage, upon reasonable request.

27  
28 Change of Carriers. If during the term of this Agreement, PeaceHealth opts to change the  
29 professional liability insurance carrier for Physician as set forth in Section 5.2.1, it shall either  
30 secure a "retro" clause in such coverage (i.e., "nose" coverage) or shall purchase tail  
31 insurance with equivalent coverage to the prior policy for errors or omissions arising from

1 professional services rendered by Physician under this Agreement prior to the effective date  
2 of the new professional liability insurance policy.

3 Termination of Agreement. If this Agreement is terminated by PeaceHealth pursuant to  
4 Sections 7.2.2, or 7.3 due to a cause attributable to Physician, Physician agrees to reimburse  
5 PeaceHealth for the tail insurance premium and all reasonable costs related to securing tail  
6 insurance for Physician. If Physician's employment is terminated other than pursuant to  
7 Sections 7.2.2 or 7.3 due to a cause attributable to Physician, the Parties shall share cost of  
8 tail insurance that PeaceHealth procures for Physician as follows: (i) If termination occurs  
9 during the first year of Physician's employment, PeaceHealth shall pay 33 1/3% of the tail  
10 insurance premium, (ii) if during the second year, PeaceHealth shall pay 66 2/3% of the tail  
11 insurance premium, (iii) if during any subsequent year, PeaceHealth shall pay 100% of the  
12 tail insurance premium. Physician further agrees that PeaceHealth may set off such amounts  
13 Physician owes from any and all amounts due to Physician, including salary and bonuses.  
14 Physician shall reimburse PeaceHealth for any and all amounts remaining due following such  
15 set-off.

16

<p><b>PeaceHealth Sacred Heart Medical Center</b></p>  <p><b>By:</b> _____</p>  <p><b>Date:</b> _____</p>	<p><b>American Federation of Teachers Local 6552, Pacific Northwest Hospitalist Medicine Association, AFL-CIO</b></p>  <p><b>By:</b> _____</p> <p style="text-align: center;"><b>Tom Doyle</b></p> <p><b>Date:</b> _____</p>
---	---

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20









## CONTRACT RECEIPT FORM

*(Please fill out neatly and completely.)*

Return to Oregon Nurses Association,  
18765 SW Boones Ferry Road Ste 200, Tualatin OR 97062-8498  
or by Fax 503-293-0013. Thank you.

Your Name: \_\_\_\_\_

*I certify that I have received a copy of the ONA Collective Bargaining Agreement with  
PeaceHealth Sacred Heart Medical Center FOR July 1, 2016 through October 31, 2017.*

Signature: \_\_\_\_\_

Today's Date: \_\_\_\_\_

Your Mailing Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Unit: \_\_\_\_\_

Shift: \_\_\_\_\_